

Cuadernos Europeos de Deusto

Núm. Especial 06 (Diciembre 2022)

DOI: <https://doi.org/10.18543/ced062022>

ESTUDIOS

The European Parliament's Oversight of the Agencies of the Area of Freedom, Security and Justice. Where are we Now and Where are we Heading

La supervisión por parte del Parlamento Europeo de las agencias del espacio de libertad, seguridad y justicia. Dónde nos encontramos ahora y perspectivas de futuro

Lucas J. Ruiz Díaz

doi: <https://doi.org/10.18543/ced.2583>

Recibido el 31 de julio de 2022 • Aceptado el 28 de septiembre de 2022 • Publicado en línea: diciembre de 2022

Derechos de autoría (©)

Los derechos de autor (para la distribución, comunicación pública, reproducción e inclusión en bases de datos de indexación y repositorios institucionales) de esta publicación (*Cuadernos Europeos de Deusto, CED*) pertenecen a la editorial Universidad de Deusto. El acceso al contenido digital de cualquier número de *Cuadernos Europeos de Deusto* es gratuito inmediatamente después de su publicación. Los trabajos podrán leerse, descargarse, copiar y difundir en cualquier medio sin fines comerciales y según lo previsto por la ley; sin la previa autorización de la Editorial (Universidad de Deusto) o el autor. Así mismo, los trabajos editados en CED pueden ser publicados con posterioridad en otros medios o revistas, siempre que el autor indique con claridad y en la primera nota a pie de página que el trabajo se publicó por primera vez en CED, con indicación del número, año, páginas y DOI (si procede). Cualquier otro uso de su contenido en cualquier medio o formato, ahora conocido o desarrollado en el futuro, requiere el permiso previo por escrito del titular de los derechos de autor.

Copyright (©)

Copyright (for distribution, public communication, reproduction and inclusion in indexation databases and institutional repositories) of this publication (*Cuadernos Europeos de Deusto, CED*) belongs to the publisher University of Deusto. Access to the digital content of any Issue of *Cuadernos Europeos de Deusto* is free upon its publication. The content can be read, downloaded, copied, and distributed freely in any medium only for non-commercial purposes and in accordance with any applicable copyright legislation, without prior permission from the copyright holder (University of Deusto) or the author. Thus, the content of CED can be subsequently published in other media or journals, as long as the author clearly indicates in the first footnote that the work was published in CED for the first time, indicating the Issue number, year, pages, and DOI (if applicable). Any other use of its content in any medium or format, now known or developed in the future, requires prior written permission of the copyright holder.

The European Parliament's Oversight of the Agencies of the Area of Freedom, Security and Justice. Where are we Now and Where are we Heading¹

*La supervisión por parte del Parlamento Europeo de las agencias del espacio de libertad, seguridad y justicia.
Dónde nos encontramos ahora y perspectivas de futuro*

Lucas J. Ruiz Díaz
Profesor Ayudante Doctor
Universidad de Granada
lucasruiz@ugr.es

doi: <https://doi.org/10.18543/ced.2583>

Received on July 31, 2022
Accepted on September 28, 2022
E-published: December 2022

Summary: I. Introduction.—II. The legal changes after the Lisbon Treaty and the praxis of oversight afterwards. 1. The general oversight powers of the European Parliament over the Area of Freedom, Security and Justice. 2. The oversight over the agencies. The main concerns that the legal and praxis evidence.—III. The main sources of conflict and the need for further reforms to enhance agencies' accountability and transparency.—IV. Conclusions.

Abstract: Despite becoming a legislative actor comparable to the Council after the entry into force of the Lisbon Treaty, the European Parliament (EP) still lacks the power to effectively scrutinize the implementation of the European Union (EU) law and policies by the agencies of the Area of Freedom, Security and Justice (AFSJ). The case of Frontex has demonstrated the extent to which the successful protection of human rights is at stake when it comes to the activities at the external borders to halt irregular migration flows and other illegal cross-border activities. Abuses in this regard have been highlighted by several International Organizations and non-Governmental Organizations, forcing the EU Institutions to act accordingly. This paper analyzes the current state of affairs of the EP's

¹ This paper was presented at the International Conference of the Jean Monnet Network on EU Law Enforcement (EULEN), entitled «The EU Migration, Border Management and Asylum Reform in the Aftermath of the Refugee Crisis: Towards an Effective Enforcement», organized by the University of Deusto and held in Bilbao on 2 and 3 June 2022. The author would like to thank the peer reviewers for their valuable comments to improve the original draft. All the website pages referenced were latest accessed on 29 July 2022.

powers to scrutiny AFSJ agencies after the progressive enhancement of their mandates in the last decade, and suggests several recommendations to enhance the accountability of these agencies to fully respect the principles of the rule of Law and the values on which the EU is based.

Keywords: European Union, European Parliament, AFSJ, border management, migration policy

Resumen: *A pesar de convertirse en un legislador comparable al Consejo tras la entrada en vigor del Tratado de Lisboa, el Parlamento Europeo (PE) todavía carece de los poderes necesarios para controlar de manera efectiva la implementación del Derecho y políticas de la Unión Europea (UE) por parte de las agencias del Espacio de Libertad, Seguridad y Justicia (ELSJ). El caso de Frontex ha demostrado la medida en la que la protección efectiva de los derechos humanos está en juego cuando se abordan las actividades en las fronteras exteriores para detener los flujos de inmigración irregular y otras actividades transfronterizas ilícitas. Los abusos en este sentido han sido señalados por Organizaciones Internacionales y Organizaciones no gubernamentales, lo que ha provocado la intervención de las instituciones de la UE para ponerles coto. Este trabajo analiza el estado actual de la cuestión en relación con los poderes del PE para examinar las agencias del ELSJ tras el progresivo refuerzo de sus mandatos en la última década y sugiere algunas recomendaciones para reforzar la responsabilidad de dichas agencias con el fin de respetar plenamente los principios del Estado de Derecho y los valores sobre los que la UE se fundamenta.*

Palabras clave: Unión Europea, Parlamento Europeo, ELSJ, gestión de fronteras, política de migración

I. Introduction

With the entry into force of the Lisbon Treaty, the European Parliament (EP) became a legislative actor comparable to the Council in terms of competences and responsibilities. Nowadays, however, it still lacks the power to effectively scrutinize the implementation of European Union (EU) law and policies by, and the activities of, the agencies of the Area of Freedom, Security and Justice (AFSJ). After decades of progressive development thanks to the stimulus given by the European Council, at present the main problem lies in the fact that the AFSJ covers policies that directly touch at the basic principles of the protection of fundamental rights of individuals, along with several “regalian functions of the State”, such as borders and (rule of) law. Indeed, some authors have argued that the AFSJ has turned into “the inferno of the rule of law”² because of the breakdown of some of its main elements, such as the protection of the legislative prerogatives of national and European parliaments against the interference of the executives in a European normative process clearly driven by intergovernmental logics —and rules— in specific areas of EU integration. For instance, in the last decade the case of the European Border and Coast Guard (Frontex) has persistently demonstrated the extent to which the effective protection of human rights is in danger when it comes to the activities prompted and coordinated by the agency at the external borders to halt irregular migration flows and other illegal cross-border activities. Abuses have been repeatedly condemned by several International Organizations³, non-Governmental organizations⁴, and the Academia⁵, forcing the EU Institutions to act accordingly and progressively reinforce the protection and safeguards mechanisms within the agency, the fulfilment

² Ignacio Borrajo Iniesta, “El Estado de Derecho en el Espacio de Libertad, Seguridad y Justicia de la Unión”, in *Estado de Derecho y Unión Europea*, dir. D. J. Liñán Nogueiras and P. J. Martín Rodríguez (Madrid: Tecnos 2018), 263 (own translation).

³ Inter alia, Council of Europe's Parliamentary Assembly, Res. 1821 (2011), of 21 June 2011, “The interception and rescue at sea of asylum seekers, refugees and irregular migrants”, and judgments of the European Court of Human Rights (ECtHR) *Hirsi Jamaa v. Italia*, no. 27765/09 (ECtHR, de 23 February 2012) and *N.D. v. Spain and N.T. v. Spain*, no. 8675/15 and 8697/15 (ECtHR, 3 October 2017).

⁴ Human Rights Watch, “Frontex Failing to Protect People at EU Borders”, *HRW News*, 23 June 2021, <https://www.hrw.org/news/2021/06/23/frontex-failing-protect-people-eu-borders>

⁵ See, for instance, Melanie Fink, *Frontex and Human Rights. Responsibility in 'Multi-Actor Situations' under the ECHR and EU Public Liability Law* (Oxford: Oxford University Press, 2018); and Simone Marinai, “The interception and rescue at sea of asylum seekers in the light of the new EU legal framework”, *Revista de Derecho Comunitario Europeo*, no. 55 (September-December 2016): 901.

of human rights standards in its mandate and the conduct of operations⁶, and even the opening of investigations into Frontex's Executive Director over claims of "harassment, misconduct and migrant pushbacks"⁷, which recently ended up with his resignation⁸.

Against this complex background, the aim of this paper is to analyse the current state of affairs of the EP's powers to scrutinise the work of AFSJ agencies after the progressive enhancement of their mandates in the last decade, and suggest recommendations to enhance their accountability to fully respect the principles of the rule of law and the values on which the EU is founded (art. 2 of the Treaty on the EU, TEU). Indeed, it aims at understanding to what extent the reforms of the founding statutes of the AFSJ agencies operated in the last decade have served to enhance EP's oversight and, indirectly, reinforced (or not) the transparency and accountability of their activities. On the one hand, the legal and regulatory frameworks and, on the other, the praxis of the Members and Political Groups within the EP will be assessed to evaluate whether the gaps identified in the following sections are a matter of lack of competences or, instead, are part of the habitual conduct of politics by the EP and the rest of the EU Institutions —with the connivance of the Member States (MMSS)— to fulfil other short-term, security-related issues on the EU agenda. Due to the limited extent of this paper, nevertheless, we will not deal with the role of national parliaments in overseeing the activities of AFSJ agencies in junction with the EP —a shared responsibility introduced by the Lisbon Treaty (art. 12 TEU and Protocols no. 1 and 2) which has been duly analysed elsewhere⁹.

In our paper, we will consider in particular the external dimension of the AFSJ and the EP's (limited) oversight over it. Indeed, in the last years

⁶ Frontex, "Code of Conduct for return operations and return interventions coordinated or organised by Frontex", 2018, https://frontex.europa.eu/assets/Key_Documents/Code_of_Conduct/Code_of_Conduct_for_Return_Operations_and_Return_Interventions.pdf

⁷ Darren McCaffrey, "Frontex: EU's border agency probed over harassment, misconduct and migrant pushback claims", *Euronews*, 12 January 2021, <https://www.euronews.com/my-europe/2021/01/12/frontex-eu-s-border-agency-probed-over-harassment-misconduct-and-migrant-pushback-claims>

⁸ Alice Tidey, "Frontex chief resigns over misconduct and human rights violations probe" *Euronews*, 29 April 2022, <https://www.euronews.com/2022/04/29/frontex-chief-resigns-over-misconduct-and-human-rights-violations-probe>

⁹ Angela Tacea and Florian Trauner, "The European and national parliaments in the area of freedom, security and justice: does interparliamentary cooperation lead to joint oversight?", *The Journal of Legislative Studies* (December 2021): 1; and Aidan Wills and Mathias Vermeulen, "Parliamentary Oversight of Security and Intelligence Agencies in the European Union", European Parliament's Committee on Civil Liberties, Justice and Home Affairs, Brussels, 2011, https://www.dcaf.ch/sites/default/files/publications/documents/study_en.pdf

we have perceived a considerable increase in the AFSJ policies having an external dimension for which the EU has endorsed some programmes, funding and laws targeting at strengthening its external borders and cooperation with third States on particular issues (e.g., migration and border management), as well as external contacts between the agencies and third States' officials to enhance operational and strategic cooperation on fighting certain illegal cross-border traffics in the "neighbourhood". Concerning the agencies, the evolution of their mandates, the access to and the exchange of information and personal data, and the working and operational arrangements signed by the agencies with third countries seriously challenge the respect for EU values and the rule of law. Of particular concern is that the EP has a limited power to scrutinize these external activities and informal engagements out of the legal framework both *ex ante* and *ex post*, as the praxis so far has evidenced. As we will explore further in the following sections, the implementation of the AFSJ external dimension and its further enhancement represent one of the most significant loopholes of parliamentary oversight of the EU integration process, aggravated by the predominance of the Council —and the foreign policies of the EU MMSS— in this particular area of the AFSJ and the increased autonomy of the agencies *vis-à-vis* the establishment of relations with third parties, indirectly posing a risk to its alleged general principles of the EU's external action (art. 21 TEU), whose analysis clearly exceeds our study.

This paper is structured as follows. After an in-depth review of the reforms operated by the Lisbon Treaty in this area of integration and the praxis followed so far (section II), we will take a closer look at the main sources of conflict in current affairs as regards both domestic and external affairs, proposing some reflections and recommendations to enhance the accountability and transparency of the AFSJ agencies (section III). As a result, we will be in a better position to understand the European politics behind the AFSJ, and how institutions —to some extent— matter in this far-reaching policy goal of the EU for the 21st century taking a critic neo-institutionalism as a prism of analysis¹⁰. Indeed, EU institutions are relevant for the first time in the European integration process in the AFSJ thanks to the innovations brought through by the Lisbon Treaty, even though that the intergovernmental logic and rules which predominated in the pre-Lisbon period still govern the whole picture, including those assumed

¹⁰ Building upon the following work: Florian Trauner and Ariadna Ripoll, "The Communitarization of the Area of Freedom, Security and Justice: Why Institutional Change does not Translate into Policy Change", *Journal of Common Market Studies* 54, no. 6 (June 2016): 1417-1432.

“communitarized” areas. Nevertheless, they do not always tend to protect the European interests as they are supposed to, but the EU MMSS’ —as the “New Pact on Asylum and Migration” evidences¹¹. Here, the role of the EP remains crucial to protect human rights and safeguard the European values on which the EU is founded, both within and outside the EU borders. The underlying, basic question here is whether the EP is ready to play that role in the complex EU political system.

II. The legal changes after the Lisbon Treaty and the praxis of oversight afterwards

Until the entry into force of the Lisbon Treaty —and some time after¹², “[t]o gain control over the ongoing activities of the [Justice and Home Affairs Council]-related agencies and ensure their accountability, the EP [...] applied different strategies to compensate *ex post* for weak *ex ante* legislative involvement, including formal legal procedures as well as informal channels and practices”¹³. Because, for decades, the EP had the will but not the competences to oversee¹⁴ the whole AFSJ, the Council used extensively its powers to define —following an evident intergovernmental approach— the extent and content of the policies covered by the AFSJ and the roles of the agencies operationalizing it, becoming the “main principal”¹⁵ in a process of “agencification” of the policies covered by this

¹¹ The whole (legislative and non-legislative) package published by the Commission in September 2020 and currently debated by the Council and the EP is available at: https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/new-pact-migration-and-asylum_en

¹² In addition to the transitional period established in the Protocol no. 36 [2007, OJ, C326, p. 322], “[...] member states [...] were eager to define the new legal basis for Europol before the Lisbon Treaty was scheduled to enter into force in order to prevent the EP from using its codecision powers”, deliberately postponing thus its full involvement in the establishment of the AFSJ agencies. Florian Trauner, “The European Parliament and Agency Control in the Area of Freedom, Security and Justice”, *West European Politics* 35, no. 4 (2012): 792.

¹³ Florian Trauner, “The European Parliament...”, 787-788.

¹⁴ In this paper we will use interchangeably the terms *control*, *oversight* and *accountability* irrespective their differences concerning their extent and when and by whom they are carried out. Generally speaking, we will take a look at the relationship between an actor and an external agent to whom it has to report and justify its activities, otherwise it might face some kind of consequences. For a detailed analysis on this issue, see for instance Sergio Carrera, Leonhard den Hertog and Joanna Parkin, “The Peculiar Nature of EU Home Affairs Agencies in Migration Control: Beyond Accountability versus Autonomy?” *European Journal of Migration and Law* 15, no. 4 (2013): 337.

¹⁵ Renaud Dehousse, “Delegation of powers in the European Union: The need for a multi-principals model”, *West European Politics* (June 2008): 797.

area of integration “designed to consolidate the predominance of MMSS in the AFSJ”¹⁶. The only formal say that the EP had was budgetary control through the draft of the annual EU budget and its powers as a discharge authority. The Lisbon Treaty, therefore, opened a new “window of opportunity” for the scrutiny and control of the AFSJ agencies and, in general, the policies covered by this far-reaching objective now fully “communitarized”¹⁷. As Borrajo Inieta clearly states:

The European Parliament has moved from being considered a neglected institution in justice and home affairs to becoming the axis of legislation in this area, where the freedom of definition enjoyed by the political power and the need to respect fundamental rights openly affect all the branches of the leafy tree covered by the area of freedom, security and justice.¹⁸

1. *The general oversight powers of the European Parliament over the Area of Freedom, Security and Justice*

Nowadays, the EP enjoys legislative, budgetary and supervisory powers that have progressively enhanced its position in the EU political system through successive treaty reforms. As a result, according to the Treaties in force, the EP has become co-legislator on an equal footing with the Council to negotiate the legal framework and funding instruments of the AFSJ policies (e.g., arts. 79.4, 81-84, 177 and 322 of the Treaty on the Functioning of the EU, TFEU). This competence comes in addition to its consultative powers in the adoption of the multi-annual financial framework (art. 312 TFEU), its reinforced budgetary powers concerning the definition of the annual budget (art. 314 TFEU) and the discharge procedure (art. 319 TFEU), and certain competencies in the EU's external action when concluding international agreements (art. 209 and 218 TFEU), for which the EP is asked to give its consent —as we will discuss later.

¹⁶ Florian Trauner, “The European Parliament...”, 785.

¹⁷ Some limits remain, however, in certain areas, such as administrative cooperation (art. 74 TFEU), provisions on passports, identity cards and residence permits (art. 77.3 TFEU), and police cooperation (art. 89 TFEU), where a special legislative procedure applies in which the EP is merely consulted. Moreover, the consent procedure applies to “other specific aspects of criminal procedure” not related to mutual admissibility of evidence, the rights of individuals in criminal procedure or the rights of the victims of crimes (art. 82.2 TFEU), the inclusion of other “Eurocrimes” (art. 83.1 TFEU), and the establishment of the European Public Prosecutor's Office (art. 86 TFEU).

¹⁸ Ignacio Borrajo Inieta, “El Estado de Derecho...”, 279 (own translation).

These steps forward prompted by the Lisbon Treaty have been key to extend the “communitarian” method —and, at least theoretically, its spillover logic— to (most of) the formerly intergovernmental policies covered by the AFSJ. Indirectly, it has also enhanced the role of the EP in their definition, implementation and oversight through a series of parliamentary activities, mainly under the responsibility of the Committee on Civil Liberties, Justice and Home Affairs (LIBE Committee). On the other hand, the Lisbon Treaty shows certain continuity by confirming previous powers of the EP. As already foreseen in the preceding treaties, Members of EP (MEPs) can also draft “own-initiative reports” and resolutions on issues falling under its competence (art. 225 TFEU)¹⁹, create commissions of inquiry to investigate alleged contraventions or maladministration of EU law (art. 226 TFEU)²⁰, or to bring proceedings for annulment before the Court of Justice to request the annulment of certain provisions of, or the entire content of, legislative acts (art. 263 TFEU)²¹.

As far as EP's oversight is concerned, it mainly takes the form of political debates, exchanges of views, major interpellations for written answer, and oral and written questions to the members of the College of Commissioners —including the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy— in the framework of the ordinary legislative procedure, on a regular basis (e.g., presentation of the annual reports on the progress made in the AFSJ, and the State of the Union address), or when an issue reaches the public policy agenda. Moreover, the EP regularly organizes informal debates and public hearings open to civil society and experts, as well as interparliamentary committee meetings to discuss specific issues of the European agenda with the members of national parliaments. In particular, EP committees arrange hearings and exchanges of views with experts and representatives from the national law-enforcement authorities, judiciary, ministries, Academia and think-tanks and civil society organizations to discuss particular topics high on the political agenda or to deepen the knowledge of MEPs and their teams on a specific issue —especially in the drafting of a complex legislative file. Last but not least, Members of the EP

¹⁹ Additionally, Rule no. 54 of the Rules of Procedure of the EP, 9th Parliamentary term, September 2021. The Rules of Procedure are available at: https://www.europarl.europa.eu/doceo/document/RULES-9-2021-09-13_EN.pdf

²⁰ At the time of writing, during the ninth parliamentary term, the EP created the Committee of Inquiry to investigate the use of Pegasus and equivalent surveillance spyware. All the information at: <https://www.europarl.europa.eu/committees/en/pega/home/highlights>

²¹ For instance, Case C-133/06, European Parliament versus Council of the European Union, Judgment of the Court (Grand Chamber) of 6 May 2008, ECLI:EU:C:2008:257.

(MEPs) regularly debate, along with the presidents of the Commission and the EP, the programme of activities with the representative from the Member State holding the presidency of the Council of the EU during the presentation of the priorities for the incoming semester. Contrary to common believe, this debate still serves to settle and control the agenda by the Member State holding the presidency for six months —in junction with the other two countries forming the ‘trio of presidencies’²², and to test the points of view of the different institutions as regards certain politized issues and potential interinstitutional contestations; a question of key importance due to the new role of the European Council after the Lisbon Treaty²³ and the new dynamics opened in the current ninth legislature (2019-2024) because of the difficulties in forming the necessary majorities in the EP to take any action due to the existing political fragmentation and polarization²⁴.

These political debates, legislative and no-legislative initiatives, and oversight over the whole AFSJ are among the primary responsibilities of the LIBE Committee. Nevertheless, other EP committees with duties on certain AFSJ-related issues also pay attention to, and have a say in, the development and implementation of the AFSJ. This is the case of, for instance, budget control and discharge (Budgetary Control Committee, CONT), constitutional and legal affairs (JURI and AFCO, respectively) and foreign affairs (AFET). Within their competences, they can become responsible too for a legislative initiative, giving their opinion to the legislative procedures led by other committees or drawing a non-legislative report, as the LIBE

²² At the time of writing, the latest debate of this kind was held on 6 July 2022, during the presentation of the programme of activities of the Czech Presidency by the country’s Prime Minister, Petr Fiala. Generally speaking, during their interventions, the president of the Commission and MEPs expressed their majoritarian support to the measures envisaged by the Czech Republic, whose overall objective was ‘to contribute as much as possible to creating the conditions for the security and prosperity of the EU in the context of the European values of freedom, social justice, democracy and the rule of law and environmental responsibility’ in the aftermath of the Russian military aggression against Ukraine. In particular, during the debate MEPs highlighted the enhancement of the AFSJ as a priority of the “trio of presidencies” (France, the Czech Republic and Sweden). The priorities of the Czech Presidency are available at its website (<https://czech-presidency.consilium.europa.eu/en/programme/priorities/>), while the debate is accessible via the following link: https://www.europarl.europa.eu/doceo/document/CRE-9-2022-07-06-ITM-004_EN.html

²³ “The officialisation of the European Council as one of the key EU actors has led to new inter-institutional dynamics and increased the voice of member states.”. Ariadna Ripoll Servent, “Conclusions: What future for the Treaty of Lisbon?”, *Política y Sociedad* 58, no. 1 (2021): 2.

²⁴ Ariadna Ripoll Servent, “The European Parliament after the 2019 Elections: Testing the Boundaries of the ‘Cordon Sanitaire’”, *Journal of Contemporary European Research* 15, no. 4 (December 2019): 331.

Committee itself does on its daily work. Moreover, in the framework of the ordinary legislative procedure, the Conference of Presidents of the EP may arrange a joint committee responsible for giving its joint opinion providing that “the matter falls indissociably within the competences of several committees” and “that the question is of major importance” (art. 58 Rules of the Procedure). Thirdly, in addition to the “regular”, standing committees, MEPs may also set up a special committee “on a proposal from the Conference of Presidents” for a short period of time to discuss and decide on a particular issue (Art. 207 Rules of the Procedure). Finally, some issues of relevance on the EU agenda or highly contested/politicized²⁵ are also addressed by the Plenary for political debate —and not only for ratification of the decisions taken by LIBE or the other relevant committees. For instance, that was the case for the “Return Directive” in 2008, the “SWIFT dossier” and the Passenger Name Recognition deal with US and Australia, or the establishment in 2013 and the current reform of the Schengen evaluation and monitoring mechanism, which has become a dividing issue between the two biggest groups in the EP²⁶.

With regard to the praxis so far, generally speaking, MEPs out of the two biggest groups in the EP have traditionally held similar positions regarding casting their votes to ensure the key developments of, and the general oversight over, the AFSJ. Indeed, expressing opposite votes is the exception to the rule when it comes to the main policies covered by the AFSJ. Certainly, both the European People's Party (EPP) and the Socialist and Democrats Group (S&D Group) —the (former) “Grand Coalition”, which for the current 2019-2024 legislative period represent the 44.74 per cent of the total available seats, have jointly voted for more than a decade in the major legislative AFSJ-related dossiers following the “ordinary legislative procedure”. Inter alia, both parties have supported the introduction of the European Travel Information and Authorisation System (ETIAS)²⁷, the

²⁵ “[...] contestation [...] can occur within political institutions while in politicization a topic becomes the object of public discussion”. Tapio Raunio and Wolfgang Wagner, “Contestation over Development Policy in the European Parliament”, *Journal of Common Market Studies*, Vol. 59 (2021): 20-21.

²⁶ “European Parliament rejects EPP attempt to make internal borders within the Schengen area permanent”, *S&D Press*, 29 November 2018, <https://www.socialistsanddemocrats.eu/newsroom/european-parliament-rejects-epp-attempt-make-internal-borders-within-schengen-area>

²⁷ Data on the final votes in LIBE Committee are available at: <https://www.europarl.europa.eu/committees/en/libe/meetings/votes>. Data on the final vote in the Plenary are also available for a longer period of time than the previous website at: <https://parltrack.org/>. For a detailed analysis on the composition of majorities at the EP, see Ariadna Ripoll Servent, *Institutional and Policy Change in the European Parliament. Deciding on Freedom, Security and Justice* (London: Palgrave MacMillan, 2015).

(unfinished) reform of the “Dublin system”, the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, the reform of the European Criminal Records Information System (ECRIS)²⁸, and the respect of fundamental rights in providing competent authorities with access to centralised registers of bank accounts through the single access point in the fight against money-laundering; a general political agreement which favoured the adoption of the text by the EP at first reading in most of the cases. On the contrary, only a few issues have raised doubts or disagreement between the EPP and the S&D Group. The adoption of stricter rules on data protection²⁹, the inclusion of gender-based violence as a new area or crime listed in article 83.1 TFEU³⁰, the Digital Services Act³¹ or the extension of the EURODAC database to include the fingerprints of resettled third-country nationals and stateless persons for law enforcement purposes are examples of this latter.

This internal unity in the voting behaviour of both parties —accompanied by other political groups in certain dossiers, especially due to the current fragmentation in the Hemicycle³²— goes beyond the ordinary legislative procedure, and embraces inter alia “constitutional” affairs to protect its prerogatives against the intromission by other EU Institutions (i.e., the Council), as the case of the negotiations of the Schengen governance

²⁸ This dossier, however, divided the S&D Group because of the abstention of some of its MEPs.

²⁹ “Data protection: New rules at risk to be blocked by centre-right MEPs”, *S&D Press*, 5 March 2014, <https://www.socialistsanddemocrats.eu/newsroom/data-protection-new-rules-risk-be-blocked-centre-right-meps>

³⁰ Andreas Rogal, “MEPs welcome Ursula von der Leyen’s announcement to legislate on violence against women”, *The Parliament Magazine*, 17 September 2021, <https://www.theparliamentmagazine.eu/news/article/meps-welcome-ursula-von-der-leyens-announcement-to-legislate-on-violence-against-women>

³¹ See the EPP’s position on the issue at: <https://www.eppgroup.eu/newsroom/publications/epp-group-position-on-the-digital-services-act-dsa>. For the S&D Group’s position consult their website at: <https://www.socialistsanddemocrats.eu/es/channel/digital-services-act-people>. The final document was supported *en bloc* by the EPP, the S&D Group, Renew and Les Verts/ALE, in a vote tabled at the Plenary on 5 July 2022 after the groups reached a compromise text.

³² Even though the number of political groups in the EP has remained almost unchanged since the first one directly elected by the citizens in 1979 (7-10 groups, plus the Non-attached Members), the number of seats that the EPP and the S&D attained declined in the 2019 elections —for the benefit of the Renew Europe group, while the number of seats in the two extremes of the Hemicycle considerably increased, which made possible that the Identity and Democracy group (far-right) became the fifth force in the currents legislative period immediately after the Greens (73 and 74 seats, respectively). Data available at: <https://www.europarl.europa.eu/about-parliament/en/in-the-past/previous-elections>

demonstrated in 2012³³, as well as on the oversight of the work of the AFSJ agencies, as we will analyse in the following section. Nevertheless, the current fragmentation and the loss of seats by the “Grand Coalition” complicate the political panorama in the near future as far as the EP’s internal unity is concerned. With regard to the other EP groups, for instance, Renew Europe has evidenced a more Europhile approach in recent AFSJ-related initiatives³⁴, although it has voted along the lines of the two biggest political groups for most of the AFSJ-related dossiers. On the contrary, the Identity and Democracy Group (ID) and the European Conservatives and Reformists Group (ECR) —on the extreme right side of the Hemicycle— and the Left group (GUE/NGL) and Les Verts/ALE —on the extreme left side— generally oppose to the main legislative initiatives coming from the Commission if they represent a further step in the integration process or do not take sufficiently into account human rights, respectively. Hence, fragmentation has directly favoured the inclusion of different parties in the leading positions and roles in the EP, such as committee chairs and vice-presidencies, or rapporteurships in key legislative dossiers³⁵. However, indirectly, it might raise some concerns with regard to the expected results of the political debate (i.e., reports and opinions “of minimums”) internally at the EP because of the assumptions of these important legislative dossiers by some Europhobe and xenophobe MEPs.

In particular, when it comes to the oversight over the external relations the question becomes even more problematic, to say the least. For instance, although the EP is entitled to provide its consent to international agreements concluded by the EU (art. 218 TFEU), the practice has evidenced its secondary role *vis-à-vis* the (European) Council due to the latter’s ploys to avoid Parliamentary involvement; a question that reaches too the consultation procedure in other areas of the development and implementation of the AFSJ, including its external dimension. As Ripoll Servant clearly states:

³³ In June 2012, the EP suspended its cooperation with the Council in the negotiation of five legislative dossiers linked to the maintenance of internal security due to the Council’s unilateral decision to modify the Schengen governance in a clearly restrictive, intergovernmental manner. More information at: <https://www.europarl.europa.eu/news/es/press-room/20120614IPR46824/ep-suspends-cooperation-with-council-on-five-justice-and-home-affairs-dossiers>

³⁴ See, for instance, the intervention of its representatives in the following debates: search and rescue in the Mediterranean and the publication of the EU Security Union Strategy. These interventions are available at: https://www.europarl.europa.eu/doceo/document/CRE-9-2019-10-23-ITM-018_EN.html, and https://www.europarl.europa.eu/doceo/document/CRE-9-2020-12-16-ITM-013_EN.html, respectively.

³⁵ For instance, the Dutch MEP Tineke Strik (Group of the Greens/European Free Alliance) was appointed rapporteur on the reform of the Return Directive and the Spanish MEP Jorge Buxadé Villalba (European Conservatives and Reformists Group) rapporteur on the (new proposal on) Eurodac Regulation.

The use of non-legislative instruments (such as the EU-Turkey Statement on asylum-seekers) and intergovernmental treaties (such as the fiscal compact) outside the EU framework mean that the EP has no say on decisions or is restricted to implementing them in follow-up legislation. Moreover, the fact that these successive crises have touched upon core state powers of member states has also helped governments to legitimize their primary role as decision-makers and placed MEPs under the shadow of the European Council and, hence, intergovernmentalism.³⁶

In fact, what we observe is the limited power or even the exclusion of the EP in policymaking formulas other than the ordinary legislative procedure as far as the AFSJ or its external dimension are concerned. Indeed, when the EP is merely consulted on an issue of its competence, or under the consent procedure in the event that the Treaties so envisage³⁷, it is easier for the (European) Council and/or the Commission to take the lead and present its political guidelines or a proposal, respectively. This EP's loss of relevance has happened in those areas of the AFSJ in which the EP is consulted, such as refugee relocation³⁸, in addition to the consent practice for the conclusion of international agreements which cover its external dimension. Concerning the latter, for instance, the EP consented on the (controversial³⁹) return and readmission agreements concluded by the EU with third States⁴⁰, "which falls within the scope of Title V of Part Three of the TFEU" (i.e., the AFSJ).

³⁶ Ariadna Ripoll Servent, "The European Parliament: Powerful but Fragmented", in *The Institutions of the European Union*, fifth edition, ed. por Dermont Hodson *et al.* (Oxford: Oxford University Press): 24. <https://halshs.archives-ouvertes.fr/halshs-03498368/document>

³⁷ In addition to those AFSJ-related areas already mentioned in footnote 17, that is: the establishment of the number of seats of the EP (art. 14.2 TFEU); actions to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation (art. 19 TFEU); the strengthening or addition to the rights of the Citizens of the Union (art. 25 TFEU); the accession to and withdrawal of Member States from the EU (arts. 49 and 50 TFEU, respectively); the negotiation of international agreements (art. 218 TFEU); the setting of the Union's own resources (art. 311 TFEU) and the MFF (art. 312 TFEU); and the extension of EU competencies if any action is considered necessary "to attain one of the objectives set out in the Treaties" (art. 352 TFEU).

³⁸ On this particular topic, see Maria Chiara Vinciguerra, "Punching Below Its Weight: The Role of the European Parliament in Politicised Consultation Procedures", *Politics and Governance* 9 (2021): 29.

³⁹ On this issue, see Philipp Stutz and Florian Trauner, "The EU's 'return rate' with third countries: Why EU readmission agreements do not make much difference", *International Migration* 60 (2022):154; and Florian Trauner, *Return and readmission policy in Europe. Understanding negotiation and implementation dynamics* (London: Routledge, 2018).

⁴⁰ The whole list of return and readmission agreements signed by the EU with third countries is available at: https://home-affairs.ec.europa.eu/policies/migration-and-asylum/ir-regular-migration-and-return/return-and-readmission_en

However, because of the “sensitivities” they entail⁴¹ and the complex intergovernmental negotiations they imply, since 2016 “the EU has increasingly refrained from concluding formal EU readmission agreements but asked for more informal, non-legalised readmission arrangements or, simply, return deals”⁴². The progressive “informalisation of cooperation with third countries” in the last years was recently denounced by MEPs, which called on the MMSS “to urge and enable the Commission to conclude formal EU readmission agreements coupled with EU parliamentary scrutiny and judicial oversight”, at the same time it criticised the conclusion of bilateral agreements between MMSS and third countries⁴³ upon which the EU and, in particular, its agencies have operationalized the AFSJ. Therefore, the well-known 2016 “EU-Turkey deal” has just been an example of the practices of the EU Institutions in the “common” migration policy that, on the one side, have precluded the EP from its oversight duties and responsibilities in recent times, and, on the other, reflected the externalisation of control practices to third States not always fulfilling the minimum requirements regarding the protection of human rights; and, thus, contravening the principles, objectives and values guiding the external action of the EU as declared in the Treaties (arts. 2, 3 and 21 TEU). This “risky business” is even more evident in the external action of the AFSJ agencies, whose control is, nowadays, overwhelmingly deficient.

2. *The oversight over the agencies. The main concerns that the legal and praxis evidence*

With regard to the task of effectively overseeing the protection of the rule of law and fundamental rights in the AFSJ, the EP also has a say in the establishment and further enhancement, budget and —therefore, indirectly— personnel, and scrutiny of the activities of the agencies due to the Lisbon provisions and their subsequent normative developments. Now

⁴¹ For instance, the latest formal EU readmission agreement was concluded in 2020 with Belarus, a country ruled by a pro-Russian dictatorship that has “instrumentalised” migration to its advantage. For this reason, which was also condemned by the Committee on Migration, Refugees and Displaced Persons of the Parliamentary Assembly of the Council of Europe (Report 15382 rev, of the 29 September 2021), the Commission decided to suspend in June 2021 certain articles of the EU’s Visa Facilitation Agreement with the Republic of Belarus, after the country’s government announced that it would suspend the EU-Belarus readmission agreement. Additionally, the EU signed a legally non-binding readmission arrangement with Afghanistan in 2016, and the country was marked as “secure” weeks before the return of the Taliban to power.

⁴² Stutz and Trauner, “The EU’s ‘return rate’ with third countries...”, 156.

⁴³ European Parliament resolution of 17 December 2020 on the implementation of the Return Directive (2019/2208(INI)), paragraph 6.

the Treaties (art. 85 and 88 TFEU) and the regulations establishing the agencies⁴⁴ provide the EP with the capacity to create and strengthen the role of the AFSJ agencies⁴⁵, define their personnel and budgets (art. 314 TFEU and agencies' regulations; e.g., art. 59 Frontex Regulation), and —“although the EP does not have uniform powers to summon AFSJ agency directors”⁴⁶— invite the directors of the agencies to report annually on their activities. Currently, for instance, the EP is fully responsible for the establishment of new AFSJ agencies, such as the Anti-Money Laundering Authority (AMLA)⁴⁷, in the framework of its faculties within the ordinary legislative procedure, long time vetoed under previous treaties. Indeed, in the last decade it has become a clear supporter of the increasing “agencification” of the AFSJ —along with the Commission, even if the Council urged itself to put in place major reforms of the agencies before the Lisbon Treaty came into force to strengthen its position in the negotiations and guarantee its intergovernmental governance until further reforms.

In the last decade, nevertheless, it has also done so by demanding more sources of control and accountability in exchange for a higher degree of autonomy. For instance, in the latest reform of the European Union Agency for Law Enforcement Cooperation (Europol) Regulation⁴⁸, the EP agreed to enhance its potential to process and analyse data —including those coming from private entities, while respecting privacy and under the direct supervision of the European Data Protection Supervisor (EDPS), who will oversee Europol's personal data processing operations, and work together with the agency's Data Protection Officer⁴⁹. This unconditional support to the latest (Council-driven)

⁴⁴ In particular, the case of Frontex according to Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, OJ L295, 14 November 2019.

⁴⁵ Another one is being discussed at the time of writing these lines to fight money-laundering and terrorism financing. See Proposal for a Regulation of the European Parliament and of the Council establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism and amending Regulations (EU) No 1093/2010, (EU) 1094/2010, (EU) 1095/2010, 2021/0240(COD), COM/2021/421 final, Brussels, 20 July 2021.

⁴⁶ Angela Tacea and Florian Trauner, “The European and national parliaments...”, 74.

⁴⁷ European Commission, Proposal for a Regulation of the European Parliament and the Council establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism and amending Regulations (EU) No 1093/2010, (EU) 1094/2010, (EU) 1095/2010, COM(2021) 421 final 2021/0240 (COD), Brussels, 20.7.2021.

⁴⁸ Regulation (EU) 2022/1190 of the European Parliament and of the Council of 6 July 2022 amending Regulation (EU) 2018/1862 as regards the entry of information alerts into the Schengen Information System (SIS) on third-country nationals in the interest of the Union, OJ L 185, 12 July 2022.

⁴⁹ European Parliament, “Parliament backs giving more powers to Europol, but with supervision”, *Press Releases*, Brussels, 4 May 2022, <https://www.europarl.europa.eu/news/en/press-room>

reform of Europol, which demonstrated —once again— that the EPP and the S&D vote in the same line when it comes to the big AFSJ dossiers, came at the expense of the civil society organizations' opinion, clearly opposed to the expansion of Europol's powers⁵⁰, and the opposition of the Greens and The Left in the EP on the same grounds. Similar "suspicions" were expressed by the MEPs with regard to the most recent reforms of Frontex⁵¹ and the European Union Agency for Criminal Justice Cooperation (Eurojust)⁵², while other AFSJ-related initiatives were openly supported by the EP with less caution for its part, notwithstanding their alleged potential politicization/contestation⁵³.

As a result of legal changes, the EP has gained an evaluation role *ex ante*⁵⁴, during⁵⁵ and *ex post*⁵⁶ of the AFSJ agencies which contrasts with the

⁵⁰ Fair Trials, "Europol's expanding mandate: European Parliament must stand against unaccountable and discriminatory policing", 28 April 2022, <https://www.fairtrials.org/articles/news/europols-expanding-mandate-european-parliament-must-stand-against-unaccountable-and-discriminatory-policing/>

⁵¹ Art. 6, *Accountability*, of the Frontex Regulation.

⁵² *Inter alia*, art. 67 of Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA [2018], OJ L295.

⁵³ For example, the creation in 2019 of the new database on the past convictions of third country nationals (ECRIS-TCN), to complement the existing European Criminal Records Information System (ECRIS), used to exchange information on the previous convictions of EU citizens. By the same token, the extension of the EURODAC database to include the fingerprints of resettled third-country nationals and stateless persons for law enforcement purposes, and the provision of access to data to Europol, MMSS or even third-country law enforcement authorities. Moreover, in spite of the suspicions over how the Agency carried out its joint return operations and other coordinated activities, "[t]hanks to vote in the European Parliament on 17 April 2019 that followed very speedy negotiations under the co-decision procedure, the objective to provide Frontex with 10,000 staff by 2027 was achieved. At the same time, Frontex also obtained the power to hire its own agents: 1000 out of 5000 by 2021 and the remainder provided by Member States.". Pascal Lamy *et al.*, "The European Parliament, another Parliament", *Brief*, Jacques Delors Institute, 17 May 2019, 8, <https://institutdelors.eu/en/publications/the-european-parliament-another-parliament/>

⁵⁴ It is foreseen (art. 15 Eurojust Regulation), for instance, that the College of Eurojust will forward the annual and multiannual programming documents to the European Parliament, along with the Council, the Commission and the EPPO. Concerning Frontex and its inputs to the preparation of the multiannual strategic policy cycle for European integrated border management, article 29 of Frontex Regulation stipulates that the Agency shall prepare general annual risk analyses, which shall be submitted to the EP and the Council and the Commission, as well as, every two years, a strategic risk analysis for European integrated border management. Finally, Europol Regulation also states that the Agency will transmit 'for information purposes' its multiannual programming and annual work programme (art. 51). On the other hand, the appointment of the agencies' directors is subject too to a prior exchange of views with MEPs.

⁵⁵ For instance, where a situation requiring urgent action at the external borders arises, the European Parliament shall be informed of that situation without delay as well as of any subsequent measures and decisions taken in response (art. 42 Frontex Regulation).

⁵⁶ Art. 67 Eurojust Regulation; art. 6 and 65 Frontex Regulation; art. 51 Europol Regulation.

previous limitations imposed by the former Treaties and regulations. However, more of the general oversight powers are held hand-in-hand with the national parliaments through an inter-parliamentary committee — with all the negative consequences it might have⁵⁷. This interparliamentary oversight includes the Joint Parliamentary Scrutiny Group (JPSG) on Europol, composed of representatives of the European and of national parliaments (art. 51 Europol Regulation) and meeting twice a year⁵⁸; “an interparliamentary committee meeting” for Eurojust (art. 67 Eurojust Regulation⁵⁹); or general inter-parliamentary cooperation in the case of Frontex (art. 112 Frontex Regulation), the missing “Holy Grail” due to its lack of formalization so far. Furthermore, upon their appointment, the candidate directors are “invited” to make a statement before the competent committee or committees of the EP and respond to the questions posed by MEPs, and the EP has gained access to classified information, personal data and work files of the agencies. Nevertheless, several limitations apply to these innovations, as we will analyse further below.

Additionally, the scrutiny of the activities of the AFSJ agencies includes sending delegations of MEPs to the territories of MMSS, or at the external borders, to identify sources of conflict in the implementation of EU law and fundamental rights, for instance in return operations coordinated by Frontex to avoid inter alia the violation of the non-refoulement principle, or to countries under serious migration pressures⁶⁰. This oversight capacity

⁵⁷ “With regard to legislative scrutiny [...] the timing of the meetings and the fluctuating participation of MPs limited the possibility of joint oversight. [...] Concerning the Joint Parliamentary Scrutiny Group over Europol], the cooperation of [national parliaments] and the EP has not evolved among equals. [...] The national parliaments have had a higher level of fluctuation of their participating members, with little follow-up and coordination among themselves. [...]”. Angela Tacea and Florian Trauner, “The European and national parliaments...”, 15.

The same authors have argued that, despite their interest in scrutinizing the AFSJ agencies, “in those cases where national parliaments have been involved in scrutinizing AFSJ Bodies, they have primarily been interested in scrutinizing the work of Europol” (Angela Tacea and Florian Trauner, “The European and national parliaments...”, 64), evidencing the politization of the work of some AFSJ agencies.

⁵⁸ Without any doubt, the most active of the interparliamentary committees established. It met for the 10th time on 28 February 2022. See the full agenda here: <https://www.europarl.europa.eu/cmsdata/244543/Draft%20Agenda%20EN.pdf>

⁵⁹ The first meeting was held on 1 December 2020. See the agenda at: <https://www.europarl.europa.eu/cmsdata/215665/draft-programme.pdf>

⁶⁰ One of the latest delegations of MEPs paid visit to “one of the EU’s most important migration front lines in Greece”. Andreas Rogal, “European Parliament delegation completes ‘intense agenda’ following migration fact-finding trip to Greece”, *The Parliament Magazine*, 4 November 2021, <https://www.theparliamentmagazine.eu/news/article/european-parliament-delegation-completes-intense-agenda-following-migration-factfinding-trip-to>

includes, among others, Frontex obligation towards the EP to forward it “a detailed evaluation report” every six months “covering all return operations conducted in the previous semester, together with the observations of the fundamental rights officer” (art. 50.7 Frontex Regulation). Furthermore, now the EP has become a reliable co-legislator, the Council has also changed its position concerning the role of MEPs and it might consider their opinions even if it is not necessarily obliged to. For example, in the latest reform of the Schengen evaluation mechanism, the EP obtained from the Council that visits to verify the implementation of EU (border) law and restrictive measures at the internal borders do not need previous notification to the concerned Member State(s) “in cases where the Commission has substantiated grounds to consider that there are serious violations of fundamental rights in the application of the Schengen acquis”⁶¹, although the Treaty provisions stipulate a mere non-legislative, consultation procedure⁶².

Last but not least, one of the powers the EP has used the most even before the entry into force of the Lisbon Treaty has been its discharge powers (art. 319 TFEU). In fact, is one of the strongest tools the EP has at its disposal to oversee —ex post, though— the activities of the agencies, since MEPs have demonstrated their will to scrutiny every activity undertaken by the agencies during the year in study and how the EU budget is spent “in accordance with the principles of economy, efficiency and effectiveness”⁶³. In this sense, once again, the news brings us to the role of

greece. In addition to this mission, the LIBE Committee discussed on 14 July 2022 the mission deployed to Vilnius, Lithuania, and Riga in March 2022, authorized by the Conference of Presidents to analyze the situation at the external border due to the migratory pressure provoked by the Belarusian government. Both mission reports are available at: https://emeeting.europarl.europa.eu/emeeting/committee/en/agenda/202207/LIBE?meeting=LIBE-2022-0713_1&session=07-14-09-00

⁶¹ Council Regulation (EU) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen acquis, and repealing Regulation (EU) No 1053/2013, OJ L 160, 15 June 2022.

⁶² “[...] the Council may, on a proposal from the Commission, adopt measures laying down the arrangements whereby Member States, in collaboration with the Commission, conduct objective and impartial evaluation of the implementation of the Union policies referred to in this Title [V AFSJ] by Member States’ authorities, in particular in order to facilitate full application of the principle of mutual recognition. The European Parliament and national Parliaments shall be informed of the content and results of the evaluation” (art. 70 TFEU).

⁶³ “Sound financial management”, art. 2 (59) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193, 30 July 2018.

Frontex and its accountability, since on 4 May 2022, the EP voted to postpone until Autumn the discharge of the Agency's 2020 budget claiming that Frontex was incapable of fulfilling the conditions foreseen in the previous discharge report, as well as the enquiries conducted by the European Antifraud Office (OLAF)⁶⁴; a concern that was raised the previous financial period and prompted the agreement of the two biggest parties in EP (i.e., the EPP and the S&D group).

Against this background, the AFSJ agencies have taken advantage of the legal framework to develop a set of agreements/arrangements and conduct operations within the EU external borders, and in the territories of third States, that clearly pose serious concerns when it comes to their accountability and the transparency of their activities. Furthermore, they have also enjoyed some political connivance at national and EU levels to expand their competences by the promulgation of regulations even beyond the provisions of the Treaties. Hence, for instance, Eurojust, Europol and Frontex have signed cooperation agreements and working arrangements with third countries and partners outside the EU⁶⁵ aiming at operationalizing the AFSJ, paying particular attention to fighting cross-border crimes and terrorism and, in particular in recent times, halting irregular migration. Inter alia, these international agreements allow the parties —in rather broad terms— to exchange information and personal data under some circumstances and provided that they ensure the necessary security standards, as well as the secondment of liaison officers, while working arrangements do only provide for the exchange of information and non-personal data. Nevertheless, most of these agreements/arrangements —which are crucial to the establishment and well-functioning of the integrated border management— were signed before current provisions on the role of the EP in their negotiation entered into force, as we will further discuss in the following section. Moreover, as the EP noted with concern, “in some cases the option to carry out joint Frontex return operations is excluded by bilateral agreements between organising or participating MMSS and non-EU countries of destination”⁶⁶, building upon bilateral agreements between EU MMSS and third countries and, therefore, at the margins of the EU. This praxis has, thus, left the EP with little marge of

⁶⁴ Bulletin Quotidien Europe, no. 12945 - 5/5/2022; Bulletin Quotidien Europe, no. 13002 - 29/7/2022.

⁶⁵ All these documents are available at their websites: <https://www.europol.europa.eu/partners-collaboration/agreements>, <https://frontex.europa.eu/we-build/other-partners-and-projects/non-eu-countries/>, and <https://www.eurojust.europa.eu/states-and-partners/third-countries/international-agreements>

⁶⁶ European Parliament resolution of 17 December 2020 on the implementation of the Return Directive (2019/2208(INI)), paragraph 6.

manoeuvre to know in detail the content of the arrangements/agreements prior to their signing and subsequent publication, the information eventually exchanged between national authorities and the agencies —or the complex set of supporting networks and liaison officers, and the full extent of the activities carried out jointly on account of these arrangements/agreements, evidencing the limits of the EP's (mainly ex post) oversight; clear limitations from the legal framework and the praxis followed so far that may cause further conflict in the near future and need a further strengthening.

III. The main sources of conflict and the need for further reforms to enhance agencies' accountability and transparency

As previously pointed out, everything in the garden is not necessarily rosy. To start with, regardless the well-known limits to the complete “communitarisation” of the AFSJ⁶⁷, the Lisbon Treaty has left a clear gap when it comes to the agencies: while there is a particular reference to the EP's oversight of Eurojust and Europol (arts. 85 and 88 TFEU, respectively), there is no mention to Frontex in none of the Treaties, an agency whose activities have been particularly scrutinized and subject to criticism since it became operational⁶⁸ in a clear process of contestation/politization of the role of some AFSJ agencies, such as Europol in the 1990s and Frontex in the 2010s. While awaiting the reform of the Treaties to bridge this clear gap, the power to scrutinize Frontex is given to the EP by virtue of the Agency's Regulation (e.g., art. 6 and 65). Nevertheless, in this case, again the news ran faster than the MEPs in declaring its alleged illicit activities concerning return operations of asylum seekers in the Aegean Sea⁶⁹. Hence, whereas the Frontex Scrutiny Working Group (FSWG) “did not find conclusive evidence

⁶⁷ See footnote no. 17 for references. Additionally, the EP has only a consultative role in the extension of the application of the Schengen acquis to new EU Member States, such as recently to Cyprus and Croatia.

⁶⁸ Inter alia, the most recent published articles: Miguel Ángel Acosta, “Reglamento 2019/1896/UE sobre la guardia europea de fronteras y costas: ¿Frontex 3.0?” *Documento Opinión IEE* (2019); Sarah Léonard and Christian Kaunert, “The securitisation of migration in the European Union: Frontex and its evolving security practices”, *Journal of Ethnic and Migration Studies* 48 (2020): 1417; and Raphael Bossong, “The expansion of Frontex: symbolic measures and long-term changes in EU border management” (SWP Comment, 47/2019). Berlin: Stiftung Wissenschaft und Politik -SWP- Deutsches Institut für Internationale Politik und Sicherheit. <https://doi.org/10.18449/2019C47>

⁶⁹ Julia Pascual and Tomas Stenius, “European border control agency Frontex has been covering up illegal returns of migrants”, *Le Monde*, 30 April 2022, https://www.lemonde.fr/en/international/article/2022/04/30/frontex-the-european-border-control-agency-has-been-masking-illegal-returns-of-migrants-in-the-aegean-sea_5982031_4.html

on the direct performance of pushbacks and/or collective expulsions by Frontex in the serious incident cases that could be examined”, it also noted some shortcomings when it declared that the Agency “failed to address and follow-up on these violations promptly, vigilantly and effectively”⁷⁰. This event has clearly undermined the credibility of Frontex before the public opinion, the media, the civil society organizations, and the EP itself; a task for the next executive director to work on it to recover the agency’s reputation, which should start with increasing the transparency of its activities and rendering public some internal reports on the functioning of the agency. Additionally, a reform of the Treaties to include the agency among the bodies of the EU under the scrutiny of the EP should refrain from further deterioration of its image and enhance the role of the MEPs in the AFSJ.

Another “grey area” in the complex puzzle of the AFSJ agencies is the formal participation of the Commission in their governance and/or administration bodies as an extension of its administrative powers, and the role given to the EP in the appointment of their directors and its governance at large. For years, “control of these agencies has become a focal point of inter-institutional struggles”⁷¹ in the pre-Lisbon era. For that reason, in the subsequent reforms of their founding regulations the supranational logic after the “communitarisation” of the AFSJ, and the scrutiny of their activities, have resulted in the entry of representatives from the Commission in their governing bodies. Hence, the Commission has a representative in the Executive Board of Eurojust (art. 16 Eurojust Regulation), with powers *inter alia* to propose a list of candidates for the post of Administrative Director; two representatives of the Commission, “each with a right to vote” (art. 101 Frontex Regulation) in the Management Board of Frontex; and one representative in the Management Board of Europol, with the right to vote (art. 10), both of them with similar powers when appointing the director of the agencies and with formal competences when administrative affairs are handled. In the case of the EP, conversely, the relationship with the governing bodies and their appointment has been close to zero. Moreover, besides some general comments in the founding regulations⁷², the EP has no

⁷⁰ LIBE Committee, “Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations”, PE692.887v01-00 (14 July 2021): 6. For a detailed overview of the mechanisms established to investigate these alleged violations of human rights, see Micaela Del Monte and Katrien Luyten, “European Parliament scrutiny of Frontex”, European Parliamentary Research Service, PE 698.816 (2021).

⁷¹ Florian Trauner, “The European Parliament...”, 785.

⁷² For instance, Recital 60 of Europol Regulation states “the competent committee of the European Parliament should be able to invite the Executive Director to appear before it prior to his or her appointment, as well as prior to any extension of his or her term of office.”

formal power to investigate the candidates for the post of director in his/her appointment procedure, and, if needed, to reject him/her if his/her profile or background does not fit the responsibilities of the post, or to dismiss him/her if serious breaches of EU law are alleged, as it is the case in the appointment of the Commissioners. This shortcoming has been already criticized by the European Council on Refugees and Exiles: “[given] the wide prerogatives enjoyed by the [executive director of Frontex], the Parliament, as a democratic institution, should have a formal role [...] in appointing and dismissing” him/her⁷³; an old demand that would, once again, call for a reform of the Treaties or the founding statutes of the agencies.

A further point of concern is the influence they have on decision- and policy-making in European politics. Via inter alia their reports, risk/threat assessments and parliamentary debates or hearings, the agencies exert a strong influence on the Institutions to define AFSJ policies and programmes that was already recognised by the Commission, the Council and the Parliament in a joint statement in 2012⁷⁴, which served to further enhance their role in the implementation of AFSJ policies and EU law thanks to subsequent reforms of their regulations to strengthen their autonomy. The case of Europol and Frontex in defining the policing cycle and border management exemplify well the influence they exert on the development of AFSJ both domestically and abroad, arguing their expertise and technical capabilities to expand their tasks and functions. Nevertheless, that their expertise might be considered neutral should not be for granted, since their functions, personnel and budget also depend on their “relevance” in the whole institutional picture of law enforcement at the EU level. This way of proceeding in the consolidation of the agencies might create a sort of “Leviathan” that is at odds with the principles of the rule of law and accountability unless contrasted and critically analysed (politically) by MEPs.

Additionally, parliamentary oversight is limited by the restrained access to information and data handled by the agencies, or to the cases they are managing at the time of oversight. Normally, access to these data is subject to

⁷³ European Council on Refugees and Exiles, “Holding Frontex to account. ECRE’s proposals for strengthening non-judicial mechanisms for scrutiny of Frontex”, *ECRE’s Policy Paper 7* (2021): 8.

⁷⁴ “Agencies also have a role in supporting decision-making process by pooling the technical or specialist expertise available at European and national level and thereby help enhance the cooperation between Member States and the EU in important policy areas. [...]”. Joint statement of the European Parliament, the Council of the EU and the Commission on decentralized agencies, 19 July 2012.

internal rules⁷⁵ and case-by-case authorisations, which differ considerably in the extent of the access they grant although they follow the same restrictive, distrusting lines. For instance, the article 92 of the Frontex Regulation clearly states that, although “[classification] shall not preclude information being made available to the European Parliament», information exchange should fully respect the «criteria of availability, confidentiality and integrity»” (art. 68.6 Frontex Regulation). Similar provisions are foreseen in Eurojust and Europol regulations (art. 72 and 51, respectively). Moreover, Eurojust Regulation openly claims for the respect of its independence in the handle of cases (Recital 62), clearly limiting parliamentary oversight over its running investigations and access to case work files especially sensitive for a concerned Member State⁷⁶. The same rule applies to Frontex, for which the transfer of personal data is subject to verification “whether such personal data are required for the legitimate performance of tasks within the competence of the recipient”⁷⁷. Finally, after the latest reform, Europol has become more than “a cleaning house for information”⁷⁸, due to its capacity to receive personal data directly from private parties and its powers to conduct own-initiative investigations. At the same time, the role of the JPSG and the European Data Protection Supervisor (EDPS)⁷⁹ have been enhanced, being the former entitled inter alia to receive annual information on the personal

⁷⁵ These internal rules follow, however, the common guidelines provided by the Commission in their Decisions 2015/443 of 13 March 2015 on Security in the Commission, and 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L72, 17 March 2015); and the Council Decision 2013/488/EU of 23 September 2013 on the security rules for protecting EU classified information (OJ L274, 15 October).

⁷⁶ “For accountability purposes, Eurojust shall draw up a record describing the reasons for restrictions that are applied”. Art. 2.4 of the College Decision 2020-04 of 15 July 2020 on internal rules concerning restrictions of certain data subject rights in relation to the processing of personal data in the framework of activities carried out by Eurojust (OJ L 287, 2 September 2020).

⁷⁷ Recital 21 of Regulation 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (Text with EEA relevance), OJ L295, 21 November 2018.

⁷⁸ Vigilancia Abazi, “The Future of Europol’s Parliamentary Oversight: A Great Leap Forward?”, *German Law Journal* 15, no. 6 (2014): 1127.

⁷⁹ The EDPS has publicly criticized the latest reform of Europol because the amendments “weaken the fundamental right to data protection and do not ensure an appropriate oversight of the” Agency, and even open “the possibility to retroactively authorise Europol to process large data sets already shared with Europol prior to the entry into force of the amended Regulation”. EDPS, “Amended Europol Regulation weakens data protection supervision”, 27 June 2022, https://edps.europa.eu/press-publications/press-news/press-releases/2022/amended-europol-regulation-weakens-data_en

data exchanged with private parties, transfers of personal data to third countries and international organisations, and the number and types of cases where “special categories of personal data” were processed⁸⁰ (art. 51.3 Europol Regulation). However, the “consolidated annual activity report” and other information sent to the EP will be provided “without disclosing any operational details and without prejudice to any ongoing investigations”⁸¹. The latter statement corroborates, generally speaking, the concerns over the protection of the independence of the AFSJ agencies regarding their operational activities and the running of investigations; a suspicion that dates back to the establishment of the agencies and the “different cultures of secrecy with some MMSS having a tendency to overclassify”⁸², a daily praxis which weakens the scrutiny powers of the EP and reduces the accountability of the agencies. Stricter rules are, then, needed to provide the EP with access to the full document —not just the public, biased (“consolidated”) version of it as so far— of the activity reports of the agencies, including operational data, and to minimize the right of opposition from the generator of the data or information potentially transferable for its scrutiny tasks, in particular when the process of “special categories of personal data” are under investigation because of alleged violations of fundamental rights in a particular case.

A final point to raise is the question of the external dimension of the AFSJ, for which the EP's oversight is kept to a minimum both in the legal framework and the subsequent practice. The lack of transparency and accountability in this area of the EU integration is even more problematic because the “externalisation of internal security measures” under certain AFSJ policies and the activities of the agencies in the last decade “(...) is seen to aggravate deficits in democratic legitimacy and accountability”⁸³ in some third States with which the EU cooperates on security and border management due to their undemocratic nature, as the case of EU/Italian cooperation against people smuggling with the Gadhafi regime in Libya

⁸⁰ These categories of special, sensitive personal data may include personal data in respect of victims of a criminal offence, witnesses or other persons who can provide information concerning criminal offences, or in respect of persons under the age of 18, as well as personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership and processing of genetic data or data concerning a person's health or sex life (art. 30 Europol Regulation).

⁸¹ Art. 51.3 of the Europol Regulation as amended by Regulation (EU) 2022/991 of the European Parliament and of the Council of 8 June 2022, OJL 169, 27 June 2022.

⁸² Vigjilencia Abazi, “The Future of Europol's...”, 1127.

⁸³ Raphael Bossong and Helena Carrapico, “The Multidimensional Nature and Dynamic Transformation of European Borders and Internal Security”, in *EU Borders and Shifting Internal Security. Technology, Externalization and Accountability*, eds. Raphael Bossong and Helena Carrapico (Cham: Springer, 2016): 12.

evidenced; an embarrassing cooperation which was strongly condemned by International Organizations and the doctrine since the early 2010s⁸⁴. In spite of this, the EP scrutiny over the international agreements concluded by the EU and/or the AFSJ agencies, and the activities carried out by them at the external borders —or even outside the EU's territory in neighbouring countries⁸⁵ or beyond⁸⁶, has been traditionally diminished. Moreover, the most recent practice of signing arrangements to circumvent the EP and some potential vetoes within domestic constituencies at Member State's level has aggravated this situation. The "EU-Turkey deal" to halt migration flows towards the EU, "adopted in the total absence of democratic oversight"⁸⁷, exemplifies well how the EU Institutions have opted for more informal, political negotiations to avoid the scrutiny by the EP of the content of the agreement between the EU and third parties.

Some progress has been made, nevertheless, in the latest reforms of the agencies' founding regulations, in addition to the consent procedure regarding international agreements according to the Treaties. Because of the politization/contestation of migration policy and the role of Frontex in the last decade, particular attention is paid to the protection of fundamental rights in the execution of its tasks and its accountability in the latest reform of Frontex. Now, for instance, article 73 of Frontex Regulation clearly stipulates that any status agreement "for actions conducted on the territory of third countries"⁸⁸ "shall be concluded by the Union with the third country concerned on the basis of Article 218" of the TFEU; that is, with the previous consent of the EP. As a result, Frontex has already deployed officers and equipment in Albania —on the border with Greece, Montenegro and Moldova to provide technical and operational assistance to

⁸⁴ See footnotes 3, 4 and 5 for full references.

⁸⁵ Statewatch, "Montenegro: Frontex launches second operation on non-EU territory", *Statewatch News*, 23 July 2020, <https://www.statewatch.org/news/2020/july/montenegro-frontex-launches-second-operation-on-non-eu-territory/>

⁸⁶ For instance, 2019 Frontex Regulation eliminated the territorial limitations in the deployment of joint operations to neighbouring countries contained in its previous regulations.

⁸⁷ Eva Joly *et al.*, "Foreword", in *The EU-Turkey Statement and the Greek Hotspots. A Failed European Pilot Project in Refugee Policy*, Yiota Masouridou and Evi Kyprioti, The Greens / European Free Alliance in the European Parliament, 2018, 1.

⁸⁸ These "status agreements" are comparable to the Status of Forces Agreements (SOFAs) signed by the EU with third countries before the deployment of any Common Security and Defence Policy (CSDP) mission or operation. Indeed, at the image of the Commission's model envisaged in the own Frontex Regulation (art. 76.1), they include clauses with regard to the conditions for the exercise of executive powers in the host country —including the use of force; task and powers of the team members, as well as their privileges and immunities; suspension and termination of the actions; processing of personal data; and dispute settlement.

local law enforcement authorities in managing borders⁸⁹. Additionally, before their approval by the management board, article 76 of Frontex Regulation states that working arrangements between the Agency and competent authorities of third countries needs prior Commission's approval, and that the EP will be provided "with detailed information as regards the parties to the working arrangement and its envisaged content" before its conclusion, as well as concerning the operational activities involving the deployment of liaison officers to third countries "without delay". Similar provisions apply to the exchange of classified information with the relevant authorities of a third country or ad hoc releases if there is no arrangement, with the only prerequisite of having an "equivalent level of protection".

That said, however, there are still severe loopholes in the oversight that the EP exercises with regard to the agencies in their daily work, with the connivance of the other Institutions and MMSS. First, most of the current working, strategic and operational arrangements signed by the three AFSJ agencies briefly analyzed in this study (i.e., Europol, Eurojust and Frontex) were endorsed well before the entry into force of these provisions. Therefore, neither formal involvement of the EP was required to adopt them, nor was it informed of their content before their approval. Moreover, when the EU or the agencies had no agreement with third states, for instance in the area of migration and border controls, the activities carried out by Frontex have relied on those agreements signed by individual MMSS with third countries, out of EP's oversight powers. This was the case of, for instance, "Joint Operation Hera" in the Canary Islands, which benefited from the beginning (in 2006) from the agreements that Spain signed with Mauritania and Senegal⁹⁰. Third, there is a mammoth problem

⁸⁹ At the time of writing, the EU has signed, however, four status agreements, while others are in negotiation with the rest of the Western Balkan countries: Status Agreement between the European Union and the Republic of Albania on actions carried out by the European Border and Coast Guard Agency in the Republic of Albania, OJ L 46, 18 February 2019; Status Agreement between the European Union and the Republic of Serbia on actions carried out by the European Border and Coast Guard Agency in the Republic of Serbia, OJ L 202, 25 June 2020; Status Agreement between the European Union and Montenegro on actions carried out by the European Border and Coast Guard Agency in Montenegro, OJ L 173, 3 June 2020, p. 3-11; and Agreement between the European Union and the Republic of Moldova on operational activities carried out by the European Border and Coast Guard Agency in the Republic of Moldova, OJ L 91, 18 March 2022.

⁹⁰ Acuerdo Marco de Cooperación entre el Reino de España y la República de Senegal, hecho en Dakar el 10 de octubre de 2006 (*BOE* no. 170, 15 July 2008, pp. 30878-30879); Aplicación provisional del Acuerdo entre el Reino de España y la República Islámica de Mauritania en materia de inmigración, hecho en Madrid el 1 de julio de 2003 (*BOE* no. 185, 4 August 2003). For an in-depth analysis of these agreements, see: María Asunción Asín Ca-

of application of the EU (human rights) law and international human rights law in the so-called “hotspots”, a situation aggravated by the 2015 alleged “refugee crisis”, with serious consequences on the protection of human rights of migrants and refugees on the European soil⁹¹. And, fourth, the MEPs have generally agreed to the international agreements, or their further development under inter alia the form of status agreements of Frontex, without demonstrating its real capacity to oversee the details of the whole picture due to its growing complexity —to which the EP itself contributes. Therefore, for instance, under an “urgent procedure” (art. 163 Rules of Procedure), the EP gave its consent —without a previous report by the committee responsible— to the conclusion of an international agreement between the EU and Republic of Moldova on operational activities carried out by the Frontex, which is being provisionally applied since its signature, on 17 May 2022. For that reason, the EP’s consent to this kind of agreements and arrangements, although “conditional” to include human rights clauses, at the end paves the way for the violation of EU law, its internal rules and code of ethics developing it⁹², and its international commitments under international law, evidencing its low profile when it comes to the scrutiny of EU’s external action irrespective the policy under investigation.

All these loopholes, in addition to the current preference for informal agreements to deal with “urgent crises”, have left little leeway for the EP to provide effective oversight over the implementation and (rapid) development of the AFSJ. As a result, the external dimension of the AFSJ and, in particular, the activities carried out by the agencies at the external borders or within the territory of third States with the EU’s support is the “black hole” of EP’s oversight. The need for the “de-politization”/“de-contestation” of some dossiers linked to the AFSJ is evident and urgent as this case demonstrates, since the “common” migration and border policies

brera, “Los acuerdos bilaterales suscritos por España en materia migratoria con países del continente africano: especial consideración de la readmisión de inmigrantes en situación irregular”, *Revista de Derecho Constitucional Europeo* 10 (July-December 2008): 165-188; and Teresa Fajardo del Castillo, “Los acuerdos de readmisión de los inmigrantes en situación irregular celebrados por España”, in *Migraciones y Desarrollo. II Jornadas Iberoamericanas de Estudios Internacionales*, coordinated by Francisco Aldecoa Luzarraga y José Manuel Sobrino Heredia (Madrid: Marcial Pons, 2007): 87-102.

⁹¹ “Subsequent to the implementation of the EU-Turkey statement, Greek hotspots have now become places of de facto detention, where fast-track asylum and return procedures are being carried out with the aim of achieving an expedited return of asylum seekers to Turkey.” Eva Joly *et al.*, “Foreword”, in Yiota Masouridou and Evi Kyprioti, *The EU-Turkey Statement...*, 1.

⁹² The most striking example being that of the Frontex Code of Conduct, available at: https://frontex.europa.eu/assets/Publications/General/Frontex_Code_of_Conduct.pdf

are a source of conflict with neighbouring countries as much as between the MMSS (and the Council), in conjunction with the Commission, and the EP. Hence, the EU should pay particular attention to the external dimension of the AFSJ if it wants to be coherent with the general principles guiding its external action (art. 21 of the Treaty on the EU, TEU; art. 205 TFEU) and become a credible, trustful partner in international affairs.

IV. Conclusions

In the last years, some progresses have been made concerning EP's oversight over the AFSJ and its agencies. It has moved from being an almost irrelevant actor in the process of developing the AFSJ and establishing its main constituent elements to its impact as co-legislator in most of the areas covered by the AFSJ; from merely scrutinizing the budget and having recourse to informal means to have a say in the AFSJ-related politics to overseeing the activities of the agencies and gain access to relevant (classified) information and data for its overseeing purposes. In particular, the recent reforms of the founding regulations of the agencies have increased the oversight powers of the EP, making the most of the Lisbon Treaty provisions. However, some serious concerns arise when it comes to the external dimension of the AFSJ, not to mention the still intergovernmental areas of the AFSJ subject to consultation under a special legislative procedure. In the external dimension we perceive a clear imbalance between, on the one hand, the general principles of the rule of law —including accountability and transparency— and the values on which the EU has been founded, which should guide its external action; and, on the other hand, the short-term objectives of the AFSJ directly associated with security and the protection of the internal public order against common threats and risks, such as transnational organized crime and irregular migration, policies clearly MMSS-driven either through the Council or the European Council. Nowadays, therefore, the problem is not having a say in the establishment of the agencies and its impact on the legislative process (*ex ante*) as it was during the pre-Lisbon period, but to be able of fully controlling the outcomes and results of this work via a coherent oversight role that the EP is still seeking to attain after Lisbon entered into force. Much work needs to be done, including the “de-politization”/“de-contestation” of some dossiers, to enhance the oversight power of the EP in the “black” and “grey areas” of the European integration process briefly identified in this paper to revert a situation that would undermine the international credibility of the EU before its international partners, as well as the European project itself. And, for this task, the

impulsion of the EP in the coming years is imperative since the Commission is deemed to have adopted Council's opinions on some policies of the AFSJ, such as migration and refugee and the external dimension of the entire AFSJ. The result of the negotiations of the New Pact on Asylum and Migration will be a clear indication of the direction the EU is taking to solve the concerns identified, for good or ill.

Bibliography

- Abazi, Vigjilenc. "The Future of Europol's Parliamentary Oversight: A Great Leap Forward?", *German Law Journal* 15, no. 6 (2014): 1127-1143.
- Acosta, Miguel Ángel. "Reglamento 2019/1896/UE sobre la guardia europea de fronteras y costas: ¿Frontex 3.0?" *Documento Opinión IEEE* (2019).
- Asín Cabrera, María Asunción. "Los acuerdos bilaterales suscritos por España en materia migratoria con países del continente africano: especial consideración de la readmisión de inmigrantes en situación irregular", *Revista de Derecho Constitucional Europeo* 10 (July-December 2008): 165-188.
- Borrajo Iniesta, Ignacio. "El Estado de Derecho en el Espacio de Libertad, Seguridad y Justicia de la Unión", in *Estado de Derecho y Unión Europea*, dir. D. J. Liñán Nogueras and P. J. Martín Rodríguez (Madrid: Tecnos 2018), 263-292.
- Bossong, Raphael. "The expansion of Frontex: symbolic measures and long-term changes in EU border management" (SWP Comment, 47/2019). Berlin: Stiftung Wissenschaft und Politik -SWP- Deutsches Institut für Internationale Politik und Sicherheit. <https://doi.org/10.18449/2019C47>
- Bossong, Raphael and Carrapico, Helena. "The Multidimensional Nature and Dynamic Transformation of European Borders and Internal Security", in *EU Borders and Shifting Internal Security. Technology, Externalization and Accountability*, eds. Raphael Bossong and Helena Carrapico (Cham: Springer, 2016): 1-21.
- Dehousse, Renaud. "Delegation of powers in the European Union: The need for a multi-principals model" *West European Politics* (June 2008): 797-805.
- Del Monte, Micaela and Luyten, Katrien. "European Parliament scrutiny of Frontex", European Parliamentary Research Service, PE 698.816 (2021).
- Fajardo del Castillo, Teresa. "Los acuerdos de readmisión de los inmigrantes en situación irregular celebrados por España", in *Migraciones y Desarrollo. II Jornadas Iberoamericanas de Estudios Internacionales*, coordinated by Francisco Aldecoa Luzárraga y José Manuel Sobrino Heredia (Madrid: Marcial Pons, 2007): 87-102.
- Fink, Melanie. *Frontex and Human Rights. Responsibility in 'Multi-Actor Situations' under the ECHR and EU Public Liability Law* (Oxford: Oxford University Press, 2018).
- Human Rights Watch, "Frontex Failing to Protect People at EU Borders", *HRW News*, 23 June 2021. <https://www.hrw.org/news/2021/06/23/frontex-failing-protect-people-eu-borders>

- Joly, Eva *et al.*. “Foreword”, in *The EU-Turkey Statement and the Greek Hotspots. A Failed European Pilot Project in Refugee Policy*, coord. Yiota Masouridou and Evi Kyprioti, The Greens / European Free Alliance in the European Parliament, 2018. <http://extranet.greens-efa-service.eu/public/media/file/1/5625>
- Léonard, Sarah and Kaunert, Christian. “The securitisation of migration in the European Union: Frontex and its evolving security practices”, *Journal of Ethnic and Migration Studies* 48 (2020): 1417-1429. <https://doi.org/10.1080/1369183X.2020.1851469>
- Marinai, Simone. “The interception and rescue at sea of asylum seekers in the light of the new EU legal framework”, *Revista de Derecho Comunitario Europeo*, no. 55 (September-December 2016): 901-939.
- McCaffrey, Darren. “Frontex: EU’s border agency probed over harassment, misconduct and migrant pushback claims”, *Euronews*, 12 January 2021. <https://www.euronews.com/my-europe/2021/01/12/frontex-eu-s-border-agency-probed-over-harassment-misconduct-and-migrant-pushback-claims>
- Pascual, Julia and Staius, Tomas. “European border control agency Frontex has been covering up illegal returns of migrants”, *Le Monde*, 30 April 2022. https://www.lemonde.fr/en/international/article/2022/04/30/frontex-the-european-border-control-agency-has-been-masking-illegal-returns-of-migrants-in-the-aegean-sea_5982031_4.html
- Ripoll Servent, Ariadna. “The European Parliament: Powerful but Fragmented”, in *The Institutions of the European Union*, fifth edition, ed. Dermont Hodson *et al.* (Oxford: Oxford University Press): 1-32. <https://halshs.archives-ouvertes.fr/halshs-03498368/document>
- Ripoll Servent, Ariadna. “The European Parliament after the 2019 Elections: Testing the Boundaries of the ‘Cordon Sanitaire’”, *Journal of Contemporary European Research* 15, no. 4 (December 2019): 331-342.
- Ripoll Servent, Ariadna. *Institutional and Policy Change in the European Parliament. Deciding on Freedom, Security and Justice* (London: Palgrave MacMillan, 2015).
- Rogal, Andreas. “European Parliament delegation completes ‘intense agenda’ following migration fact-finding trip to Greece”, *The Parliament Magazine*, 4 November 2021. <https://www.theparliamentmagazine.eu/news/article/european-parliament-delegation-completes-intense-agenda-following-migration-factfinding-trip-to-greece>.
- Stutz, Philipp and Trauner, Florian. “The EU’s ‘return rate’ with third countries: Why EU readmission agreements do not make much difference”, *International Migration* 60 (2022): 154-172. <https://doi.org/10.1111/imig.12901>
- Tacea, Angela and Trauner, Florian. “The European and national parliaments in the area of freedom, security and justice: does interparliamentary cooperation lead to joint oversight?”, *The Journal of Legislative Studies* (December 2021): 1-19. <https://doi.org/10.1080/13572334.2021.2015559>
- Tidey, Alice. “Frontex chief resigns over misconduct and human rights violations probe” *Euronews*, 29 April 2022. <https://www.euronews.com/2022/04/29/frontex-chief-resigns-over-misconduct-and-human-rights-violations-probe>
- Trauner, Florian and Ripoll, Ariadna. “The Communitarization of the Area of Freedom, Security and Justice: Why Institutional Change does not Translate into Policy Change”, *Journal of Common Market Studies* 54, no. 6 (June 2016): 1417-1432.

- Trauner, Florian. *Return and readmission policy in Europe. Understanding negotiation and implementation dynamics* (London: Routledge, 2018).
- Vinciguerra, Chiara. "Punching Below Its Weight: The Role of the European Parliament in Politicised Consultation Procedures", *Politics and Governance* 9 (2021): 29-39. <https://doi.org/10.17645/pag.v9i3.4069>
- Wills, Aidan and Vermeulen, Mathias. "Parliamentary Oversight of Security and Intelligence Agencies in the European Union", European Parliament's Committee on Civil Liberties, Justice and Home Affairs, Brussels, 2011. https://www.dcaf.ch/sites/default/files/publications/documents/study_en.pdf

About the author

Lucas J. Ruiz Díaz obtained his PhD in International Relations from the University of Granada (2015), from where he holds a Graduate in Political Science (2004) and a Master's degree in European Constitutional Law (2008). He also holds a Diplôme d'Études Spécialisées in European Politics from the Université libre de Bruxelles (ULB, 2005) and a Graduate in Law from the National University of Distance Education (UNED, 2020). He has accompanied his academic background and research experience on account of the several internships in International Organizations that he has conducted, such as the Council of Europe (2008), the United Nations (2009) and the European Union (Eurojust, 2010; European Parliament, 2013). He is specialist in European politics, policies and Law, in particular relating to the external dimension of the Area of Freedom, Security and Justice and the Common Security and Defence Policy of the EU. He is currently a Lecturer at the University of Granada.

Sobre el autor

Lucas J. Ruiz Díaz obtuvo su Doctorado en Relaciones Internacionales en la Universidad de Granada (2015), en donde se licenció en Ciencias Políticas (2004) y finalizó el Máster en Derecho Constitucional Europeo (2008). Obtuvo igualmente el Diplôme d'Études Spécialisées en Política Europea en la Université libre de Bruxelles (ULB, 2005) y se graduó en Derecho por la UNED (2020). Ha completado su formación académica y experiencia investigadora gracias a las pasantías realizadas en varias Organizaciones Internacionales, como el Consejo de Europa (2008), las Naciones Unidas (2009) y la Unión Europea (Eurojust, 2010; Parlamento Europeo, 2013). Es especialista en política, derecho y políticas europeas, en particular aquellos aspectos ligados al Espacio de Libertad, Seguridad y Justicia y la Política Común de Seguridad y Defensa de la Unión Europea. Actualmente, es Profesor Ayudante Doctor en la Universidad de Granada.

