

THE POLITICAL ACCOUNTABILITY OF EUROPEAN AGENCIES IN THE FIELDS OF MIGRATION AND ASYLUM: FRONTEX AND THE EASO

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Introduction

The evolution of the European administration during the last decades has been characterised by the phenomenon of “agencification²”, namely by the establishment and multiplication of European agencies in the context of different European policies.³ Created in order to serve various purposes, such as additional administrative capacity, technical expertise and credible commitment, and having multiplied in an anarchic manner,⁴ European agencies are specialised, non majoritarian EU bodies that are established by secondary law, that are institutionally separate from the institutions of the European Union (EU) and endowed with their own legal personality.⁵ Their independence both *vis à vis* European institutions and Member States and *vis à vis* private entities, is a common requirement of their founding regulations and crucial for the credibility of their action.⁶

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² The literature on the evolution of the European administration is vaste. See, among others, J.-B. AUBY, J. DUTHEIL DE LA ROCHÈRE (dir.), *Traité de droit administratif européen*, Bruxelles, Bruylant, 2014; H. HOFMANN, G. ROWE, A. TÜRK (eds.), *Administrative Law and Policy of the European Union*, Oxford, OUP, 2011. On European agencies in particular, see M. CHAMON, *EU Agencies. Legal and Political Limits to the Transformation of the EU Administration*, Oxford, OUP, 2016; J. MOLINIER (dir.), *Les agences de l’Union européenne*, 3^{es} Journées Guy Isaac, 11 et 12 mars 2010, à Toulouse organisées par l’Institut de recherche en droit européen, international et comparé, IRDEIC, Bruxelles, Bruylant, 2011; G. DELLA CANANEA (ed.), *European Regulatory Agencies*, Seminar organized by the Study Group for European Policies, Rome, 26 June 2003, Paris, Editions Rive Droite, 2005; J.-F. COUZINET (dir.), *Les agences de l’Union européenne: recherche sur les organismes communautaires décentralisés*, Actes de la journée Guy Isaac, 8 juin 2001, Toulouse, Presses de l’Université des sciences sociales, 2002; E. CHITI, *Le agenzie europee. Unità e decentramento nelle amministrazioni comunitarie*, Padova, Cedam, 2002; D. GERADIN, R. MUNOZ, N. PETIT, *Regulation through agencies in the EU: a new paradigm of European governance*, Cheltenham, Edward Elgar Publishers, 2005.

³ See <https://europa.eu/european-union/about-eu/agencies_fr> (last accessed 07.07.2018).

⁴ The European Parliament, the Commission and the Council have attempted to introduce coherence in the governance of the European agencies by adopting a Common Approach on decentralized agencies in 2012, see Joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralized agencies, available at <https://europa.eu/european-union/sites/europa.eu/files/docs/body/joint_statement_and_common_approach_2012_fr.pdf> (last accessed 30.06.2018) (Common Approach).

⁵ See M. BUSUIOC, *European Agencies: Law and Practices of Accountability*, Oxford, OUP, 2013, p. 21.

⁶ On the independence of European agencies, see M. BUSUIOC, “Accountability, Control and Independence: The Case of European Agencies”, *European Law Journal*, Vol. 15, N° 5, 2009, p. 599-615; M. EGEBERG, J. TRONDAL, “EU-level agencies: new executive center formation or vehicles of national control”, *Journal of European Public Policy*, Vol. 18, N° 6, 2011, pp. 868-887. The European Parliament has expressed its concern regarding the independence of certain European agencies *vis-à-vis* the Commission and the industry, see, respectively, European Parliament, Resolution of 3 April 2014 on discharge in respect of the implementation of the budget of the European Union agencies for the financial year 2012: performance, financial management and control (2013/2256(DEC)), points 16, 56-57; European Parliament, Resolution of 28 April 2016 on discharge in respect of the implementation of the budget of the European Union agencies for the financial year 2014: performance, financial management and control (2015/2205(DEC)), point 13.

The European administration in the Area of Freedom, Security and Justice (AFSJ) is not exempt from this evolution. While broader cooperation among European agencies in its context is on the rise—be it concretely in hotspots⁷ or, more generally, in the context of the Justice and Home Affairs (JHA) agencies' network—⁸ the European Border and Coast Guard Agency (“Frontex”) and the European Asylum Support Office (“EASO”) are the two European agencies that are the most directly involved in the migration crisis: they are responsible for coordinating Member States' cooperation respectively in the areas of external border management and asylum, their powers having been reinforced over time. Indeed, following the adoption of the European Border and Coast Guard Regulation in 2016,⁹ Frontex has moved further than merely coordinating practical cooperation towards being involved in the development¹⁰ and monitoring of European border management.¹¹ EASO's operational support activities have also evolved from giving expert advice to national administrations to “hands-on tasks, such as providing information to arriving third country nationals and assisting with the relocation process”¹² and could be further reinforced after the revision of its founding regulation transforming it into a “European Union Agency for Asylum” (EUAA).¹³

The powers these European agencies have been entrusted with in this politically sensitive field bring with them important constitutional challenges: in a nutshell, agencification needs to be effective while at the same time respecting the democratic values of the European Union¹⁴ and ensuring the

7 Especially through the establishment of Migration Management Support Teams, viz. of teams “of experts which provide technical and operational reinforcement to Member States at hotspot areas and which (are) composed of experts deployed from Member States by the European Border and Coast Guard Agency and by the European Asylum Support Office, and from the European Border and Coast Guard Agency, Europol or other relevant Union agencies”, see art. 2(9), Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) N° 863/2007 of the European Parliament and of the Council, Council Regulation (EC) N° 2007/2004 and Council Decision 2005/267/EC, OJ L 251, 16.09.2016, p. 1-76 (EBCG Regulation). On hotspots, see, among others, D. NEVILLE, S. SY, A. RIGON, *On the frontline: the hotspot approach to managing migration*, Study for the LIBE committee, Brussels, 2016.

8 The Justice and Home Affairs (JHA) agencies' network is composed of nine agencies: the European Union Agency for Law Enforcement Training (CEPOL), the European Asylum Support Office (EASO), the European Institute for Gender Equality (EIGE), the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA), Eurojust, Europol, the European Union Agency for Fundamental Rights (FRA) and Frontex. The JHA agencies' network has been established in 2006 in order to allow cooperation and the development of synergies in areas such as operational work, training and external relations, see <<http://www.eurojust.europa.eu/about/Partners/Pages/jha-cooperation.aspx>> (last accessed 07.07.2018).

9 As L. TSOURDI notes “(t)he European Border and Coast Guard, despite its denomination, does not aim to replace national border guard units centralizing external border management, remaining essentially a new model built on an old logic”, see L. TSOURDI, “Monitoring and Steering through Frontex and EASO 2.0: The Rise of a New Model of AFSJ agencies?”, available at <<http://eumigrationlawblog.eu/monitoring-and-steering-through-frontex-and-easo-2-0-the-rise-of-a-new-model-of-afsj-agencies/>> (last accessed 07.07.2018). On the evolution of Frontex, see J. RIJPMMA, *The Proposal for a European Border and Coast Guard: Evolution or Revolution in External Border Management?*, Study for the LIBE Committee of the European Parliament, PE 556.934, Brussels, 2016; J. RIJPMMA, “Hybrid agencification in the Area of Freedom, Security and Justice and its inherent tensions: the case of Frontex”, in M. BUSUIOC, M. GROENLEER, J. TRONDAL (eds.), *The Agency phenomenon in the European Union: Emergence, institutionalization and everyday decision-making*, Manchester, Manchester University Press, 2012, pp. 84-102. For the needs of our analysis we will continue referring to this European agency as “Frontex”, following its common reference (see recital 9, EBCG Regulation).

10 Notably through the adoption of a “technical and operational strategy for European integrated border management”, see art. 3, EBCG Regulation.

11 Most notably through liaison officers present in Member States (see art. 8, EBCG Regulation) and through the elaboration of a vulnerability assessment (see art. 8, 13, EBCG Regulation).

12 See L. TSOURDI, “Hotspots and EU agencies: towards an integrated European administration”, 26.01.2017, available at <<http://eumigrationlawblog.eu/hotspots-and-eu/>> (last accessed 07.07.2018).

13 See L. TSOURDI, “Bottom-up Salvation? From practical cooperation towards joint implementation through the European Asylum Support Office”, *European Papers*, Vol. 1, N° 3, 2016, pp. 997-1031; L. TSOURDI, “Monitoring and Steering through Frontex and EASO 2.0: The Rise of a New Model of AFSJ agencies?”, *op. cit.*

14 The need for the AFSJ to be firmly based on “the principles of transparency and democratic control” had already been affirmed in the European Council's Conclusions in Tampere, see Tampere European Council, Presidency Conclusions, 15-16 October 1999, point 7.

protection of fundamental rights.¹⁵ While the protection of the latter, especially in the context of the activities of Frontex, has attracted the interest of legal scholars,¹⁶ institutions,¹⁷ NGOs and of the general public, the mechanisms ensuring the political accountability of both European agencies, namely accountability before elected representatives in the context of a democratic Union, rather seem to escape the spotlight.¹⁸

Defining the notion of accountability is, in any event, not an easy task: despite being unanimously accepted as a principle of good governance,¹⁹ the term has been used by legal doctrine as more of an “umbrella concept”²⁰ reflecting a “range of understanding”,²¹ than a clear-cut notion. Nevertheless, consensus among scholars seems to emerge with respect to the fact that accountability can be resumed as “a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgment, and the actor may face consequences”.²² Three stages are, thus, involved in account giving: information gathering, debate and consequences.²³

Political accountability of European agencies is typically envisaged before the European Parliament and the Council²⁴. In the specific case of AFSJ agencies, however, giving account before national parliaments also seems to be on the rise.²⁵ While the jury is still out on the right “accountability mix” for these EU bodies,²⁶ examining the current political accountability regime set out for Frontex and for the EASO is undeniably of crucial importance both from a constitutional perspective and in order to facilitate the understanding and acceptance of their role in the politically sensitive fields of migration and asylum.

15 See J. RIJMA, “Frontex and the European system of border guards: the future of European border management”, in M. FLETCHER, E. HERLIN-KARNELL, C. MATERA (eds.), *The European Union as an Area of Freedom, Security and Justice*, London, Routledge, 2016.

16 See, among others, M. FINK, “A “blind spot” in the framework of international responsibility? Third-party responsibility for human rights violations: the case of Frontex”, in T. GAMMELTOFT-HANSEN, I. VEDSTED-HANSEN (eds.), *Human Rights and the Dark Side of Globalisation: transnational law enforcement and migration control*, London-New York, Routledge, pp. 272-293.

17 See, in particular, the advances related to fundamental rights’ protection proposed in the European Parliament’s draft position on the European Union Agency on Asylum, in *Report on the proposal for a regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) N° 439/2010 (COM(2016)0271-C8-0174/2016-2016/0131(COD))*, 21.12.2016.

18 See, however, F. LAFARGE, “La redevabilité des agences européennes de l’Espace de liberté, de sécurité et de justice”, *RFAP*, Vol. 160, N° 4, 2016, pp. 1209-1226.

19 See C. JOERGES, R. DEHOUSSE, *Good governance in Europe’s integrated market*, Vol. 11/2, Oxford, OUP, coll. The Collected Courses of the Academy of European Law, 2002; D. CURTIN, R. WESSEL (eds.), *Good governance and the European Union: Reflections on concepts, institutions and substance*, Antwerp, Intersentia, 2005.

20 See M. BOVENS, “Analyzing and Assessing Accountability: A Conceptual Framework”, *European Law Journal*, Vol. 13, N° 4, 2007, pp. 447-468; R. MULGAN, “Accountability: an ever expanding concept?”, *Public Administration*, Vol. 78, N° 3, 2000, pp. 555-573.

21 See D. CURTIN, P. MAIR, Y. PAPADOPOULOS, “Positioning Accountability in European Governance: An Introduction”, *West European Politics*, Vol. 33, N° 5, 2010, pp. 929-945, p. 930.

22 See M. BOVENS, “Analyzing and Assessing...”, *op. cit.*, p. 450.

23 See M. BUSUIOC, *European Agencies: Law and Practices of Accountability*, *op. cit.*, p. 47. On the different types of accountability, see M. BOVENS, D. CURTIN, P. HART, “Studying the Real World of EU accountability: Framework and Design”, in M. BOVENS, D. CURTIN, P. HART (eds.), *The Real World of EU Accountability. What Deficit?*, Oxford, OUP, 2010, pp. 31-62, pp. 47-49.

24 For example, Frontex is accountable both to the European Parliament and to the Council and should report to them “to the fullest extent” (see recital 56, art. 7, EBCG Regulation).

25 At present, with respect to Europol, Eurojust and the EPPO. On this topic, see C. VLACHOU, “La reddition des comptes démocratique des agences de l’Union européenne: quel rôle pour les parlements nationaux?”, *R.A.E.-L.E.A.*, Vol. 3, 2017, pp. 481-492, C. VLACHOU, “The democratic accountability of European agencies: which role for national parliaments?” (forthcoming).

26 See *infra* II, B.

In this context, it is important to examine how the political accountability of these two European agencies is ensured both before the European Parliament (I), that is directly elected from the European citizens, and before bodies whose legitimacy stems from the national level²⁷ (II), i.e. the Council of ministers, and, potentially, national parliaments.

I. Political accountability before the European Parliament

The role of the European Parliament *vis à vis* European agencies has evolved over time reflecting its own progressive gain of powers in the EU institutional landscape:²⁸ the European Parliament, thus, currently intervenes both *ex ante*, namely in the procedures for the appointment of the Executive Directors of European agencies²⁹ and *ex post*, viz. as an accountability forum for these Union bodies³⁰ conformed by the expert knowledge of its parliamentary committees. Its role as a co-legislator, that can potentially push for a future revision of the mandate of European agencies in the context of the ordinary legislative procedure, allows for consequences to be attached to such account giving.³¹

In this regard, the European Parliament exercises its role as a political accountability forum for Frontex and for the EASO through instruments that are progressively refined and increasingly linked to the budgetary discharge procedure (A). This link with the budgetary discharge procedure (B) allows for significant political pressure to be exercised on the two agencies on issues that exceed mere technicalities.

A. Through progressively refined instruments of political accountability

The political accountability of European agencies before the European Parliament is ensured, on the one hand, through the scrutiny of their annual work programs and annual activity reports and, on the other hand, through hearings of their Executive Directors before the competent parliamentary committee.³² Both the EBCG regulation and the negotiations regarding the proposal for an EUAA are illustrative of a trend towards progressively refined instruments of accountability before the European Parliament,³³ potentially due to the political pressure exercised in that respect by the institution itself during the ordinary legislative procedure.³⁴

27 The analysis will not focus on the European agencies' Management Boards due to their hybrid nature, combining both managerial and political accountability. Management Boards can, indeed, be viewed as a "lower tier of political accountability", due to their composition from Member States' representatives, as opposed to "upper echelons of political accountability" such as the European Parliament and the Council, see M. BUSUIOC, "European agencies and their Boards: promises and pitfalls of accountability beyond design", *Journal of European Public Policy*, Vol. 19, N° 5, 2012, pp. 719-736; M. BUSS, "European Union agencies and their management boards: an assessment of accountability and democratic legitimacy", *Journal of European Public Policy*, Vol. 22, N° 1, 2015, pp. 94-111.

28 See C. VLACHOU, *La coopération entre les autorités de régulation en Europe (énergie, communications électroniques)*, Thèse en droit public, Université Paris II (Panthéon-Assas), 2014, p. 383. The European Parliament can currently defend its own role in the accountability regime foreseen for European agencies as a co-legislator in the context of the ordinary legislative procedure.

29 On appointment procedures, see art. 69(2), 62(2a), EBCG Regulation; art. 30(1), 31(1), Regulation (EU) N° 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office (EASO Regulation).

30 See M. BUSUIOC, *European Agencies: Law and Practices of Accountability*, *op. cit.*; M. SCHOLTEN, *The Political Accountability of EU Agencies: Learning from the US Experience*, Maastricht, Datawyse – Universitaire Pers Maastricht, 2014.

31 Especially on the basis of the evaluation report transmitted to it (see art. 81(2), EBCG Regulation). Art. 46, EASO Regulation, did not expressly refer to the transmission of an evaluation report to the European Parliament, a gap that is formally filled by art. 66(2), Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) N° 439/2010, 04.05.2016, COM(2016)0131(COD) (EUAA Proposal).

32 See M. SCHOLTEN, *op. cit.*, p. 145., C. VLACHOU, *La coopération entre les autorités de régulation en Europe (énergie, communications électroniques)*, *op. cit.*, p. 388.

33 Appointment procedures will not be treated in this article which focuses on *ex post* accountability.

34 This trend can also be observed in other fields, see C. VLACHOU, *La coopération entre les autorités de régulation en Europe (énergie, communications électroniques)*, *op. cit.*, pp. 378-382.

Rather than being self-evident, the real effectiveness of the various reporting obligations set on European agencies is conditional upon the actual content of the annual work programs and activity reports,³⁵ the possibility to hold a public hearing where such documents could be debated and the consequences attached to their transmission to the European Parliament. In this regard, the reporting obligations set on the two agencies tend to be, on the one hand, more detailed in terms of content³⁶ and, on the other hand, directly related to the budgetary discharge procedure through the introduction of various performance indicators.³⁷ The link with the budgetary discharge procedure comes as no surprise: it was already envisaged by the Common approach on decentralized agencies adopted by the institutions in 2012 and by relevant guidelines subsequently elaborated by the European Commission.³⁸

In this context, the EBCG regulation and the EUAA proposal, first of all, guarantee extended information rights³⁹ for the European Parliament regarding both “problematic” situations at the borders or with respect to the asylum or reception systems⁴⁰ and the external activities of these two agencies⁴¹. Specific reporting obligations are further foreseen by the EBCG regulation regarding the—at times lacking—Member States’ input in the activities of Frontex, especially as to the number of border guards

35 The insufficient quality of the annual reports of certain European agencies has been noted several times in the past, see Ramboll Management, Euréal, Matrix, Evaluation of the EU Decentralised Agencies in 2009, Final Report, Volume I, Synthesis and prospects. Evaluation for the European Commission, p. 23, available at <http://europa.eu/agencies/documents/synthesis_and_prospects_en.pdf> (last accessed 07.07.2018); European Court of Auditors, Special Report N° 5/2008, “The European Union’s Agencies: getting results”, 2008, 52 p., available at <www.eca.europa.eu/Lists/ECADocuments/SR08_05/SR08_05_EN.PDF> (last accessed 07.07.2018).

36 A similar trend can be observed in another politically sensitive field, i.e. the Banking Union: the content of the annual activity report prepared by the Single Resolution Board is foreseen in detail in an interinstitutional agreement concluded with the European Parliament, see Interinstitutional agreement between the European Parliament and the Single Resolution Board on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the Single Resolution Board within the framework of the Single Resolution Mechanism, OJ L 339/58, 24.12.2015.

37 On the absence of quantitative objectives and targets for the joint operations of Frontex and on the inadequacy of the key performance indicators used by this agency, see European Court of Auditors, Special Report N° 12/2016: Agencies’ use of grants: not always appropriate or demonstrably effective, 21.04.2016.

38 Indeed, according to the Common Approach, while “agencies’ Directors are accountable to the European Parliament and the Council for the use of the EU contribution, the discharge procedure focuses on accountability and regulatory compliance rather than performance per se. This is due, inter alia, to the lack of performance indicators. Agencies’ Directors should therefore be more clearly accountable for performance. To this end, tailored performance indicators should be introduced for allowing effective assessment of the results, achieved in terms of objectives”, see Common Approach, *op. cit.*, point 15. The Commission has, subsequently, elaborated Guidelines on key performance indicators and urged the European agencies to include the ones relevant to their mandate in their annual work programs, see Commission, Staff Working Document, Guidelines on key performance indicators (KPI) for directors of EU decentralized agencies, 13.03.2015, SWD(2015) 62 final (Guidelines on KPIs).

39 While it remains to be seen whether instances of over-classification may occur, art. 50(3), EBCG Regulation, explicitly states that “classification shall not preclude information being made available to the European Parliament” and that the rules concerning the forwarding and handling of classified information applicable between the European Parliament and the Commission will be followed.

40 Such as situations at the external border requiring urgent action, in which case the European Parliament is informed “without delay” including of “all subsequent measures and decisions taken in response” (see art. 19(2), EBCG Regulation) and situations requiring more border guards in the context of the deployment of EBCG teams, in which case the European Parliament is informed “immediately” (see art. 20(9), EBCG Regulation). The EUAA proposal moves, to a certain extent, in the same direction as it foresees that the European Parliament is kept informed of the progress made by a Member State on an action plan elaborated to address shortcomings of its asylum or reception systems (see art. 15(4), EUAA Proposal).

41 In the case of Frontex, the European Parliament is informed both prior to the conclusion of working arrangements with institutions, bodies, offices, agencies and international organizations (see art. 52(2), EBCG Regulation), and *ex post* of the activities conducted by Frontex in the context of its cooperation with third countries. The European Parliament is also kept fully informed without delay of the decision taken by Frontex to deploy liaison officers in third countries (see art. 55(4), EBCG Regulation). On the external activities of Frontex, see F. COMAN-KUND, *European Union Agencies as Global Actors: A Legal Study of the European Aviation Safety Agency, Frontex and Europol*, Routledge, New York, 2018; J. RIJPMAN, “External Migration and Asylum Management: Accountability for Executive Action Outside EU-territory”, *European Papers*, Vol. 2, N° 2, 2017, pp. 571-596; M. FINK, “Legal Challenges of Frontex’ External Relations”, in M.-G. BOTTARO PALUMBO, C. DANISI (eds.), *Civil Rights Protection and Rights of Migrants in the Framework of Mediterranean Cooperation*, Proceedings of the Emuni Doctoral Research Seminar, 18-23.07.2011, Genova, De Ferrari, 2013, pp. 139-150. When it comes to the future EUAA, the European Parliament is also to be informed of working arrangements allowing cooperation with third countries (see art. 35(2), EUAA Proposal) and arrangements allowing cooperation with Union agencies, bodies and offices (see art. 36(2), EUAA Proposal) even though it is not clearly specified whether such information will be transmitted prior to their conclusion.

committed and actually deployed to the EBCG teams⁴² and the number of items of technical equipment committed to the technical equipment pool.⁴³ The EBCG regulation further foresees that the agency will be transmitting to the European Parliament its annual activity report—including an assessment of its cooperation with third countries⁴⁴—and its programming document, containing its multiannual programming and annual programming for the following year.⁴⁵ In this context, the above-mentioned link with financial accountability is striking: the multiannual programming document of Frontex must indicate “objectives, expected results, performance indicators and resource planning” as well as “strategic areas of intervention” and a “strategy for relations with third countries and international organizations”⁴⁶. In what seems to be more of a procedural requirement,⁴⁷ a consultation of the European Parliament is required prior to the adoption of this specific document.⁴⁸ Additionally, the annual work programs of Frontex allowing for the implementation of its multiannual programming also become more detailed and financial accountability-friendly “comprising detailed objectives and expected results including performance indicators” and “an indication of the financial and human resources allocated to each activity, in accordance with the principles of activity-based budgeting and management”.⁴⁹ While the requirements introduced by the EBCG regulation seem to enhance access to information and to structure *a minima* the content of the reporting obligations set on Frontex, it remains to be seen whether such indicators can indeed ensure the accountability of the agency⁵⁰ or whether they will in reality focus on “process” rather than on its actual performance.⁵¹

The same trend towards more detailed content seems to be followed in the EUAA proposal: the current version of the EASO regulation already foresees the transmission to the European Parliament of an annual report on the situation of asylum in the EU – which is also presented before it⁵², of the agency’s annual general report⁵³ and of its work program for the following year adopted “in accordance with the annual budgetary procedure and the legislative work in the area of asylum”.⁵⁴ Similarly to the case of Frontex, the EUAA proposal requires the transmission of a much more detailed and budgetary discharge-oriented programming document⁵⁵. In addition, the EUAA proposal reiterates the transmission and presentation of an annual report on the situation of asylum

42 See art. 20(12), EBCG Regulation.

43 See art. 39(13), EBCG Regulation.

44 See art. 54(11), EBCG Regulation.

45 See art. 64(1), EBCG Regulation. The programming document becomes definitive after the final adoption of the general budget potentially following adjustments (see art. 64(2), EBCG Regulation).

46 See art. 64(3), EBCG Regulation.

47 Indeed, art. 64(1) does not set an explicit obligation upon Frontex to follow the views of the European Parliament.

48 This, however, does not apply to the annual programming for the following year (see art. 64(1), EBCG Regulation).

49 See art. 64(5), EBCG Regulation.

50 The reports rendered public by Frontex have indeed been persistently criticized by NGOs as being reduced to mere statistical data and, thus, as not containing information on the essence of the work of this agency.

51 The Commission’s Guidelines regarding key performance indicators related to operational objectives seem indeed to be more process-related: they focus, on the one hand, on the timeliness of the submission of the draft annual working program and programming document and of the achievement of the objectives set in these documents and, on the other hand, on the “percentage of completion” of the relevant activities (see Commission, Guidelines on KPIs, p. 4). See F. BLANC, G. OTTIMOFIORE, “The interplay of mandates and accountability in enforcement within the EU”, in M. SCHOLTEN, M. LUCHTMAN (eds.), *Law Enforcement by EU Authorities: Implications for Political and Judicial Accountability*, Cheltenham, Edward Elgar, 2017, pp. 276-277.

52 See art. 12(1), 29(1d), EASO Regulation.

53 See art. 29(1c), EASO Regulation. Recital 18, EASO Regulation clarifies that “(t)he Executive Director should also present the annual report to the European Parliament”.

54 See art. 29(1f), EASO Regulation.

55 See art. 41(1, 2, 3), EUAA Proposal.

in the EU before the European Parliament⁵⁶ and the transmission of a consolidated annual activity report⁵⁷, that will also be presented to the institution by the EUAA's Executive Director.⁵⁸

Following the trend of enhanced accountability before the European Parliament, the EBCG regulation, additionally, allows for more systematic hearings of the Executive Director of Frontex: he/she may indeed not only be invited to report on the carrying out of his/her tasks before the European Parliament but also to make a statement before it “if requested and to report to it regularly”.⁵⁹ The seemingly increased frequency envisaged by the EBCG regulation is particularly relevant in the case of Frontex, whose officials have not always been available for hearings before the LIBE committee.⁶⁰ In addition, the object of such hearings is broadly defined since, according to the EBCG regulation, they include “reporting on the implementation and monitoring of the fundamental rights strategy, the annual activity report of the Agency for the previous year, the work program for the following year and the Agency's multiannual programming or any other matter related to the activities of the Agency”.⁶¹ When it comes to the EASO, its Executive Director reports to the European Parliament on the performance of his/her duties when invited,⁶² an obligation that is maintained in the EUAA proposal.⁶³ Nevertheless—in a “misalignment” that is typical for European agencies—⁶⁴ the Executive Directors of Frontex and of the EASO themselves are not accountable before the European Parliament for their performance but to the agencies' Management Board,⁶⁵ with relevant sanctions seemingly being an *ultimum refugium* for extreme cases.⁶⁶

The progressive refinement of instruments of political accountability in the case of these two agencies and, especially, their direct link to the budgetary discharge procedure highlights the importance of this second facet of accountability before the European Parliament.

B. Through financial accountability spilling over to governance issues

While not necessarily being a straightforward means of ensuring political accountability, the “power of the purse” held by the European Parliament in the context of the budgetary discharge procedure is a particularly effective means of exercising political pressure on European agencies

56 See art. 40(1m), EUAA Proposal.

57 See art. 40(1c), EUAA Proposal.

58 See art. 65(2), EUAA Proposal.

59 See art. 68(2), EBCG Regulation.

60 On the recurrent refusal of Frontex senior officials to participate in hearings organized by the LIBE committee in the past, see House of Lords European Union Committee, 9th Report of Session 2007-2008, *Frontex: the EU external border agency*, para. 85.

61 See art. 68(2), EBCG Regulation.

62 See art. 31(3), EASO Regulation.

63 See art. 46(3), EUAA Proposal.

64 As it has been explained by M. SCHOLTEN: “(t)he missing interplay between individual accountability mechanisms seems to be intertwined with the fact that EU agencies operate in a multi-principal environment. While EU agencies may be subject to accountability mechanisms to ensure all three stages of accountability, not all accountability obligations may exist in relation to the same representative institution, the Council or the European Parliament”, see M. SCHOLTEN, *op. cit.*, p. 162.

65 See art. 68(4), EBCG Regulation; art. 31(1), EASO Regulation. See, also, art. 45(8), EUAA Proposal.

66 As is evidenced by the example of the former Director of EASO who resigned—amidst an ongoing investigation on alleged instances of mismanagement by the OLAF and alleged accusations of “psychological violence”—rather than await a formal decision on his removal by the EASO's Management Board, see EASO, EASO Management Board appoints interim Executive Director, 06.06.2018, available at <<https://www.easo.europa.eu/news-events/easo-management-board-appoints-interim-executive-director>> (last accessed 07.07.2018). See, also, J. BARIGAZZI, EU asylum agency in disarray amid alleged “psychological violence”, 09.05.2018, available at <<https://www.politico.eu/article/eu-asylum-agency-in-disarray-amid-alleged-psychological-violence-jose-carreira-olaf/>> (last accessed 07.07.2018).

whose budget is composed of Union's contributions and grants chargeable to the general budget of the European Union.⁶⁷ Given the fact that their budgetary discharge can be postponed or even refused,⁶⁸ European agencies that strive to secure resources in a dire budgetary context⁶⁹ are receptive to the individual or horizontal resolutions that are adopted by the European Parliament in the context of this procedure. Interestingly, while *a priori* touching upon budgetary conformity and performance, these resolutions tend to spill over to broader governance and accountability issues.⁷⁰

The budgets of Frontex and of the EASO, as adopted by their Management Boards,⁷¹ indeed consist primarily of contributions and subsidies from the European Union's budget.⁷² Contrary to other European agencies that have been suffering from severe resource strains,⁷³ the budget of both agencies has known considerable increases in the context of the effort made by the European Union to manage the migration crisis.⁷⁴ Regardless of this increase, the budgetary planification of Frontex has known difficulties throughout the years due to the lack of willingness of the Member States to provide it with equipment and material,⁷⁵ while its budget has been plagued with chronic carry-overs⁷⁶. The European Parliament has been rather lenient on such issues despite concerns with the budgetary principle of annuality.⁷⁷

67 On the budget of European agencies, see *s.n.*, Analytical Fiche N° 20, Funding and budget revenues of agencies, available at <https://europa.eu/european-union/sites/europa.eu/files/docs/body/fiche_20_sent_to_ep_cons_2011-07-20_en.pdf> (last accessed 07.07.2018).

68 The political pressure exercised by the European Parliament when discussing about postponing or refusing the budgetary discharge of a European agency can be very effective. The European Parliament has already refused to give budgetary discharge to the CEPOL in October 2010 due to the irregularities that have been identified by the European Court of Auditors, see European Parliament, Decision of 7 October 2010 on discharge in respect of the implementation of the budget of the European Police College for the financial year 2008, C7-0198/2009-2009/2127(DEC). The European Parliament has subsequently postponed the budgetary discharge of this agency for the year 2009, see European Parliament, Decision of 10 May 2011 in respect of the implementation of the budget of the European Police College for the financial year 2009, C7-0241/2010 – 2010/2181(DEC).

69 In the perspective of a general budget reduction post-Brexit and given the 5% staff reduction that has already been imposed on European agencies in the years 2013-2017, see Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, 02.12.2013, point 27.

70 Indeed, “in the context of the discharge procedure, the discharge authority stresses the particular importance of further strengthening the democratic legitimacy of the Union institutions by improving transparency and accountability, and implementing the concept of performance-based budgeting and good governance of human resources”, see European Parliament, Resolution of 27 April 2017 on discharge in respect of the implementation of the budget of the European Union agencies for the financial year 2015: performance, financial management and control (2016/2206(DEC)), P8_TA(2017)0155, point B.

71 See art. 62(2), EBCG Regulation; art. 29(1g), 34(8), EASO Regulation.

72 See art. 75(1), EBCG Regulation; art. 33(3), EASO Regulation.

73 As is, for example, the case of the Agency for the Cooperation of Energy Regulators facing considerable resource strains due to the fact that—contrary to the example of Frontex—additional powers delegated to it have not been accompanied by an equivalent increase of its resources, see ACER, Recommendation N° 1/2016 of 30 May 2016 on ensuring the independence of the Agency for the Cooperation of Energy Regulators and of National Regulatory Authorities, para. 1.

74 According to the European Council on Refugees and Exiles, in “(t)he amended budget 2017 the total revenue for Frontex has more than doubled between 2015 and 2017 to a total of 302 million Euros. In the one-year period following the Border and Coast Guard regulation alone the agency has grown to a staff size of 488 with a goal of 1000 employees by 2020. Comparatively the European Asylum Support Office (EASO) budget of 73 million Euros is around one fourth of Frontex”, see ECRE, Migration control top priority at Member State level—substantial growth of EU Agency Frontex, 13.10.2017, available at <<https://www.ecre.org/migration-control-top-priority-at-member-state-level-substantial-growth-of-eu-agency-frontex/>> (last accessed 07.07.2018).

75 See European Parliament Resolution, Resolution of 23 April 2009 with observations forming an integral part of the Decision on discharge in respect of the implementation of the budget of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2007 (C6-0445/2008)2008/2272(DEC)), points 15-18; European Parliament, Resolution of 5 May 2010 with observations forming an integral part of its Decision on discharge in respect of the implementation of the budget of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2008 (C7-0199/2009 – 2009/2128(DEC)), point 18.

76 The European Parliament has been expressing its concern regarding the high level of carry-overs and cancellations since the first years of functioning of Frontex, see, for example, European Parliament, Resolution of 10 May 2011 with observations forming an integral part of its Decision on discharge in respect of the implementation of the budget of the European Agency for the Management of the Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2009 (C7-0242/2010-2010/2182(DEC)), points 8-13.

77 The European Parliament had initially stressed that “a high level of carry-overs and cancellations is indicative of the inability of the Agency to manage so large an increase in its budget” and wondered “whether it would not be more responsible for the budgetary authorities, in future, to take greater care in deciding on increases in the Agency's budget in the light of the time needed to carry out the new activities”, see European

In any event, the role of the European Parliament in the context of the budgetary discharge procedure has been critical, first of all, in enhancing the political accountability of European agencies in general and, by way of consequence, of Frontex and of the EASO in particular. The European Parliament has, indeed, insisted on European agencies improving the quality of their reporting by introducing a standard chapter on issues related to transparency, accountability and integrity in their annual activity report.⁷⁸ It has also pushed for the introduction of “comprehensive indicators” allowing to measure the overall results and efficiency of the European agencies’ activities and to “support decisions of the budgetary authority on budget and staff allocation”.⁷⁹ In this vein, the European Parliament has in particular insisted on the need to specifically improve access to data on the impact of the operations of Frontex in order to render the reporting of this agency more outcome-oriented.⁸⁰ As previously discussed, this general trend has started to find its way in the founding regulations of the two agencies.

Secondly, following up on the Common approach of the institutions on decentralized agencies,⁸¹ the European Parliament has used the budgetary discharge procedure in order to push forward a “horizontal” issue that is critical for the transparency and trust in the action of European agencies:⁸²

Parliament, Resolution of 5 May 2010 with observations forming an integral part of its Decision on discharge in respect of the implementation of the budget of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2008, (C7-0199/2009-2009/2128(DEC)), point 5. More recently, it has, however, followed a more nuanced approach considering that carry-overs “are an inevitable result of the Agency performing its duties” in a context where unexpected events occur at the borders and that the multiannual nature of the Agency’s operations could justify the carry-overs which “do not necessarily indicate weaknesses in budget planning and implementation and are not always at odds with the budgetary principle of annuality”, see respectively, European Parliament, Resolution of 3 April 2014 with observations forming an integral part of its Decision on discharge in respect of the implementation of the budget of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2012 (C7-0318/2013 – 2013/2230(DEC)), point 8; European Parliament, Resolution of 27 April 2017 with observations forming an integral part of the decision on discharge in respect of the implementation of the budget of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (now European Border and Coast Guard Agency (“Frontex”)) for the financial year 2015 (2016/2179(DEC)), point 10. Nevertheless, the European Parliament has still insisted that budget monitoring can be improved (see European Parliament, Resolution of 29 April 2015 with observations forming an integral part of the decision on discharge in respect of the implementation of the budget of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2013 (2014/2114(DEC)), point 15) and that the agency’s operational programs could be better planned in advance and communicated to the European Court of Auditors (see European Parliament, Resolution of 27 April 2017 with observations forming an integral part of the decision on discharge in respect of the implementation of the budget of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (now European Border and Coast Guard Agency (“Frontex”)) for the financial year 2015 (2016/2179(DEC)), point 10).

78 See European Parliament, Resolution of 28 April 2016 with observations forming an integral part of the decision on discharge in respect of the implementation of the budget of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2014 (2015/2181(DEC)), point 21.

79 See European Parliament, Resolution of 27 April 2017 on discharge in respect of the implementation of the budget of the European Union agencies for the financial year 2015: performance, financial management and control (2016/2206(DEC)), points 16 and 56. In the specific case of Frontex, the European Parliament has noted with concern that “the majority of Frontex operational programs lack quantitative objectives and specific target values for the joint operations; notes with concern that this, together with insufficient documentation from cooperating countries, might hamper the ex post evaluation of the effectiveness of joint operations in the long term”, see European Parliament, Resolution of 27 April 2017 with observations forming an integral part of the decision on discharge in respect of the implementation of the budget of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (now European Border and Coast Guard Agency (“Frontex”)) for the financial year 2015 (2016/2179(DEC)), point 25.

80 See European Parliament, Resolution of 10 May 2011 with observations forming an integral part of its Decision on discharge in respect of the implementation of the budget of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2009 (C7-0242/2010-2010/2182(DEC)), point 5; European Parliament, Resolution of 5 May 2010 with observations forming an integral part of its Decision on discharge in respect of the implementation of the budget of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2008 (C7-0199/2009 – 2009/2128(DEC)), point 15.

81 See paras. 11, 18, 20, Common Approach, respectively concerning members of the Management Board, the Director and scientific committees; Commission, Guidelines on the prevention and management of conflicts of interest in EU decentralized agencies, 10.12.2013.

82 See European Parliament, Resolution of 27 April 2017 with observations forming an integral part of the decision on discharge in respect of the implementation of the budget of the European Asylum Support Office for the financial year 2015 (2016/2192(DEC)), point 12.

the prevention and management of conflicts of interests,⁸³ viz. of situations “where the impartiality and objectivity of a decision, opinion or recommendation of an Agency is or might be perceived as being compromised by a personal interest held or entrusted to a given individual”.⁸⁴ In this context, the European Parliament has pushed throughout the years for the adoption and publication of the EASO’s policy on prevention and management of conflicts of interest and of related documents regarding the members of its Management Board and of the Executive Director in order to “ensure public oversight and scrutiny of its management”.⁸⁵ The EASO has also proceeded to the implementation of a decision of its Management Board on the prevention of fraud and an anti-fraud strategy⁸⁶ and to the adoption of rules on whistleblowing.⁸⁷ Similarly, Frontex has adopted rules on transparency and potential conflicts of interests of its Management Board, staff and seconded national experts,⁸⁸ an anti-fraud strategy and action plan,⁸⁹ and has been finalizing internal whistleblowing rules.⁹⁰ Taking the issue even further as a co-legislator and aiming to ensure legal certainty,⁹¹ the European Parliament has militated in favor of the new provision finally introduced in the EBCG regulation expressly dedicated to the prevention of conflicts of interest⁹².

Last but not least, accountability in the context of the budgetary discharge procedure has also allowed the European Parliament to touch upon important “sector-specific” issues related to the activities of Frontex and of the EASO. On the one hand, the European Parliament has promoted inter-agency cooperation among AFSJ agencies⁹³ stressing that they “fulfil a distinct and necessary role providing European added value”⁹⁴ and pushing for improved operational efficiency on the

83 See E. CHITI, “Mismanagement by European agencies: concerns, institutional responses, and lessons”, in J.-B. AUBY, E. BREEN, T. PERROUD (eds.), *Corruption and Conflicts of Interest*, Cheltenham, Edward Elgar, 2014, p. 253.

84 See Commission, Guidelines on the prevention and management of conflicts of interest in EU decentralized agencies, *op. cit.*, p. 5.

85 *Ibid.*, point 11; European Parliament, Resolution of 28 April 2016 with observations forming an integral part of the decision on discharge in respect of the implementation of the budget of the European Asylum Support Office for the financial year 2014, (2015/2194(DEC)), point 11.

86 See European Parliament, Resolution of 27 April 2017 with observations forming an integral part of the decision on discharge in respect of the implementation of the budget of the European Asylum Support Office for the financial year 2015 (2016/2192(DEC)), point 10.

87 On the 23rd of February 2017, following pressure exercised by the European Parliament in this respect in the context of the previous year’s budgetary discharge procedure, *ibid.*

88 Namely, the Frontex Staff Code of Conduct, the Code of Conduct for all persons participating in Frontex activities and the Code of Conduct for joint return operations coordinated by Frontex. Following up on remarks made by the European Court of Auditors, the European Parliament has been urging Frontex to also establish relevant rules regarding external experts, internal staff and governing board members involved in the selection and award process of grants and negotiations teams, see European Parliament, Resolution of 27 April 2017 on discharge in respect of the implementation of the budget of the European Union agencies for the financial year 2015: performance, financial management and control (2016/2206(DEC)), points 16, 18; European Court of Auditors, Special Report N° 12/2016, *op. cit.*, p. 30.

89 See European Parliament, Resolution (EU) 2016/1577 of 28 April 2016 with observations forming an integral part of the decision on discharge in respect of the implementation of the budget of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union for the financial year 2014, point 7.

90 See, for example, European Parliament, Resolution of 27 April 2017 with observations forming an integral part of the decision on discharge in respect of the implementation of the budget of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (now European Border and Coast Guard Agency (“Frontex”)) for the financial year 2015 (2016/2179(DEC)), point 17, following up on European Parliament, Resolution (EU) 2016/1577 of 28 April 2016, *op. cit.*, point 9.

91 The introduction of relevant provisions in the founding regulations of all European agencies is clearly envisaged by the European Parliament, see Resolution of 27 April 2017 on discharge in respect of the implementation of the budget of the European Union agencies for the financial year 2015, *op. cit.*, point 44. When it comes to the EASO, the adoption of an antifraud strategy and of rules on the prevention and management of conflicts of interest is explicitly stated among the functions of the Management Board (with respect to its members) in the EUAA proposal, see art. 40(1f, g), EUAA proposal.

92 See art. 78, EBCG Regulation. Internal rules for the prevention and management of conflicts of interest are adopted by the Management Board of Frontex with respect to its members, see art. 62(2q), EBCG Regulation.

93 The clustering of European agencies, namely their cooperation in the context of a thematic group, has indeed been promoted by the European Parliament, see European Parliament, Resolution of 27 April 2017 on discharge in respect of the implementation of the budget of the European Union agencies for the financial year 2015, *op. cit.*, point 7.

94 *Ibid.*, point 58.

ground.⁹⁵ It has, thus, called for an effective cooperation of Frontex with the other AFSJ agencies,⁹⁶ for exchange of information allowing to “improve the effectiveness of Frontex grant-funded joint operations”⁹⁷ and it has welcomed the operational cooperation agreement of Frontex with Europol.⁹⁸ In the same vein, the European Parliament has also greeted the cooperation between the EASO and the European Migration Network Return Expert Group on the return of failed asylum seekers.⁹⁹

On the other hand, the European Parliament has touched upon issues related to the respect of fundamental rights in the context of the two agencies’ activities. For example, it has welcomed the EASO’s initiatives related to asylum-seeking children, including unaccompanied minors, such as the launch of the EASO Network on the Activities on Children.¹⁰⁰ When it comes to Frontex, it has joined similar remarks made by the Frontex Consultative Forum on Fundamental Rights and by the Commission,¹⁰¹ in requiring both “adequate” resources to be allocated to the Fundamental Rights’ Officer of Frontex and “staff for setting up a complaint mechanism and for further developing and implementing the Agency’s strategy to monitor and ensure the protection of fundamental rights”.¹⁰²

Despite the prominent role of the European Parliament in ensuring the political accountability of these two agencies, the analysis made so far only partially reflects the reality of the accountability regime foreseen in the case of these two agencies: a much less documented aspect—or prospect—of it relates to political accountability before bodies deriving their legitimacy from the national level.

II. Political accountability before the Council of ministers and national parliaments

Operating in a multi-principal environment, European agencies are also politically accountable before the Council of ministers, a vector of indirect democratic legitimacy in the European integration process due to its composition. Indeed, the founding regulations of Frontex and of the EASO naturally recognize the Council as a political accountability forum (A), with *de jure* similar powers to the ones of the European Parliament¹⁰³ but a *de facto* rather opaque role. Finally, while Frontex and the EASO currently escape the trend of recognizing national parliaments as accountability fora for AFSJ agencies, a similar evolution at some point in the future may not be excluded (B).

95 *Ibid.*, point 57.

96 See European Parliament, Resolution of 27 April 2017 with observations forming an integral part of the decision on discharge in respect of the implementation of the budget of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (now European Border and Coast Guard Agency (“Frontex”)) for the financial year 2015 (2016/2179(DEC)), point 30.

97 The European Parliament has also regretted difficulties in assessing the actual impact of joint operations, *ibid.*, point 24.

98 *Ibid.*, point 30.

99 See European Parliament, Resolution of 27 April 2017 with observations forming an integral part of the decision on discharge in respect of the implementation of the budget of the European Asylum Support Office for the financial year 2015 (2016/2192(DEC)), point 21.

100 *Ibid.*, point 17.

101 On this issue, see, also, Frontex Consultative Forum on Fundamental Rights, Fifth Annual Report, Warsaw, 2018, pp. 5-6; Commission, Fourth Report to the European Parliament, the European Council and the Council on the operationalization of the European Border and Coast Guard, COM (2017) 325 final, 14.06.2017, point 3.4; LIBE Committee, Mission Report following the LIBE Mission to the European Border and Coast Guard Agency (Frontex) in Warsaw, Poland (20-21 February 2017), 22.03.2017, pp. 13-14.

102 See European Parliament, Resolution of 27 April 2017 with observations forming an integral part of the decision on discharge in respect of the implementation of the budget of (Frontex), *op. cit.*, point 29.

103 In terms of the consequences attached to account giving, the Council is a co-legislator that will proceed, alongside the European Parliament, in a potential future revision of the founding regulations of these two European agencies. Its position in the context of negotiations can be informed by the evaluation report prepared by the Commission, see art. 81(2), EBCG Regulation.

A. An opaque role of the Council of ministers

The Council of ministers' role as a political accountability forum, as outlined in the European agencies' founding regulations, is essentially based on examining their annual work programs and annual activity reports and conducting hearings.¹⁰⁴ Both the EBCG and the EASO regulations indeed organize accountability before the Council in a manner similar to what is foreseen for the European Parliament—albeit not identical.¹⁰⁵ On the one hand, according to the EBCG regulation, Frontex is accountable to the Council¹⁰⁶ and must report to it on its activities “to the fullest extent”,¹⁰⁷ including by forwarding to it its annual activity report¹⁰⁸ and its single programming document.¹⁰⁹ Nevertheless, it is only the European Parliament—and thus not the Council—that is consulted before the adoption of the programming document by the agency.¹¹⁰ On the other hand, while under its founding regulation, the EASO is under the obligation to transmit to the Council the same documents as the ones transmitted to the European Parliament¹¹¹, the EUAA proposal follows the same path as the EBCG regulation regarding reporting obligations, by also providing for a consultation exclusively of the European Parliament on the programming document.¹¹² Furthermore, while the EUAA proposal definitely extends the presentation of the annual report on the situation of asylum in the Union also to the Council¹¹³, it reserves the future presentation of the agency's annual activity report by the Executive Director of the EUAA exclusively to the European Parliament.¹¹⁴ Inversely, while information rights on “problematic” situations are similar to the ones foreseen for the European Parliament,¹¹⁵ the Council is envisaged as the institution that will exercise political pressure on the Member States so that they provide much needed input to Frontex for its activities, for example by “seek(ing) commitments” from them in case of a severe shortage of boards guards.¹¹⁶

104 On the particularities of the Council's role in the political accountability of Europol and Eurojust, see M. BUSUIOC, *European Agencies: Law and Practices of Accountability*, *op. cit.*, pp. 140, 144-145.

105 The European Parliament also holds a more prominent role in the appointment procedure for the Executive Director of Frontex (see art. 69(1, 2), EBCG Regulation).

106 See art. 7, EBCG Regulation.

107 See recital 56, EBCG Regulation.

108 See art. 62(2i), EBCG Regulation.

109 See art. 62(j), EBCG Regulation.

110 See art. 64(1), EBCG Regulation.

111 Namely, its annual general report and its work program (see art. 29(1c), (1f), EASO Regulation). EASO's annual report on the situation of asylum in the European Union is to be presented to the European Parliament, whereas the Council *may* request that the report is presented to it as well (see art. 29(1d), EASO Regulation).

112 See art. 41, EUAA Proposal.

113 The EUAA proposal puts the European Parliament and the Council on an equal footing in this respect by stating that this report “shall be presented to the European Parliament, the Council and the Commission” (see art. 40(1m), EUAA Proposal).

114 See art. 65(2), EUAA Proposal.

115 More in detail, the EUAA proposal foresees that the Council is informed, alongside the European Parliament, of the progress made by a Member State on an action plan elaborated to address shortcomings of its asylum or reception systems (see art. 15(4), EUAA Proposal). Under the EBCG regulation the Council is kept informed by the agency regarding the composition and deployment of the EBCG teams and the technical equipment pool, while Frontex also submits general risk analyses and the results of its vulnerability assessment to the Council and informs the institution if it “has substantial additional financial needs due to a situation at the external borders” (see respectively art. 11(2), 13(9), 14(4), EBCG Regulation). The Council is not formally recognized an information right on the external activities of the two agencies, but it is the Management Board, composed of Member States' representatives, that approves working arrangements with third countries (see art. 62(2z), EBCG Regulation; art. 40(1aa), (bb), EUAA proposal).

116 Namely when needs are not met by the rapid reaction pool and the deployment of European Border and Coast Guard teams (see art. 20(9), EBCG Regulation).

The European Parliament seems to be the main political accountability forum also regarding hearings: while both the European Parliament and the Council may invite the Executive Director of Frontex to report on his/her tasks, the Executive Director is only expected to make a statement before the European Parliament if requested and to report to it regularly,¹¹⁷ as it has already been noted. In the same vein, when it comes to the EASO, its founding regulation provides that the Executive Director “*shall*” report to the European Parliament, while the Council “*may*” invite him/her to report,¹¹⁸ a divergence in the formulation that is reiterated in the EUAA proposal.¹¹⁹

While the textual analysis reveals that the Council *de jure* plays a somewhat lesser role as a political accountability forum compared to the European Parliament, much less is known as to the real practice of accountability before it.¹²⁰ A first feature that seems to stand out in practice reflects the Council of ministers’ own structure as an institution, which includes not only its formations composed of ministers but also lower structures, such as committees and working groups. As it has been demonstrated by empirical research, meetings of European agencies’ representatives before the Council’s lower structures might in practice complement or even replace the actual meetings with its ministerial formations.¹²¹

In the case of the AFSJ agencies, the Standing Committee on Operational Cooperation on Internal Security (COSI), created by the Treaty of Lisbon in order to ensure that “operational cooperation on internal security is promoted and strengthened within the Union”,¹²² stands out among the Council’s lower structures. Representatives of the AFSJ agencies, including Frontex and—potentially—the EASO,¹²³ are allowed to attend its meetings as observers upon invitation.¹²⁴ The agencies also regularly report to it regarding their operational activities,¹²⁵ since COSI is entrusted with ensuring consistency

117 See art. 68(2), EBCG Regulation.

118 See art. 31(3), EASO Regulation.

119 See art. 46(3), EUAA Proposal.

120 Empirical research on the accountability of European agencies indeed reveals that merely examining the letter of their founding regulations does not suffice and that delving into actual practice is necessary. M. BUSUIOC, for example, notes with respect to the European Union Aviation Safety Agency (EASA) and the Office for Harmonization in the Internal Market (OHIM) that “although the EASA regulation provides for the possibility of hearings before the Council, such hearings are, in practice, not undertaken. In the case of OHIM, although formally the Council has the power to “exercise disciplinary authority”, the president of OHIM reported that during his whole time in office, spanning two terms, he never had to appear before the Council. [...] in fact, even in the case of a highly formal moment, i.e. the appointment of the president of the Office, where the Council is the appointing authority, the president was not required to appear before the Council prior to appointment”, M. BUSUIOC, *European Agencies: Law and Practices of Accountability*, *op. cit.*, pp. 141-142.

121 M. BUSUIOC explains that in practice “(e)ven when they do take place, hearings at the Council level are more like “ritual dances” given the fact that a significant part of the issues had already been decided in the lower structures and the ministers simply rubber stamp these decisions” and that, consequently, “(a)ll in all the scrutiny by the Council is likely to imply scrutiny by its lower structures which are not famous for their transparent operation”, see M. BUSUIOC, *id.*, pp. 143-144.

122 See art. 71 TFEU and art. 3, Council Decision 2010/131/EU of 25 February 2010 on setting up the Standing Committee on Operational Cooperation on Internal Security, OJ 2010 L 52/50 (COSI Council Decision). The establishment of the COSI, composed of representatives from each Member State Ministry of the Interior and/or Justice, officials from the European Commission and from the European Action Service, resulted from a willingness to rationalize the working groups and structures of the Council. In that context, the COSI has been qualified as “the main transformation experienced within the Council in the field of internal security, following the entry into force of the Lisbon Treaty”, see A. SCHERRER, J. JEANDESBOZ, E.-P. GUITTET, *Developing an EU Internal Security Strategy, fighting terrorism and organized crime*, Study for the European Parliament, Brussels, 2011, p. 38.

123 See art. 5(1), COSI Council Decision, which provides for such a participation of representatives of Europol, Eurojust, Frontex, CEPOL and of other relevant EU bodies—a general reference that could serve as a basis for the participation of representatives of the EASO.

124 See art. 5(1), COSI Council Decision.

125 As it has been noted “(t)he process is two-sided. On the one hand, COSI’s work on the EU “policy cycle” in internal security has placed it in charge of a number of programmatic activities such as devising Operational Action Plans [...]. On the other, EU JHA agencies seek to promote their own image and way of working as an important contribution to internal security policies”, see A. SCHERRER, J. JEANDESBOZ, E.-P. GUITTET, *op. cit.*, p. 42.

in their action.¹²⁶ Further information on such accountability practices is, however, lacking. For example, Frontex indeed states in its official website that it reports on a regular basis not only to the Justice and Home Affairs Council itself but also to a number of its committees and working groups.¹²⁷ At the same time, it remains difficult to establish whether in such instances the agency indeed gives account or if a number of such meetings is also related to the agency merely providing technical advice to the Council's lower structures as an expert body.¹²⁸

This lack of transparency seems to be a more general characteristic of political accountability before the Council. Neither the founding regulations of these two agencies nor the Rules of Procedure of the Council foresee detailed rules regarding the frequency of visits made by the Council's representatives to the agencies or of the hearings of their Executive Directors before the Council or regarding the actual procedure that is followed when European agencies give account.¹²⁹ While the fact that the migration crisis has been at the top of the Council's political agenda has certainly increased the frequency of such meetings, actual practices of accountability, thus, appear to be "fluid" depending on "patterns of previous hearings, priorities and interests of the Council Secretariat and the current Presidency as well as the overall level of satisfaction with agency performance".¹³⁰

B. A potential role for national parliaments

A final perspective that needs to be further explored relates to a potential role of national parliaments as political accountability fora for Frontex and for the EASO – especially given the fact that the Treaty of Lisbon already recognizes a more pronounced role for national parliaments in the context of the AFSJ.¹³¹ Indeed, while the relationship between national parliaments and European agencies is traditionally conceived as being primarily an indirect one—through the control of national executives for the action of national representatives in the Management Boards of European agencies—¹³² a significant transformation of the role of national parliaments *vis à vis* the AFSJ agencies seems to be underway.¹³³

126 See art. 5(2), COSI Council Decision.

127 Especially the COSI, the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) and the Working Party on Frontiers, see <<https://frontex.europa.eu/partners/eu-partners/council/>> (last accessed 07.07.2018).

128 Frontex itself does not make a clear distinction between the two, see <<https://frontex.europa.eu/partners/eu-partners/council/>> (last accessed 07.07.2018).

129 The Council's Rules of Procedure indeed only refer to the need for COREPER to ensure "the observance of rules establishing the powers of Union [...] agencies" (see art. 19(1b), Council Rules of Procedure) and the recourse to the silence procedure for the decision "to consult [...] agencies wherever such consultation is required by the Treaties", see 12(2a), Council Rules of Procedure.

130 See M. BUSUIOC, *European Agencies: Law and Practices of Accountability*, *op. cit.*, p. 143. M. BUSUIOC, for example, explains that despite the absence of relevant provisions in the founding instruments of Europol and Eurojust, follow-ups on their annual reports and hearings before the Council take place *de facto*, see M. BUSUIOC, *ibid.*, pp. 142-143.

131 See art. 12c TEU, 70 TFEU.

132 A. WILLS and M. VERMEULEN give the following examples: "The UK's House of Lords for instance has given recommendations to the UK Government on its policy towards these bodies. It encouraged the Home Office to encourage the Serious Organized Crime Agency (SOCA) to insert more info into Europol's database. Another example is the Dutch Second Chamber's request that the Dutch government make necessary resources available for specific operations of Frontex in guarding the Southern borders of the EU", see A. WILLS, M. VERMEULEN, *Parliamentary oversight of security and intelligence agencies in the European Union*, Study, Brussels, European Parliament, 2011, p. 66, available at <<http://www.europarl.europa.eu/document/activities/cont/201109/20110927ATT27674/20110927ATT27674EN.pdf>> (last accessed 07.07.2018).

133 This transformation is all the more interesting since, until fairly recently, the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC) confirmed that twenty-two out of thirty-eight national parliaments "have never carried out an overall consideration of the role, functions and accountability mechanisms of EU agencies, or of any specific agency", see COSAC, Twenty-second Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny, 04.11.2014, p. 49.

In the absence of a fully-blown interparliamentary conference covering the entire field,¹³⁴ the direct implication of national parliaments in the political accountability of AFSJ agencies has taken two forms¹³⁵. First of all, the form of an interparliamentary conference, i.e. of the Joint Parliamentary Scrutiny Group (JPSG), whose mission is to “politically monitor Europol’s activities in fulfilling its mission”.¹³⁶ This “unprecedented political accountability mechanism”,¹³⁷ composed of members of national parliaments and members of the European Parliament’s LIBE committee, constitutes the first ever interparliamentary conference to have been entrusted with such an innovative mission as opposed to the mere exchange of best practices and dialogue.¹³⁸ Secondly, accountability arrangements, such as reporting obligations and hearings—this time before national parliaments *individually*—have been introduced in the founding regulation of the European Public Prosecutor’s Office (EPPO)¹³⁹ and are currently being discussed in the context of the negotiations for a Eurojust founding regulation.¹⁴⁰

The proliferation of such direct accountability arrangements before national parliaments for several AFSJ agencies naturally raises the question of their potential future diffusion to Frontex and to the EASO. Even though arrhythmia is a typical feature of the agencification process, several factors seem to have contributed to the absence of similar arrangements in the case of these two European agencies. The first one seems to be a mere “timing” factor. The above-mentioned direct accountability regime finds a sound legal basis in the Treaty of Lisbon: indeed, article 88(2) TFEU provides for the “scrutiny of Europol’s activities by the European Parliament, *together with national Parliaments*”, whereas article 85(1) TFEU requires “*involving* the European Parliament and national Parliaments in the evaluation of Eurojust’s *activities*”.¹⁴¹ These provisions, however, date back to the defunct

134 Due to the opposition of the European Parliament which maintained that the multiplication of interparliamentary conferences needed to be contained and that the ordinary legislative procedure applicable in this field post-Lisbon allows national parliaments to focus on the control of their governments’ position in the Council, see I. COOPER, “The emerging Order of Interparliamentary Cooperation in the EU: Functional Specialization, the EU Speakers Conference, and the Parliamentary Dimension of the Council Presidency”, RSCAS 2017/05, p. 6.

135 On this topic, see C. VLACHOU, “La reddition des comptes démocratique des agences de l’Union européenne: quel rôle pour les parlements nationaux”, *op. cit.*, C. VLACHOU, “The democratic accountability of European agencies: which role for national parliaments?”, *op. cit.*

136 See art. 51, Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JAI, 2009/934/JAI, 2009/935/JAI, 2009/936/JAI et 2009/968/JAI, OJ L 135, 24.05.2016, p. 53-114 (Europol Regulation).

137 See M. SCHOLTEN, “(R)evolution in the EU System of Political Accountability: Joint Parliamentary Scrutiny mechanism”, 30.05.2016, available at <<http://blog.renforce.eu/index.php/nl/2016/05/30/revolution-in-the-eu-system-of-political-accountability-joint-parliamentary-scrutiny-mechanism-2>> (last accessed 07.07.2018).

138 The creation of an interparliamentary conference is not innovative *per se*. Indeed, two “generalistic” interparliamentary conferences, namely the COSAC and the Conference of Speakers of the European Union Parliament, have been long facilitating the exchange of information and best practices among their members. Following the entry into force of the Treaty of Lisbon, “functionally specialized” interparliamentary conferences, i.e. the Interparliamentary Conference on the Common Foreign and Security Policy and the Common Security and Defence Policy of the EU (CFSP-CSDP Conference) and the Interparliamentary Conference on Stability, Economic Coordination and Governance in the European Union (SECG Conference) have also been set up. On interparliamentary cooperation, see C. HEFTLER, K. GATTERMANN, “Interparliamentary Cooperation in the European Union: Patterns, Problems and Potential”, in C. HEFTLER *et al.* (eds.), *The Palgrave Handbook of National Parliaments and the European Union*, Basingstoke, Palgrave Macmillan, 2015, pp. 94-115; N. LUPO, C. FASONE, *Interparliamentary Cooperation in the Composite European Constitution*, Oxford, Hart Publishing, 2016; O. ROZENBERG, *The Role of National Parliaments after Lisbon: Potentialities and Challenges*, Brussels, European Parliament, 2017.

139 See art. 7(1), (2), Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office (“the EPPO”) (EPPO Regulation).

140 See art. 55(3), (4), Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust), 17.07.2013, COM(2013) 535 final (Eurojust Regulation Proposal). The two co-legislators have reached a political agreement on the Eurojust proposal on the 19th of June 2018, see <<http://www.consilium.europa.eu/en/press/press-releases/2018/06/20/eu-agrees-new-rules-for-a-more-efficient-and-effective-eurojust/>> (last accessed 07.07.2018).

141 Article 86(1) TFEU provided for the establishment of a European Public Prosecutor’s Office “from Eurojust”, thus establishing a particular link between the two. In this respect, see, among others, A. WEYEMBERGH, C. BRIÈRE, “Relations between the EPPO and Eurojust: still a privileged partnership?”, in W. GEELHOED, L. ERKELENS, A. MEIJ (eds.), *Shifting Perspectives on the European Public Prosecutor’s Office*, T.M.C. The Hague,

Treaty establishing a Constitution for Europe,¹⁴² namely before Frontex and the EASO actually took up their responsibilities—respectively in 2005 and 2011—and prior to the subsequent significant reinforcement of their powers. A second relevant factor could relate to the “intergovernmental” past of European agencies such as Europol, which was initially created as an intergovernmental body under the homonymous Convention.¹⁴³ Setting up a joint parliamentary scrutiny mechanism for this “ex-third pillar” agency had already been envisaged since its establishment¹⁴⁴ as a means to compensate for mechanisms of indirect accountability which were widely considered as being ineffective or too difficult to exercise.¹⁴⁵ Lacking an intergovernmental past that would have led to similar discussions since their birth, the accountability regimes of Frontex and of the EASO have not followed a similar path.¹⁴⁶

Could national parliaments be a missing link in the political accountability of Frontex and of the EASO?¹⁴⁷ In discussing such a perspective, it is interesting to note that the absence of a relevant specific provision in primary law is not necessarily problematic *per se*. On the one hand, if political accountability before an interparliamentary conference were to be envisaged in their case, extending the mandate of the JPSG or—in a much less efficient manner—using the “generalistic” legal basis available in the treaties for the creation of a new interparliamentary conference¹⁴⁸ could suffice. Despite the absence of an explicit relevant legal basis in the Treaties—and, probably, as an expression

T.M.C. Asser Press, 2018, pp. 171-186; C. DEBOYSER, “European Public Prosecutor’s Office and Eurojust: Love match or arranged marriage?”, in L. ERKELENS, A. MEIJ, M. PAWLIK (eds.), *The European Public Prosecutor’s Office: An Extended Arm or a Two-Headed Dragon?*, The Hague, T.M.C. Asser Press, 2014, pp. 79-100.

142 See art. I-42(2), Treaty establishing a Constitution for Europe.

143 See Council Act of 26 July 1995 drawing up the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention), OJ C 316, 26.11.1995, p. 1. See R. DE GARIBAY, “Coordination practices in the parliamentary control of justice and home affairs agencies: the case of Europol”, in B. CRUM, J.-E. FOSSUM (eds), *Practices of interparliamentary coordination in international politics. The European Union and beyond*, ECPR Press, University of Essex, Wivenhoe Park, 2013, pp. 87-103.

144 The establishment of a body composed of national and European members of the Parliament, entitled “PARLOPOL”, had been discussed for the first time in the context of an interparliamentary conference on Europol organized by the Dutch Parliament in 2001, see A. VITORINO, “Democratic Control of Europol”, Europol Conference organized by the Senate and House of Representatives of the Dutch States General, 08.06.2001, SPEECH/01/274. See, also, C. FIJNAUT, “Europol and the parliaments of the Member states of the European Union”, in Dutch Parliament (ed.), *From Europol to Parlopol. Interparliamentary conference on democratic control of Europol*, Amsterdam, Boom, 2002, pp. 15-19.

145 As it has been stressed by the Commission regarding Europol: “existing controls through the Parliaments [...] are perceived as being exercised in a manner which is indirect, fragmented and not easy to understand. National Parliaments in particular consider the supervision process *via* the control of their governmental representative on the Board or in the Council to be cumbersome. Moreover, they have found it difficult to coordinate their efforts among each other. National Parliaments may still feel that they lack information about Europol’s work”, see European Commission, Communication to the European Parliament and the Council on the procedures for the scrutiny of Europol’s activities by the European Parliament together with national Parliaments, 17.12.2010, COM(2010)776 final, p. 15. A. WILLS and M. VERMEULEN also explain in this regard: “national parliaments have experienced difficulty in scrutinizing Europol’s work through the national representatives on the Management Board, in finding information and in coordinating their efforts [...]. Some national parliaments (e.g. Latvia, Lithuania and the Czech Republic) invite their national liaison officer to Europol to attend meetings of the relevant parliamentary committee(s) but this practice does not seem to be widespread. [...] it is also not clear to which extent national parliamentary committees examine the role of personnel seconded to the AFSJ bodies”, see A. WILLS, M. VERMEULEN, *op. cit.*, p. 66.

146 Frontex has been set up by Council Regulation (EC) N° 2007/2004 of 26 October 2004 on the legal basis of articles 62(2a) and 66 TEC (Title IV on “Visas, Asylum, Immigration and Other Policies related to free movement of persons”) following a consultation of the European Parliament, as an—at the time—“first pillar” agency. EASO has been set up by the EASO Regulation on the basis of articles 74, 78(1, 2) TFEU in accordance with the ordinary legislative procedure.

147 See European Parliament, Resolution of 25 November 2009 on the Communication from the Commission to the European Parliament and the Council – An area of freedom, security and justice serving the citizen, Stockholm program, point 10, where the European Parliament “calls for the creation of the evaluation system to give Parliament and national parliaments access to information related to the policies (Article 70 of the TFEU) and activities of the internal security committee (Article 71 of the TFEU) as well as of EUROPOL (Article 88 of the TFEU) and Eurojust (Article 85 of the TFEU), together with the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), the European Asylum support Office (EASO) and the Schengen System”. In the same resolution the European Parliament called for “a framework legislative proposal outlining the involvement of the European Parliament and national parliaments in the evaluation of AFSJ policies and of the agencies involved at European level (including the Schengen authorities, Europol, Eurojust, Frontex and the EASO)”, *ibid.*, point 148.

148 Namely article 12 TEU in combination with the Protocol No 1 on the role of national parliaments in the European Union. The creation of a second interparliamentary conference in the Area of Freedom, Security and Justice would obviously lead to unnecessary duplication.

of the active contribution of national parliaments to the good functioning of the Union—¹⁴⁹ accountability arrangements before individual national parliaments have, on the other hand, already been introduced in the founding regulation of the Single Resolution Board, a European agency entrusted with significant powers in the context of the Banking Union.¹⁵⁰ Introducing similar accountability arrangements also in the cases of Frontex and of the EASO would, thus, not be unprecedented.

Such an evolution in their case would, in reality, consolidate an already existing informal trend: according to the 22nd Bi-annual report of the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union, despite the absence of a formalized link, Frontex and the EASO have already attracted the interest of national parliaments.¹⁵¹ The latter have indeed organized informal inquiries, meetings, visits and hearings of the Executive Directors, conducted discussions on annual reports and sent requests for written evidence¹⁵² to the two agencies. in a manner similar—albeit less evident—than the informal accountability practices before the European Parliament which were subsequently consolidated in the founding regulations of other European agencies, such instruments could find their place in the founding regulations of these agencies in the future.¹⁵³

Finally, in terms of the powers entrusted to these agencies, and especially to Frontex, the fact that this agency combines regulatory and operational competencies by ensuring the cooperation of joint operational activities of Member States' border and coast guards does not place it that further apart than other AFSJ agencies: since Frontex also lays “in between” the European Union and Member States in such a politically sensitive field,¹⁵⁴ an implication of national parliaments in its accountability regime could address the very same difficulties met in exercising an indirect control of the national representatives in its Management Board.¹⁵⁵ In addition, the impact of its activities on fundamental rights¹⁵⁶ could—in a manner similar to Europol—¹⁵⁷ serve as a further reason to reinforce its political accountability before national parliaments.

149 See art. 12 TEU. The establishment of these accountability arrangements in the case of the Single Resolution Board seems to be the result of “diffusion”, given the role held by national parliaments as accountability fora in the context of the Single Supervisory Mechanism, see B. BERTRAND, “Les spécificités institutionnelles du contrôle démocratique de la supervision bancaire”, in F. MARTUCCI (dir.), *L'Union bancaire*, Bruxelles, Bruylant, 2016, pp. 99-117.

150 See art. 46, Regulation (EU) N° 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) N° 1093/2010. See, also, C. VLACHOU, “The democratic accountability of the Single Resolution Board: which role for the European Parliament and national parliaments?”, *Revue internationale des services financiers*, n° 1, 2017, pp. 8-18.

151 Right after Europol and Eurojust, see COSAC, 22nd Bi-annual report, *op. cit.*, p. 49.

152 *Ibid.*, pp. 56-58.

153 The process of informal accountability practices emerging before the European Parliament and subsequently being introduced in the text of the founding regulations of European agencies has been well documented in literature, see M. BUSUIOC, *op. cit.*, p. 129.

154 A. WILLS and M. VERMEULEN explain that: “the AFSJ bodies consist of a mix of seconded personnel from the Member States and EU staff members. This unique intergovernmental feature of the AFSJ bodies requires that the European Parliament works closely with national parliaments”, see A. WILLS, M. VERMEULEN, *op. cit.*, p. 18. V. MITSILEGAS also stresses in this respect that “(e)nhanced scrutiny and inter-parliamentary co-operation is essential given the potentially far-reaching consequences action in the fields covered by these bodies may entail and the considerable potential gap in the examination of operational and management action by these bodies. Establishing cooperative scrutiny mechanisms becomes all the more relevant given the increasing difficulties to precisely “pin down” what exactly these EU bodies do in practice”, see V. MITSILEGAS, “Interparliamentary Co-operation in EU Justice and Home Affairs”, Paper prepared for the Conference *Fifty Years of Interparliamentary Cooperation*, Stiftung Wissenschaft und Politik, Berlin, 13 June 2007, p. 7, available at <https://www.swp-berlin.org/fileadmin/contents/products/projekt_papiere/070829mitsilegas_ks.pdf> (last accessed 07.07.2018).

155 See *supra*, footnote 144.

156 See, *supra*, footnote 15.

157 The JPSG indeed ensures the political monitoring of Europol's activities, “including as regards the impact of those activities on the fundamental rights and freedoms of natural persons” (see art. 51, Europol Regulation).

While the involvement of national parliaments in the political accountability of AFSJ agencies is on the rise, the respective recent and current revision of the two agencies' founding regulations excludes such an evolution in the near future. From a "micro" perspective, such accountability arrangements need, in any case, to be put to the test before knowing further diffusion: while certainly facilitating transparency and access to information, the effectiveness of both the JPSG¹⁵⁸ and of the recently established "uncoordinated" accountability arrangements before individual national parliaments will be conditional upon variables such as the interest indeed shown by national parliaments with regard to the activities of European agencies, their level of expertise and the resources and personnel dedicated to the exercise of their role. In the absence of a well-thought diffusion of these arrangements, the risk of an accountability overload for European agencies could not be excluded.¹⁵⁹ From a "macro" perspective, the current anarchic proliferation of accountability arrangements for AFSJ agencies before national parliaments creates a cluttered institutional framework whose rationalization remains uncertain: the political accountability regime for these agencies will largely depend on the dynamics developed between the European Parliament and national parliaments and the success of the above-mentioned mechanisms in practice, the interinstitutional battles that have characterized the agencification process as a whole, and, more generally, the *bras de fer* between the competing views of supranational or intergovernmental integration as to the future of the European Union.

158 On an initial assessment of the JPSG see, more in particular, C. VLACHOU, <<https://eutarn.blogactiv.eu/2018/04/20/the-joint-parliamentary-scrutiny-group-for-europol-a-successful-institutional-innovation/>> (last accessed 07.07.2018).

159 On accountability overload, see, among others, A. HALACHMI, "Accountability Overloads", in M. BOVENS, R. GOODIN, T. SCHILLEMANS (eds.), *The Oxford Handbook of Public Accountability*, Oxford, OUP, 2014, pp. 560-573.