

# I Introduction

“Supranational agencies may solve problems of incomplete contracting.”<sup>1</sup> The various parties to a contract pledge to behave in a certain way in the future in order to achieve a certain goal. However, all contracts are inevitably incomplete since they cannot spell out explicitly all the obligations of the parties throughout the life of the contract. Let us imagine that the contracting parties are the Union Member States and that the relevant obligation of the parties to the contract is the implementation of the Asylum Union acquis aimed at achieving the goal of a Common Asylum Support System. The agreement among the Member States fixes the general performance expectation (i.e. the implementation duties) but forgets to take into account a peculiar aspect of asylum law: its high dependency on the national administrative practices of dealing with applications for international protection. The contract among the Member States presents, thus, a gap that now has to be filled which is the convergence of administrative decision-making practices in granting asylum protection. The problem of incompleteness of the contract will be faced by a brand new supranational agency, as suggested by the contract paradigm of Pollack.

The identification by the European Council of this “practical gap” that stands in the way to the creation of a Common European Asylum System stimulated the Commission in 2006 to draft a Green Paper in order to address the issue of practical cooperation by making use of a new agency: the European Asylum Support Office.<sup>2</sup> The main aim of stimulating practical cooperation among the Member States asylum services is to improve convergence in decision making.<sup>3</sup> In fact, one of the final achievements of the new brand European Asylum Support Office (EASO) will be to step-up administrative cooperation between Member States with a view to align national practices which will improve convergence in decision making by the Member States within the framework of the Union asylum legislation. *But*, will the European Asylum Support Office be able to fill the “practical gap”? In other words, will the European Asylum Support Office be able to address the major differences in the

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1 Pollack, M. (2003) ‘Delegation and Agency in the European Community’ in B. Nelsen and A. Stubb (ed.), *The European Union: Readings on the Theory and Practice of European Integration*, New York: Palgrave Macmillan, p. 259.

2 COM(2007) 301 final, ‘On the future Common European Asylum System (presented by the Commission)’ *Green Paper*, Brussels, 6.6.2007.

3 COM(2007) 301 final, ‘On the future Common European Asylum System (presented by the Commission)’ *Green Paper*, Brussels, 6.6.2007.

way Member States deal with applications for international protection? Will it be able to effectively promote convergence of practices, thus, completing the Europeanization of asylum law throughout the Union?

In order to address this question this paper will proceed as follows. The first part (I) will introduce the reader to the theoretical framework and to the methodology of this paper. The conceptualization of why agencies are created and the conceptualization of convergence of practices will thus be presented. Next, the concept of Europeanization will be clarified in light of the purpose that it will serve in this paper (a). Finally, the first part will end with the methods that will be used in order to carry out the concrete analysis of the paper (b). The method has been designed in such a way that it will try to test the theoretical insights presented by the paper in this first section. The second part of the paper (II) will introduce the reader to the EASO. The reasons for its establishment (a) and a description of the Office's tasks and of the tools to achieve its tasks (b) will be illustrated. The third part (III) will try to suggest possible improvements to the tools that the office is planning to use in order to achieve more effectively its tasks aimed at convergence of asylum determination practices. In order to carry out this analysis, comparable tasks to the one of the EASO have been chosen from other agencies and the effectiveness of the comparable tasks in determining convergence of practices have been analyzed. Sub-section (a) will analyze the effectiveness of the European Agency for Safety and Health at Work's (EU-OSHA)<sup>4</sup> tools in collecting and analyzing good practices and promoting their exchange. Sub-section (b) will analyze the effectiveness of European Agency for the Management of Operational Cooperation at the External Borders's (FRONTEX)<sup>5</sup> training tools in promoting a European Common Curriculum for border guards. Sub-section (c) will provide an insight into the effectiveness of FRONTEX's Rapid Border Intervention Teams (RABIT) as a tool to support Member States subject to urgent and exceptional pressure at their external borders. Finally sub-section (d) will question whether inspections tools are *the* necessary device for EASO to really contribute to the implementation of the Common

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4 The European Agency for Safety and Health at Work (EU-OSHA) acts as a catalyst for developing, analyzing and disseminating information that improves occupational safety and health in Europe. <<http://osha.europa.eu/en>>

5 The European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX) coordinates operational cooperation between Member States in the field of management of external borders; assists Member States in the training of national border guards, including the establishment of common training standards; carries out risk analyses; assists Member States in circumstances requiring increased technical and operational assistance at external borders; and provides Member States with the necessary support in organizing joint return operations. <<http://www.frontex.europa.eu/>>

European Asylum Support System by looking at the inspection tools of the European Maritime Safety Agency (EMSA).<sup>6</sup>

This research aims at providing both an insight in the agency debate<sup>7</sup> by carrying out an attentive analysis of the effectiveness of the tasks of four existing agencies; but also tries to suggest to a new born agency that deals with vulnerable human beings effective tools for the promotion of one of its final goals: convergence of Member States practices.

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6 The European Maritime Safety Agency (EMSA) helps the Commission and the authorities in EU member countries in matters of maritime safety, security and preventing pollution caused by ships.

<http://www.emsa.europa.eu/>

7 The participants involved in the agencies debate are divided on whether agencies are the right way forward for improving the executive power of the Union. Some argue that they are highly appropriate instruments to perform Union intervention more effectively and efficiently; while others raise concerns relating to coherence of the Union legal architecture. Moreover, the Commission in 2008 challenged the increased number of agencies and asked for a reflection period. Budget Directorate General Evaluation Unit, 'Meta-Evaluation on the Community Agency System', Brussels, 15.9.2003; Majone, G. (2000) 'The credibility Crises of Community Regulation', *Journal of Common Market Studies* 38(2): 278; COM(2008)135 final, 'Communication from the Commission to the European Parliament and the Council: European Agencies – The Way Forward', Brussels, 11.3.2008.

## II Analytical Framework and Methodological Considerations

### a Theoretical Framework

#### i The theories

EU-level agencies are supposed to contribute first to the efficient and flexible implementation of Union legislation and policies<sup>8</sup> and second should encourage the harmonization of regulatory practices in the Member States.<sup>9</sup> The first statement reflects the functionalist approach to the creation of agencies. That is to say, rational choice theory explains institutional choices in terms of increase of efficiency, reduction of transaction costs, increase transparency, enhance credible commitment and organize independent expertise.<sup>10</sup> The second statement seems to suggest a second theory. Next to the functionalist argument, agencies provide for harmonization and convergence of national practices through a process of mutual learning and socialization (Sociological Institutionalism).<sup>11</sup> These two approaches, even if with a different focus, seem to be two sides of the same coin. Both the functionalist approach and sociological institutionalism aim at explaining how agencies provide for the uniform application of Union

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8 Majone, G. (1997) 'The New European Agencies: Regulation by Information', *Journal of European Public Policy* 4(2): 270; Majone, G. (2000) 'The credibility Crises of Community Regulation', *Journal of Common Market Studies* 38(2): 274.

9 Kelemen, R.D. (2004) *The Rules of Federalism: Institutions and Regulatory Politics in the EU and Beyond*, Cambridge, MA: Harvard University Press.

10 Heringa A. W. and Verhey L. (2003) 'Independent agencies and political control', in Zwart T. and Verhey L. (ed.), *Agency in European and Comparative Law*, Antwerp: Intersentia, p. 157; Pollack M. (2003) 'Delegation and Agency in the European Community' in B. Nelsen and A. Stubb (ed.), *The European Union: Readings on the Theory and Practice of European Integration*, New York: Palgrave Macmillan, p. 258; Williams, G. (2005) 'Monomaniacs or Schizophrenics? Responsible Governance and the EU's Independent Agencies', *Political Studies* 53: 85; Vos, E. (2000) 'Reforming the European Commission: What Role to Play for EU Agencies', *Common Market Law Review* 37: 1120.

11 Groenleer, M., Kaeding, M. and Versluis, E. (2010) 'Regulatory Governance through EU Agencies? The Role of the European Agencies for Maritime and Aviation Safety in the Implementation of European Transport Legislation', *Journal of European Public Policy*, 17(8); Kelemen, R.D. (2004) *The Rules of Federalism: Institutions and Regulatory Politics in the EU and Beyond*, Cambridge, MA: Harvard University Press.

legislation. However, the functionalist approach seems to stress the efficiency aspect of implementation of Union legislation while the sociological institutionalism theory seems to underline a less efficient process that is the outcome of social interaction among actors.<sup>12</sup>

For the purpose of this paper, the sociological institutionalism theory will be mainly taken into account (see Section *I.ii*). This choice has been made since this paper focuses on the EASO's aim of promoting of convergence of practices among Member States via mutual transfer of knowledge and socialization processes.<sup>13</sup>

## ii Europeanization through the glasses of Sociological Institutionalism

There is no shared definition of the term Europeanization and the term has no single precise stable meaning but is rather characterized by many faces.<sup>14</sup> Europeanization, according to Olsen, is about how the term can be useful for understanding the dynamics of the evolving European Polity.<sup>15</sup> Thus, in light of this interpretation of the term Europeanization this paper will focus on the vision of Europeanization explained by sociological institutionalism which, as explained in the sub-section above, is a theory which can also be used to explain agency creation. Sociological institutionalism suggests that “Europeanization leads to domestic change through a socialization and collective learning process resulting in norms internalization and development of new identities”.<sup>16</sup> According to this vision of Europeanization, Europeanization can be conceptualized as a process of change at the domestic level in which the Member States adapt their institutions to new procedures that emanate from the emergence of a European System of Governance.<sup>17</sup> In other words, Union policies, norms and collective understanding attached to them exert an adaptation pressure on the Member States level which is mediated by European institution building (e.g agencies) which may cause a change at the domestic

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12 'Efficiency' in this context is meant as the fastest way to reach a goal.

13 E.g. pooling of best practices, exchange of information, common training, implementation tasks via transfer of knowledge, etc.

14 Olsen, J. (2002) 'The Many Faces of Europeanization', *Journal of Common Market Studies* 40(5): 921.

15 Olsen, J. (2002) 'The Many Faces of Europeanization', *Journal of Common Market Studies* 40(5): 922.

16 Börzel, T. and Risse, T. (2000) 'When Europe Hits Home: Europeanization and Domestic Change', *European Integration online Papers (EIoP)* 4 (15).

17 Olsen, J. (1996) 'Europeanization and Nation-State Dynamics' in Gustavsson S. and Lewin L. (ed.), *The Future of the Nation State*, London: Routledge, pp. 245-285; Olsen, J. (1997) 'European Challenges to Nation State' in Steunenberg, B. and van Vught, F. (ed.), *Political Institutions and Public Policy*, The Hague: Kluwer Academic Publishers, pp. 157-188.

level. Sociological institutionalism identifies two mechanisms of domestic change of policies at the domestic level, one more structural and the other agency-centered.<sup>18</sup> The agency-centered model suggests that supranational agencies induce changes into the domestic level through socialization projects to which domestic actors are exposed. Domestic actors, via the agencies' activities, learn to internalize new norms and rules in order to become members of an international society.<sup>19</sup> Under this model, Member States socialize into new norms and rules thanks to processes of persuasion and social learning offered by the agencies and redefine their interests and identities accordingly.

In sum, Europeanization is understood as the emergence of new rules, norms and practices to which Member States are exposed via the agency-centered model which exert pressure on Member States via socialization processes aimed at the incorporation of the new norms at the domestic level.

### iii What is convergence of practices?

Convergence of practices is commonly understood as the process of alignment of Member States practices. However, since it is outside the scope of this paper to check empirically whether alignment of practices has happened in the Member States, the term convergence of practices assumes a different connotation.

The agencies' tasks analyzed by this paper all have as one of their main aims convergence of practices.<sup>20</sup> The goal of the analysis in this thesis is to determine whether the tools used by the agencies in achieving their tasks are effective. Thus, convergence of practices for the purpose of this paper is the effectiveness<sup>21</sup> of the agencies' tools in achieving the task. This concept will be clarified in Fig. 1.

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18 Börzel, T. and Risse, T. (2000) 'When Europe Hits Home: Europeanization and Domestic Change', *European Integration online Papers* (EIoP) 4(15).

19 Finnemore, M. and Sikkink, K. (1998) 'International Norm Dynamics and Political Change', *International Organization* 52(4): 808.

20 This statement will be explained in the following sub-section *b(i) 'Socialization nature'*.

21 The term effectiveness will be explained in the following sub-section *b(ii) 'How to measure effectiveness?'*.

Fig. 1

Each task has as one of its end results the promotion of convergence.	Achieved task = Convergence
Each task is achieved via its tools.	Effective tools = Achieved task
Thus, if the tools are effective in achieving the task most likely convergence of practices will be the end result.	Convergence ≈ Effective tools

This logical syllogism does present some limitation. In fact, the process that leads to convergence of practices in the Member States cannot be so clear cut as explained in Fig. 1. Other variables play a role.<sup>22</sup> This simplification of the path that leads to convergence by making use of the agencies tools has been made in order to obtain some clear defined results that should be then put in context in the general picture where more variables play a role. Over-simplification sometimes is necessary in order to contribute to knowledge (Karl Popper).

## b Methodology

### i The comparability of tasks and their socialization nature

Sociological Institutionalism theory seems to suggest that supranational agencies induce changes into the Member States domestic level thank to socialization projects, persuasion and social learning. These types of activities push the Member states' administrative services to redefine their interests and identities according to the European model – convergence of practices towards one model. Thus, this paper aims at analyzing four agencies tasks which are comparable to four EASO tasks and which are characterized by a socialization aspect. This choice has been made in line with the Sociological Institutionalism theory which affirms that it is more likely that “sociological tasks” will bring forward adaptation to new norms and rules by Member States administrative services if they have a persuasion and social learning nature. In other words, this paper

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22 That is why in Fig. 1 convergence is not equal (=) to effective tools but is similar (≈) to effective tools.

will analyze the following four agencies' tasks due to their *i. comparability with the tasks of the EASO* (Fig. 2) and due to their *ii. socialization nature*.

### Comparability with the tasks of the EASO

Fig. 2

EASO tasks	Comparable tasks from different agencies
1. Pooling information and best practices.	1. EU-OSHA: Collect and analyze good practices and promote their exchange.
2. Support training for all national administration and courts, and national services responsible for asylum. -> AIM: Creation of a European Asylum Curriculum.	2. FRONTEX: Assistance training of all national border guards, including the establishment of common training standards. -> AIM: Creation of a European curriculum with common skills and competencies for border guards across Europe.
3. Support common action: assisting asylum reception systems of Member States subject to particularly urgent and exceptional pressure. -> By deploying Asylum Support Teams.	3. FRONTEX: Support common action: assisting Member States faced with a situation of urgent and exceptional pressure at the arrival points of the external borders. -> By deploying Rapid Borders Intervention Teams (RABIT).
4. Contribution to the implementation of the Common European Asylum System -> by gathering and exchanging information on implementation of Union Asylum <i>acquis</i> : <ul style="list-style-type: none"> <li>• by organizing, coordinating and promoting exchange of information between Member States' asylum authorities.</li> <li>• by carrying out research with the aim of improving the quality, consistency and effectiveness of CEAS (which will be contained in annual reports).</li> </ul> -> by drawing office documents which evaluate the implementation of Union Asylum <i>acquis</i> .	4. EMSA: Contribution to the implementation of the European Maritime <i>acquis</i> -> by gathering and exchanging information on implementation of Union Maritime <i>acquis</i> : <ul style="list-style-type: none"> <li>• via workshop and training courses.</li> <li>• by carrying out research for the improvement of port state control throughout the EU.</li> </ul> -> by inspections.

### *Socialization nature*

The first task *pooling information and best practices* is characterized by a socialization nature by the fact that EU agencies, such as the EU-OSHA, promote Member States' exchange of best practices by making use of techniques which put Member States in contact with each other (e.g. networking).<sup>23</sup> The second task, *support training* is clearly a task which promotes social learning via mutual learning training activities.<sup>24</sup> The third task, *assisting Member States faced with a situation of urgent and exceptional pressure at the arrival points of external borders*, promotes socialization not only because it creates the perfect framework for different national border guards interaction;<sup>25</sup> but also because it strengthens the concept of solidarity among Member States.<sup>26</sup> Finally, the fourth task *gathering and exchanging of information on the implementation of the Union acquis* is another way for promoting interaction and sociological learning via the sharing of knowledge on implementation or non implementation of the Union *acquis*.<sup>27</sup>

## **ii How to measure effectiveness?**

As explained in part *I.a.iii*<sup>28</sup> in order to determine whether the existing agencies tasks are effective in achieving convergence of practices this paper will look at the tools that the agencies use in order to achieve their respective tasks. For each of the agencies' tools, as explained in Fig. 3, the same criteria will be used as a parameter to determine whether the tools of the agency have been effective in achieving their respective task.

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23 Network cooperation between national regulators ensure more consistent implementation of Union law at Member State level. Sabel, C. and Zeitlin, J. (2008) 'Learning from Differences: The New Architecture of Experimentalist Governance in the EU', *European Law Journal* 14(3): 280.

24 Interview 2.

25 ECRE (European Council on Refugees and Exiles), 'Comments on the EU plans to establish a European Asylum Support Office (EASO)' No. AD05/12/2008/ext/AP.

26 COM(2008) 67 final, 'Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of Regions: Report on the evaluation and future development of the FRONTEX Agency', Brussels, 13.2.2008.

27 "Via the transfer of knowledge [diffusion of implementation practices across Europe] agencies add to the harmonization and convergence of national practices" Groenleer, M., Kaeding, M. and Versluis, E. (2010) 'Regulatory Governance through EU Agencies? The Role of the European Agencies for Maritime and Aviation Safety in the Implementation of European Transport Legislation', *Journal of European Public Policy*, 17(8).

28 Sub- section *I.a.iii* - *What is convergence of practices?*

Fig. 3

Task	Criteria to determine effectiveness
1. <i>Pooling information and best practices (EU-OSHA) via national Focal Points which upload their practices and experience by making use of a Live Network on internet.</i>	<p>A. Member States' response to the agency's tools aimed at achieving the task.</p> <p>B. Evaluation by the Commission and External Reports in achieving the agency's task.</p>
2. <i>Support training (FRONTEX) via specialized, thematic and evaluation trainings.</i>	<p>A. Member States' response to the agency's tools aimed at achieving the task.</p> <p>B. Evaluation by the Commission and External Reports in achieving the agency's task.</p>
3. <i>Assisting Member States faced with a situation of urgent and exceptional pressure via the RABITS.</i>	<p>A. Member States' response to the agency's tools aimed at achieving the task.</p> <p>B. Evaluation by the Commission and External Reports in achieving the agency's task.</p>
4. <i>Contribution to the implementation of the European Maritime acquis via inspection powers and gathering and exchanging information on implementation of the Union Maritime acquis.</i>	<p>A. Member States' response to the agency's tools aimed at achieving the task.</p> <p>B. Evaluation by the Commission and External Reports in achieving the agency's task.</p> <p>However, this last task will have a slightly different emphasis when compared to task 1; 2 or 3.</p> <p>The aim of this analysis will shift to whether inspection tasks are necessary in order to promote implementation of Union <i>acquis</i>.</p>

In order to determine whether the Member States' response to the agencies' tools and the Member States' involvement in supporting the agencies' tools (A) have been significant (or not), questionnaires, statistics, and journal articles have been analyzed. Moreover, also some interviews at the European Commission have been useful in determining the degree of interest and appreciation by Member States of the agencies' activities. With the aim of determining whether the Commission has evaluated positively the work of

agencies (B), interviews with Commission officers have been carried out in the relevant DGs.<sup>29</sup> Moreover, together with the interviews<sup>30</sup>, Commission evaluation reports on the agencies work have also been analyzed. Finally, the last parameter (evaluation of agencies activities by External reports) has been evaluated by making use of reports by independent consultancies.

### iii Limitations

This comparative analysis does recognize that the different agencies are concerned with very different policies; some more sensitive and others which do not touch upon the sovereignty of the State. This weakness cannot be overcome due to the fact that the agencies in place which have comparable tasks as to the one of the EASO are not concerned with issues similar to Asylum Policy. However, this weakness gains little importance because this paper is focused on the technical tools used by the agencies in promoting convergence via their tasks. The focus on technicalities distances the policy field from the actual effectiveness of the research. This statement can be proved by the fact that two very similar agencies with very similar mandates<sup>31</sup> and policy area ‘safety and health at work’ (EU-OSHA and EUROFOUND), were evaluated by the Commission Communication on the Way Forward for Agencies in a completely different way when it came to determine whether they were effective in promoting exchange of information. The EU-OSHA was praised for its Live online Network,<sup>32</sup> while EUROFOUND was criticized for its lack of tools to promote socialization.<sup>33</sup>

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29 DG Freedom, Security and Justice for EASO and FRONTEX; DG Employment Social Affairs and Equal Opportunities for EU-OSHA; and DG Transport for EMSA.

30 Interviews are subject to biased comments which cannot be controlled. However, in order to try to prevent some biased comments, when the interviews have been carried out, the scope of my research has always been disclosed at the end. In this way it is more likely that the interviewee would not try to fit his or her answers in a way that could influence at his or her desire my findings. Additionally, with the interviews on the Commission opinion of the agencies’ activities, written Commission reports on the agencies’ activities have been consulted to check the validity of the interviewee’s statements. Gubrium, J.F. and Holstein, J.A. (2001) *Handbook of interview research: context & method*, Thousand Oaks: Sage Publications, p. 299.

31 The Commission in its Communication on the way forward for European Agencies clearly stated that the EU-OSHA and the EURO-FOUND do have a very similar mandate. COM(2008)135 final, ‘Communication from the Commission to the European Parliament and the Council: European Agencies – The Way Forward’, Brussels, 11.3.2008.

32 EU-OSHA: “successful internet strategy”. COM(2008)135 final, ‘Communication from the Commission to the European Parliament and the Council: European Agencies – The Way Forward’, Brussels, 11.3.2008.

33 EUROFOUND: “Lack of efficient contact management system”. COM(2008)135 final, ‘Communication from the Commission to the European Parliament and the Council: European Agencies – The Way Forward’, Brussels, 11.3.2008.

## III The Rise of the European Asylum Support office

### a Reasons for the Establishment

The year 1999 laid the foundation for the creation of a Common European Asylum System (CEAS)<sup>34</sup> which would ensure that “nobody is sent back to persecution”.<sup>35</sup> However, such an ambitious plan to create a CEAS had to be backed up by enhanced practical cooperation on asylum due to the significant differences in the decision making procedures in the 27 Member States of the Union.<sup>36</sup> These differences are shown by the objective possibilities that for example a Chechen or an Iraqi have to be granted asylum within the territory of the European Union. A Chechen has a 72% chance of being granted asylum in one country and 0% in another and an Iraqi has a 71% chance of asylum in one country and 2% in another.<sup>37</sup> It is in this context that the European Council in 2004 in the Hague Programme proposed the setting up of the European Support Office (EASO) for all forms of cooperation between Member States relating to the CEAS.<sup>38</sup> The Hague Programme has been followed by the Commission Green Paper in 2007 which stressed the importance of improving practical cooperation among Member States in order to improve convergence of decision making practices by Member States within the framework of the Union asylum legislation. The

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- 34 The Treaty of Amsterdam introduced to the ex-Treaty Establishing the European Community Title IV which provides the legal basis for adopting binding legislation in the field of asylum and related areas. Next to this legal development in the field of asylum, the heads of state of governments adopted in Tampere (16 October 1999) the political guidelines for the development of the legislative agenda set in Title IV TEC. Gil-Bazo M. T. (2007) ‘The Protection under the Common European Asylum System. The Establishment of a European Jurisdiction for Asylum Purposes and Compliance with International Refugee and Human Rights Law’, *Cuadernos Europeos de Deusto* 36: 162.
- 35 European Parliament, ‘Tampere European Council 15 and 16 October 1999: Presidency Conclusions’.
- 36 COM(2008) 360 final, ‘Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of Regions: Policy Plan on Asylum an integrated approach to protection across the EU’, Brussels 17.6.2008.
- 37 Europa Press Releases (18/04/2008), ‘The EU moves towards the creation of a Support Office in the field of asylum management’.
- 38 General Secretariat, ‘The Hague Programme : strengthening freedom, security and justice in the European Union’, Brussels, 13.12.2004. Moreover, it is interesting to mention that the EASO was envisaged even before the Tampere programme by the AGIT (Academic Group on Immigration) which before the Hague Conference suggested the creation of an asylum agency aimed at convergence of practices of asylum reception conditions in its paper titled (1999) ‘Tampere Efficient, effective and encompassing approaches to a European Immigration and Asylum Policy’, *International Journal of Refugee Law* 11(2): 338 – 374.

Green Paper suggested the first preliminary activities that were to be carried out in order to achieve convergence of practices and mentioned that such activities shall be carried out by the EASO in the future. Finally, in 2008 the Commission in its Policy Plan on Asylum stressed again the discrepancies between the asylum decisions and clearly stated that ‘legal harmonisation [has to be accompanied] with effective practical cooperation’ which will be promoted by the EASO that will bridge the practical gap in the field of asylum.<sup>39</sup> The Commission Officer Françoise Comte responsible for drafting and negotiating the whole package of the EASO and now responsible for setting up the Office also stated during the interview that ‘the convergence of practices was one of the main reasons why the EASO was intended to be created’.<sup>40</sup>

## b Tasks

The EASO founding regulation has created a three pillar structure (Fig. 4) aimed at helping Member States to become familiar with the system and practices of others, to develop closer working relations between asylum systems at operational level, to build trust and confidence in each other’s systems and achieve greater consistency in practice.<sup>41</sup>

Fig. 4

<p>1. Supporting Practical Cooperation<sup>42</sup></p>	<ul style="list-style-type: none"> <li>• Poling of best practices</li> <li>• Coordination on countries of origin</li> <li>• Supporting relocation of beneficiaries of international protection within the Union</li> <li>• Support for training</li> <li>• Support for external dimension of the CEAS</li> </ul>
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39 COM(2008) 360 final, ‘Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of Regions: Policy Plan on Asylum an integrated approach to protection across the EU’, Brussels, 17.6.2008.

40 Interview 1.

41 UNCHR, ‘UNCHR’s Response to the European Commission Green Paper on the Future Common European Asylum System’, September 2007.

42 For the purpose of this paper only for certain tasks of the three pillars structure the possible future effectiveness will be determined. For the first pillar, only pooling of best practices and support for trainings will be analyzed. For the second pillar only coordination and support for common action via the Asylum Support teams will be considered. This choice has been made for mainly one reason: the other tasks do not find any other possible comparison in other existing agencies.

2. Support Member States subject to particular pressure <sup>42</sup>	<ul style="list-style-type: none"> <li>• Coordination and Support for Common action</li> <li>• Gathering and analyzing information</li> <li>• Asylum Support teams</li> </ul>
3. Contribution to the Implementation of the CEAS	<ul style="list-style-type: none"> <li>• Gathering and exchanging information</li> <li>• Support Office documents</li> </ul>

For the time being it is not possible to give a detailed description of the different characteristics of the tasks of the EASO. The reason for this lack of information is because it will be the future Management Board that will be responsible for shaping the nature and the functional details of each task.<sup>43</sup> Nevertheless, some interesting remarks can be made.

#### *Pillar I*

Article 3,<sup>44</sup> pooling of best practices, is characterized by a broad wording which seems to give a wide discretion to the Management Board in deciding which tools will be used in order to achieve the task.<sup>45</sup> Article 6<sup>46</sup>, support for training, is characterized by a broad scope<sup>47</sup> which allows the EASO to provide trainings in different areas. More specifically the agency is under the obligation<sup>48</sup> to develop both a Common Curriculum for national administrators, national courts and national services responsible for asylum matters and will have the power to provide trainings that have general scope, specific or thematic scope, or which may include ‘train-the-trainers’ methodology.<sup>49</sup> The Regulation remains silent on whether Member States are under the obligation to implement the Common Curriculum in their Member States training programs for asylum officers.

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43 Art. 29 Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office.

44 Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office.

45 This lack of information further highlights the relevance of the research carried out by this paper. In fact, since the Management board is not bound to any guidelines, it could benefit even more by the research of this paper which aims at providing information on the effectiveness of agencies in achieving their tasks.

46 Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office.

47 Interview 1.

48 Art. 6 (1) “The Support Office *shall* establish and develop trainings [...]”; Art. 6(2) “The Support Office *shall* manage and develop a European asylum curriculum [...]” Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office.

49 Art. 6 (3) (4) Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office.

### *Pillar II*

Art. 10 (c),<sup>50</sup> support action for the Member States via the Asylum Support Teams, states that the agency will only coordinate actions to support Member States subject to particular pressure<sup>51</sup> if the Member States will request help from the agency. This task seems to underline the sensitive character of asylum issues and the contradicting nature of the desire of Member States to have an agency that would help them to converge their national practices and their desire to maintain their control over their third country migration policy.<sup>52</sup> The text of Art. 14, Asylum Support Teams, has been taken from the RABIT formulation.<sup>53</sup> The Member States have a duty to contribute their asylum experts to the asylum intervention pool<sup>54</sup> from which the Management Board will select the national experts which will be part of the Asylum Team.<sup>55</sup> The operating plan setting out the details and the conditions for deployment of the Asylum Support Teams is agreed by the Executive Director together with the requesting Member State.<sup>56</sup>

### *Pillar III*

The third pillar of the EASO concentrates on three main tools. The first tool aims at exchanging information between Member States' asylum authorities concerning the implementation of all relevant instruments of the Asylum *acquis*.<sup>57</sup> The second tool

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50 Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office.

51 “[...] particular pressure which places exceptionally heavy and urgent demands on their reception facilities and asylum systems.” Art. 8 Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office.

52 Interview 1.

53 Interview 1; Interview 6; Ch. 3 Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office.

54 Art. 15 “Member States *shall* contribute to the Asylum Intervention Pool via national experts [...]” Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office.

55 This duty holds true unless Member States are faced with a situation of insufficient staffing for the performing of procedures to determine the status of person applying for international protection. Art. 16 Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office.

56 Art. 18 Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office.

57 Art. 11 Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office.

(annual reports) strives at gathering information by carrying out research with the aim of improving the quality, consistency and effectiveness of the CEAS in light of the situation of asylum in the Union.<sup>58</sup> The third tool consists in drawing up Support Office documents on the implementation of the asylum instruments of the Union, including guidelines and operating manuals.<sup>59</sup> This last type reports are adopted by the EASO acting in close consultation with the Commission and the working parties<sup>60</sup> and indirectly will point out where Asylum *acquis* has not been implemented in the Union. This type of Support Office document seems to be the result of an almost *de facto* inspection power by the EASO, which in order to draw this reports have to check whether the Union asylum instruments have been properly implemented by the Member States.<sup>61</sup> However, the Council have inserted as an amendment to Art. 12(2) of the Regulation setting up the EASO on its first reading that the Support Office documents ‘shall not purport to give instructions to Member States about the grant or refusal of applications for international protection’.<sup>62</sup> The Commission had to accept this amendment in order for the Regulation to be adopted as quickly as possible.<sup>63</sup> Nevertheless, inspection powers for the EASO could be envisaged in the future, but for the time being the Asylum *acquis* is a very young one and the Member States keep on behaving as if Asylum Policy are still under the domain of the old third pillar.<sup>64</sup>

In sum, the EASO, together with other aims not covered by this paper, seems to have been created in order to encourage the harmonisation of regulatory practices in the Member States in light of the significant differences in dealing with international protection by

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58 Art. 12 Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office.

59 Art. 12 Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office.

60 Working Parties are groups of experts from competent Member States authorities operating in the field of asylum. The working parties are set up by the EASO. Art. 32 Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office.

61 If in order to draw this office document the agency has to go to a Member State, then the agency is inspecting. Interview 7. The text of the EASO regulation is quite vague concerning both the type of procedure that will be pursued to obtain the information that will appear on the office documents and about the information that will be disclosed in these documents.

62 Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office.

63 From the adoption of the First draft regulation it took only one year and three months before the adoption of the final text on the 19.05.2010. Interview 1.

64 Interview 1.

the Member States administrations which were obstructing the creation of the CEAS. The three pillar structure of the EASO shall not be seen as three divided compartments, but rather as three pillars that complement each other in order to fill the practical gap that the CEAS is missing.<sup>65</sup>

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65 Interview 1.

## IV Effectiveness of agencies tools in promoting convergence of practice: what can the EASO learn?

The aim of this section is to analyze the effectiveness of the selected agencies' tools in achieving their respective tasks. The tasks, as explained in sub-section *l.b.*, have been chosen for their socialization nature, which aims at stimulating convergence of practice, and for their comparability with EASO, which allow this research to provide the new brand agencies with a lesson from the past.

The first two tasks that will be analyzed (*a*) (*b*) are comparable with two tasks of the first pillar of the EASO. The third task (*c*) is comparable to one task of the second pillar of the EASO; and finally the fourth task (*d*) is comparable with the task of the third pillar of EASO (See Annex 1).<sup>66</sup>

Fig. 5

	EASO	SELECTED AGENCIES
Pillar I	<ul style="list-style-type: none"> <li>• Poling of best practices</li> <li>• Support for training</li> </ul>	<ul style="list-style-type: none"> <li>• Pooling information and best practices (EU-OSHA)</li> <li>• Support for training (FRONTEX)</li> </ul>
Pillar II	<ul style="list-style-type: none"> <li>• Asylum Support teams</li> </ul>	<ul style="list-style-type: none"> <li>• RABIT teams (FRONTEX)</li> </ul>
Pillar III	<ul style="list-style-type: none"> <li>• Gathering and exchanging information               <ul style="list-style-type: none"> <li>- coordination of exchange of information</li> <li>- carrying out research</li> </ul> </li> <li>• Reports and other Support Office documents               <ul style="list-style-type: none"> <li>-&gt; Inspection (?)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Gathering and exchanging information (EMSA)               <ul style="list-style-type: none"> <li>- workshop and training courses</li> <li>- carrying out research</li> </ul> </li> <li>• Inspection powers (EMSA)</li> </ul>

<sup>66</sup> For the purpose of this paper only for certain tasks of the three pillars' structure the possible future effectiveness will be determined. For the first pillar, only pooling of best practices and support for trainings will be analyzed. For the second pillar only coordination and support for common action via the Asylum Support teams will be considered. This choice has been made for mainly one reason: the other tasks do not find any other possible comparison in other existing agencies.

## a Pooling information and best practices: the lesson of the European Agency for Safety and Health at Work (EU-OSHA)

### i Description of how the tools interact to achieve the task

The mission of the European Safety Agency for Safety and Health at work (EU-OSHA) is to make Europe's workplaces safer, healthier and more productive by identifying new and emerging risks and by collecting and analyzing good practices and promote their exchange.<sup>67</sup> The EU-OSHA was established in 1994 by the establishing Council Regulation 2062/94 and started operating in 1996 and is situated in Bilbao (Spain).<sup>68</sup> According to Art. 2<sup>69</sup> of the founding Council Regulation, the aim of the agency is to provide the Community bodies, the Member States and those involved in the field, with the best information related to the field of safety and health at work. This main objective of the agency is achieved by collecting and disseminating information in the field of safety and health at work, but also by promoting and supporting the cooperation and the exchange of experience and best practices amongst the Member States in the field.<sup>70</sup> The practical tool via which the agency achieves its aim is the Network (Art. 4).<sup>71</sup> The Network is composed by both National Focal Points (FOPs) and by Topic Centers. The latter are made up of some of the most important occupational safety and health research institutes in Europe.<sup>72</sup>

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67 Office for the Official Publications of the European Communities (2010), 'EU Agencies the way ahead' *European Communities*, Luxembourg.

68 The establishing Council Regulation has been further amended by other four Council Regulations: 1643/95; 1654/2003; and 1112/2005.

69 Council Regulation (EC) No 2062/94 of 18 July 1994 establishing a European Agency for Safety and Health at Work.

70 Art. 3 Council Regulation (EC) No 2062/94 of 18 July 1994 establishing a European Agency for Safety and Health at Work; Interview 3; RAMBOLL, Euréval and Matrix (2009), 'Evaluation of the EU decentralized agencies in 2009' *Report Vol. II*, No. 003-004, p. 18.

71 Council Regulation (EC) No 2062/94 of 18 July 1994 establishing a *European Agency for Safety and Health at Work*. Interview 3.

72 Office for Official Publications of the European Communities (2006), '2005 Annual Report' *European Agency for Safety and Health at Work*, Luxembourg, p. 31.

The former play a pivotal role in the agency's network;<sup>73</sup> they are the main health and safety information network of the agency.<sup>74</sup> This sub-section will focus only on the role of FOPs in promoting a social dialogue between Member States. This is achieved via the FOCs meeting in Bilbao and the role of FOPs in managing the website.<sup>75</sup> This choice has been made since these are the two main tools that the agency uses in order to achieve its task of pooling best practices.<sup>76</sup> The process of networking via the meetings in Bilbao and the managing of the website are interconnected. The main networking activity of the FOPs revolves both around the process of uploading their national best practices on the agency's website<sup>77</sup> and on the meetings in Bilbao.<sup>78</sup> All the Member States FOPs' home pages share the same structure which allows the users to surf from one information on a given field on one Member State internet page to the same subject in another Member State internet page.

## ii The effectiveness of the agencies tools in achieving the task

The effectiveness of the EU-OSHA' tools in achieving the task of pooling information and best practices will be analyzed by looking at the effectiveness of FOPs in creating an horizontal network among FOPs, and, by looking at the effectiveness of FOPs in creating a vertical network between FOPs' electronic information and the users consulting the website. The effectiveness of these two aspects of the same task will be evaluated by making use of the parameters explained in the methodology sub-section (A and B).

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73 Office for Official Publications of the European Communities (2001), '2000 Annual Report' *European Agency for Safety and Health at Work*, Luxembourg, p. 7.

74 Sabel, C. and Zeitlin, J. (2008) 'Learning from Differences: The New Architecture of Experimentalist Governance in the EU', *European Law Journal* 14(3): 271-327; Centre for Strategy and Evaluation Services (2007), 'Evaluation of the European Agency for Safety and Health at Work' COWI, Kent (UK), p. 17.

75 The FOPs over all are responsible for organizing the European Campaign Weeks, the networking via the meetings in Bilbao, the website management and checking translation of the agency documents. The European Agency for Safety and Health at Work (EU-OSHA). <[http://europa.eu/agencies/community\\_agencies/osha/index\\_en.htm](http://europa.eu/agencies/community_agencies/osha/index_en.htm)>; RAMBOLL, Euréval and Matrix (2009), 'Evaluation of the EU decentralized agencies in 2009' *Report Vol. III*, No. 003-004, p. 154.

76 Interview 3; 'The sharing of good practices is also an important feature of FOP networking' Centre for Strategy and Evaluation Services (2007), 'Evaluation of the European Agency for Safety and Health at Work' COWI, Kent (UK), p. 90.

77 Office for Official Publications of the European Communities (2009), '2008 Annual Report' *European Agency for Safety and Health at Work*, Luxembourg, p. 19.

78 Office for Official Publications of the European Communities (2008), '2007 Annual Report' *European Agency for Safety and Health at Work*, Luxembourg, p. 15.

The horizontal dimension seems to have received wide support among the Member States.<sup>79</sup> Two-thirds of the FOPs appear to have developed on-going links with the other FOPs.<sup>80</sup> The most effective tool in creating contact between FOPs are the meetings organized by the agency in Bilbao.<sup>81</sup> Nevertheless, also the network on internet has been well accepted by the FOPs since in the first year of work of the agency 12 Member States were live on the web-site and the latter was visited more than 10.000 times.<sup>82</sup> The horizontal dimension has also been evaluated very positively by the Commission. The Commission Officer interviewed defined as realistic the possibility that Member State's practices will converge thanks to the process of horizontal networking that is created both at the website level and at the meetings level in Bilbao.<sup>83</sup> The process of convergence that can result is not a real process of copying but rather of adaptation of the best practices in conformity with the specific features of each Member State.<sup>84</sup> Nevertheless, it shall not be forgotten that the reasons why FOCs are so active in uploading their best practices via the agencies might not be linked to the Member States' desires to converge their practices, but rather in order for their position to be correctly represented in the agency's overall report.

The vertical dimension has also been evaluated very positively by the External Reports and by the Commission. The Commission defines the agency very efficient in disseminating good practices via the website on internet.<sup>85</sup> The external reports seem to agree with the findings of the Commission. Online surveys show that both the information users and the information re-disseminators consider the pooling of best practices one of the

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79 The FOPs are the reflection of the Member State interests, being the FOPs organized by the Member States themselves.

80 Centre for Strategy and Evaluation Services (2007), 'Evaluation of the European Agency for Safety and Health at Work' *COWI*, Kent (UK), p. 35.

81 Interview 3; Centre for Strategy and Evaluation Services (2007), 'Evaluation of the European Agency for Safety and Health at Work' *COWI*, Kent (UK), p. 35.

82 Office for Official Publications of the European Communities (1998), '1997 Annual Report' *European Agency for Safety and Health at Work*, Luxembourg, p. 9. This appreciation has continued also over the next years. Office for Official Publications of the European Communities (1999), '2000 Annual Report' *European Agency for Safety and Health at Work*, Luxembourg; Office for Official Publications of the European Communities (2002), '2001 Annual Report' *European Agency for Safety and Health at Work*, Luxembourg.

83 Interview 3.

84 Interview 3.

85 COM(2008)135 final, 'Communication from the Commission to the European Parliament and the Council: European Agencies – The Way Forward, Brussels', 11.3.2008; Interview 3.

most useful and effective achievements of the agency's website,<sup>86</sup> with the 2007 survey defining the pooling of best practices *the* most useful and effective (See Annex 2).<sup>87</sup>

### iii What can be learned?

The overall assessment of the agency's tools aimed at pooling best practice and exchange of information is very positive. Thus, it seems possible to conclude that pooling of best practice can be well achieved via the FOPs system and via an internet strategy similar to the one of the EU-OSHA. However, three suggestions for improvement have been put forward by the Commission and the external reports. First, a similar framework in which FOPs are created in all the Member States (either via national administration or via national institutes) is ideal for a better functioning of the network.<sup>88</sup> Second, next to the FOPs and the web-site more campaigns aimed at sharing good practices shall be carried out.<sup>89</sup> The third suggestion is more controversial. On the one hand there is the request for more FOPs meetings in Bilbao;<sup>90</sup> and on the other hand there is criticism expressed on the FOCs meetings in Bilbao since they require a lot of administrative effort which does not balance the outcomes of the meetings.<sup>91</sup> A possible solution to this debate would be a greater use of ICT to strengthen the FOPs relations.<sup>92</sup> Finally, the reasons why Member States are so active in working together with the agency might not be animated by their

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86 Development, implementation, management and analysis of results of an online survey for the European Agency for Safety and Health at Work (2005); RAMBOLL, Euréval and Matrix (2009), 'Evaluation of the EU decentralized agencies in 2009' *Report Vol. III*, No. 003-004, p. 158.

87 CARSA (2007), 'Monitoring the corporate communication and information performance' *On-line Survey*, Vizcaya (Spain); RAMBOLL, Euréval and Matrix (2009), 'Evaluation of the EU decentralized agencies in 2009' *Report Vol. II*, No. 003-004, p. 85.

88 The National Focal Points are divided between the one that are based in national administrations and the one semi autonomous (e.g. institutes). Both these two frameworks present pros and cons. However, the most problematic disadvantage of the FOPs based on a national administration framework is their dependency on the government departmental structure that often change with the changing of government. Centre for Strategy and Evaluation Services (2007), 'Evaluation of the European Agency for Safety and Health at Work' *COWI*, Kent (UK), p. 17.

89 Centre for Strategy and Evaluation Services (2007), 'Evaluation of the European Agency for Safety and Health at Work' *COWI*, Kent (UK), p. 89.

90 Interview 3; Centre for Strategy and Evaluation Services (2007), 'Evaluation of the European Agency for Safety and Health at Work' *COWI*, Kent (UK), p. 89.

91 RAMBOLL, Euréval and Matrix (2009), 'Evaluation of the EU decentralized agencies in 2009' *Report Vol. III*, No. 003-004. p. 158.

92 Interview 3; Centre for Strategy and Evaluation Services (2007), 'Evaluation of the European Agency for Safety and Health at Work' *COWI*, Kent (UK), p. 89.

desire for convergence but rather for their need to receive full attention, this attitude could create a significant hindrance to the process of convergence of best practices.

## b Support training in promoting a European Common Curriculum: the lesson of the European Agency for the Management of Operational Cooperation at the External Borders's (FRONTEX).

### i Description of how the tools interact to achieve the task

The European Agency for the Management of Operational Cooperation at the external Borders of the Member States of the European Union (FRONTEX) was established in 2004 by the founding Council Regulation 2007/2004<sup>93</sup> and started operating in 2005 and is situated in Warsaw (Poland). The main objective of FRONTEX is to improve the integrated management of the external borders of the Member States by coordinating operational cooperation between Member States in the field of management of external borders (Joint Operations), by assisting Member States on training national border guards, and by assisting Member States under particular pressure at their borders.<sup>94</sup>

Art. 2 (b) and Art. 5 of the founding Regulation require FRONTEX to assist Member States with the training of border guards aiming at implementing the Common Core Curriculum (CCC) for border guards in the Member States training activities (See Annex 3).<sup>95</sup> The CCC has been developed and finalized in 2008<sup>96</sup> in close cooperation with the Member States and it is the first standardized program for the basic training of border guards

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93 The founding Council Regulation has been further amended by the Council Regulation 863/2007 establishing the mechanism for the creation of Rapid Border Intervention Teams.

94 FRONTEX (2007), 'Annual Report 2007' *European Agency for the Management of the Operational Cooperation at the External Borders of the Member States of the European Union*, p. 7.

95 Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

96 FRONTEX (2008), 'Annual Report 2008' *European Agency for the Management of the Operational Cooperation at the External Borders of the Member States of the European Union*, p. 32.

across Europe.<sup>97</sup> The CCC is a training program that Member States can implement in their national training program in order to provide for a common ground playing field throughout Europe for vocational training for border guards (training standardization).<sup>98</sup> For the time being, Member States are not under the obligation to implement the CCC in their Member States training activities.<sup>99</sup> Nevertheless, the new FRONTEX amending regulation, which the Council and European Parliament are now discussing, will create the obligation to implement the CCC in the Member States' training programs.<sup>100</sup> So far in the Parliament and in the Council everyone agreed on that obligation, so it should become reality when the amending Regulation will be adopted.<sup>101</sup> In this context, the agency is requested to help the Member States in implementing the CCC by providing to the Member States support training at the Member States' request.<sup>102</sup> In providing support for trainings, FRONTEX acts as the operational coordinator for training based on partnership with national academies.<sup>103</sup> Next to the trainings aimed at supporting the implementation of the CCC, FRONTEX also organizes thematic trainings<sup>104</sup> which are complementary to the implementation of the CCC and should help the Member States to harmonize their border guards' practices.<sup>105</sup>

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97 FRONTEX (2007), 'Annual Report 2007' *European Agency for the Management of the Operational Cooperation at the External Borders of the Member States of the European Union*, p. 7.

98 Interview 2; Interview 4; Interview 6; FRONTEX (2006), 'Annual Report 2006' *European Agency for the Management of the Operational Cooperation at the External Borders of the Member States of the European Union*, p. 17.

99 Interview 2; Interview 4; Interview 6; FRONTEX (2008), 'Annual Report 2008' *European Agency for the Management of the Operational Cooperation at the External Borders of the Member States of the European Union*, p. 32.

100 Justice and Home Affairs Council, 'Background Justice and Home Affairs Council Brussels, 25 and 26 February 2010. Brussels, 24 February 2010'.

101 Interview 6.

102 Interview 2; Interview 4; Interview 6; FRONTEX (2008), 'Annual Report 2008' *European Agency for the Management of the Operational Cooperation at the External Borders of the Member States of the European Union*, p. 32. Centre for Strategy and Evaluation Services (2008), 'External Evaluation of the European Maritime Safety Agency' COWI, Kongens Lyngby (DK), p. 43.

103 Training activities. The European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX). Retrieved 10/06/2010 from <<http://www.frontex.europa.eu/structure/training/>>

104 E.g. Stolen Cars detection trainings, Falsified Documents trainings. The European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX). Retrieved 10/06/2010 from <[http://www.frontex.europa.eu/training\\_activities/art9.html](http://www.frontex.europa.eu/training_activities/art9.html)>

105 Interview 6.

## ii The effectiveness of the agencies tools in achieving the task

The Member State response to the agency's support training and to the CCC seems to be affirmative and appreciative.<sup>106</sup> In particular, services provided in cooperation between FRONTEX and the Member States are appreciated for their emphasis on mutual learning and networking.<sup>107</sup> Most Member States' respondents to an e-survey have expressed a positive attitude towards harmonization of training of border guards via the CCC.<sup>108</sup> Moreover, the support of the Council in passing a new amending regulation which imposes an obligation on Member States to implement the CCC would be a clear form of recognition that the CCC is well accepted in Member States.<sup>109</sup> Finally, the increasing demand for FRONTEX training support activities by the Member States, even superior to the supply possibility, shows the recognition by the Member States of the benefits that they have if they welcome in their territory the FRONTEX trainings.<sup>110</sup>

The Commission seems to be also positive about the approach chosen by FRONTEX in dealing with the support training activities and with the CCC.<sup>111</sup> Nevertheless, the Commission seems to be aware of the fact that convergence of Member State border guards' practices is a step by step approach that requires time for being properly assessed.<sup>112</sup> An undeniable obstacle on the way to convergence is the differences in 'border cultures'.<sup>113</sup> Border cultures stand in the way of the complete transposition of the CCC since Member States, for the moment,<sup>114</sup> can decide to transpose only the aspects of the CCC that

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106 "The Member States participated in FRONTEX-led operational cooperation to various degree but in general it seems that they see the cooperation as both necessary and rewarding." RAMBOLL, Euréval and Matrix (2009), 'Evaluation of the EU decentralized agencies in 2009' *Report Vol. III*, No. 003-004, p. 200.

107 Interview 4.

108 Centre for Strategy and Evaluation Services (2008), 'External Evaluation of the European Maritime Safety Agency' *COWI*, Kongens Lyngby (DK), p. 43.

109 Interview 4; Interview 6.

110 Interview 6; FRONTEX (2008), 'Annual Report 2008' *European Agency for the Management of the Operational Cooperation at the External Borders of the Member States of the European Union*, p. 32.

111 Interview 4; Interview 6; Interview 2; COM(2008) 67 final, 'Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of Regions: Report on the evaluation and future development of the FRONTEX Agency', Brussels, 13.2.2008.

112 COM(2008) 67 final, 'Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of Regions: Report on the evaluation and future development of the FRONTEX Agency', Brussels, 13.2.2008; Interview 6; Interview 2.

113 Interview 2; Interview 6; Centre for Strategy and Evaluation Services (2008), 'External Evaluation of the European Maritime Safety Agency' *COWI*, Kongens Lyngby (DK), p. 45.

114 This will not be the case if the FRONTEX amending regulation that creates an obligation on Member States to transpose the CCC will pass.

are suitable to them avoiding the ones that are contrary to their border culture.<sup>115</sup> The positive aspect of trainings is that they try to overcome the differences between ‘border cultures’ by promoting convergence without rules.<sup>116</sup> A little step made by the CCC and the FRONTEX training activities in overcoming the border cultures has been shown by the FRONTEX pilot projects.<sup>117</sup> The pilot projects put together border guards from different Member States which underwent the training activities aimed at implementing the CCC in order to check if the guards could actually work better together. According to a FRONTEX Commission Officer the pilot project did demonstrate that the guards that benefited from the trainings implementing the CCC did cooperate better together.<sup>118</sup>

### iii What can be learned?

Member States’ surprising positive response to the creation of a CCC which is implemented via training activities supported by FRONTEX on such a sensitive topic could be partly explained by the ability of FRONTEX to create a spirit of common venture.<sup>119</sup> The CCC and the implementing trainings have been mostly developed in close cooperation between FRONTEX and the Member States. Thus, such a cooperative approach shall be praised. Moreover, CCC and the respective implementing trainings seem to be more effective if they stimulate, as a side effect, networking between Member States academies and mutual learning. In sum, the tool of promoting convergence via the CCC and the support training activity by FRONTEX seems to be an effective tool to promote convergence because it tries to overcome Member States’ cultural differences by a process of mutual learning rather than via the imposition of strict rules.

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115 Centre for Strategy and Evaluation Services (2008), ‘External Evaluation of the European Maritime Safety Agency’ *COWI*, Kongens Lyngby (DK), p. 43.

116 Interview 2; Interview 6.

117 Europa Press Release (13/2/2008), ‘The FRONTEX Agency: evaluation and future development’; Neal, A. (2009) ‘Securitization and Risk at the EU Border: the Origins of FRONTEX’, *Journal for Common Market Studies* 47(2): 341.

118 Interview 4.

119 Centre for Strategy and Evaluation Services (2008), ‘External Evaluation of the European Maritime Safety Agency’ *COWI*, Kongens Lyngby (DK), p. 44; Interview 6; Interview 4.

## c Assisting Member States faced with a situation of urgent and exceptional pressure: the lesson of the RABITS by FRONTEX

### i Description of how the tools interact to achieve the task

FRONTEX<sup>120</sup> is on the one hand focused on developing technological and bureaucratic means for the harmonization of external border management control,<sup>121</sup> while on the other, is concentrated on providing urgent and rapid action to deal with the various challenges inherent to holding a common external border for the whole Union.<sup>122</sup> This second task of FRONTEX of providing urgent and rapid action was institutionalized in 2007 by the amending FRONTEX Regulation 863/2007 which established the creation of the Rapid Border Intervention Teams (RABIT). The RABIT can be requested by Member States facing “a situation of urgent and exceptional pressure”<sup>123</sup> especially for the arrival of third-country nationals trying to enter the territory of the Member State illegally. The RABIT teams consist of highly trained specialized border guard officers from various Member States that are requested to undergo the same training activities.<sup>124</sup> The RABIT regulation imposes a duty on the Member States to contribute to the RABIT Pool via national experts and imposes a duty to make their border guards available for deployment: ‘compulsory solidarity’. The RABIT experts are also deployed in the FRONTEX joint operations since they can work together very well and they are a very good tool to promote the idea of common operation at the external borders.<sup>125</sup>

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120 For the description of the FRONTEX Agency see sub-section III.b.i.

121 Neal, A. (2009) ‘Securitization and Risk at the EU Border: the Origins of FRONTEX’, *Journal for Common Market Studies* 47(2): 350.

122 Carrera, S (2007) ‘The EU Border Management Strategy, Frontex and the Challenges of Irregular Immigration in the Canary Islands’. *CEPS Working Document*, No. 261. Art. 8 Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

123 Art. 1 Council Regulation (EC) No 863/2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers.

124 Beuving, M. (2008) ‘FRONTEX: its Role and Organisation’, *Université Robert Schuman Working Paper*, No. 8.

125 The RABIT Pool of experts undergoes both a process of basic training and of exercises which are essential for harmonizing their core competences; Interview 4.

## ii The effectiveness of the agencies tools in achieving the task

It is too early to assess the effectiveness of the RABIT due to their short history. Nevertheless, some interesting remarks can be drawn on this new form of technical and operational assistance.

Some Member States ever since the establishment of FRONTEX have expressed their desire for the agency to organize a certain type of action that would support the Member States under particular pressure.<sup>126</sup> This willingness by certain Member States to organize a type of action that could be deployed in cases of urgent pressure is also confirmed by an e-survey which demonstrates that more than 54% of Member States would agree that the RABIT mission will be effective in supporting Member States with border management.<sup>127</sup> This positive judgment by some Member States is also shared by the Commission which believes that the RABIT will provide for a “rapid reaction capacity” and will increase practical cooperation among Member States once they will be deployed.<sup>128</sup> Even though the RABIT have been generally positively evaluated, in particular for their potential for improving Member States’ cooperation and for their participation in the Joint Operations,<sup>129</sup> some doubts about their efficiency have been cast. Will they ever be deployed? Will Member States ever be able to admit that they cannot provide the necessary protection for their own territory?<sup>130</sup> There are different assumptions on why the RABIT teams have not been deployed yet. Two interviewees are convinced that the RABIT have never been deployed up until now because such a situation of urgent pressure has not yet occurred, and believe that Member States will be willing to accept the teams in their territory if such a situation of urgency would occur.<sup>131</sup> On the other hand, another interviewee and several stakeholders

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126 Carrera, S (2007) ‘The EU Border Management Strategy, Frontex and the Challenges of Irregular Immigration in the Canary Islands’. *CEPS Working Document*, No. 261.

127 Centre for Strategy and Evaluation Services (2009), ‘Evaluation of the European Agency for the Management of Operational Cooperation at the External Borders of the European Union’ *COWI*, Kongens Lyngby (DK), p. 54.

128 COM(2008) 67 final, ‘Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of Regions: Report on the evaluation and future development of the FRONTEX Agency’, Brussels, 13.2.2008; Interview 6.

129 Interview 2; Interview 6; Interview 4; Centre for Strategy and Evaluation Services (2009), ‘Evaluation of the European Agency for the Management of Operational Cooperation at the External Borders of the European Union’ *COWI*, Kongens Lyngby (DK), p. 51.

130 Interview 2; Centre for Strategy and Evaluation Services (2009), ‘Evaluation of the European Agency for the Management of Operational Cooperation at the External Borders of the European Union’ *COWI*, Kongens Lyngby (DK), p. 7.

131 Interview 4; Interview 6.

are wondering whether the RABIT will ever be deployed due to the stringent definition<sup>132</sup> of ‘particular pressure’ presented in the regulation and because Member States would better cooperate with neighboring third-countries than with the other Member States.<sup>133</sup> Another concern that has been raised with RABIT is their lack of knowledge of Human Rights and persons in need of international protection.<sup>134</sup> This type concerns could be possibly be overcome if a new article will be insert in the FRONTEX funding regulation offering the legal basis for cooperation with other EU agencies (*vis a vis* the new brand EASO).<sup>135</sup>

### iii What can be learned?

The RABIT seems to present a positive step in the right direction to increase cooperation, solidarity and integrated border management<sup>136</sup> at the European external borders. Moreover, the development of the RABIT basic common trainings is an essential tool for harmonizing core competences.<sup>137</sup> In this respect the Commission expressed its desire to return to the question of the fully fledged European Border Guards System when some experience has been gathered about the teams.<sup>138</sup> Nevertheless, the stringent definition

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132 The stringent definition of particular pressure seems to be justified by the fact that the main responsibility of the control and surveillance of the external borders still lies with the Member States. The RABIT shall not be deployed for influxes that happen on a yearly, known, regular basis. Interview 6; FRONTEX (2007), ‘Frontex Programme of Work 2007’.

133 Interview 2; Centre for Strategy and Evaluation Services (2009), ‘Evaluation of the European Agency for the Management of Operational Cooperation at the External Borders of the European Union’ *COWI*, Kongens Lyngby (DK), p. 56.

134 Permanente Commissie van deskundigen in international vreemdelingen en strafrecht (2008), ‘Views on the Commission report on the evaluation and future development of the FRONTEX agency (COM(2008) 67 final)’.

135 FRONTEX (2009), ‘Recommendations issued following the evaluation of the European Agency for the Management of the Operational Cooperation at the External Borders of the Member States of the European Union’ *European Agency for the Management of the Operational Cooperation at the External Borders of the Member States of the European Union*.

136 COM(2008) 67 final, ‘Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of Regions: Report on the evaluation and future development of the FRONTEX Agency’, Brussels, 13.2.2008.

137 Interview 4; Centre for Strategy and Evaluation Services (2009), ‘Evaluation of the European Agency for the Management of Operational Cooperation at the External Borders of the European Union’ *COWI*, Kongens Lyngby (DK), p. 52.

138 COM(2008) 67 final, ‘Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of Regions: Report on the evaluation and future development of the FRONTEX Agency’, Brussels, 13.2.2008.

of “particular pressure” seems to represent a very high burden for the deployment of the teams which might even undermine the positive aspect of this new brand action. This stringent definition of “particular pressure” in the context of FRONTEX seems to be necessary for drawing a clear distinction between the RABIT and the Joint Operations. The latter are operation coordinated by FRONTEX, at the request of one or more Member States, with a view to tackle problems and risks encountered at the external border of Europe;<sup>139</sup> the former have more urgent and exceptional character.

## d Contribution to the implementation of the Union *acquis*: the lesson from the European Maritime Safety Agency (EMSA).

This sub-section will both analyze the agency’s tools aimed at contributing at the implementation of the Maritime *acquis*, and will try to question whether inspections tools are *the* necessary tool in order for an agency to significantly implement Union legislation.

### i Description of how the tool interacts to achieve the task

The mission of the European Maritime Safety Agency (EMSA) is “to reduce the risk of maritime accidents, marine pollution from ships and the loss of human life at sea.”<sup>140</sup> The EMSA, based in Lisbon (Portugal), was established in 2002<sup>141</sup> in light of the two disastrous accidents of Erika (1999) and Prestige (2002) which stressed the importance of establishing a specialized body to ensure the application of Union legislation via monitoring its implementation and by evaluating the effectiveness of the measure in place.<sup>142</sup> The EMSA plays a potentially significant role in the implementation of

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139 Art. 3 Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

140 EMSA (2010), ‘Annual Report 2007’ *European Maritime Safety Agency*, p.10.

141 Council Regulation (EC) No. 1406/2002 of the 27 June 2002 establishing a European Maritime Safety Agency is the legal basis that defines the tasks of EMSA and is the principal framework for developing the EMSA strategy. The Commission is planning to present a proposal amending Regulation 1406/2002 in the course of 2010. The amendment does not want to define completely new tasks but rather to widen the scope of the activities undertaken by the Agency within the range of existing tasks.

142 Council Regulation (EC) No. 1406/2002 of the 27 June 2002 establishing a European Maritime Safety Agency.

maritime legislation.<sup>143</sup> In order to achieve its task of monitoring the implementation and evaluating the effectiveness of the Union legislation in the field of Maritime the EMSA carries out inspection, training, gathering and exchange of information, and research.<sup>144</sup> The EMSA carries out three types of inspections within the Member States context;<sup>145</sup> Member States do not have to grant permission for the inspection visits.<sup>146</sup> The EMSA delegation gathers during inspections written evidence and conducts interviews with national inspectors and head officers of the national maritime authorities.<sup>147</sup> At the end of the inspection the agency writes an assessment report which is submitted to the Commission and copied to the national maritime authorities of the Member State which has been inspected. The reports are confidential in order to prevent a “blame and shame approach” aimed at the implementation of the Union legislation. However, this does not prevent the agency from drawing anonymous horizontal conclusions at the end of an inspection cycle.<sup>148</sup> These horizontal reports are the basis for the next tool that the agency uses in order to support the implementation of the Maritime *acquis*. In fact, on the basis of the information gathered during the inspections the EMSA organizes workshops and training courses which allow spreading the lesson learnt among all Member States.<sup>149</sup> Finally, the last tool is to carry out research for the improvement of port control via the Union legislation.<sup>150</sup>

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143 Groenleer, M., Kaeding, M. and Versluis, E. (2010) ‘Regulatory Governance through EU Agencies? The Role of the European Agencies for Maritime and Aviation Safety in the Implementation of European Transport Legislation’, *Journal of European Public Policy*, 17(8).

144 Art. 2 (b) (c) Council Regulation (EC) No. 1406/2002 of the 27 June 2002 establishing a European Maritime Safety Agency.

145 Monitoring the port state control regime, assessing classification societies, and checking the work of notified bodies responsible for designing and constructive maritime equipment. Moreover, EMSA carries out inspections outside the Member State territories: third countries and in private companies. Interview 7; EMSA (2010), ‘Five Years Strategy Plan’ *European Maritime Safety Agency*, p. 37.

146 Art. 13 Council Regulation (EC) No. 1406/2002 of the 27 June 2002 establishing a European Maritime Safety Agency.

147 EMSA (2005), ‘Annual Report 2005’ *European Maritime Safety Agency*, p. 17.

148 Interview 7.

149 Sabel, C. and Zeitlin, J. (2008) ‘Learning from Differences: The New Architecture of Experimentalist Governance in the EU’, *European Law Journal* 14(3): 271-327; EMSA (2010), ‘Five Years Strategy Plan’ *European Maritime Safety Agency*, p. 20; EMSA (2006), ‘Annual Report 2006’ *European Maritime Safety Agency*, p. 28; EMSA (2004), ‘Annual Report 2004’ *European Maritime Safety Agency*, p. 24.

150 Art. 2(a) Council Regulation (EC) No. 1406/2002 of the 27 June 2002 establishing a European Maritime Safety Agency; EMSA (2010), ‘Five Years Strategy Plan’ *European Maritime Safety Agency*, p. 34; Centre for Strategy and Evaluation Services (2008), ‘External Evaluation of the European Maritime Safety Agency’ COWI, Kongens Lyngby (DK), p. 26.

## ii The effectiveness of the agencies tools in achieving the task

The Member State response to the agency's tools aimed at supporting them in the implementation of the Maritime *acquis* is generally positive. The 27 Member States in an e-survey expressed their full support for both training tools and exchange of knowledge and best practice. Surprisingly, 75% – 80% of the Member States also expressed their positive support for the agency visits to the Member State (See Annex 4).<sup>151</sup> This positive support by the Member States for the inspection powers can probably be explained by the fact that the agency tries to present its visits as a help that the agency can provide to the Member States in order to align their legislation and standards to the one of the Union.<sup>152</sup> The political responsibility of the inspections still lays in the Commission so the agency remains welcomed by the Member States when it organizes the training activities and the workshops.<sup>153</sup> This apparently clear separation of tasks, is in reality quite blurry and creates clashes between the agency and the Commission.<sup>154</sup>

The Commission in general is very positive about the work of the agency in supporting the implementation of the Maritime *acquis*.<sup>155</sup> The Officer interviewed clearly stated that the Commission noticed an improvement in the implementation of Maritime *acquis* after the establishment of the agency.<sup>156</sup> Moreover, the Commission expresses its satisfaction and credibility towards the work of the agency also by sending reasons opinion to Member States in light of the EMSA inspection reports.<sup>157</sup> Nevertheless, sometimes there is disagreement between the agency and the Commission on the methodology

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151 Centre for Strategy and Evaluation Services (2008), 'External Evaluation of the European Maritime Safety Agency' *COWI*, Kongens Lyngby (DK), p. 26.

152 The visit of the agency's auditors in the Member States does not always result in an infringement procedure by the Commission. In fact, even if the agency finds shortcomings during the inspections, the Member State is given the time to correct or implement the legislation in a correct way. Interview 7; Interview 5.

153 Interview 7; Groenleer, M., Kaeding, M. and Versluis, E. (2010) 'Regulatory Governance through EU Agencies? The Role of the European Agencies for Maritime and Aviation Safety in the Implementation of European Transport Legislation', *Journal of European Public Policy*, 17(8).

154 RAMBOLL, Euréval and Matrix (2009), 'Evaluation of the EU decentralized agencies in 2009' *Report Vol. III*, No. 003-004, p. 123.

155 Interview 7; RAMBOLL, Euréval and Matrix (2009), 'Evaluation of the EU decentralized agencies in 2009' *Report Vol. III*, No. 003-004, p. 124.

156 Interview 7; Interview 5.

157 Interview 5; Europa Press Release (5/5/2010), Maritime safety: Commission sends a reasoned opinion to Malta on port state control.

of the inspections. This dissatisfaction might be related to the unclear dependence/ independence relation between the Commission and the agency. The agency on the one hand wants to be an autonomous body; on the other it is linked to the Commission in light of its inspection powers.

The Commission and external reports believe that both the inspection powers and the gathering/exchanging knowledge activities of the agency are complementary and fundamental for the full completion of the agency task of supporting implementation of Union legislation.<sup>158</sup> The Commission does not privilege one tool over the other. The idea behind this approach is that the agency can add the most value when it stimulates mutual learning among national regulatory authorities.<sup>159</sup>

Finally, also research activities aimed at the improvement of port state control throughout the EU have been evaluated positively both by the Commission and the Member States for providing input for the revision of new legislation, including assisting at expert meetings in Council and the European Parliament.<sup>160</sup>

### iii What can be learned?

Inspection powers alone are not as effective as inspection powers accompanied with mutual learning processes.<sup>161</sup> “Via the transfer of knowledge, agencies add to the harmonization and convergence of national practices and thus contribute to a uniform application of Union legislation”.<sup>162</sup> Moreover, mutual learning processes can be considered a strong tool on its own. Thus, the lack of inspection powers does not

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158 Interview 7; Interview 5; RAMBOLL, Euréval and Matrix (2009), ‘Evaluation of the EU decentralized agencies in 2009’ *Report Vol. III*, No. 003-004; p. 123.

159 Groenleer, M., Kaeding, M. and Versluis, E. (2010) ‘Regulatory Governance through EU Agencies? The Role of the European Agencies for Maritime and Aviation Safety in the Implementation of European Transport Legislation’, *Journal of European Public Policy*, 17(8); Centre for Strategy and Evaluation Services (2008), ‘External Evaluation of the European Maritime Safety Agency’ *COWI*, Kongens Lyngby (DK), p. 39.

160 Centre for Strategy and Evaluation Services (2008), ‘External Evaluation of the European Maritime Safety Agency’ *COWI*, Kongens Lyngby (DK), p. 26; EMSA (2007), ‘Annual Report 2007’ *European Maritime Safety Agency*, p. 11.

161 “EMSA’s activities related to visits, training, provision of tools and exchanging of best practices has lead to greater degree of harmonization in the implementation of the EU Maritime Law.” RAMBOLL, Euréval and Matrix (2009), ‘Evaluation of the EU decentralized agencies in 2009’ *Report Vol. III*, No. 003-004, p. 86.

162 Groenleer, M., Kaeding, M. and Versluis, E. (2010) ‘Regulatory Governance through EU Agencies? The Role of the European Agencies for Maritime and Aviation Safety in the Implementation of European Transport Legislation’, *Journal of European Public Policy*, 17(8).

represent a high burden on an agency having the task of promoting implementation of the Union legislation. Nevertheless, it should not be forgotten that the two tools together have a stronger impact. Finally, if inspections visits are portrayed to Member States as tools that might help them to align their practices to the standard of the Union; and the Commission remains the main political actors behind the infringement procedure the invasive inspection tool might be better accepted by the Member States. However, it shall not be forgotten that such a distinction is very often blurred and creates problems between the agency and the Commission and between the Member States and their reliance on the agency.

## V Conclusion

All the three pillars of the EASO (Support Practical Cooperation, Support Member States under Pressure, and Support Implementation of the Asylum *acquis*) and their respective tasks analyzed by this paper (pooling of best practices, creation of a Common Curriculum implemented by training activities, the Asylum Support Teams, and the tools for supporting the implementation of the Asylum *acquis*) are characterized by a socialization and mutual learning nature. This characteristic, according to the definition of Sociological Institutionalism, lays a favorable ground for the promotion of convergence of practices; one of the main important aims of the EASO. The lesson given by the tasks of the existing agency, all having both socialization nature and similarities with the EASO's tasks, can provide the EASO with interesting inputs for being effective in achieving the goal of convergence of practice.

The system of National Focal points provides for a good structure for collecting and disseminating good practices by making use of soft coordination between Member States in order to achieve better the EU objectives. Nevertheless, it would be important to monitor the FOPs' attachment to the Member States' governments. This would prevent that Member States will use their FOP as mean to impose their ideas; instead of using the FOP as a tool to learn from other Member States.

The CCC implemented in the Member States' training activities via support training offered by the agency seems to be a very positive tool to promote convergence of practices via mutual learning in order to overcome 'cultural differences'. This type of approach avoids Union's imposition on Member States via fixed rules, which are often not welcomed. However, the implementation of the CCC should be compulsory on the Member States in order to avoid Member States refusing to implement the parts not in line with their 'culture'. The lesson from FRONTEX seems to suggest that the Member States are ready for this step.

The Asylum Support Teams have potential both to promote convergence of practices by creating a special training curriculum for the members of the team and to create a sense of solidarity toward Member States under particular pressure. On the other hand, the definition of particular pressure should be better interpreted less strictly. This would give more room for the Member States, willing to accept the teams in their territory, to ask for its deployment.

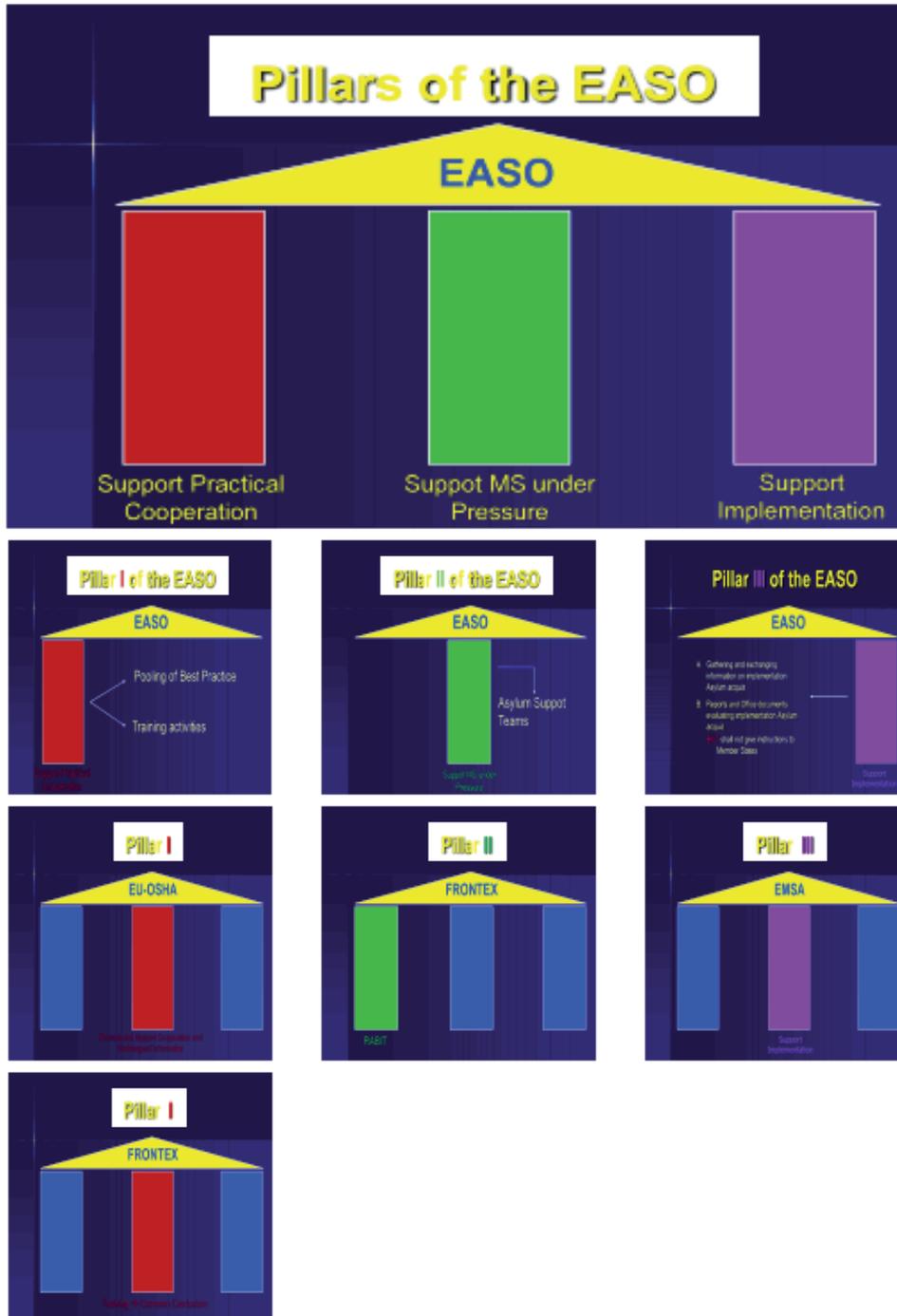
For the moment the EASO founding regulation does not foresee inspection powers. Inspection powers are a useful tool in order to improve the implementation of the

Union *acquis* but present a significant disadvantage. The independency of the agency is undermined, especially in the context of the reliance relation between the agency and the Member States. The special focus of the agency on sharing and gathering of information shall not be underestimated. Inspection powers alone are strong but often not enough for supporting an effective implementation process. The social dialogue is necessary to spread the lessons learned.

In light of the analysis carried out in this research paper, it seems possible to positively conclude that the EASO is on the right way forward to be successful in promoting the process of Europeanization of Asylum Policies. The new and old rules in the field of asylum at the Union level will be hopefully better internalized by Member States thanks to the EASO. The Office via its socialization and mutual learning tasks will eventually be able to start filling the present practical gap in the CEAS. Nevertheless, it cannot be denied that the EASO will find obstacles on its way to effectiveness, as shown by the lesson of existing agencies.

# VI Appendices

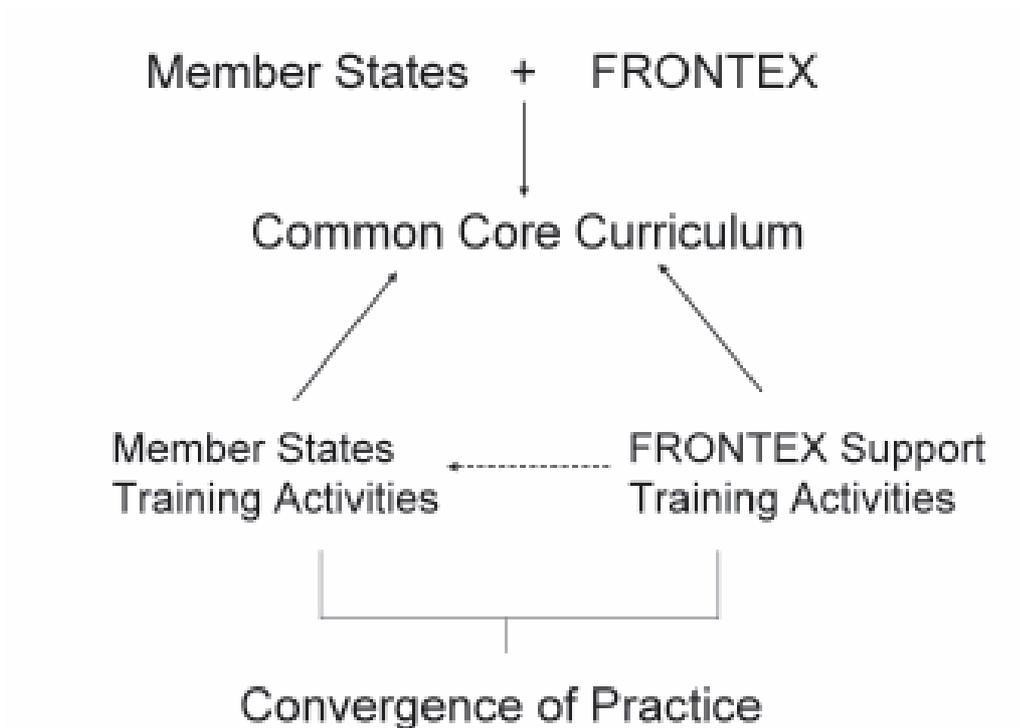
## Appendix I



## Appendix II

Q10: How useful do you find the following major sections of the EU-OSHA website?	Result
Development, implementation, management and analysis of results of an online survey for the European Agency for Safety and Health at Work (2005). < <a href="http://osha.europa.eu/en/publications/evaluation_reports">http://osha.europa.eu/en/publications/evaluation_reports</a> >	Average: 3,65 out of 5 5 is very satisfied and 1 is very dissatisfied
CARSA (2007), 'Monitoring the corporate communication and information performance' <i>On-line Survey</i> , Vizcaya (Spain).	Average: 4 out of 5 5 is very satisfied and 1 is very dissatisfied

## Appendix III



## Appendix IV

“Please indicate whether EMSA, from your point of view, should continue the activity in the future (yes, no, do not know)?”	Share of Member States that are positive towards continuation of EMSA activities in per cent.
Exchange of knowledge and best practice	100%
Training Courses	100%
Visit to Member States on port state control	75 - 80 %

Centre for Strategy and Evaluation Services (2008), ‘External Evaluation of the European Maritime Safety Agency’ *COWI*, Kongens Lyngby (DK), p. 26.

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## Interviews

Interview 1 Françoise Comte	Commission Officer <i>DG Freedom, Security and Justice;</i> <i>Directorate B: Immigration and Asylum;</i> <i>Unit B2: Asylum.</i>	20 May 2010, Brussels
Interview 2	Commission Officer <i>DG Freedom, Security and Justice;</i> <i>Directorate C: Immigration and Borders.</i>	20 May 2010, Brussels
Interview 3	Commission Officer <i>DG Employment, Social Affairs and Equal Opportunities;</i> <i>Directorate F: Health, Safety and Hygiene at Work.</i>	28 May 2010, Phone
Interview 4	FRONTEX Officer <i>Involved in Training Activities</i>	31 May 2010, Phone
Interview 5	EMSA Officer	31 May 2010, Email
Interview 6	Commission Officer <i>DG Freedom, Security and Justice;</i> <i>Directorate C: Immigration and Borders.</i>	2 June 2010, Brussels
Interview 7 Andreas Boschen	Commission Officer <i>DG Transport;</i> <i>Directorate C: Mobility and Transport;</i> <i>Unit C1: Maritime Transport Policy:</i> <i>Regulatory questions, maritime safety &amp; seafarers.</i>	2 June 2010, Brussels