Universiteit Leiden
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The impact of the migrant crisis on EASO:

A study of agencification within the agency's

Management Board

Master's thesis

International Relations

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Word count: 19,996

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"Europe will be forged in crises, and will be the sum of the solutions adopted for those crises."

–Jean Monnet (1978)

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1. Introduction

The post-Schengen era has seen a lineage of measures to institutionalise the common European effort in managing migration. EU agencies such as Europol, Frontex and more recently the European Asylum Support Office (EASO) have been established to facilitate this effort, and in the recent years the EU legislators have sought to grow the budgets and tasks of these agencies. EU integration research often refers to this process as agencification (Chamon 2016; Levi-Faur 2011).

The migrant crisis of 2015–2016 made European migration policy a centerpiece of political debate within the EU and its Member States. As a reaction to the crisis, EASO saw its budget, personnel and operational presence in Member States grow. EASO engaged in the registration process of asylum seekers at special management centres known as "*hotspots*", participated in the facilitation of the EU–Turkey agreement and increased its information support activities such as compiling country of origin information to harmonise the grounds for asylum decisions.

However, EASO faced extraordinary expectations that were difficult to fulfill with the resources at its disposal. Firstly, EASO had to rely on emergency funding to react to the operational needs. Secondly, EASO's own staff was few and the agency depended on experts provided by the Member states. Thirdly, the Common European Asylum System (CEAS) was not prepared to manage the scale of the migrant crisis.

The Commission hoped to mitigate EASO's handicaps by proposing to expand the agency's regulation and develop it into a "*fully-fledged agency*" first in 2016 and again in 2018[1]. The proposed regulation would provide EASO with more resources, decrease its reliance on Member States' solidarity and increase its oversight of national asylum agencies. However, the Council and the Parliament have not adopted the proposal, leaving the agencification process through legislation into a stand-still.

This study focuses on EASO's Management Board's (MB) role in the process of agencification. The MB, which is the planning and monitoring body of the agency, has a

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[1] COM/2016/0271 final; COM/2018/633 final

peculiar intergovernmental nature: it consists of representatives from Member States (EU+ states), the Commission, UNHCR and EASO administration. The Member State representatives are typically the operational heads of the MS asylum administrations. Consequently, the MB is apolitical and technocratic on paper, as its discussions focus on practical cooperation in asylum affairs.

During 2015–2019, however, the MB had to discuss issues with a more political dimension such as increasing the agency's budget, staff and operational role and expanding the agency's regulation. As a result, the MB had to weigh the benefits of the proposed expansions to the budget and regulation against the challenges it would cause on the MS' own asylum administrations.

Research on agencification within the EU has traditionally focused on the power-play of the EU institutions. However, less attention has been given to the extent to which the agencies act in the process. The question of management boards' willingness to advance agencification and the variety of opinions in the MBs has been largely neglected, thus providing the niche this study attempts to address.

This study examines the EASO Management Board's role in the agency's agencification process during and after the migrant crisis over the years 2015–2019. This will be done through the analysis of the MB's meeting minutes in 2015–2019, focusing on the MB member's positions on budget and regulation expansions.

1.2 Research design

This study contributes to the research on agencification by examining the process within the European Asylum Support Office. This study has two complimentary parts.

Part 1 (Chapters 2–5) consists of a literature review which establishes the practical and theoretical framework of EASO's creation and the effects of the migrant crisis on EASO's operational and regulatory environment and activities. The purpose is to establish the basis for Part 2 of this study by showing that the initiatives to reform EASO during and after the migrant crisis are new steps in a longer evolutionary process.

Part 2 (Chapters 6–9) focuses on the EASO Management Board. The concept of agencification is applied to the analysis of the Management Board meeting minutes of 2015–2019 which were received upon request from EASO.

Merijn Chamon defines agencification as "*the process whereby the EU agencies take up an increasingly important role in the EU administration, both in a quantitative as well as in a qualitative sense* (…)". (Chamon 2016, 45)

Chamon further differentiates between quantitative and qualitative agencification. Quantitative agencification "*refers to the growing number of the EU agencies, the increase in staff and total budgets, etc, and this both in absolute and relative terms*". Qualitative agencification "*relates to the growing importance of the EU agencies in delivering EU policies and the increasingly important powers conferred on them*".

This study focuses on two specific issues that, according to Chamon's definitions, can be identified as agencification: budget expansion and regulation expansion.

The institutional focus will be aimed at the Management Board for two reasons: Firstly, Chamon's definition of agencification allows the agency itself to have an active role in the process. Secondly, research has given little consideration to how the prospects of these changes are received by the Management Board members.

Therefore, the following research questions are derived:

1. How did the migrant crisis affect the EASO MB representatives' willingness to expand the agency's budget and the EASO regulation in the years 2015–2019?
2. What, if any, concerns did the EASO MB representatives express on these expansions?

The research questions will be answered through a combination of quantitative and qualitative content analysis of the MB meeting minutes. A detailed presentation of data gathering and methodology will be presented in Chapter 6. Furthermore, the results will be used to assess the MB's role in the agencification process.

The primary hypothesis for this study is that the willingness for expanding the of the agency's budget and the EASO regulation increased over the years 2015–2019 within the MB. Since budget and regulation expansions are examples of agencification, the degree of willingness to expand them reflects the MB's inclination for agencification in general.

Part 1: EASO's evolution and the migrant crisis

2. EASO's legal framework

2.1 A regulatory agency

The legal form of EASO is a regulatory agency established by a regulation[2]. The Commission had a history of promoting the use of regulatory agencies since they provide a means to allocate operational activities, thus letting the Commission focus on its core tasks (Commission 2008a). In addition to a regulatory agency, the following alternatives were considered: 1) Strengthening the asylum unit in the Commission's JHA Directorate-General; 2) an executive agency; 3) creating a "network" where existing cooperative structures would be enhanced[3]; and 4) entrusting new tasks to the existing JHA agencies such as the Agency for Fundamental Rights.[4]

In 2008, the Commission defined regulatory agencies as "*independent bodies, with their own legal personality.*" Despite their technical independence, the agencies' autonomy is strictly limited; they may take individual decisions by direct effect but they cannot be given the power to adopt general regulatory measures. Instead of being organically operational, regulatory agencies usually provide technical expertise or focus on enhancing cooperation between Member States – functions which both are also part of the EASO mandate. (Commission 2008a)

According to Article 2 of its founding regulation, EASO shall: 1) facilitate, coordinate and strengthen practical cooperation among Member States on the many aspects of asylum and help to improve the implementation of the CEAS (Common European Asylum System); 2) provide effective operational support to Member States subject to particular pressure on

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[2] Regulation (EU) No 439/2010 of the European Parliament and of the Council. Regulatory agencies are set up for an indefinite period. For comparison, executive agencies are set up by the Commission for a pre-determined period to manage specific tasks related to EU programmes.
[3] At the time cooperation was conducted in two different frameworks: the EURASIL (the European Asylum Practitioners' Working Group) and GDISC (General Directors' of Immigration Services Conference).
[4] For an evaluation for each alternative refer to Commission 2009b; or Comte 2010, 382–385.

their asylum and reception systems and in such cases coordinate the use of resources provided by other Member States; and 3) provide scientific and technical assistance in regard to the policy and legislation of the Union in all areas having a direct or indirect impact on asylum.

Towards fulfilling these purposes, EASO produces information on the country of origin of asylum seekers, facilitates training on asylum procedures and implementing the CEAS, deploys Asylum Support Teams at a Member State's request and administers the Asylum Intervention Pool for resource contributions of Member States.

EASO is led by an Executive director and a Management Board (MB), of which the former is the operational leader and the latter is the planning and monitoring body. The Board consists of a representative from each Member State, two representatives from the Commission and one representative from the office of the United Nations High Commissioner for Refugees (UNHCR). Each representative apart from UNHCR has one vote in the MB where decisions are mainly taken by absolute majority.

EASO works together with the EU institutions, Member States, the UNHCR and third countries. Its founding regulation explicitly requires it to establish operational relations with the other Justice and Home Affairs (JHA) agencies, e.g. Frontex. Comte points out that EASO's and Frontex's mandates include common and at times conflicting provisions, for instance in relation to the management of "*mixed flow*" immigration (Comte 2010, 392). Consequently, parallel arrival of and asylum seekers and other migrants may "*blur*" responsibilities. (Carrera et al. 2013, 341)

2.2 Legal framework for regulating migration

The Area of Freedom, Security and Justice (AFSJ) is an area of shared competence between the EU and its Member States[5]. Title V of the Treaty on the Functioning of the European Union (TFEU) states the EU's objectives for the AFSJ. This provides the broader treaty foundation for creating an asylum agency.

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[5] Article 4(2j) TFEU

The EASO regulation is based on Articles 74 TFEU and 78 TFEU which deal with cooperation and asylum. The regulation is also closely tied to other relevant Articles provided in the Title:

Article 67(2) TFEU states that the EU *"shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States"*. This is a general provision that provides the foundation that the subsequent provisions build on.

Article 68 TFEU gives the European Council the power to *"define the strategic guidelines for legislative and operational planning"* within the AFSJ. This means that the agency's creation has been largely determined by the political direction chosen by the European Council.

Articles 71 and 74 TFEU refer to operational cooperation. Article 71 TFEU states that the Council's responsibility is to *"facilitate coordination"* for internal security issues. According to Article 74 TFEU, the Council shall also *"ensure administrative cooperation between relevant departments of Member States* (…) *and the Commission"* within the AFSJ.

Article 78(1) TFEU states that the EU *"shall develop a common policy on asylum* (…) *with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of* non-refoulement*"*.

It is important to acknowledge the implications that this Article had on establishing EASO. According to Comte, EASO's mandate would probably have been more limited if the regulation had only been based on Article 74 TFEU: it obliges the Council only to *"ensure administrative cooperation"* between the Member States, while the wording of Article 78 is more demanding. Article 78(2) TFEU also provides a broader basis for unifying asylum policy by identifying a variety of asylum procedures where convergence is intended. (Comte 2010, 392)

Article 80 TFEU makes an indirect reference to burden sharing between the Member States. The Article states that the policies and their implementation shall be directed by *"the principle of solidarity and fair sharing of responsibility, including its financial implications"*. It is worth noting that the Commission has sought to advance burden-sharing and financial solidarity through the CEAS (Commission 2007).

All the mentioned obligations are, however, subjected to what Monar refers to as *"constitutional safeguards"* (Monar 2010, 25). Article 72 TFEU states that the relevant Title

shall not affect "*the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security*". This illustrates the sensitivity of AFSJ policy and the will of the Member States to preserve control over it.

The wording of the Treaties seems to promote cooperation instead of integration in the AFSJ. Consequently, it is logical that the EU has developed agencies to specifically facilitate cooperation and coordination between Member States. According to Monar, more "*integrated and hierarchal*" alternatives would have been politically difficult even where the Treaties would have allowed it. (Monar 2010, 26)

Furthermore, the words cooperation and coordination are central in the EASO regulation. The effect of the wording is that participating in EASO activities is often voluntary for the Member States. As will be shown in Chapter 5, this voluntary nature of cooperation resulted in insufficient resources at EASO's disposal during the migrant crisis.

3. Creating EASO – a historical perspective

3.1 Deepening integration and cooperation in the EU

The roots of the European Asylum Support Office (EASO) are in the evolution of the Justice and Home Affairs (JHA) policy area. JHA was incorporated into the Maastricht Treaty of 1992 as an intergovernmental policy section. Often referred to as the "*third*" pillar of the Treaty, it was later merged into the community pillar by the Amsterdam Treaty in 1999. This Treaty revision also called for the EU to create an Area of Freedom, Security and Justice (AFSJ).

In 1999, the European Council provided further policy guidelines for creating the AFSJ and establishing a Common European Asylum System (CEAS) through the Tampere Programme (1999), the Hague Programme (2004) and the Stockholm Programme (2009). Especially the Hague and Stockholm programmes fostered bundles of legislation that deepened the Member States' cooperation in the AFSJ, including the creation of EASO by 2011.

Older forums, such as the TREVI network[6] of the JHA ministers of the EC countries and the Schengen Convention of 1990, are often mentioned as the origins from which JHA was developed. (Monar 2010, 27) In effect, immigration and asylum issues were properly addressed in the EU context for the first time by the Maastricht Treaty. When Schengen was incorporated to the EU Treaties in 1999, the EU's policy-making potential was strengthened in the areas of asylum, immigration and border control. The Amsterdam Treaty thus brought asylum issues "*fully into the European community world*" (Comte 2010, 375).

Even though the Lisbon Treaty later introduced co-decision to JHA issues, the fragmented intergovernmental past of the policy field has resulted in "*both structural and cultural*" challenges for the institutional setup of the AFSJ. (Monar 2010, 27–29) These challenges were visible in the negotiations between the European Parliament and the Council on EASO's mandate: asylum policy, a sensitive matter which in the EU context was previously subjected to intergovernmental decision-making, now required co-decision and initially

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[6] A loose form of intergovernmental cooperation established in 1975 to respond to growing terrorism challenges.

provoked "*conflicts*" between the legislators (Comte 2010, 392). Despite this, the EASO regulation was later adopted with record speed.

This section investigates the process which led to the creation of EASO. It will try to illustrate that outlining EASO's mandate was a process and that the concept of a "*support office*" evolved gradually.

3.2 Envisioning, formulating and establishing EASO

Pursued through the Tampere Programme of 1999, a legislative goal of the EU was to harmonise the legal frameworks of Member States regarding asylum. In practice, this meant the introduction of common minimum standards. This was the first step in building the CEAS as envisaged by the Amsterdam Treaty.

In 2004, the Hague programme provided 10 priorities for the EU upon which it should develop the AFSJ during the next five years. Among them, the priorities included the establishment of the CEAS towards "*developing a common asylum policy, which will seek to establish a common procedure and uniform status for persons benefiting from asylum or subsidiary protection*". This should be done by establishing a "*European support office for all forms of cooperation between Member States*" relating to the CEAS. (Commission 2005)

Although this is the first time that the idea for a "*European support office*" appears, it should be noted that the institutional form it should take was not addressed. Comte pays attention to the word "*support*" which suggests that a future mandate of the office would focus on facilitating cooperation (Comte 2010, 277).

In 2006, the Commission refined its idea on the "*European support office*". It suggested in a communication that the office should host a "*common portal*" for information available for the Member States. Information would be gathered, for instance, regarding the countries of origin of asylum seekers. The office could also provide Member States with training on the implementation of the CEAS and coordinate a reaction to instances where the asylum system of a single Member State faces "*particular*" pressure. Notably, the Commission also envisaged that the European support office might "*prove useful in terms of work carried out

in the migration and integration fields". This hints that the eventual EASO mandate could have become broader than it currently is. (Commission 2006)

The idea of a support office continued to develop. In its Green Paper in 2007, regarding the future CEAS, the Commission planned to launch a feasibility study on setting up the Office. The role of the Office in assisting states with "*particular pressure*" now shifted from mere coordination to the possibility to "*set up and manage*" asylum teams. (Commission 2007)

In June 2008, the Commission finally announced in its *Policy Plan on Asylum* that it will propose to establish a support office. In fact, it was now referred to as the "*European Asylum Support office*". (Commission 2008b)

In September 2008, the European Council adopted the European Pact on Immigration and Asylum in which it agreed to establish a European Support office in 2009. The Office's future functions would be facilitating exchange of information and experiences as well as developing practical cooperation between the Member States. The European Council further outlined the role of the Office by insisting that it "*will not have the power to examine applications or to take decisions but will use the shared knowledge of countries of origin to help bring national practices, procedures, and consequently decisions, into line with one another*". (Council 2008b)

The Commission officially proposed to establish a European Asylum Support Office on 18th February 2009. The agreement of the Council and the European Parliament was received rather quickly, already in November 2009, which is considered a sign of "*genuine will*" of the legislators. (Comte 2010, 379)

The Regulation No 439/2010 finally came into force on 19th June 2010 and EASO became operational 1st February 2011.

4. EASO as a product of European integration – a theoretical perspective

The analysis of European integration is traditionally rooted in one or more of the three "*grand theories*": neofunctionalism, intergovernmentalism and postfunctionalism[7]. These theories provide a basis for investigating agencification which has emerged as an effective tool for the EU's capacity-building.

This chapter aims to illustrate the theoretical framework for EASO's evolution. It begins by defining agencification and continues by assessing the functioning of agencies from the perspective of the integration theories.

4.1 Defining agencification

Agencies have become more important in the EU's executive space, and, consequently, the research on agencification within the EU context has expanded in the last two decades.

Agencification refers to a process where a parent organisation actively fragments its governance between specialised departments – as the Commission with its agencies. According to Levi-Faur, a quantitative way to examine the expansion of the EU's regulatory space is through the growth of its agencies. He shows in a survey that agencies have become a dominant form of expanding the EU's regulatory reach: the number of agencies has increased as well as the resources at their disposal. (Levi-Faur 2011, 810–813).

The number of EU agencies and the number of personnel they have has indeed multiplied during the last 20 years. The EU regulatory framework currently includes more than 40 agencies compared to the 11 in 2000.

However, Chamon notes that that the definition of an EU agency has been ambiguous. In his comprehensive study on EU agencies, Chamon derives a definition by which EU agencies are "*1) permanent bodies, 2) under EU public law, 3) established by the institutions through*

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[7] Descriptions vary. The three theories have been referred to as the "grand theories" (e.g. Hooghe & Marks 2019) and the "dominant approaches" (e.g. Börzel & Risse 2018).

secondary legislation, and 4) endowed with their own legal personality."[8] He further defines agencification as "*the process whereby the EU agencies take up an increasingly important role in the EU administration, both in a quantitative as well as in a qualitative sense*". (Chamon 2016; 10, 45)

Chamon differentiates between quantitative and qualitative agencification. Quantitative agencification refers to this growing number of EU agencies, but also to the increasing resources (personnel, budget, etc.) at the agencies' disposal. Qualitative agencification refers to the phenomenon where the number and importance of tasks conferred to agencies is increased. More specifically, qualitative agencification "*relates to the growing importance of the EU agencies in delivering EU policies and the increasingly important powers conferred on them*". (Chamon 2016, 45)

Consequently, agencification may lead to broadening the mandates of both new and existing agencies. Chamon notes that new agencies and agencies that have their establishing regulations amended tend to receive more power than the previous agency generations. (Chamon 2016, 44)

Chamon concludes that "*agencification is an atypical form of administrative integration and administrative capacity building*" and that it is "*a political solution, favourable to the Member States*". Chamon argues that MS prefer establishing and empowering agencies to the empowerment of the Commission, since the agency-method ensures better application of EU law and the ability to pool expertise *"without giving up as much autonomy as would be the case were the Commission to take on implementing tasks*". (Chamon 2016, 369–371)

Chamon further notes that "*the Commission has allowed a fragmentation of the EU's executive and an undermining of its own position as part of a trade-off with greater and deeper European integration*" (Chamon 2016, 370). This is in line with other literature, which has established that the Commission proposes agencies that extend rather than compete with its competences (e.g. Nugent 2010, 234; Scipioni 2018a, 770).

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[8] For a review on Merijn Chamon's "EU Agencies. Legal and Political Limits to the Transformation of the EU Administration", please see the book review by Sara Pernuš in Common Market Law Review, 55:2, 2018, 692–694.

According to Chamon, "*all actors*" consider agencies to be a legitimate form of executive governance and that "*this pragmatism was also taken over by the Parliament when it became co-legislator in agencification*". The process has not happened without legal concerns: among others, Chamon argues that unguided agencification and the heterogeneity of EU agencies pose a legitimacy problem. (Chamon 2016; 61, 370)

Research on agencification within the EU has traditionally focused on the power-play of the EU institutions. However, academic interest towards the agencies themselves and their management boards has increased during the past decade. A focal point of this interest has been the agencies' relationship with other actors.

Egeberg and Trondal argue that agencies can act "*relatively independently*" of national governments or the Council but are "*much closer*" to the Commission which can inflict its influence through management boards (Egeberg & Trondal 2011, 882). Later they re-articulate that the relationship of an agency and the Commission is "*fairly strong*", suggesting that the Commission continues to firm its grip over agencies (Egeberg, Trondal & Vestlund 2015, 624). However, the composition of the management boards (with MS and the Commission represented) makes assessing relationships difficult: the composition "*is often taken as evidence of either retained or increased Member States' control*" (Scipioni 2018a, 770).

4.2 Agencification and the grand integration theories

A neo-functionalist perspective

From a neo-functionalist perspective, EASO can be considered a consequence of the integration in the area of the European Union's Justice and Home Affairs (JHA).

Neo-functionalist logic often sees integration as partial and therefore imperfect but nevertheless an ongoing process. The classical argument follows, that more integration is needed to fix the shortcomings of previous integration. Even the Commission has "*implicitly acknowledged that EU agencies are a policy response the insufficient application of EU law*" (Chamon 2016, 5). Another traditional neo-functionalist argument is that European

integration is powered by crises. Scipioni argues that "(…) *the European Union has created the very conditions for the emergence of crises, and this has, in turn, spurred on further agreements to deepen integration"* (Scipioni 2018b, 1357).

The neo-functionalist analogy can be applied to the effect that European integration has had on migration governance. The advocation of the free movement of people and the removal of internal borders posed new problems to the EU and its Member States: immigration and asylum issues gained another regional dimension while control remained on the national level. Thus, implementing the free movement of people resulted in the need for cooperation in the control of external borders and affairs relating to immigration and asylum. As a result, agencies such as Frontex and EASO were established. Previous integration (removing internal border checks) resulted in more integration (establishment of new agencies). Neo-functionalism describes this as the spillover effect.

As will be explained in chapter 5, the migrant crisis proved to be a disaster for the Common European Asylum System. From a neo-functionalist perspective, it is logical that the Commission proposed to expand EASO's regulation as a reaction to the crisis. The Frontex regulation has already been revised, and expectations for EASO's empowerment have risen (e.g. Meißner 2019; 10, 235).

However, the jury is still out there. Some argue that it remains to be seen if the migrant crisis really does result in a political spillover or not (Wolf & Ossewaarde 2018, 47).

An intergovernmentalist perspective

Intergovernmentalism explains the integration process through the individual decisions taken by governments (Nugent 2010, 433). As explained in Chapters 2–3, the establishment of EASO was envisaged in the political programmes outlined in Tampere (1999) and The Hague (2004). In many regards EASO was a supranational project, but it had a strong intergovernmental nature and Member State support.

The intergovernmentalist perspective suggests that empowering EASO would be driven primarily by the needs of Member States if they saw increasing cooperation as an effective solution for their individual problems. Chamon notes that, despite being a compromise,

utilising agencies for a common effort is fundamentally a political decision. Overall Chamon sums the development of agencies bluntly: "[A]*gencification seems foremost driven by the (political) interests of the competent actors, rather than a concern for ensuring the legal soundness of this institutional development under current primary law*." (Chamon 2016; 48, 51, 102)

The supranational elements of European asylum governance came under attack during the migrant crisis. For example, the Dublin procedure was infamously challenged by Member States when Italy, Greece and others began to allow migrants to pass through deeper into the Schengen area without registration. Migration and asylum governance and crisis management partially shifted from institutional cooperation within the EU framework to the intergovernmental arena where deals were negotiated between Member States.

According to Hooghe and Marks, this was partially the outcome of public pressure and the rise of anti-migrant parties. The populist movement made it "*vastly more difficult*" for Member States to negotiate solutions on a European level. (Hooghe & Marks 2009, 1122).

A postfunctionalist perspective

Börzel and Risse argue that while intergovernmentalism and neofunctionalism "*can account for why the euro crisis resulted in more integration,* [they] *fail to explain why the EU has been stuck in a stalemate in the Schengen crisis*" (Börzel & Risse 2018, 83).

Therefore, it is worthwhile to apply a third approach on the migrant crisis. Postfunctionalist logic argues that a shift in public opinion limits the extent to which EU stakeholders can advance integration. Over a decade ago, Hooghe and Marks described this as a shift from "*permissive consensus to constraining dissensus*" (Hooghe and Marks 2009).

Börzel and Risse argue further that postfunctionalism "*offers a plausible account for the paralysis of member states and EU institutions during the Schengen crisis*". According to them, the politicization of migration policy and pressure from eurosceptical parties prevented Member States from finding common solutions and executing measures already agreed to in the Council of Ministers. (Börzel & Risse 2018; 84, 93)

Postfunctionalist logic suggests that a decade ago migration and asylum policy was less sensitive before the migrant crisis. As explained in Chapter 3, the EASO regulation was adopted quickly by the Council and the Parliament, and the proposal for a new agency did not cause decisive opposition from Member States.

5. The migrant crisis and the EASO

The number of first-time asylum applicants in the EU28 peaked at 1,3 million in 2015 and remained at 1,2 million in 2016. Figure 1 shows that the number of applications per year doubled compared to that of 2014. The asylum systems in many EU Member States (MS) were overwhelmed, Schengen and Dublin provisions were neglected, and the European Union found itself amidst a multi-dimensional crisis with political, social, and humanitarian implications that are under academic scrutiny to date.

Figure 1
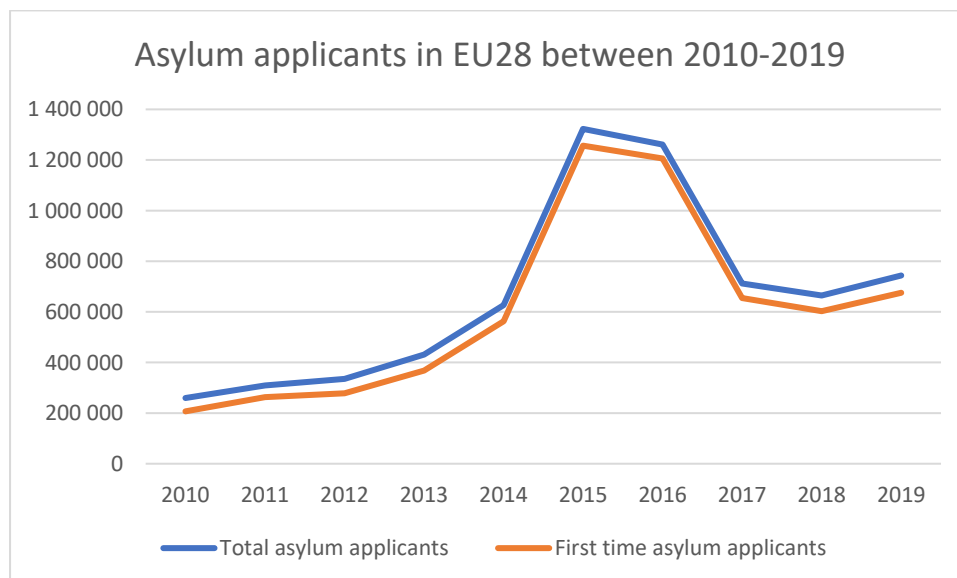
Source: Eurostat

The crisis has been referred to with a variety of names depending on the chosen perspective: It has been called a "*refugee crisis*" (e.g. Wolf & Ossewaarde 2018), a "*Schengen crisis*" (e.g. Börzel & Risse 2018; Meißner 2019), an "*asylum crisis*" (e.g. Ripoll Servant 2019), even a "*legitimacy crisis*" (e.g. Murray & Longo 2018), and a "*migrant crisis*". This paper uses the term migrant crisis, because it can be considered a neutral description considering the mixed flow of peoples in 2015–2016: not all migrants applied for asylum and not all that applied for asylum were granted asylum.

The events of the summer and fall of 2015 have been described as "*the number one issue in most EU Member States*" with limited room for EU-level response (Hooghe and Marks 2019,

1122) and something that "*generated in its wake a political turmoil in virtually all Member States*" (Deleixhe & Duez 2019, 921) .

In particular, the migrant crisis tested the EU's ability to implement a Common European Asylum System (CEAS). The crisis has even been described as a "*de facto collapse*" of the CEAS (Berger & Heinemann 2016, 2). Implementing the CEAS is integral to EASO's tasks, and thus the crisis had implications for EASO.

5.1 An unprepared system

Scipioni argues that the migrant crisis partly resulted from the lack of means to monitor an area without internal borders, a key element being the lack of strong institutions in the field of migration management. Scipioni further notes that the resources of EU agencies were insufficient, and MS could "*simply refuse requests*" for pooling resources. (Scipioni 2018b, 1365–1370)

Trauner points out that the disparities between the asylum standards between MS and the disproportionate distribution of applicants within the region created pressure for reforming the system (Trauner 2016, 312). The Commission itself has noted that the migrant influx strained the CEAS and there were "*serious shortcomings*" especially in the implementation of the Dublin regulation[9].

Despite "*extreme challenges*" towards migration policy, national self-interests largely prevented the EU-level support for overwhelmed MS (Falkner 2016; 228, 231). At first, EU institutions seemed unable to initiate effective coordinated action, and hence unilateral and national responses by MS began to emerge. MS started to reinstate border controls on inter-Shengen borders after migrants began to travel north from Italy and Greece (Trauner 2016, 322).

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[9] COM/2016/0197

In September 2015, Germany introduced border controls with Austria[10]. Austria reacted by reinstating border controls with Hungary, which had already begun to build a fence along its external border with Serbia and, once migratory flows shifted, continued to fence off its border with Croatia. In November, Slovenia began to fence its external border with Croatia, and soon after Austria begins to fence its border with Slovenia. In January 2016, Sweden introduces border controls on its border with Denmark, and soon after Denmark tightened border controls with Germany[11].

Trauner bluntly states that the MS started "*overtly disrespecting*" the Dublin regulation (Trauner 2016, 322). MS started questioning the EU's "*procedural dimension*" which, according to Murray and Longo, even challenged the EU's legitimacy. They identify different forms of tensions that emerged in the crisis: the tension between national and EU-level responses to burden-sharing, the lack of leadership and policy response, and the tension between interests and values. (Murray & Longo 2018, 416)

The unfolding of events seemed to push the EU into an existential crisis apart from a practical one.

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[10] For a timeline of events, see e.g. the article "In review: timeline of major incidences and policy responses" produced by the International Centre for Migration Policy Development. Online: https://www.icmpd.org/news-centre/2015-in-review-timeline-of-major-incidences-and-policy-responses/
[11] "Denmark responds to Swedish border checks with own controls". BBC. 04.01.2016. Online: https://www.bbc.com/news/world-europe-35222015

5.2 The EU response and the role of EASO

The EU's response to the migrant crisis compromised of many policy initiatives. A prominent effort was finalised in November 2015, when the EU and Turkey settled an agreement by which Turkey would tighten its border control in return for financial compensation. This action was furthered by the EU-Turkey Statement in March 2016 which dictated that irregular migrants crossing from Turkey to Greece would be returned. The European Council noted in its press release, that:

"*Turkey and Greece, assisted by EU institutions and agencies, will take the necessary steps and agree any necessary bilateral arrangements (…) to ensure liaison and thereby facilitate the smooth functioning of these arrangements.*"[12]

Already in May 2015 – as a response to a migrant shipwreck in the Mediterranean – the Commission published a document named *A European Agenda on Migration*, which proposed short-term and long-term solutions to the "*human tragedy in the whole of the Mediterranean*". In the Commission's view, "*No Member State can effectively address migration alone. It is clear that we need a new, more European approach.*" This initiative envisaged EASO as a central tool for an EU-level response. (Commission 2015)

The immediate actions proposed were: 1) saving lives at the sea by tripling the budgets for the Frontex joint-operations Triton and Poseidon; 2) targeting criminal smuggling networks; 3) responding to high-volumes of arrivals within the EU through relocation; 4) enhancing a common approach for granting protection through a resettlement scheme of 20,000 people per year by 2020; 5) working in partnership with third countries; and 6) using the EU's tools to help frontline MS by setting up "*hotspots*" in which EASO, Frontex and Europol work with MS to identify, register and fingerprint asylum applicants.

The Council approved the emergency measures: Frontex received funding and "*hotspots*" were set up. However, ambitious schemes like relocation and resettlement were less fortunate. According to Morsut and Kruke, The *European Agenda on Migration* was an ambitious undertaking that "*failed miserably*". They argue that "[i]*n this case, the worst case*

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[12] EU-Turkey Statement, press release, European Council, 18.03.2016. Online:
https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/

scenario was realised, since the Member States not only pursued their own responses to the crisis (fences and border controls), but also caused a breakdown in cooperation, since they did not respect the decisions taken at EU level." (Morsut & Kruke 2018, 156)

The first hotspot in Italy was opened at Lampedusa on October 9th 2015 and the first in Greece at Lesbos on October 16th 2015. According to Trauner, the hotspots were a part of an "*additional layer*" of centralised instruments that were proposed to control asylum applications (Trauner 2016, 322).

According to Scipioni, the hotspot approach proved successful in advancing the implementation of fingerprinting which had not been properly done in some border states. In effect, the hotspots transferred procedural power from Member States to the EU agencies that deployed personnel to the hotspots under their banner. (Scipioni 2018b, 1366)
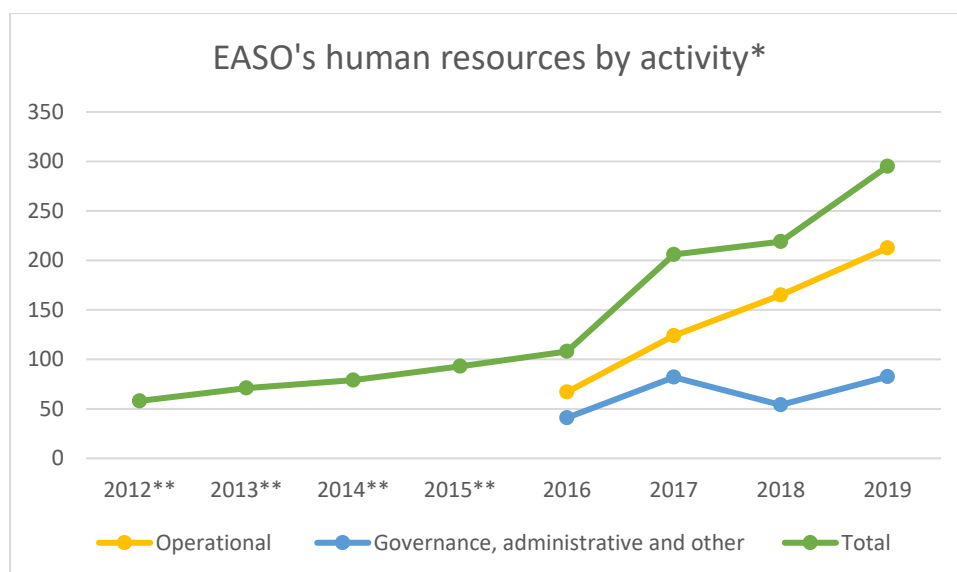
Indeed, the migrant crisis increased EASO's resources manifold. In 2015–2019 the agency's staff almost tripled and its budget sextupled as illustrated by Figures 2 and 3.

Figure 2:
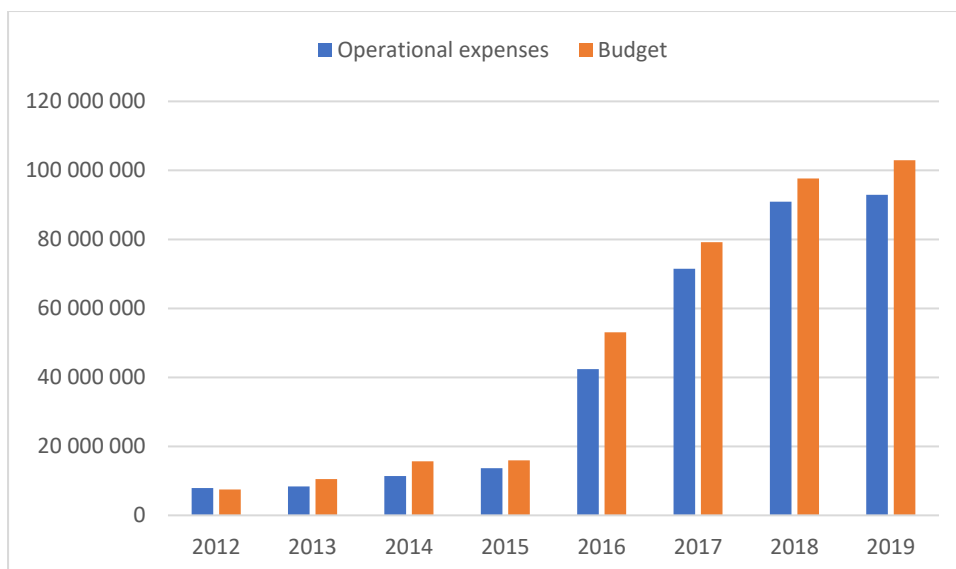
Source: EASO Final Annual Accounts 2012-2019

Figure 3:

EASO's human resources by activity*

* Including administrators, assistants, contract agents and seconded national experts.
** The overview of EASO staff at the end of the year.
Source: Consolidated Annual Activity Reports 2016-2019, General Activity Reports 2012–2015

Especially 2016 was a turning point both expenditure-wise and regarding EASO's tasks. Firstly, EASO's budget was amended from 19 million euros to 53 million euros, which was covered largely with emergency AMIF funding. Secondly, the EU-Turkey Statement tasked EASO to support Greek officials at the hotspots, which included interviewing migrants. EASO boasts in its Annual report that the agency "*conducted 70% of the 6,774 interviews performed within the framework of the EU-Turkey Statement*"[13]. EASO deployed 650 experts to Italy and in Greece of which 329 were allocated to the implementation of the EU-Turkey Statement.[14] Significant numbers were also allocated to relocation-related activities.

This shifted the agency's focus from merely facilitating cooperation to operational support. Figure 3 above shows that the number of EASO staff engaged in operational activities grew faster than staff engaged in administration. This is in line with EASO's intentions: the agency had sought to strengthen its operational role since 2015[15]. Meißner notes that the role of the EASO changed "*drastically*" especially during the immediate years of the migrant crisis:

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[13] EASO Consolidated Annual Activity Report 2016, 9.
[14] EASO Consolidated Annual Activity Report 2016, 14–15.
[15] EASO Consolidated Annual Activity Report 2019, 93.

the agency became more involved in ground operations and it grew in terms of budget and personnel (Meißner 2019, 199).

However, the Commission envisaged a grander future for its agency. In May 2016, the Commission proposed to transform EASO into a "*fully-fledged agency*" that would provide comprehensive operational support and have more sufficient resources to implement the CEAS[16]. This proposal was amended in 2018 but it has yet to be adopted[17]. If the Commission would have had its will, EASO's budget would have grown on average to approximately 160–180 million euros per year for 2019–2027 and its staff to 500 full-time equivalents.

5.3 EASO and Frontex regulation proposals – unparallel empowerment

When discussing the EASO's empowerment, it is illustrating to look at the attempts to reform an JHA agency close to it: Frontex. The border agency, established in 2004, played a role in the EU-level responses in managing the migrant influx of 2015–2016 through the Triton and Poseidon joint-operations and in setting up hotspots in Greece and Italy.

In December 2015, the Commission proposed to expand the Frontex regulation. Carrera and den Hertog noted that the proposal introduced a "*right to intervene*" in the MS border management and increased obligations to contribute resources to the agency. (Carrera & den Hertog 2016, 2).

Eventually, the European Parliament and the Council adopted the amended Frontex regulation in September 2016. However, some MS "*resisted bitterly*" to transforming Frontex into a supranational authority and preferred the agency to remain largely intergovernmental in nature. (Deleixhe & Duez 2019, 929)

It would have been natural to expand the EASO's regulation in a similar manner. Indeed, Carrera and Hertog called for the role of EASO to be expanded alongside with Frontex.

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[16] COM/2016/0271 final
[17] COM/2018/633 final

The Commission finally published a proposal to expand EASO's regulation in May 2016. The regulation was to be amended in a similar way to the Frontex regulation: it included new tasks such as monitoring national asylum systems and more mandatory cooperation for Member States.

This has been considered further evidence of the Commission's will to empower EASO and Frontex simultaneously (Meißner 2019, 227). The Commission argued that EASO was one of the tools that could "*effectively address the structural weaknesses in the CEAS*" and that reforming the CEAS would not be plausible "*without providing the Agency with a mandate that corresponds to the demands that the reform will entail*". EASO would also be renamed the European Union Agency for Asylum (EUAA)[18].

The EUAA regulation would boost the agency's resources and change its relationship with MS. According to Meißner, the main controversial changes in the EUAA proposal would force the MS to "*submit to the agency*" in matters relating to information gathering, analysis and the implementation of the CEAS. Voluntary cooperation would partially be replaced by the obligation to do so. Meißner notes that Member States would have a "*duty*" to co-operate and exchange information, they would have to allocate 500 experts for the agency, and the agency would be able to make unannounced on-site visits and monitor the asylum processes of MS. (Meißner 2019, 185–188)

The Commission presented the EUAA proposal in the first of two legislative packages meant to reform the CEAS in the aftermath of the migrant crisis. The first package, introduced in May 2016, additionally included a proposal for the reform of the Dublin system (the initiative known as Dublin IV) and the reinforcement of the Eurodac database. The second package, introduced in July 2016, included multiple proposals to "*achieve a comprehensive reform of the existing CEAS*" (Meißner 2019, 223).

Initially, the European Parliament and the Council had diverging positions especially on the monitoring role of the new agency (Meißner 2019, 229). Differences of opinion related, for instance, to how often the asylum systems of MS were to be monitored and would the

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[18] COM/2016/0271 final - 2016/0131

agency have the right to make "*unannounced visits*". The Commission presented an amended proposal in September 2018[19], but it has not been adopted.

Summa summarum, the EASO's mandate was not expanded in sync with Frontex's mandate, despite such hopes. Meißner concludes that as a result, "*the tasks, resources and scope of EASO are far more limited even than the ones of the former Frontex*". (Meißner 2019, 238)

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[19] COM/2018/633 final. For a thorough analysis of the positions of EU legislators on the EUAA regulation, see e.g. Meißner 2019, 217–234.

Part 2: Agencification and EASO's Management Board 2015–2019

6. Methodology

6.1 Data gathering

The data set consists of the EASO Management Board (MB) meetings in 2015–2019. In this time, the MB held a total of 18 meetings: three in 2015, three in 2016, four in 2017, four in 2018 and four in 2019.

The minutes of the meetings were acquired through an information request emailed to the agency on 7th April 2020. The initial request asked for the MB meeting minutes for 2011–2020. EASO initiated negotiations to narrow the request, and eventually the scope was limited to the years 2015–2019. EASO delivered the requested documents via email on 2nd June 2020.

The minutes total to 436 PDF document pages. The minutes include summaries of the events and discussions in the meetings, consisting of information points, decision points and discussion points. Typically, the meetings began with the introduction of the agenda by the Chair followed by presentations given by the agency's Executive Director (ED) and other agency officials. Presentations included, but were not limited to, overviews on the asylum situation in the EU, introductions to documents and working papers. These were often followed by discussion between MB members, and the minutes frequently summarise a range of MB members' remarks.

The data has some limitations. Firstly, the minutes do not include full word-by-word transcripts of all the remarks by different MB members but, instead, include summaries of these remarks. Secondly, EASO redacted parts of the minutes based on Article 4(2) and Article 4(3) of Regulation 1049/2001 and based on personal data provisions in Article 3 of Regulation *1725/2018*.

6.2 Methodology

This study applies a combination of quantitative and qualitative content analysis to the remarks documented in the EASO Management Board meeting minutes. The study consists of three phases: data selection, quantitative content analysis and qualitative content analysis.

In the first phase, the minutes are read in whole and relevant excerpts are selected when they meet the following criteria:

1. The excerpt refers to comments, opinions or other identifiable remarks given by a Management Board member; and
2. The excerpt contains a direct reference to any changes to EASO's budget or regulation, or if the excerpt can be otherwise associated by its context to any changes to EASO's budget or regulation.

An excerpt is a summary of a comment or discussion under a specific agenda point as reported in the MB meeting minutes. The minutes consistently note the member or members whose comment is summarised in each excerpt.

The excerpts are then coded according to position of the MB member. The position will be coded as one of the three categories:

1. Anti expanse: if the excerpt contains apparent opposition towards the expansion
2. Neutral: if the excerpt does not contain apparent opposition nor support towards the expansion
3. Pro expanse: if the excerpt contains apparent support towards the expansion

In the first phase, data will be collected to the table provided in Annex 1. The table will present the following information:

- Excerpt
- The MB member associated with the excerpt
- The number and date of the MB meeting
- The topic associated with the excerpt (budget, regulation)
- The position of the excerpt (anti expanse, neutral, pro expanse)

- Any concerns expressed by the MB member
- Agenda point

The second phase of this study applies quantitative content analysis on the selected excerpts. The number of excerpts associated with budget or regulation expansion will be counted per year. The frequency of the different positions of the excerpts (anti expanse, neutral, pro expanse) and the frequency of identified concerns will be analysed to quantify how the MB discussions on the budget and regulation evolved between the years 2015–2019.

The third phase of this study applies qualitative content analysis on selected excerpts. The nature of the excerpts and possible concerns voiced in them will be analysed to identify any trends over the years 2015–2019. Considering the research questions, the analysis of the excerpts will focus on the MB members' willingness to expand EASO's budget or regulation and any possible concerns raised. Attention will be given to the possible divisions of opinions between MB members and how these opinions evolved over the course of 2015–2019.

Findings will be reflected against their internal and external context. The internal context refers to the discussion point at hand, e.g. where MB members comment the agency's work programmes, planning documents, the regulation proposal or other relevant issues that involve budget or regulation expansions. The external context refers to the evolution of the migrant crisis and the responses to it. Any other contexts will be included in the analysis when they support answering the research questions.

After presenting these results, this study reflects the findings of the quantitative and qualitative analyses against their theoretical framework outlined in chapters 1–4. Emphasis will be on the reflection of the results against the concept of agencification.

6.3 Evaluation

According to Richards and Morse, in qualitative research "*reliability requires that the same results would be obtained if the study were replicated, and validity requires that the results accurately reflect the phenomenon studies*" (Richards & Morse 2013, 216).

In this study, the risks to validity and reliability were mitigated by combining quantitative and qualitative content analysis. However, the qualitative nature and the degree of interpretation applied to the analysis require an assessment of the methods and data.

Validity

The coding scheme used in this study was independently developed to code the dataset against Merijn Chamon's definitions of qualitative and quantitative agencification. The *ad hoc* nature coding scheme presents a limitation to the validity of this study since the coding scheme was not based on an expert standard[20].

Potter and Levine-Donnerstein note that misapplication of coding rules "*is the greatest threat*" when coders are asked to make difficult judgements (Potter & Levine-Donnerstein 1999; 265, 271). Thus, the nature of the coding scheme may limit the extent to which the results reflect the phenomenon studied.

The risks towards validity were mitigated by developing a coding scheme that had only three variables: the topic of the excerpt (budget expansion or regulation expansion) the position of the excerpt towards the topic (anti expansion, neutral/unclear, pro expansion) and the concern expressed in the excerpt. A simple coding scheme was developed specifically to ensure that the coding refines the data and reveals trends relevant to the research questions.

During quantitative content analysis, excerpts were coded as neutral/unclear when the excerpts did not display apparent anti expanse or pro expanse positions on budget or regulation expansion. As a result, 75 percent of the excerpts were coded as neutral/unclear.

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[20] For an explanation on the expert standard, see e.g. Potter & Levine-Donnerstein 1999, 266–270.

This result alone would have reduced the validity of this study. However, this study supplemented the quantitative content analysis of the excerpts with qualitative content analysis to overcome this limitation. The quantitative and qualitative content analyses complement each other by filling in the gaps and revealing any disparities between the results.

Reliability

The dataset of this study can be considered reliable, since the data set was acquired by request for information. EASO responded within their legal obligations, and it should be credible to assume that other researchers making the request would receive the same dataset. The large size of the acquired dataset increases its reliability.

The methodology presents a limitation to the reliability of this study. Firstly, the possibility of human errors, such as misinterpretations of excerpts, cannot be excluded in the content analysis phase. Secondly, the validity limitations of the coding scheme allow for the possibility that later coders may make different interpretations about the excerpts.

This challenge is illustrated by the quantitative content analysis phase of this study. At times it was difficult to decide whether an excerpt's topic should be categorised as a point on budget expansion or regulation expansion. This was the case when MB members referred to both topics in the same excerpt[21]. In these cases, excerpts were categorised according to the dominant topic in the excerpt. Often the dominant topic was regulation expansion since budget expansion was often considered an outcome of the regulation expansion.

Furthermore, the results were double-checked against the coding scheme to limit the risk of errors in the coding phase.

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[21] E.g. the Commission's excerpt in June 2018 MB meeting: "Stressed the importance of the EASO budget being increased under its proposal for a revised EASO Regulation. A EUR 400m budget and 500 staff by 2020 have been proposed."

7. Results

The results show that budget and regulation expansions were a recurring topic at the EASO Management Board (MB) meetings during 2015–2019. The MB held a total of 18 meetings, from which 272 excerpts fell within the scope of this study. From these, 70 excerpts referred to budget expansion and 202 to regulation expansion (Figure 4).

Figure 4
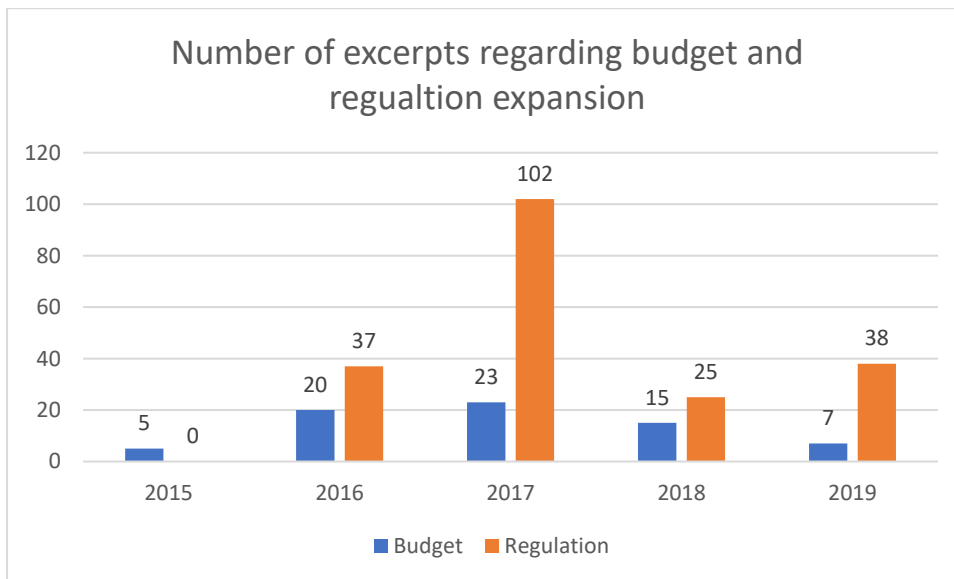
Furthermore, 132 excerpts (48,5%) were associated to a comment by a Member State (MS) and 140 excerpts (51,5%) to a comment by the Commission, Chair, Vice Chair, EASO's Executive director (ED), EASO's Executive director *ad interim* (ED a.i.) or the UNHCR.

The excerpts identified in respect to the scope of this study fall under a total of 66 agenda points. Some of these agenda points were more relevant than others: as shown in Table 1, agenda points that focused on the preparations for the foreseen EUAA[22] or the Single Programming Documents (SPD)[23] host most of the excerpts.

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[22] In 2016, the Commission proposed to expand EASO into a European Union Agency for Asylum (EUAA).
[23] Single Programming Documents direct EASO's activities over a period of multiple years, and the tasks envisaged by the EUAA regulation were included in the SPDs.

Table 1: Agenda points with most references to budget expansion or regulation expansion

Year	MB meeting	Agenda point	Number of excerpts
2016	21st EASO's Management Board meeting, 6-7 June 2016	12. Communication from the Commission to the European Parliament and the Council – Towards a Reform of the CEAS and Enhancing Legal Avenues to Europe	20
2017	24th EASO Management Board meeting, 13-14 June 2017	12. Preparations for the EUAA	15
2017	25th EASO Management Board meeting, 26-27 September 2017	6. EASO Governance and the future role and tasks of the Management Board	35
2017	26th EASO Management Board meeting, 27-28 November 2017	13. Preparing for the EUAA: future responsibilities of the Agency and additional roles of the Management Board	18
2017	26th EASO Management Board meeting, 27-28 November 2017	7. Draft Single Programming Document 2018-2020, Work Programme and Budget 2018	14
2018	27th EASO Management Board meeting, 27-28 February 2018	13. Preparing for the EUAA: future responsibilities of the Agency and additional roles of the Management Board	18
2018	27th EASO Management Board meeting, 27-28 February 2018	9. State of play of the EASO Single Programming Document 2018-2020, including prioritisation of 2018 Budget	10
2018	27th EASO Management Board meeting, 27-28 February 2018	11.Preparing for the EUAA	10
2019	33rd EASO Management Board meeting, 24-25 September 2019	15. EUAA Preparations	15

This chapter presents the results with a segmented approach. Sub-chapter 7.1. presents the distribution and contents of the excerpts that refer to EASO's foreseen budget expansions. Sub-chapter 7.2. presents the distribution and contents of the excerpts that refer to EASO's foreseen regulation expansions. These presentations will provide the basis for further analysis in Chapter 8 and conclusions in Chapter 9.

7.1 Perspectives on budget expansion

7.1.1   Quantitative content analysis

As described in chapter 5, EASO's budget grew rapidly through multiple budget amendments and emergency funding between 2015–2019. The minutes document references to budget expansions in 16 of the 18 MB meetings.

This study identified a total amount of 70 excerpts that referred to budget expansion. The excerpts were categorised based on their position on budget expansion (Figure 5) and whether the excerpt includes concern towards the budget expansion (Figure 6).

Figure 5

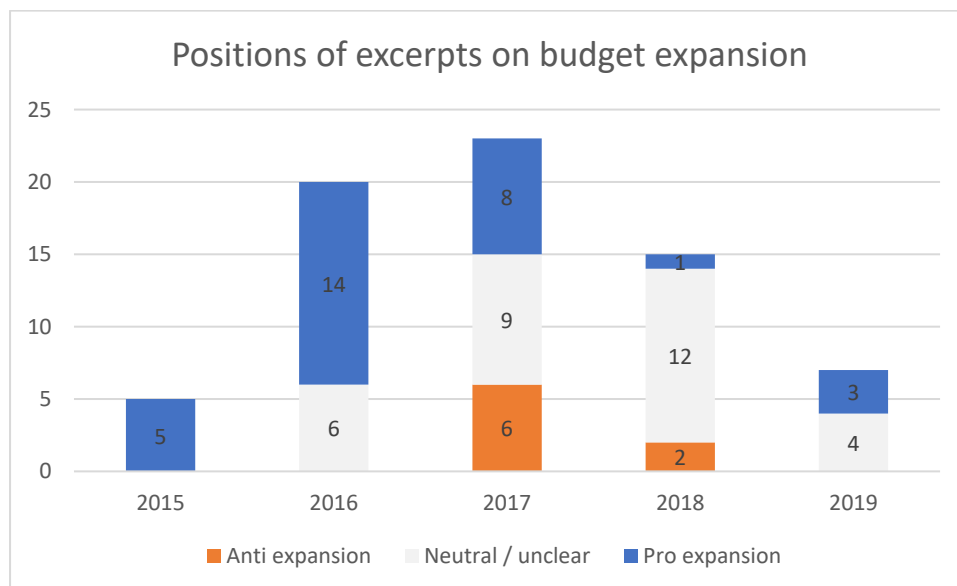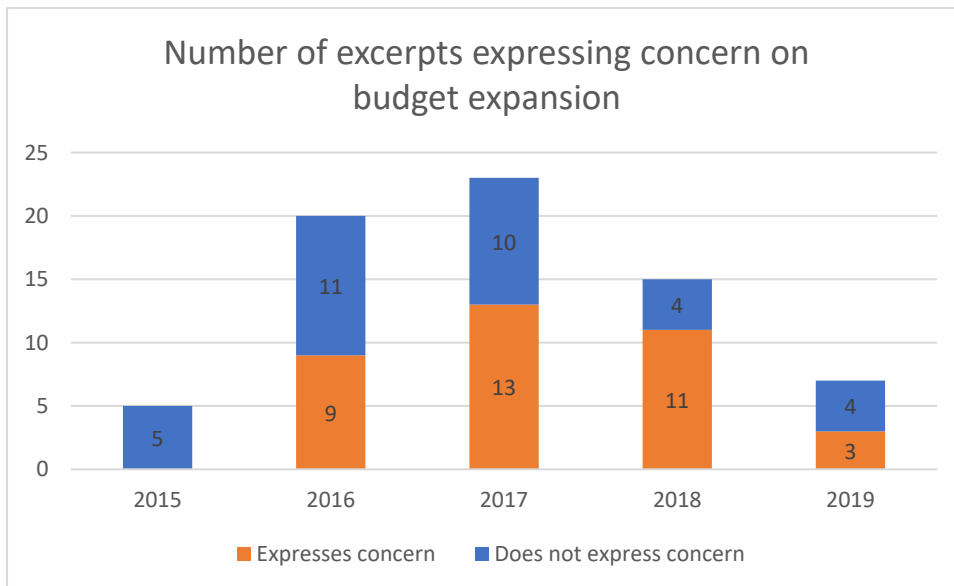Figure 5 shows that MB members tended to approve budget expansions in the years 2015–2016. A share of 100% in 2015 and 70% in 2016 of the excerpts showed a pro expansion position. It dropped to 35% in 2017 and to 7% in 2018 until rising to 43% in 2019. Disapproving positions emerged in 2017–2018, where 26% of the excerpts in 2017 and 13% of the excerpts in 2018 showed an anti expansion position.

Figure 6

Number of excerpts expressing concern on budget expansion

(Bar chart showing number of excerpts per year 2015–2019. Each bar is split into "Expresses concern" (orange) and "Does not express concern" (blue).)

- 2015: Does not express concern 5
- 2016: Expresses concern 9, Does not express concern 11
- 2017: Expresses concern 13, Does not express concern 10
- 2018: Expresses concern 11, Does not express concern 4
- 2019: Expresses concern 3, Does not express concern 4

■ Expresses concern   ■ Does not express concern

The data in Figure 5 is complemented by the data in Figure 6 which shows that budget expansions did not go undebated. Year 2015 seemed a year of consensus on budget expansion, but in 2016–2019 some 40–60% of the excerpts host concerns towards it.

In all, Figures 5 and 6 show that the initial consensus towards budget expansion weakened as opposition emerged in 2017.

7.1.2 Qualitative content analysis

Next, the quantitative analysis is supplemented by a qualitative analysis of the contents of the excerpts to assess how the MB members actually referred to the budget expansions and what concerns they raised.

2015–2016: Consensus amidst the crisis

The minutes of the MB meetings show that budget expansion was discussed rather briefly during the three meetings that took place in 2015. In June, EASO's Executive director (ED) outlined the agency's actions in relation to the *European Agenda on Migration* published by the Commission earlier that year. EASO had requested additional funding from the Commission for a variety of measures, including providing guidance on practical implementation of the Eurodac regulation, coordinating COI (Country of Origin Information) production and resettlement demands and creating a Dublin network. According to the minutes, no MS member commented the request.

In September 2015, the Commission informed that it would propose an increase of 30 staff and extra money for EASO for managing the migrant crisis. The minutes record Ireland as the only MS member to directly comment and approve the new recruitments, expecting EASO reprioritise its work. ED and UNHCR also supported expanding EASO's capacity.

In all, the budget expansion was directly referred to by MB members only five times in 2015. All the references were pro expansion in nature and no explicit concerns were raised on the matter. A partial reason may be that, as shown in chapter 5, EASO's budget remained at 15,7 million euros in 2015 which was only +2% compared to 2014. However, EASO and the Commission had started preparations to expand EASO's budget and Work Programme (WP) for 2016. In September, ED noted that "*the WP will have to be substantially changed*" once the budget is adopted.

ED's comment foreshadowed the year 2016 where unprecedented budgetary expansion began to inspire a more critical discussion in the MB. Through four budget amendments, EASO's budget more than tripled to 53 million euros in 2016.

Budget expansion was most frequently referred to in the January 2016 MB meeting during agenda points on the Single Planning Document (SPD) 2017–2019 and budget and staff for 2017. The two are combined in a budgetary sense, because the SPD was a new long-term planning document for EASO's activities and was based on the assumption that the agency's budget would be expanded. The Executive Director (ED) explained that the 2016 budget is short especially for operations and that EASO risks running out of funds. He also explained that the requested budget for 2017 shows "*the biggest increase in recent years*" but

considers that EASO's needs justify the increase. Additional funds would be spent on "*increased staff, more deliverables, more work on information and analysis, development of training and practical tools*".

Belgium, Germany, the Netherlands, Ireland, and Spain supported the SPD – and, therefore, the budget expansion within – but raised multiple concerns about how the SPD foresaw a change in EASO's character. Germany had reservations about the "*political character of EASO*" and emphasized that "*it is the practical cooperation that needs to be strengthened and not the political harmonization*". Ireland, the Netherlands, and Spain had similar concerns but with an emphasis on the need for EASO's capacity building. Ireland noted that EASO is "*totally dependent*" on MS to provide support for operations and that "*sometimes MS cannot respond*"[24]. In general, the MS members seemed to prefer that funds are spent on recruitments for practical support and that harmonisation is not a primary objective. In the end, the Chair and ED agreed with this opinion.

Budget expansion was again a topic at the MB meeting in June 2016. ED explained that, because of EASO's role in the EU-Turkey action plan, "*the already existing need for additional budget had become increasingly important*". EASO's budget was again being amended with emergency funding which began to cause visible concern among the MB members. The Commission stressed that "*it should not be the rule that a regulatory agency is funded by emergency funding as it requires a derogation from the regular budgetary procedure*". Further, the Commission and the Netherlands emphasized the role of the MB. The Commission noted that "*it is important that the MB is informed about progress made on its implementation*"[25], while the Netherland stressed the need "*for more information to the MB about the agency's work in view of its growth*".

Aside from the EU-Turkey agreement and EASO's operational presence at the hotspots, 2016 provided another major topic regarding budget expansion: The Commission proposed to expand EASO's regulation, which would grow the agency's budget significantly. In-depth discussion on the budget of the future agency was not held at the 2016 MB meetings, but

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[24] MS inability or unwillingness to provide experts to EASO's disposal caused continuous strain between EASO and the Commission and the MS in 2015–2019.

[25] In the June 2017 MB meeting, the Commission went on to propose the establishment of a budgetary committee under the MB, which would e.g. "provide assurances that the significant EU funding is being spent in accordance with the Financial Regulation".

ED noted in September that the agency had "*commenced a heavy recruitment programme (…) and structural preparations for the future, which has also had an influence on the budget*". The budget's connection to the proposed regulation would become a central point of debate in coming years.

2017: Criticism emerges

Year 2017 saw two amendments to the budget which eventually grew to 79,2 million euros with the approval of the MB. ED was especially satisfied with the development, stating that "*the most striking difference between 2016 and 2017 is the fact that EASO has more stability as regards budget and annual work programme which has a positive impact on the operational planning and responses*". Italy and Greece were often the most enthusiastic supporters of budget amendments. For example, Italy stated in the September 2017 MB meeting that it "*expressed appreciation for the efforts of EASO and support of the MS to strengthen the budget increase allowing IT to go ahead and improve its activity*".

However, the MB's consensus on budget expansions had disappeared by the November 2017 MB meeting. This can be seen through the discussion on the agenda point "*Draft Single Programming Document 2018-2020, Work Programme and Budget 2018*". First, the Commission – which had continuously supported EASO's requests for extra funding – raised criticism towards several EASO's actions

The Commission's criticism was two-fold: Firstly, the Commission was concerned about EASO's budget planning and implementation rate of the budget, meaning that EASO was not using all of its planned budget[26] and might not be able to absorb the substantial increase of the suggested 26 million euros for 2017. Secondly, the Commission was unsatisfied that EASO neglected budgetary procedure and engaged in lobbying the European Parliament and the Council for extra funds, in addition to lobbying the MB members to support budget expansion. The Commission noted that "*should EASO require additional budget,* [the Commission] *was prepared to take appropriate measures, as it has in previous years*", but overall, its criticism was exceptional.

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[26] In fact, the Commission often voiced its unsatisfaction on the budget implementation rate.

ED defended the 2018 budget by stating that "*in reality operations outgrew this budget*" in the previous 18 months, especially through the support operations in Italy and Greece, and that support-demand had not disappeared. ED further noted that it is "*his duty to alert that the financial situation is not stable*"[27].

Following the Commission's comments, other MB members expressed unprecedented division towards the 2018 budget. Sweden, Slovenia, France, Germany, Czech Republic, Finland, and the Netherlands preferred to maintain the initial budget and look for reprioritisations, while Belgium, Italy and Greece preferred to expand the budget because of operational needs.

Germany required that "*before considering an increased budget, efficient use of resources, especially the human resources, and prioritisation should be reconsidered*". This was in line with the comments by Czech Republic, Belgium, the Netherlands, and Finland. Finland summarised the nature of the discussion by saying it "*concurred with previous speakers regarding 'budget discipline' including prioritisation, increased efficiency, evaluation, etc.*".

Regarding prioritisation, Belgium, France, Germany, and the Netherlands emphasised the importance of continued support for the operations in Italy and Greece. The Netherlands described operational support to Italy and Greece as "*a cornerstone of EASO activities*". Belgium made a concrete proposal by suggesting that increased budget for the operations in Greece and Italy should be a higher priority than acquiring new staff[28].

Greece and Italy argued that the need for EASO's support would continue and this would have to be sufficiently addressed by the budget. Greece "*disagreed with predictions of reduced costs and foresaw an increase in arrivals in 2018*" and stated it will continue to rely on EASO's support. Italy confirmed the need for support from EASO, "*especially for training and formalization of application in order to accelerate the decision phase*".

Eventually, the MB adopted the initial budget with no increase. The November 2017 MB meeting showed that differing positions on budget expansion had emerged: ED, Italy,

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[27] ED revoiced this concern in the November 2018 MB meeting regarding the 2019 budget, stating that "EASO will not be in a position to maintain the same level of operations in 2019 as in 2018 without a budget amendment".

[28] Three months later at the February 2018 MB meeting, Belgium revoiced its suggestion of "*not recruiting the additional 70 staff*".

Greece, and Belgium seemed favorable to budget expansion while other MS members opposed.

2018–2019: Calls for reprioritisation and budget discipline continue

In 2018, most of the excerpts referring to budget expansion fell under the agenda points on the SPD 2018–2020 in the February and June MB meetings. In February, the Chair reinitiated the discussion on reprioritisation of the 2018 budget. The Chair stated that the newly established Preparatory Group requested a prioritisation of the budget and pointed out "*that the proposed savings of €1.8 million is a positive first step, but more savings will be required in view of operational costs*".

Budget had been consumed by the new staff, which had grown from 93 in 2015 to 219 in 2018. In addition to wages, the staff growth had indirect budgetary effects: EASO had outgrown its headquarters in Valletta, Malta, and hoped to expand into the nearby building. The improvement and refurbishment of the building would tentatively cost up to 10 million euros. The MB members were concerned of its effect on the budget: the Chair noted that "*this will have implications on new staff recruitment*", and the Commission incited EASO to "*consider all alternative options to avoid such high costs*". ED replied that "*due to the budget shortage on operations, either the program has to be reduced or the budget amended*". ED later noted the gap between the budget and EASO's operational needs: "[T]*o maintain the same level of operations, tentative figures are €14 million shortage for EL and €22 million for IT*".

Generally, operations in Italy and Greece were considered most important EASO activities. Belgium and Sweden revoiced their position that EASO's work should be prioritised, with Belgium suggesting that "*EASO consider not recruiting the additional 70 staff*" for other purposes.

The MB's disapproval to expand EASO's budget was further strengthened by the irregularities in EASO's finances in the crisis years of 2016 and 2017. The European Court of Auditors (ECA), Internal Audit Service of the Commission (IAS) and European Anti-Fraud office (OLAF) had initiated investigations on EASO's financial activities. The ECA and OLAF

interventions were discussed numerous times. In the June 2018 MB meeting, the Commission considered that "*in the current circumstances with the ECA findings and the ongoing OLAF investigation, a request for additional budget was not appropriate*". However, it noted that another discussion is needed in the next MB meeting to assess whether additional budgetary support for EASO is required.

Aside from the budgetary irregularities, another important issue stalled the budget expansion: the EUAA regulation proposal had not been adopted by the Parliament and the Council, and further delay seemed evident. This meant that EASO could not continue planning to spend the envisaged budget of the EUAA. Therefore, in the November 2018 MB meeting, EASO announced that the SPD 2019–2021 was now "*based on the EASO Regulation and not on the future EUAA Regulation*".

7.1.3 Concluding remarks on budget expansion

The quantitative and qualitative analysis of the excerpts suggests that the MB was in consensus on EASO's budget expansion during 2015–2016. These were the peak years of asylum applicants and EASO's operational engagements through the hotspots and the EU-Turkey agreement.

Disagreement on budget expansion surfaced in 2017, when the Commission and the MS members raised concern about EASO's governance and criticized the ever-expanding budget while calling for prioritisations. Meanwhile, Greece and Italy (the biggest EASO support beneficiaries), the Commission and ED remained largely in favour of budget expansion. ED was especially keen to expand EASO's funding and continued to advocate for it during every year 2015–2019, despite calls for "*budget discipline*".

The change in the positions of ED, the Commission, and the MS on budget expansions during 2015–2019 is summarised in Figure 7. The data set is limited, but it is supplemented by the qualitative content analysis of the excerpts presented earlier in this chapter.

Figure 7

The change in positions on budget expansion
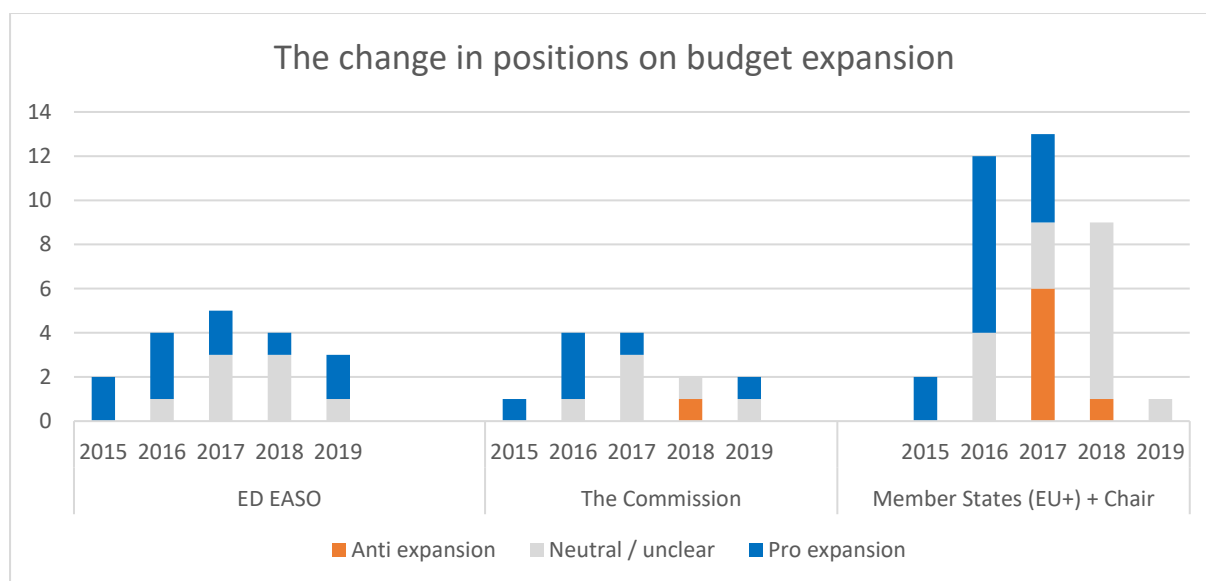
The results show that 1) MB discussions on budget expansion increased until 2017 and then began to decrease; and 2) anti expansion sentiments emerged in 2017. These trends correlate with three external developments described in Chapter 5.

Firstly, the years 2015–2016 were the immediate years of the migrant crisis when the influx of asylum applicants peaked in the EU+ states. EASO needed more resources to grow its operational staff especially at the hotspots in Greece and Italy. In total, EASO's budget was amended two times in 2015 and a record of four times in 2016[29].

Secondly, the Commission proposed the EUAA regulation in March 2016. This envisaged a substantial budget expansion, and the MB initiated preparations for the strengthened agency. This increased debate about budget expansion during 2016–2017.

Thirdly, it was clear at the beginning of 2018 that the Commission's proposal for the EUAA regulation may not be adopted in the short-term by the Council and the EP. This marginalised the discussions on budget expansion.

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[29] See e.g. https://easo.europa.eu/governance-documents.

7.2 Perspectives on regulation expansion

As described in Chapter 5, the Commission, in May 2016, proposed to expand EASO's regulation and establish a "*fully-fledged asylum agency*" that would be renamed the EUAA. The purpose was to better prepare the EU against irregular migratory flows and to speed-up the creation of a Common European Asylum System (CEAS). The proposal was not adopted by the EP and the Council, and therefore the Commission published an amended proposal in September 2018. These proposals formed the core of the MB's debate on EASO's regulation expansion, and they were debated at all the subsequent MB meetings throughout 2016–2019.

7.2.1 Quantitative content analysis

In 2015–2019, the total amount of excerpts referring to regulation expansion was 202. The excerpts were categorised based on their position on regulation expansion (Figure 8) and whether the excerpt included concern towards the regulation expansion (Figure 9).
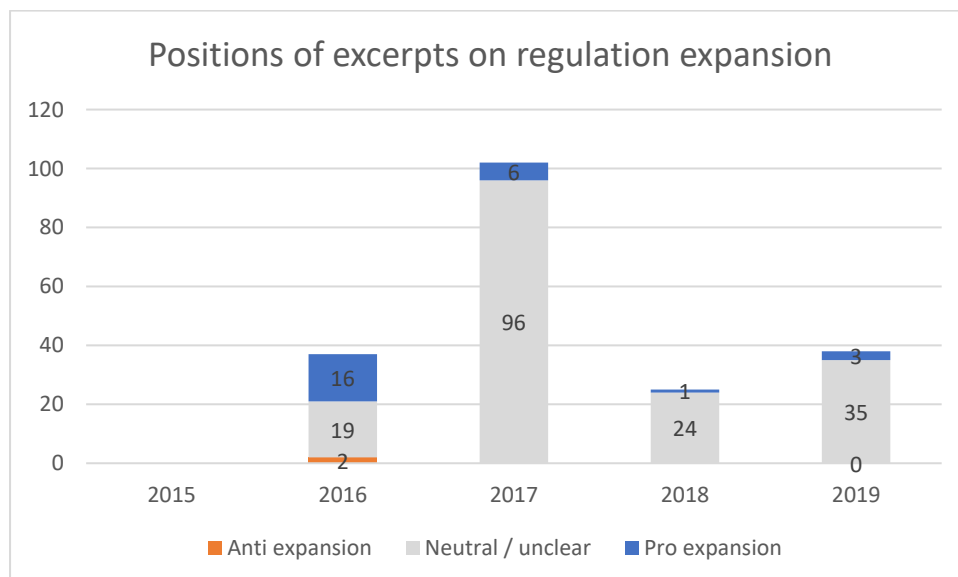
Figure 8

Figure 8 shows that no MB member commented regulation expansion in 2015. In 2016, regulation expansion emerged as a central agenda point and many MB members were inclined to support it: 43% of the excerpts were classified as pro expansion while 5% were classified as anti expansion.

However, Figure 8 has its limits. An overwhelming portion (86%) of the excerpts were classified as neutral or unclear with respect to their position on regulation expansion. A reason for this may be that excerpts were categorised as pro expansion or anti expansion in a conservative manor, where excerpts that did not apparently take a side were categorised as neutral or unclear – despite the fact that many excerpts showed inexplicit traits of pro expansion[30].

The limits of Figure 8 are compensated by the revelations of Figure 9 below. It shows that the MB members expressed numerous concerns on the regulation expansion. In 2016–2019, a total of 45% of the excerpts expressed concern.

Figure 9

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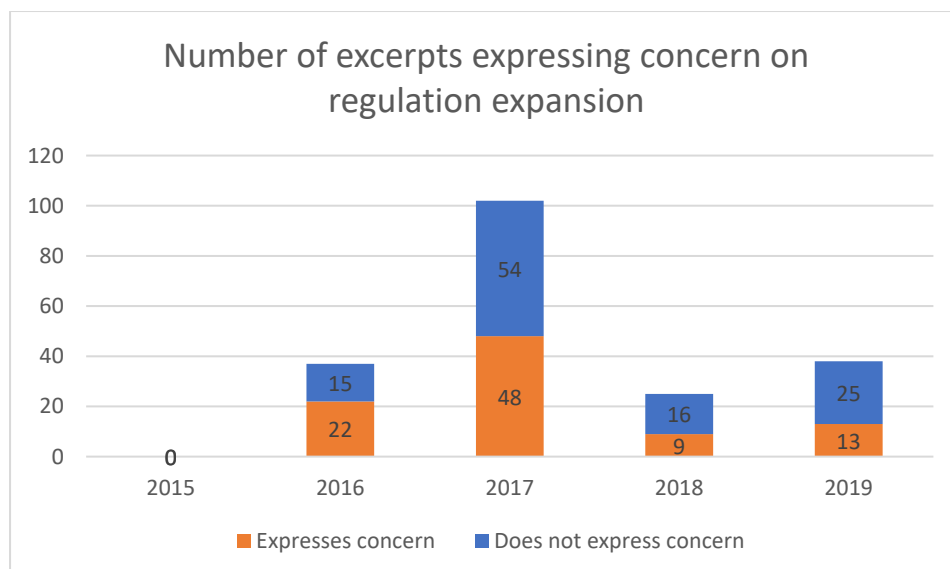
[30] Analysis in subchapter 7.2.2 explains that after the Commission proposed the regulation expansion in 2016, future discussions in the MB seemed take the foreseen regulation expansion for granted.

7.2.2 Qualitative content analysis

Next, the quantitative analysis is supplemented by a qualitative analysis of the contents of the excerpts to assess how the MB members actually referred to the regulation expansions and what concerns they raised.

2015–2016: The concerned welcome of the regulation proposal

The idea of expanding EASO's regulation initially surfaced at the MB meetings in 2015 – before the Commission's regulation proposals. The consulting firm EY had conducted an external evaluation of the agency which suggested to expand EASO's mandate. EY is not a MB member and their comment is therefore out of the scope of this research, but their view should be summarised briefly. In the September 2015 MB meeting, EY briefly presented that the main recommendation of the evaluation "*is the need for an update of EASO's mandate to include new tasks. Increased financial and operational needs are expected to result from this update*". However, no discussion on the recommendations was held at this point.

EY's evaluation report was officially presented and discussed in the January 2016 MB meeting, where the recommendation on mandate expansion was opposed by the MB members that referenced it directly. The Commission considered that "*the current mandate is sufficiently broad to provide for the necessary flexibility, so there is no need to revise it in the current situation*". The Netherlands agreed that "*the mandate should not be the first point of action*". The timing of this discussion is a noteworthy: the Commission and the Netherlands expressed these anti expansion positions some four months before May 2016 when the Commission published its proposal to expand EASO's regulation. The minutes do not reveal why the Commission's MB representative did not refer to the Commission's future plans at this point.

In 2016, a total of 37 excerpts referenced the regulation expansion. A significant discussion on the topic was held at the June 2016 MB meeting, where the minutes on the agenda point "*Communication from the Commission to the European Parliament and the Council –*

Towards a Reform of the CEAS and Enhancing Legal Avenues to Europe" included 20 references on regulation expansion. The communication listed "*a new mandate for the EU's asylum agency*" as one of five priorities in the structural improvement of the CEAS[31].

During the discussion, the Commission, the Executive Director (ED) and UNHCR supported the regulation proposal. So did the MS representatives of Germany, Slovakia, and The Netherlands – but with reservations. Germany noted that "*amendments may be needed to ensure it is supported by all MS*". The opinions of Ireland, Austria, Czech Republic, UK, France, Finland, Italy, Greece, Belgium, and Spain were neutral or unclear. For example, France stated that the French authorities did not have a final opinion on the matter and that it will depend "*on the evolution of the reform package*".

It is noteworthy that a total of 16 MB members expressed concerns on the regulation expansion during this first major discussion. A central concern was the envisaged control function of EASO which would allow the agency to e.g. make unannounced visits to MS asylum facilities. Many MS warned that this could harm the relationship between EASO and the MS.

The UK was concerned that the merits of EASO's supporting function might be undermined and the proposal "*will change the agency entirely*". Furthermore, the UK was worried that "[i]*f the new EASO will have a teacher's role, there is a risk for it to be seen as coercive and invasive in the MS functioning, rather than supportive and consequently lose much of the value it has provided*". Italy agreed that the control role of EASO would be "*too invasive*", and Belgium stressed for the need to "*guarantee a good balance between the national asylum agencies and the EASO*". France, too, regretted that the proposal's focus shifted away from the support function and that "*the support function could be difficult to marry with the function of control*".[32] The Netherlands, however, supported the control function: "*NL welcomed the proposal on strengthening EASO, and considered it a good idea to introduce a control function next to the support function*".

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[31] The communication can be found at: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A52016DC0197
[32] The MS' concerns about the monitoring function of the future EUAA can be better understood against the context provided at the November 2017 meeting, where EASO outlined the implications of the monitoring role on the role of the MB. This topic will be addressed in more depth later in Chapter 7.

The Commission addressed the concerns by clarifying that disciplinary actions would be done by the Commission, not by EASO: "*It is COM that launches infringement procedures against the MS if they do not respect the asylum acquis*".

Other concerns were more practical. Czech Republic stressed the need to not create "*too big a burden as to administration, financial and human resources*". Finland stressed the importance of EASO's resources matching the proposed tasks. During this and later meetings, another major concern was the envisaged harmonisation of asylum procedures that follow the CEAS package. For example, the future agency would produce up to three country guidance documents per year to advance convergence on asylum decisions.

However, some MS members saw merits in the details of the Commission's proposal. Italy and Greece noted that EASO would become less dependent on MS when its operational capacity is reinforced: "*expansion of EASO could allow overcoming the main weakness of the agency, which depends too much on national experts who may not always be available and easily deployed in times of crisis*". EASO's operational capability relied on the availability of experts provided by the MS, and the shortage of experts was a continuous handicap on EASO's ability to conduct operations, especially in Greece and Italy. This was a problem addressed repeatedly at the MB meetings, where the Commission and ED often appealed to the MS to provide more experts.

Simultaneously, the MB became increasingly interested in its future role after the assumed regulation expansion. The MB's role was considered in seven excerpts in 2016. The Netherlands first commented in the June MB meeting that "*NL requested that more information is shared with the MB and a discussion on the future role of the MB*". Czech Republic went further by urging the MS to "*contribute to the discussions in the Council based on the MB's practical experience*". Italy, referring to the future agency's monitoring role, was worried that "*the MB would turn into a control body within the agency*" which could complicate cooperation.

In this context, it should be noted that the Chair required, and the Commission supported the MB's participation in the legislative process. The Chair noted that the "*MB is an important player*" and asked the Commission to "*take up the recommendations made by the MB during the legislative process*". The Commission replied that "*the proposal was adopted*

by COM and is currently with the EP and Council, but reactions from MB are nevertheless important to the process". The nature of the MB's role in the legislative process remained unclear at this point, and the MB's role was debated often during the future MB meetings. Nevertheless, these comments support the assumption of this study that the MB should be considered a relevant actor in the agencification process.

At the September 2016 MB meeting, the MS continued to show support for the regulation expansion when discussing the Single Programming Document 2017–2019. The SPD was a new multiannual planning document and it was now drafted based on the regulation proposal[33]. The UK, Belgium, France, Spain, and Slovakia, who commented the document with reference to regulation expansion, supported it. Eventually, the SPD was adopted by the MB in written procedure outside the MB meetings in January 2017.

2017: Preparations for the EUAA begin

Year 2017 was the peak year with a total of 102 excerpts referring to regulation expansion. After the Commission's proposal, EASO had begun preparations to set up the new agency that would be renamed the European Union Agency for Asylum (EUAA).

In the February 2017, the regulation expansion was first referred to in the context of EASO–Frontex cooperation. The February MB meeting was the first joint-meeting of the two agencies, described by the Commission's representative as "*historic*" (the Commission hoped that EASO could build on Frontex's governance model and experience).

The joint-meeting included a discussion on the future cooperation of the two agencies, especially in the light of Frontex's recent regulation expansion and that envisaged for EASO. ED noted that "*this would necessitate closer cooperation between the two agencies and Europol*", referring to the hotspots where Frontex did the initial collection of migrants' information and EASO participated in the pre-registration process. For an example,

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[33] Also, according to the SPD 2017–2019, EASO's multiannual programme "*remains flexible to incorporate additional tasks that may emerge within the rapidly developing framework in the area of migration*". Additionally, the agency noted, "*since EASO expects to expand its activities in all areas outlined in this programming document as well as in the proposal for a new mandate and regulation, operational expenditures are expected to increase significantly in the coming years*". (SPD 2017–2019; 10, 23)

information sharing would be strengthened when EASO's envisaged regulation would allow for processing personal data.

However, hopes for the quick adoption of the new regulation had withered by the June 2017 MB meeting. The Council had emerged critical to the more difficult aspects of the proposal. The Commission explained that especially the issue of harmonising asylum practices (which was also a concern of many MB members) slowed progress: "*The difficulty is the move towards a higher degree of harmonization, and the discussion on effective solidarity. Many want discretionary rather than mandatory clauses; more flexibility and minimum harmonization.*" The Commission remarked that "*it is at this point rather unlikely that the EUAA Regulation will enter into force this year*".

Nevertheless, the MB continued to discuss preparations for the EUAA at the June 2017 MB meeting. Germany was worried that controversial issues may not be agreed upon quickly, since "*most MS want to adopt all proposals as one package*" – referring to the Dublin IV regulation among other contents of the CEAS package.

France was the only MB member to directly support regulation expansion. France stated that "*everyone wants it to progress quickly but we are 28 with different geographical positions and levels of wealth and acceptance about asylum, hence we must be optimistic if we want this to succeed*". France's remark suggests that the MB held wide-spread willingness to see the regulation expansion advance.

The agenda point was also commented by Germany, Belgium, the Netherlands, Greece, Czech Republic, Norway, Switzerland, and Italy, but mostly the discussion spired around a semantic question of what the future agency's mission statement should be. In this context, Italy revoiced the concern that the regulation proposal diminishes EASO's support role: "*there is no idea of support anymore and the new agency will strengthen the approach without the cooperation of MS*".

At the September 2017 MB meeting, the major point of debate was the establishment of a preparatory group. Proposed by the Chair and ED, the preparatory group would prepare the MB meetings. Ireland noted that with the expanded regulation, "*it will become impossible for the MB to do all the expected tasks without preparations*".

The issue of a preparatory group was relevant for a second reason: the EUAA proposal envisaged the possibility for the MB to establish an executive board "*to assist it and the Executive Director with regard to the preparation of decisions, the annual and multi-annual programming and activities to be adopted by the Management Board*"[34]. Thus, the preparatory group was discussed as a step in preparations for the EUAA. Germany noted that the "*draft Regulation includes the possibility of an 'Executive Board' which could be used at a later stage*".

The Commission was eager to see the preparatory group established in the context of the pending regulation expansion. The preparatory group model had worked at Frontex, and the Commission hoped to repeat the model at EASO. The Commission described that the emphasis would be on "*discharging the MB of its functions on the budget*". The Commission said it would likely propose to the EU legislators to move on with the EUAA regulation "*instead of waiting for the adoption of the rest of the package*", later adding that "*this will help the agency to move forward with their internal decisions*".

The MS disagreed about establishing the preparatory group. Ireland, the Netherlands, Belgium, Austria, France, Czech Republic, Sweden, Spain, Slovenia, Latvia, Slovakia, Greece, Luxembourg, Lithuania, Denmark and Germany supported the establishment of a preparatory group, arguing that it would ease the MB's workload and therefore avoid the need for more or longer MB meetings. On the other hand, Portugal, Poland, Cyprus, Italy, Malta, and Hungary did not support the preparatory group for a variety of reasons: concerns were raised especially on the composition, rotation and decision-making abilities of the preparatory group. Smaller MS called for equal representation.

Discussion shows that the idea of the preparatory group's role was still rather vague. Italy noted on the preparatory group's mandate that "*there is indeed a possibility of influencing choices and decisions*" of the MB. On the other hand, Hungary bluntly stated that it "*will not see an added value of the Preparatory Group, since it will not have any decision making power*". Despite the indifferences, the preparatory group was established by consensus – but with the compromise that the preparatory group "*will be a pilot of two periods of 6*

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[34] COM/2016/271 final 2016/0131 (COD) Article 40(3)

months" and representation of big and small countries and southern and eastern MS would be balanced.

This discussion seems to underline the MB's concern over its own role under the EUAA (an issue which was first addressed at the June 2016 MB meeting). The Commission's proposal was still in the making, and the details of its effects on the role of the MB remained unclear. Some concerns that surfaced in 2016 (e.g. regarding the monitoring role) were revoiced in 2017. For an example, Bulgaria stated that the "*New monitoring task of the agency, text in the proposal needs to be reformulated*" and that Bulgaria would "*send by e-mail suggestion on reformulation concerning Development of common practical tools and guidance including operational standards and indicators*".

Just a month later, the November 2017 MB meeting continued the discussion under the agenda point "*Preparing for the EUAA: future responsibilities of the Agency and additional roles of the Management Board*". Most of the talking was done by the Commission, Chair and Vice Chair, who outlined the state of play of the preparations undergone.

EASO presented four key priority areas emerging from the EUAA proposal: 1) monitoring of Member States' operational and technical application of the CEAS, 2) producing country guidance documents, 3) developing operational standards, indicators and guidelines, and 4) providing and facilitating operational and technical assistance, including the asylum reserve pool of 500 experts allocated by the MS.

In this context, an EASO official elaborated on the future monitoring function of the agency. He referred to Article 13 of the EUAA which "*foresees that monitoring will cover the Dublin system, asylum procedures, application of the criteria for assessing the need and type of protection, staff and capacity to handle procedures (including interpretation) and appeals, and reception conditions*". MS would be monitored every five years, and *ad hoc* monitoring of an MS would be possible "*in case of serious concern*". It would be the MB's responsibility to "*adopt the methodology for the monitoring mechanism*" and adopt the monitoring reports which could lead to intervention measures against the MS.

An important discussion was initiated by the Chair, who asked the MB "*for suggestions on three or four priorities for the EUAA activities*" and raised two guiding questions for

discussion: "*does the agency have enough staff for monitoring and can monitoring be prepared in twelve months?*"

Bulgaria, Germany, Austria, the Czech Republic, and Slovakia replied to the questions. Germany considered monitoring as the priority and "*called for preparations for this activity to start as soon as possible*". Austria considered two priorities for the agency, monitoring and country guidance. Germany's and Austria's enthusiasm about monitoring contrasts starkly to the concerns of some MS in 2016, when the monitoring function was described as "*invasive*".

Now, some MS re-expressed their concerns about relationship of the agency and MS. Bulgaria seemed to prefer insulating the MS asylum systems from EUAA monitoring by suggesting "*to use MS contingency plans as a basis for monitoring",* and *"called for measures to minimise the burden of monitoring on MS facing pressure*". Austria reminded that the MS had asked MS involvement in the monitoring teams. The Czech Republic mentioned that "*the purpose of the monitoring is to prevent a crises similar to 2015-16 crisis*" which may have a large impact on workloads and human resources. The impact on human resources was also mentioned by Germany.

The details of the functioning of the EUAA were not fully clear to the MB members at the end of 2017, despite the Commission's regulation proposal and the preparatory work done by EASO. This was partly because the ongoing negotiations on the regulation proposal could lead to changes in the proposal. The minutes of the MB meetings imply an atmosphere of general uncertainty on its effects on the MS, the MB and EASO. Nevertheless, the MB attempted to prepare to make the EUAA operational as soon as the regulation is adopted. The Chair concluded both issues by expressing that "*the time should be used to prepare especially on the meaning of monitoring, and country guidance notes*".

2018–2019: Drawbacks and the second regulation proposal

At the February 2018 MB meeting, the Commission updated the timeframe of the CEAS package, including the EUAA proposal. The aim was to reach consensus among the co-legislators by the June European Council, "*although this is highly ambitious*". After the update, the MB continued to discuss the regulation expansion under the agenda point "*Preparing for the EUAA*".

This time a major topic of discussion was the future agency's role in producing country guidance notes and coordinating Country of Origin Information (COI). The issues of country guidance and COI are important because involvement in the production of these documents would be a significant task for the EUAA. The documents were meant to converge MS asylum decisions which varied a lot by 2018 – and which made the documents politically sensitive.

The issue of country guidance and COI were addressed by the Chair, the Commission and by Slovakia and Finland. First, the Chair noted that the recently established preparatory group "*saw a high risk due to interdependence between national and EASO COI*". Slovakia emphasised the political nature of country guidance by stating that "*country guidance take long to draft not because of the lack of COI but also because of the political issues concerned*". Finland stressed that country guidance should be "*a number 1 priority*" and emphasised EASO's role in making the production efficient: "*The role of EASO (…) should be strengthened so as to avoid duplication and different decision-making*". The Commission reiterated that the country guidance and COI production are central pieces of the EUAA's proposed mandate and noted that 32 vacancies would be allocated to these tasks. The Commission further required the "*systematic use of country guidance in the national asylum procedures*" and that the MB "*should be therefore discussing this core issue regularly*".

As it often was, the MS members concentrated on the impact that COI would have on the MS activities (political concerns, double work). The Commission, which clearly had a more European perspective, emphasised the creation of the CEAS. The Vice-Chair concluded that MS favour "*a mixed approach with a partnership between MS and EASO, but that the main support work should be done by EASO*".

In the context of the regulation proposal, the MB held a separate discussion at the June 2018 MB meeting about finding a new Executive Director (ED). The MB clearly wanted to select a new ED that would be capable of transitioning the agency into the envisaged EUAA. Czech Republic underlined the importance of the position "*in the current context of EU integration and called for long-term vision in view of the EUAA*". Belgium suggested "*to look for someone who can deal with a new agency with many more staff*", and Slovakia "*emphasized the need to select a new ED in view of the future mandate*".

The MB was still very much preparing for the EUAA. However, by the November 2018 MB meeting it was clear that the regulation expansion would be further delayed. In 2018 (and later in 2019) the SPDs were revised to align with EASO's current regulation rather than the EUAA regulation, though "*some elements capturing the EUAA perspective should be included*".

In general, the delay had drastically reduced the frequency of regulation expansion mentions in the MB meeting minutes during 2018–2019. Discussion resurfaced at the September 2019 MB meeting under the agenda point "*EUAA Preparations*" where 14 excerpts referred to regulation expansion. EASO and the MB had been working with the assumption that the EUAA regulation would be in force by April 2020, and the MB now continued to discuss the MB's future role. Comments were given by ED, the Commission, UNHCR, the Chair and Austria, the Netherlands, Denmark, Greece, Bulgaria, and Finland.

The uncertainty around the regulation expansion remained. EU elections were held in May, and the Commission explained that "*there was no indications of timing for these matters*" and that "*it would be up to the new College to decide what to present*". The Netherlands wondered if the Commission might be considering the withdrawal of the EUAA proposal to revise it. The Netherlands, supported by Denmark, stated that "*it would not be desirable to withdraw the EUAA proposal*" and that "*further delay would create issues for governance in relation to long-term planning and the SPD*". Austria expressed that the uncertainty on the timetable was "*the biggest difficulty*", while Bulgaria noted that, because of the uncertainty, "*any further operational plans should therefore be based on the existing EASO Regulation*".

The discussion summarised above suggests that the MB continued show support towards the regulation expansion. The issue was referenced widely at the November 2019 MB

meeting under the agenda point "*New EASO Organogram*" which outlined the restructuring of EASO to reflect the increased operational nature of the EUAA. EASO's departments were transformed into centres that reflect the priorities of the agency's future development (most importantly, the increased operational role and training and country guidance). MB members seemed satisfied that the organogram prepared EASO for the regulation expansion. Ireland noted that "*it is a clear sign to anyone looking in at EASO that reform is happening*".

Expectations for the regulation expansion were visible elsewhere, too. Even though the SPDs had been revised to align with EASO's current mandate instead of the proposed one, the draft SPD 2021–2023 was based on the assumption that the agency will continue transitioning towards the new mandate "*by delivering its current mandate following the agreed priorities and undertaking the necessary preparatory work*".

A final note should be given about the positions implied by the 38 excerpts from 2019. The quantitative analysis in subchapter 7.2.1 showed that only 3 of the excerpts were identified as pro expansion, while 25 excerpts were identified as neutral or unclear. However, the qualitative analysis of the excerpts reveals that the MB members remained conspicuously willing to see the proposal adopted despite its delay.

7.2.3 Concluding remarks on regulation expansion

Overall, the trend over the years 2015–2019 seems clear: the MB was willing see EASO's regulation expanded after the Commission's proposal, despite the numerous concerns. This finding contrasts with the findings in subchapter 7.1. regarding budget expansion, where the MB's initial willingness to see EASO's budget expanded seemed to fade over the years.

This willingness for regulation expansion is illustrated by the analysis of the concerns expressed in the excerpts. The concerns had changed over time: In 2016, MB members were concerned about the possibly problematic relationship of the EUAA and the MS. In 2019, the MB members seemed to be increasingly worried about the delay and the lost benefits of the EUAA. For an example, social-media monitoring was perceived as an important tool to

anticipate migratory trends, but this kind of monitoring was not legal under the current EASO regulation. This issue was raised by Germany, among others, which noted that social-media monitoring "*has been an important tool and as such shortcomings are disappointing*".

The potency of the MB discussion on regulation expansion had withered by the end of 2019. The issue seemed less urgent than in the previous years. This is illustrated by the November 2019 MB meeting, the last meeting within the scope of this study: the agenda point on EUAA preparation "*was not discussed due to time constraint*".

8. Analysis

The results show that EASO's Management Board (MB) engaged in numerous discussions about the expansion of the agency's budget and regulation, including the impact of these expansions on the character of the agency and its relationship with the MS. In the EU's legislative process, the budget and regulation expansion decisions are adopted by the Council and the Parliament on the proposal of the Commission – however, the MB meeting minutes show that the MB considered itself a relevant party to the discussions on the future of the agency.

This chapter builds on the results of this study with the aim of answering the research questions and accepting or rejecting the hypothesis presented in subchapter 1.1. This will be followed by the analysis of how the results contribute to the research on agencification.

8.1. Answering the research questions

Research question 1: How did the migrant crisis affect the EASO MB representatives' willingness to expand the agency's budget and the EASO regulation in the years 2015–2019?

A brief answer to Research question 1 can be presented with a summary of two findings of this study: 1) The migrant crisis seemed to make the MB willing to expand EASO's budget in 2015–2016 until calls for "*budget discipline*" divided the MB in 2017–2019; and 2) The migrant crisis seemed to make the MB willing to expand the regulation after the Commission's proposal in May 2016, even though a regulation expansion was opposed earlier when proposed in an external evaluation.

A more nuanced answer requires elaboration on the development of the MB discussions in the context of the events of the migrant crisis.

Firstly, this study found that the willingness of the MB representatives to expand the agency's budget and regulation evolved on separate tracks. At first, the MB's willingness to expand both the budget and regulation increased in 2015–2016 after the budget-consuming

emergency measures – such as providing operational support to Greece and Italy, engaging in the hotspots and the EU–Turkey agreement – and the Commission's proposal to expand EASO's regulation.

However, the willingness for budget and regulation expansions diverged during and after 2017: the MB members became increasingly critical of expanding the ever-growing budget, especially in the light of the delay of the EUAA regulation and the financial irregularities that likely affected the Executive Director's resignation. Meanwhile, the MB's willingness to expand EASO's regulation remained strong despite the delay of its adoption.

This divergence is noteworthy, since the budget and regulation expansions became interdependent after the Commission's regulation proposal in May 2016: the new regulation would provide the agency with a bigger budget than the current regulation, because carrying out the new tasks would require more funds. At first it may seem that during 2015–2019 the MB was more willing to expand the regulation than the budget.

The qualitative analysis of the excerpts allows a deeper assessment of this divergence. During 2017–2018, a major reason for the rise of anti expansion sentiment towards budget expansion was that the EUAA regulation proposal had not been adopted as quickly as the MB had hoped. Thus, the MB members remained willing to expand the budget – but preferably through the new regulation instead of separately within the framework of the current regulation.

Secondly, the quantitative analysis of the results shows a correlation between the MB's expansionary sentiment and the events of the migrant crisis and its aftermath. Budget and regulation expansions became a major element of the MB's agenda in 2016–2017, when EASO increased its operational presence in the Mediterranean and the Commission proposed to expand the regulation.

Furthermore, the qualitative analysis of the results suggest causality between the MB's expansionary sentiment and the events of the migrant crisis. The asylum systems of MS, especially in Greece and Italy, were overwhelmed, and the MB specifically required EASO to allocate new funds and resources to operations. In addition, the MB supported the allocation of funds to the preparations for the EUAA – e.g. the recruitments that would

allow the agency to prepare for its new tasks, such as strengthening its country guidance and COI production.

Causality between the MB's willingness for regulation expansion and the migrant crisis is more evident: The Commission's regulation proposal was a direct consequence of the migrant crisis. The regulation proposal was part of the legislation package drawn specifically to strengthen the CEAS and prepare the EU for future crises. MB members, including many MS representatives, repeatedly noted the benefits of improving EASO's operational capacity and information support that would result from providing the agency with the resources envisaged in the EUAA regulation. Throughout 2015–2019, the central MS members' priorities were the operational support for distressed MS and making EASO less dependent on MS experts.

Thirdly, a key finding of this study suggests that the motivations for the willingness of the MB members to expand the budget and regulation differed. Differences of motivation can be identified between EASO Executive Director (ED), the Commission and the MS.

The results display ED as an opportunist official who wants to see his agency's resources increased for the agency to be able to fulfill its duties. The results display the Commission as the supranational perpetrator to whom EASO's empowerment is just one of the tools in integration and building the CEAS. The results display the MS as protectionist supporters of a mixed approach, where practical cooperation and focused support is enhanced but the independence of the national asylum systems is, to an extent, safeguarded.

Research question 2: What, if any, concerns did the EASO MB representatives express on these expansions?

The MB members expressed numerous concerns on the budget and regulation expansions: 51% of the excerpts relating to the budget expansion and 45% of the excerpts relating to the regulation expansion contained apparent concerns relating to the foreseen expansion.

The MS raised a number of concerns about the details of the proposed regulation expansion, including the possible invasiveness of the new agency's monitoring function, the undermining of EASO's support function and the role of the MB in monitoring and planning the new tasks of the agency. In addition, the MB wanted a role in forming recommendations

and providing reactions to the regulation expansion, which was supported by the Chair and the Commission.

A more nuanced analysis of the concerns shows divergences in perspectives of ED, the Commission and the MS. A major concern for the ED was the agency's ability to execute its duties – ED's repeated position was that the agency is overwhelmed and without extra resources it could not fulfill its duties e.g. in operations. In turn, the Commission was often concerned about financial management of EASO, including the low implementation of the budget, and the delay of the EUAA regulation in general.

The MS expressed a variety of concerns. For example, in 2016 the MS were concerned that the monitoring function would diminish EASO's well-established supporting function. Other initial MS concerns included: the effects of the regulation proposal on the role of the MB; the relationship of the agency and MS; the increasing political character of the agency; the perceived administrative burden; and ensuring EASO's operational capability.

However, the MS concerns seemed to shift and align with the Commission after 2017: the results suggest that after an initial shock towards the details of the EUAA proposal in 2016, the MS members quickly bought into the idea of a the EUAA and became eager to utilise its benefits, e.g. the envisaged new staff that would make the agency less dependent on MS.

The MB meeting minutes show that the MB members' attitudes toward budget and regulation expansions were substantially affected by the practical necessities of the migrant crisis. Ultimately, these necessities outweighed the concerns. The overwhelmed asylum systems of Greece and Italy, the bloated backlogs of asylum applications in all or most MS, the divergence in asylum decisions between MS, the secondary movements of applicants between states and the ineffectiveness of the Dublin procedure – in short, the crisis of the Common European Asylum System – convinced the MB members of the needs for effective country guidance documentation, "more hands" for EASO operations and stronger European asylum management in general.

Concluding remarks

The hypothesis of this study states that the willingness for expanding the EASO's budget and regulation increased over the years 2015–2019 within the MB. The results and analysis allow for the hypothesis to be accepted.

8.2. Perspectives on agencification

A decade ago, Levi-Faur showed that the EU's regulatory reach had expanded through the growth of the number of agencies and the resources at their disposal (Levi-Faur 2011, 8011). This study shows that pressure for agencification has continued within the EU's JHA domain through the attempts to expand the budgets, tasks, and regulations of EASO (and Frontex).

However, proposals for EASO's regulation expansion have not been formally adopted by the EU legislators, despite the precedence of the Frontex regulation expansion in 2016. During 2015–2019, EASO grew significantly in terms of budget, staff, and operational activities but failed to reach the level of empowerment envisaged by the Commission. Consequentially, the agency has only partially taken up an "*increasingly important role in the EU administration, both in a quantitative as well as in a qualitative sense*", as required by Merijn Chamon's definition of agencification (Chamon 2016, 45).

Indeed, EASO's subsequent budget expansions did happen and EASO's regulation expansion was in the making – but nevertheless, during and after 2017 expansionary momentum seemed to slow down (budget) or halt (regulation) due to emerging opposition after the immediate years of the migrant crisis in 2015–2016.

However, the MB seemed to buy in the idea of budget and regulation expansions to mitigate the effects and prospects of the migrant crisis. The MB seemed to align with the Commission's position, despite many concerns on the details of these expansions.

This point demands a short consideration on the Commission's influence over the MB. The results are not definitive on the extent to which the supranational Commission was able to influence the intergovernmental MB, or whether the MB reached consensus on the

agencificationary measures through self-serving considerations. Sometimes the results are in line with the findings of Egeberg, Trondal and Vestlund (2011; 2015), according to whom agencies act relatively independently of national governments and have a fairly strong relationship with the Commission. On the other hand, the MB meetings often showed that cooperation was favoured based on strong national considerations, e.g. in the case of Greece and Italy who depended on solidarity.

From a neo-functionalist perspective, the crisis of the CEAS had partially resulted from the deficiencies of previous integration – such as incorporating the Schengen to the EU treaties without simultaneous integration in migration governance – and these deficiencies would be covered with further integration *in tempore*, as had happened with border management through the new Frontex regulation. Now, it seems, that even the challenges of the migrant crisis did not fully realise a neo-functionalist "*spillover effect*" where EASO's regulation would have been expanded.

However, the neo-functionalist logic may yet prevail. Wolf & Ossewaarde have noted that EASO's regulation expansion is still on the table and it may yet advance in the coming years (Wolf & Ossewaarde 2018, 47). This study shows that the MB prefers a regulation expansion, and the opinions of MS members of the MB may yet influence the legislators to finalise it.

The analysis becomes more nuanced when the intergovernmentalist perspective is considered. The MB has a strong intergovernmental character, and this study shows that the MB's discussions on agencificationary topics were often influenced by national considerations.

However, the results show that opinions in the MB diverged: The Commission and to some extent ED seemed to emphasise the intrinsic value of the agency's budget and regulation expansion, and they expected more comprehensive integration in the longer term. The MS members took a more practical position by considering the budget and regulation expansions as tools to fix the problems of the CEAS: for example, an empowered EASO could better support the national asylum agencies that are under pressure.

The Commission's position in the MB is in line with the Commission's actions in general. The EUAA regulation was just a one of five initiatives the Commission launched in 2016 to

reform the CEAS. Through these means the EU could finally achieve the "*completion of the Common European Asylum System*" (Commission 2015, 17). The Commission has determinedly sought to expand the EU's policy reach in JHA affairs since the Treaty of Amsterdam, and the migrant crisis opened an opportunity to further this development.

A final note must be given to the postfunctionalist perspective which weighs integration against the political realities. Indeed, the migrant crisis became a highly politicised issue which grew from a mere question of asylum management to a question of the EU's legitimacy as an actor in general. Previous studies suggest that the shift in public opinion may have limited European integration during the migrant crisis (Börzel & Risse 2018; Hooghe & Marks 2019) and resulted "*in a stalemate in the Schengen crisis*".

The public awareness of the migrant crisis and the opposition towards European solutions – such as burden-sharing, open Schengen borders and the relocation and resettlement of asylum applicants – were visible in the MB meetings between 2015–2019. MB members often referred to national public discussions. However, the results presented in Chapter 7 suggest that the MB members opted to favour budget and regulation expansions nevertheless.

On a European level, the Commission's regulation proposal illustrated a limit to agencification within the JHA domain of the EU: The Commission simply proposed more than the MS and the EP could comply with. Hence the intergovernmentalist and postfunctionalist perspectives seem to provide a more accurate framework for the study of agencification in comparison to the neo-functionalist perspective.

This study adds nuances to the discussion on the powerplay of the EU legislators. The results and analysis suggest that the MB was more willing to advance agencification than the Member States. This may be a consequence of the administrative nature of the MB where emphasis often remained on the practical questions of asylum management instead of the "*political turmoil*" surrounding the issue.

9. Conclusions

This study investigated the process of agencification within the European Asylum Support Office during 2015–2019 when the impact and aftermath of the migrant crisis generated pressure to further integrate European asylum management. Focus was given to the agency's Management Board – the planning and monitoring body of the agency – which has a peculiar intergovernmental composition: along with members appointed by the Commission, the MB consists of leading asylum officials from participating Member States. More specifically, this study investigated the MB's positions on budget and regulation expansions through a quantitative and qualitative analysis of the MB meeting minutes in 2015–2019. Budget and regulation expansions are examples of quantitative and qualitative agencification.

The analysis of the Management Board meeting minutes show that the MB became a strong advocate for agencification over the examined period.

Regarding budget expansion, the quantitative and qualitative analysis of the MB meeting minutes suggests that the MB was in consensus on EASO's budget expansion during 2015–2016. These were the peak years of asylum applicants during the migrant crisis, when EASO engaged in support operations, the hotspots, and the EU-Turkey agreement. Disagreement on budget expansion surfaced in 2017, when the Commission and the MS raised concern about EASO's governance and criticized the ever-expanding budget while calling for prioritisations and "*budget discipline*".

Regarding regulation expansion, the trend over the years 2015–2019 seems clear: the MB was willing see EASO's regulation expanded after the Commission proposed it in 2016. However, the proposal raised numerous concerns amongst the MB. For example, MS members initially challenged elements of the proposal that would increase the agency's control over national asylum systems. However, these concerns generally seemed to fade over the examined period.

A key finding of this study suggests that the motivations for the willingness of the MB members to expand the budget and regulation differed. Differences of motivation can be identified between EASO's Executive Director (ED), the Commission and the MS members.

Firstly, the results display ED as an opportunist official who wants to see his agency's resources increased for the agency to be able to fulfill its duties. Secondly, the results display the Commission as the supranational perpetrator who sees EASO's empowerment as just one of the tools in building the CEAS. Thirdly, the results display the MS as protectionist supporters of a mixed approach, where practical cooperation and support is enhanced but the independence of the national asylum systems is, to an extent, safeguarded.

The MB meeting minutes show that the MB members' attitudes toward budget and regulation expansions were substantially affected by the practical necessities of the migrant crisis. The overwhelmed asylum systems of Greece and Italy, the bloated backlogs of asylum applications in most MS, the divergence in asylum decisions between MS, the secondary movements of applicants between states and the ineffectiveness of the Dublin procedure – in short, the crisis of the CEAS – generally convinced the MB members of the need to deepen cooperation and empower EASO through budget and regulation expansions.

EASO's weight in European asylum management has undoubtedly increased through its new tasks e.g. in the hotspots and through the numerous budget increases of 2015–2019. EASO emerged more as an operational agency than merely a "*support office*" which it was prior to the crisis.

The results and analysis of this study contribute to the research on agencification by illuminating the Management Board's opinions on budget and regulation expansions. MB members seemed more favourable towards agencification than their national governments who, to this date, have not adopted the EUAA regulation proposed by the Commission in 2016 and 2018.

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Annex 1

Table for data management:

Excerpt	Associated MB Member	MB meeting number and date	Year	Topic (budget, regulation)	Anti expansion	Neutral / unclear	Pro expansion	Expresses concern relating to expansion	Comments	Agenda point

Annex 1