

SUMMARY

THE BORDERS OF ACCOUNTABILITY: THE CASE OF FRONTEX

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In the EU a “new” governance system is emerging, one in which the ‘unelected’, that is to say non-majoritarian bodies, are mushrooming and are shaping European policy-making. Among the variety of committees and agencies, FRONTEX – the European Agency for Operational Cooperation at the External Borders of the EU – is definitely one that has experienced a spectacular increase in competences and in human and financial resources in a very short life-span (7 years) and that has seen its founding Regulation amended twice in the same period, while being understudied by scholars. This involves a growing impact of Frontex activities on the people affected by external border management policies, i.e. migrants crossing irregularly the borders of the Schengen Area. The worries regarding the need to keep this Agency accountable are particularly marked due to the proximity of its field of action with human and protection rights related issues.

Aim of this work was, therefore, to analyse Frontex accountability, with an eye on the possible implications of a good mechanism of accountability on democracy. In order to do so, it has been structured in three chapters, each one trying to answer one main question:

1. What kind of accountability is necessary to enhance democracy?
2. What is the framework in which Frontex operates?
3. How can accountability mechanisms be applied to Frontex?

The first chapter focuses on where the EU is heading to, both in terms of *governance* and of *democracy*. The experimentalist governance architecture is thus chosen as the most suited to describe the “new” governance of the EU, shaped by the process of agencification, due to its peculiar predilection to deliberation processes¹. Then, a detailed discussion of the democratic deficit/non democratic deficit theories was introduced, leading to the conclusion that some form of accountability is necessary in order to democratically legitimise these new “creatures” that live within the decision-making system of the Union: the European non-majoritarian agencies². However, the literature on accountability is vast; therefore the need to explore it – first M. Bovens’ actor-forum relationship and then C. Sabel and J. Zeitlin’s peer review have been described – and to find the accountability mechanism that is best suited to enhance the democratic legitimacy of the *sui generis* governance of the Union. The choice fell on the dynamic accountability model of Sabel and Zeitlin.

The second Chapter is instead focused on the description of the framework in which Frontex operates, by looking at the policies of the AFSJ and their development and in particular to how

¹ Deliberation is the process of reaching consensus through an informed debate (Eriksen E. O., 2000).

² “A public non-majoritarian institution is a wide term for all those organisations which spend public money and fulfil a public function but exist with some degree of independence from elected politicians.” (Curtin D. , 2006, p. 90).

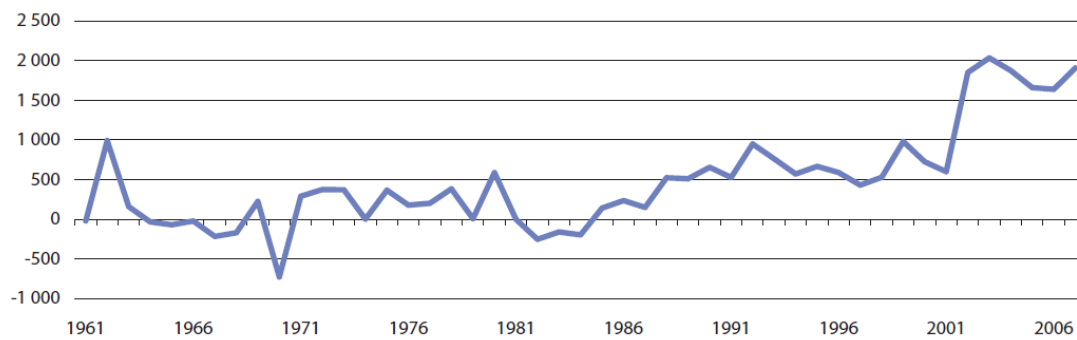
external borders have been managed since inception of the EU (the Schengen Agreement first, and the Schengen acquis after, are the legal basis for this policy field). In order to do so, it was necessary to understand the forces that are at play and the contradictions that are implicit in the evolution of this policy field; more specifically, the interaction and the division of competences between Member States and the Union bodies – which are often blurred –, the definition of borders and the migratory flows that affect critically the development of border related policies (often shaped in order to respond to “emergency situations”) have been described. Finally, the Chapter deals with the European Integrated Border Management (IBM) – the latest ongoing project of the Union in this field whose cornerstone is FRONTEX – and with the securitisation and externalisation trends that are affecting the whole system of migration policies, starting with the IBM.

The last Chapter brings together all the major findings of this work in order to analyse Frontex’ accountability relationships in a democratic perspective. The Agency is described in detail, explaining its vertiginous growth and what has changed with Regulation (EU) 1168/2011 amending Council Regulation 2007/2004 establishing FRONTEX. Then, the experimentalist governance architecture is applied to the AFSJ and therefore to Frontex, the latter being one of the products of agencification in this field. The most challenging part of this Chapter is the application of the different forms of accountability to Frontex; the multiple forms of accountability mechanisms described by Bovens have been applied first, by analysing the practices of the Agency and most of all the founding Regulations of the Agency – giving prominence to the latest amendment, i.e. Regulation 1168/2011 –, followed by the dynamic accountability and peer review. In order to study how the peer review works on Frontex a definition of the “peers” is provided, along with a short description of a selected group of them; in order to keep a democratic perspective, fundamental rights deserve a special attention and therefore civil society organisations with a human rights background have been preferred. The analysis is based mainly on the Reports that Frontex’ peers have drafted and made public over the life-span of the Agency, but also on interviews that were conducted with two stakeholders³ and reference will be made again to Regulation 1168/2011.

The main findings of this study reveal that peer review is a precious tool to keep the Agency accountable, by monitoring, asking to report and giving opinions that might lead to a change in the standards set for evaluation but, most of all, for the legislative framework. This holds true aloof from the fundamental rights and right to international protection domains, in which peer review is essential to open the ‘black box’ of division of competences between MSs and the Agency, but not to do justice in case of violations. For what concerns the democratic perspective, an increase in direct deliberation processes, triggered by peer review and dynamic accountability processes may be the starting point for a new democratisation of the EU system of governance.

³ The two respondents are: Marie Martin, Statewatch and Migreurop researcher, who answered to a written questionnaire with open questions, and Michele Simone, UNHCR Senior Liaison Officer with Frontex in Warsaw, who instead answered verbally to the same questions of the questionnaire, however leaving more space for the open debate.

FIGURE 1- PROBLEM: MIGRATORY PRESSURE AT THE EXTERNAL BORDERS OF EU

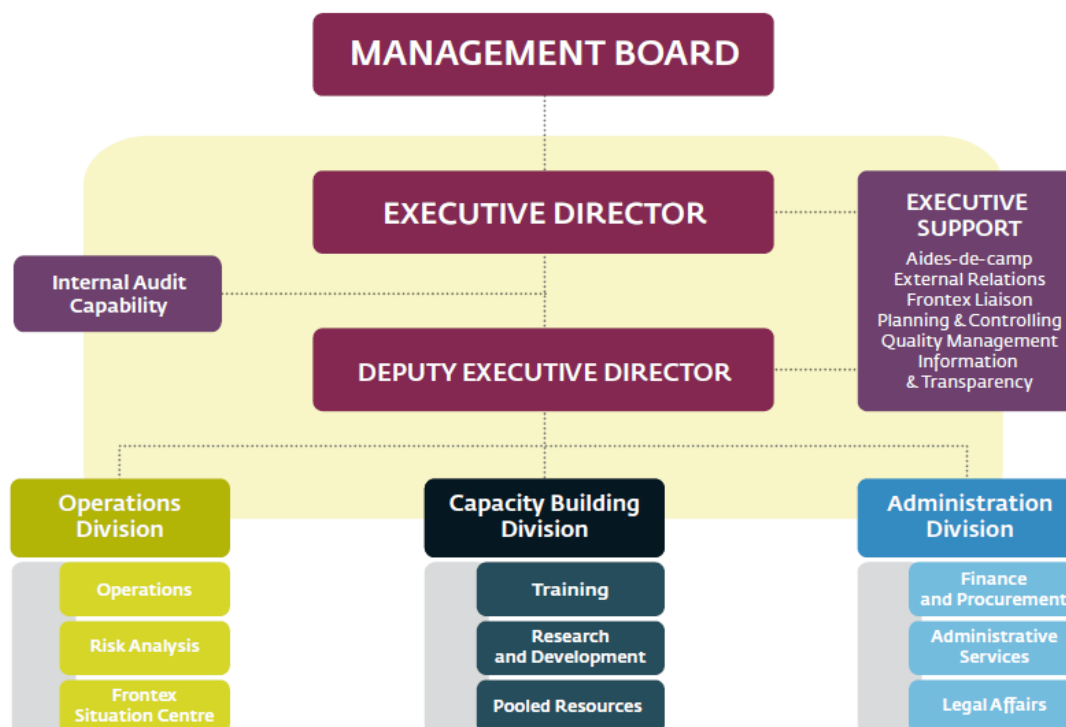


(1) Break in series: up to and including 1997 France includes metropolitan regions only; 2007 data are provisional.

Source: Eurostat (tsdde230)

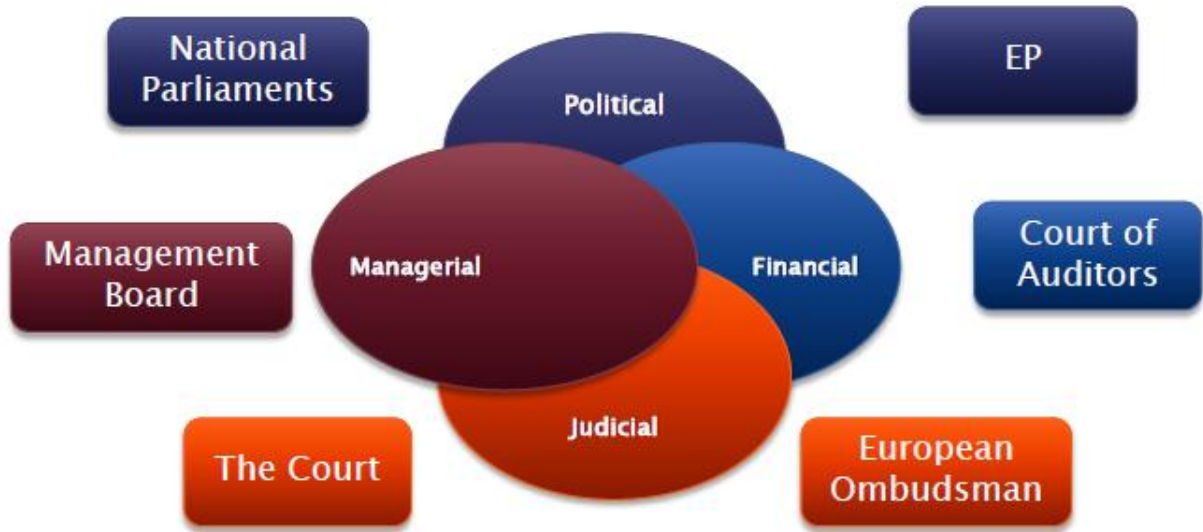
Source: Eurostat (2009), *Europe in Figures*, Statistical Yearbook, p.168. Eurostat data available for net migration flows end in 2006. More recent figures on migration flows can be found in the Statistical Yearbook of 2011, in which, however, net migration is no more considered as a relevant issue and therefore is not present.

FIGURE 2 – HOW TO CONTROL EXTERNAL BORDERS: THE STRUCTURE OF FRONTEX



Source: *Frontex Press Pack* (May 2011, p.4).

FIGURE 3 – HOW TO CONTROL THE CONTROLLER: FRONTEX ACCOUNTABILITY MAP



Source: Author's own elaboration (2012)