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More Power, More Control: The Legitimizing Role of Expertise in Frontex after the Refugee Crisis

Trym Nohr Fjørtoft

ARENA Centre for European Studies, University of Oslo

t.n.fjortoft@arena.uio.no

ABSTRACT: This article explores how the appeal to depoliticized expertise worked to legitimize increased supervisory and executive power to the European Border and Coast Guard Agency, Frontex, after the 2015 refugee crisis. Frontex is an EU agency operating in a highly salient field, removed from hard-science “gold standards” of evidence, where member states have been reluctant to delegate power and sovereignty. Through a process-tracing case study, this article finds that appeals to technical neutrality, quantification and objective indicators nevertheless were central when a new mandate for the agency was negotiated, giving Frontex unprecedented supervisory and executive power. They were also important resources for member states concerned about Frontex’s increased powers. By focusing on an agency at a remove from the natural-science archetype, this article contributes to the literature on knowledge use in independent agencies. It suggests that technical expertise can be a powerful source of legitimacy even in a field removed from “hard” science.

KEYWORDS: border control, European integration, expertise, Frontex, legitimacy

Introduction

Border control has historically been a core task of the sovereign nation state. The idea of a centralized EU institution in an area considered a core task of the nation state is “a hard sell to most member states” (Boin, Busuioc, and Groenleer 2014, 426). Accordingly, the European Union’s member states have long been reluctant to give up control of their own borders to a supranational entity. Nevertheless, the EU today has a borderless Schengen area and an EU agency for border management: Frontex. In 2016, Frontex got a new mandate

for the third time, turning it into the European Border and Coast Guard Agency (EBCG; Regulation 2016/1624).¹ Despite arguments that legitimation through technical expertise is no longer a tenable strategy in the EU (e.g. McNamara 2018), or that national leaders are hesitant to engage in European integration because of pressure from Euroskeptic parties (Hooghe and Marks 2009; Rauh, Bes, and Schoonvelde 2020), the 2016 mandate delegated *more* supranational power to Frontex and its unelected experts. How did this increase in power for Frontex come about? This article explores the role of appeals to technical expertise in legitimizing increased power to Frontex.

Two new powers are especially important in the 2016 regulation. First, Frontex is granted a supervisory power it did not have before, in the form of Vulnerability Assessments (Article 13). The agency now carries out a yearly assessment of each member state's capacity and border vulnerabilities. This is "a major innovation" (Deleixhe and Duez 2019, 928). Second, a member state's failure to comply with Frontex's vulnerability assessment recommendations may trigger an intervention by the agency. The so-called *right to intervene* (Article 19) gives Frontex the power to deploy border guards to a member state if the functioning of the Schengen area is threatened—subject to a Council decision. This is "unprecedented in the integration process of the EU's external border management" (Deleixhe and Duez 2019, 922; see also Niemann and Speyer 2018, 27).

While previously lacking in operational capacity and supranational power, Frontex has always had an important expertise function: risk analysis. Earlier studies have explored how risk analysis in Frontex has functioned as a *risk-based governance* tool (Horii 2016; Neal 2009; Paul 2017). More generally, scholars have pointed out how technocratic legitimacy has long been a central feature of the EU system (e.g. Scharpf 2009; Majone 1997; Busuioc and Rimkutė 2019). Other scholars have argued that the EU's recent crises have led to a backlash against technocratic legitimacy, expert delegation, and European integration at large (see McNamara 2018; Rauh, Bes, and Schoonvelde 2020; Hooghe and Marks 2009). In particular, the refugee crisis was met with calls for the member states to take back sovereign control over national borders.

The renegotiation of the Frontex mandate—and in particular the vulnerability assessment procedure—is therefore a pertinent test case for the legitimizing role of technical expertise under *least-likely* conditions: A policy area at the core of the sovereign nation state, with high political salience, at a time where Euroskepticism was at a peak and trust in experts and elites was

¹ Following Regulation (EU) 2016/1624, Frontex is formally called the European Border and Coast Guard Agency. Yet recital 11 of the regulation states that it "will continue to be commonly referred to as Frontex." This is also what I will do in this article.

at a low. The question guiding this article is: To what extent, and how, were appeals to neutral, technical expertise used to legitimize more supervisory and executive power to Frontex in the 2016 Regulation?

I start out by presenting two theoretical approaches to the use of expertise: the political and the epistemic approach (see Boswell 2009; Rimkutė 2015). I then specify how this general distinction fits with the theory on risk-based governance, a useful theoretical approach to the study of risk analysis and vulnerability assessment in Frontex. The empirical analysis is a process-tracing case study of the process leading up to the adoption of the 2016 Frontex regulation and its implementation in practice, with a particular emphasis on vulnerability assessments. I find that appeals to technical neutrality, quantification and objective indicators were central when a new mandate for Frontex was negotiated.

The article makes two main contributions. First, the article offers a rejoinder to the theory on risk-based governance as it has so far been applied to Frontex. The theory offers a compelling analysis of how and why the framing of policy problems in terms of risk is appealing to decision-makers. But earlier contributions have emphasized how EU-level actors—Frontex and the Commission—have used these promises strategically to achieve more European integration of border management. That argument does not find support in the present case. Instead, the article suggests that the appeal to technical expertise works because all actors have faith in its promises. Member states as well as the Commission and the Council appealed to the promises of risk-based governance for their own political purposes.

Second, it expands on the literature on knowledge use in independent agencies by focusing on an under-studied type of agency: One far removed from the “hard” natural sciences and operating in a highly salient policy area. It finds that even in a field with no scientific “gold-standard” validation procedures (see Maor 2007), the appeal to objective neutrality and technical expertise was an effective legitimizing device.

Two theoretical approaches to the use of expertise

It is well established that expertise is one of the key resources of EU agencies—it is their “raison d’être” (Ossege 2015, 101; Radaelli 1999; Majone 2001; Commission of the European Communities 2002, 5; Eriksen 2020). Studies have found that technical expertise may be a source of legitimacy both for EU agencies and the EU at large. For instance, Rauh, Bes, and Schoonvelde (2020, 2) describe the *technocratic resilience* argument, which says that executives “aim to shield European integration from the fallout of domestic politicization” by resorting to technical, scientific and managerial language (see also Wood and Flinders 2014). Technical legitimation is also a key tenet of

the regulatory state literature (see Busuioc and Rimkutė 2019 for a critique). Majone has argued that expertise has always been a source of legitimization of regulatory agencies (Majone 1997, 157). The notion of *output legitimacy* similarly describes legitimacy through effective outcomes, compared to the *input legitimacy* of majoritarian democratic procedures (e.g. Scharpf 2009). The bureaucratic reputation literature's idea of technical reputation reflects the same logic (Carpenter and Krause 2012; Maor 2007). In summary, the EU has historically been able to present itself—and in particular, its agencies—as technical and apolitical in order to obtain legitimacy. While some of these studies emphasize how language, self-presentation and signaling may be a source of authority and legitimacy, others emphasize the functional, problem-solving benefits of relying on expertise. These are two distinct approaches to the appeal of expertise: The *political* and the *epistemic* approach. These two approaches allow us to theorize the dynamics underlying these widespread appeals to technical expertise. They thereby provide an analytical distinction that is useful both for description and for explanation.

The standard account of expertise use in an organization is that it helps problem-solving, contributes to better decisions, or increases the rationality of policies. This will almost always be the official rationale for relying on research or expertise in an organization. I will term this the *epistemic* use of expertise. As Christina Boswell (2009, 30) argues, this idea of knowledge use is so widespread that it is usually taken for granted by researchers as a basic premise. Under the epistemic approach, an organization may derive legitimacy from its use of expertise. But it is a side-effect: Organizations make use of expertise to enhance their outputs, which in turn may increase their standing and legitimacy. Now, as several researchers have shown, the epistemic account is not the only way to understand expertise use. Sometimes legitimacy is the primary concern.

The literature on knowledge utilization, of which Carol Weiss (1979; see also Sabatier 1978) was an early proponent, criticizes the standard account that knowledge is used in politics purely for “problem-solving” or epistemic reasons. Weiss presents different types of “research utilization” in policymaking and argues that expertise may also be used to infuse policymaking with an appearance of rationality, hence increasing its (perceived) legitimacy (see Christensen 2018). More recently, Christina Boswell (2009) builds on these insights, offering a fine-grained typology of different strategic and symbolic uses of expertise (see also Schrefler 2010; Rimkutė 2015).

The contributions above are mainly concerned with the use of science and academic research. But the argument is more general. As Wood and Flinders (2014) show, a focus on technical, managerial, and scientific discourses is a central piece of depoliticization as a large-scale phenomenon. Contributions from political sociology, particularly policy instrumentation, argue that

the choice of any particular policy instrument or tool is never just a technical decision. Tool choices are “profoundly political” as they give some actors, and therefore some perspectives, an advantage over others (Salamon 2002, 11). Lascoumes and Le Gales (2007, 4) argue that many policy instruments use a functionalist or technical approach, but that this “conceals what is at stake politically.” There are unavoidable power relations associated to the choice of instruments (see also Hood 2007).

In the European Union, many policy instruments have been described as attempts to increase the rationality or evidence base of policymaking. In particular, *ex-ante* evaluation measures have gained increasing attention (Paul 2020). For instance, regulatory impact assessment (RIA) is a core component of drives towards “better regulation” both in individual states and in the EU (Dunlop and Radaelli 2015). In line with the discussion above, RIAs are found to have not only epistemic (“instrumental”) uses but also political (or “perfunctory”) uses (Dunlop et al. 2012). Another prominent *ex-ante* instrument is risk analysis (Rothstein, Borraz, and Huber 2013; Borraz et al. 2020). The literature on risk-based governance (see Black 2005; Hutter 2005) has analyzed how “risk” is being promoted as “a universal organizing concept for improving the quality, efficiency, and rationality of governance” (Rothstein, Borraz, and Huber 2013, 215). It is a policy instrument that emerged in natural science fields, such as radiation, food, and chemicals (Rothstein, Borraz, and Huber 2013, 216). But it has a potential to “colonize regulatory regimes” and become a ubiquitous governance tool across policy fields (Rothstein, Huber, and Gaskell 2006). This type of expertise is especially central for Frontex (Paul 2017; Horii 2016; Neal 2009). We will therefore return to risk analysis in more detail below. For now, note that a key finding in this literature is that risk analysis may be used politically as well as epistemically.

While the different contributions discussed do not always agree on terminology and a clear-cut typology of expertise use, they all criticize the standard account that knowledge and expertise are always, or even primarily, used as functional problem-solving tools. They all maintain a distinction between problem-solving, functional knowledge use on the one hand and one or more kinds of symbolic, strategic or political knowledge use on the other. Since it is the one thing all contributions have in common, I hold the epistemic–political dichotomy to be the most important distinction. I will therefore build on this dichotomy rather than attempting to pinpoint more fine-grained *types* of political expertise use.

More fundamentally, the contributions challenge the idea that facts and values are easily separated in policymaking. The epistemic approach says that politicians set the goals, while experts merely choose the best means to get there (see e.g. Weiss 1979, 427–28). The experts are free to decide on technical issues where there is no conflict over values or interests, thus

increasing the common good. These premises only work if facts and values are, conceptually and empirically, clearly distinguished. While the epistemic approach is premised on a positivist notion of value-free expertise and rational research utilization, the arguments supporting a political approach are unavoidably of a more constructivist nature (see Albæk 1995).² The contributions discussed so far run the gamut from a relatively “thin” constructivism that challenges the epistemic role of expertise only on empirical terms (claiming very few policy decisions are free from conflict over values or interests), to “thicker” variants that question the philosophical possibility of value-free science and expertise altogether. The problem with taking a thick approach for our purposes is that even looking for empirical evidence of an epistemic approach would be futile. I treat both the epistemic and political approaches as empirically possible analytical types. And while they are conceptually distinct, the approaches may overlap and interact in practice (see also Paul 2020). It is mistaken to view the dichotomy as one between “pure” and legitimate epistemic knowledge use on the one hand and completely “cynical” and illegitimate political scheming on the other. As Boswell (2008, 474) points out, the “symbolic use of knowledge need not involve a reflected calculation,” but instead reflect, for instance, actors’ deeply ingrained ideas of appropriate action. Since the approaches are not mutually exclusive, this article’s empirical focus is the *degree* to which we find each approach, and the interactions and tensions between them.

The above discussion shows that expertise, in various forms, is not only used for its problem-solving functions. It can also have political uses. This is a general argument that applies to many different types of expertise across policy domains. The next step is to situate the argument in the context of European border control. In Frontex, one type of expertise is central: Risk analysis (and, by extension, vulnerability assessment).

The promises of risk-based governance

Risk analysis has right from the start been a core task of Frontex (Horii 2016). The theory on risk-based governance provides a useful analytical framework to understand the centrality of risk analysis in Frontex and European border management. The theory is itself agnostic on the political–epistemic distinction. Rothstein, Borraz, and Huber (2013) illustrate the two sides in this debate. On the one hand, in the face of increasing public salience and legitimacy pressures, risk-based governance may offer organizations a defensive decision-making rationale that “carries the veneer of technocratic legitimacy”

² I am grateful to an anonymous reviewer for raising this point.

(Rothstein, Borraz, and Huber 2013, 217; Porter 1995; Power 2007). The use of words like “veneer” implies that this appeal to risk is mostly symbolic. On the other hand, proponents have argued that risk-based approaches may improve the accountability of decision-making by providing formal “rationalizations of the limits of what governance interventions can, and should, seek to achieve” (Rothstein, Borraz, and Huber 2013, 217; see also Black 2005; Black and Baldwin 2012)—which is more in line with the epistemic approach.

In an analysis of risk analysis in Frontex, Regine Paul argues that risk-based governance brings with it three main rationalization promises: Efficiency/effectiveness, transparency gains, and depoliticization effects (Paul 2017, 695). In this section, I build on her typology and apply it to the new vulnerability assessment procedure. Table 1 sums up the dimensions as they relate to the emergence of vulnerability assessment. The differences between the epistemic and political approaches become clearer as we move down the table.

First, vulnerability assessment can help decision-makers allocate scarce resources to where they matter most (Rothstein, Borraz, and Huber 2013, 216). This is a matter of *efficiency and effectiveness*. Risk analysis and vulnerability assessment enable legitimate spending on high-risk border sections while saving costs on lower-risk sections. By extension, vulnerability assessment could be used to filter out member states’ unfounded urgency claims and identify legitimate vulnerabilities. A risk-based approach accepts that one cannot prevent all possible harms, and aims instead to target interventions where they exceed acceptable risk levels (Rothstein et al. 2006; Black 2005; Borraz et al. 2020, 2).

Second, the *transparency* dimension promises the systematic EU-wide comparison of risks and vulnerabilities and hence a more consistent, more predictable and fairer system. This happens in part through quantification, which allows for comparison and benchmarking, and in part through the open identification of “bad performers” or “weak border spots” (Paul 2017, 696; see also Demortain 2010).

The third promise is *depoliticization*. Here the approaches start to differ more substantially. The main *political* benefit of depoliticization is that the successful portrayal of policy issues as technocratic and managerial may increase the agency’s legitimacy and scope for action. In Paul’s words, “the ‘rational,’ ‘impartial’ and ‘objective’ character which regulators ascribe to risk analysis may serve to create a perceived neutral ground” to settle conflicts about European border control (Paul 2017, 697). Quantification plays a part also here, as decision-makers’ and the public’s “trust in numbers” (Porter 1995; see also Desrosières 2002) might be stronger than trust in non-quantified claims. For example, in food safety, we have seen how quantitative risk scoring helped inspectors defend themselves against complaints about

subjective and inconsistent practices (Borraz et al. 2020). The main *epistemic* benefit of depoliticization is that it safeguards a truth-tracking procedure against undue inference from outside. Quantification, for instance, would here be preferred because of its epistemic properties (precision, comparability, etc) rather than its political effects.

For depoliticization to be credible, it needs to appeal to a truth validation procedure. It is the experts’ “claims to knowledge, supported by tests of validity,” that accord them influence and social power (Haas 1992, 17). But such tests of validity can take many forms. Different knowledge systems are connected to different validation procedures (Eriksen 2011, 1170). The “gold standard” example is the randomized controlled trial (RCT) used in clinical trials and many other fields (Maor 2007). Risk analysis is a framework that originated in the natural sciences with its own set of validation procedures. Compared to the natural sciences, however, migration risks are hard to assess (Paul 2017, 691). An important piece of the empirical analysis is therefore to examine whether a validation procedure is present (or assumed to be), and what it looks like. If the analysis finds a truth-validation procedure to be missing while Frontex and decision-makers still pursue depoliticization, it would strengthen a political interpretation. If, on the other hand, we find a truth-validation procedure that is clear and widely accepted, it would count in favor of an epistemic interpretation.

Table 1: Three dimensions of risk-based governance. Based on Paul (2017).

Dimension	Indicator
Effectiveness/ Efficiency	Enables optimal use of scarce resources
Transparency	Risk analysis used to foster benchmarking and incentivize MS coordination; Use of quantification as benchmarking
Depoliticization	Claims to neutrality/rationality/objectivity; Risk analysis and vulnerability assessment used to moderate conflict or address coordination issues; Appeal to (quasi-)scientific or technical truth-validation procedures

Now we have established an analytical distinction between political and epistemic expertise use and specified the expertise type dominant in Frontex. Together, these allow us to develop theoretical expectations towards the

use of risk analysis and vulnerability assessment in Frontex after the refugee crisis.

Political use of risk analysis

A good example of the political approach to risk-based governance in Frontex is Paul (2017): Border control is a weakly integrated domain. Member states are reluctant to give up competences. Therefore, risk analysis may “be utilised by Frontex and the Commission to legitimise EU-level interventions and increased coordination in European border control,” in an “attempt to institutionalize border controls as a genuine Community task” (Paul 2017, 690–92). This perspective offers a meta-twist on the concept of risk itself: Frontex does not only manage external migration risks, it also manages its own institutional risks of (losing) legitimacy, of organizational failure, and of accountability pressures. The question now is whether this analysis extends to the new vulnerability assessment procedure.

The political approach would explain the emergence of vulnerability assessments in three steps: (1) The refugee crisis exposed clear weaknesses in the European system of border management. (2) This increased the political contestation around border control and migration, and in turn added pressure on the agency. Many European states reinstated internal border controls during and immediately after the refugee crisis in 2015 (Ripoll Servent 2018, 90). This was a challenge to the legitimacy of, and trust in, the European-level management of external borders—including Frontex. (3) Expertise was one of the key resources that Frontex and policymakers mobilized in response to this contestation. The introduction of vulnerability assessment is the most tangible result of this mobilization.

Epistemic use of risk analysis

The epistemic approach says that risk analysis is valued primarily for its functional, problem-solving qualities. Extended to vulnerability assessment, the epistemic approach would say that the refugee crisis exposed knowledge gaps in the European system of border management, which vulnerability assessment was introduced to address. The crisis acted as a “wake-up call”: As Haas (1992) notes, decision makers do not always recognize that their problem definitions and understandings of an issue are limited. It often takes a crisis to spur decision-makers to seek help from an “epistemic community” of experts (Haas 1992, 14).

To support the epistemic approach, we would need evidence that the refugee crisis was a crisis caused, or made worse, by a gap in Frontex’s knowledge about member states’ vulnerabilities (see Boswell 2009, 85). Policymakers introduced vulnerability assessment because it was seen as the best

way to gain knowledge about these vulnerabilities. It therefore ensured a more efficient execution of the agency's mandate.

The approach expects a sequence of two steps. 1) The refugee crisis was first and foremost a *functional* problem. It exposed weaknesses in the entire European management of borders and migration, including Frontex. 2) As a response to the functional shortcomings of Frontex, decision-makers saw the need for more knowledge in the agency—they recognized that they *needed help* from experts to achieve a higher problem-solving capacity. Note that the negotiation of the Frontex mandate, like all EU legislation, is by design a political process. But political actors can have epistemic concerns: According to the epistemic approach, we should observe evidence that decision-makers were willing to defer to the experts' judgments about appropriate measures and solutions. In short, we would expect the design of the vulnerability assessment procedure to be driven by epistemic rather than political concerns.

Method and Data: Process tracing

This article is based a process-tracing case study. Process tracing is a single-case method concerned with mapping out how a causal process has developed over time rather than making cross-case comparisons. The core of the approach is to analyze “evidence on processes, sequences, and conjunctures of events within a case for the purposes of either developing or testing hypotheses about causal mechanisms that might causally explain the case” (Bennett and Checkel 2014, 7). While this article starts out from a set of predefined theoretical expectations and hence has deductive features, it remains open to inductive insights.

It is important to note what types of evidence process tracing looks for. Process tracing is not concerned with variables as understood in a statistical analysis. Instead, it looks for *evidence* that a hypothesized causal process has been in play. The observations' explanatory force, therefore, comes not from their values or counts, but from the information they can give us about context, process or mechanism (Dunning 2014, 215). This article relies on document analysis and semi-structured interviews with public servants for such process-tracing evidence.

The documents assembled are public documents (communications, risk analyses, annual reports, meeting minutes, methodology documents), legal documents (the old and new Frontex/EBCG regulations and their accompanying communications, impact assessments etc.), and previously limited documents released under freedom of information requests. In this latter category are both Frontex-internal documents and several versions of amendments and suggestions from the negotiations of the new regulation. The earliest document is from 2008, when the first calls for member state evaluation

arose. The most recent is from 2016, when the regulation was adopted. I searched for the phrases “vulnerability,” “assessment,” “analysis,” “evaluation,” and “expertise” in the corpus of assembled documents as an initial filtering device. The documents containing any of these keywords (96 total) were selected for closer analysis. I have furthermore conducted six anonymized semi-structured interviews with central public servants on both the national and Frontex level. Five were on the record and one on background. They were conducted between January 2018 and May 2019. Where the informant consented to it, interviews were recorded and transcribed. See a complete list of on-the-record informants in the [Appendix](#). Both the documents and interviews were coded according to the dimensions outlined in tbl. 1 above, and for evidence of epistemic or political uses of expertise.

Process-tracing the evolution of Frontex

This section traces the post-2015 evolution of Frontex and the role of risk-based expertise in legitimizing more power to the agency. The analysis is divided in three main stages. In the pre-2015 stage, risk analysis was a central task for Frontex, but it was restricted to external affairs. This form of risk analysis was also rather open to qualitative methods. The second stage began in early 2015 and ended with the adoption of the EBCG Regulation in September 2016. This stage contains a critical juncture—the European refugee crisis—and the negotiations around a new regulation that followed. Here, we see that concerns about Frontex’s increased power, and the objectivity of the vulnerability assessments, were high on the agenda. The third and final stage began after the Regulation was adopted. Here, the task was putting the regulation into practice. A vulnerability assessment methodology was created—with some disputes about its content and merits.

Pre-2015: The role of risk analysis in Frontex

Frontex was established in 2004, tasked to coordinate operational cooperation amongst member states in order to strengthen security at the external borders. Over time, the agency has grown in budget, mandate, and power into an operational agency in its own right. For instance, it coordinates joint operations at the borders, assists member states in the return of migrants denied residence in member states, and trains border guard officers. It has also right from the beginning had an important intelligence function: Risk analysis.

Risk analysis is the starting point for all Frontex activities. It also feeds into a range of other border management instruments (Horii 2016). For instance, risk analysis plays an important role in the European surveillance platform EUROSUR, which places the European borders under real-time

surveillance (Jeandesboz 2017). In line with the theoretical argument of the political approach, EUROSUR has been described as a series of depoliticized technical fixes, reflecting a tendency to seek agreement over technical issues “in domains considered by member states’ governments as sovereign matters” (Bellanova and Duez 2016, 30). Frontex risk analysis also plays a central role in Schengen evaluations and in resource allocation through the Internal Security Fund (Paul 2017).

Risk analysis in Frontex is based on the Common Integrated Risk Analysis Model (CIRAM), which defines risk as a function of threat, vulnerability and impact. The CIRAM model relies to a large extent on qualitative methods. It states that “the main sources for measuring the magnitude and likelihood of the threats are intelligence, historical analysis and expert judgement” (Frontex 2012, 23). Discussing the vulnerability component of the model, the CIRAM framework states that “vulnerability concerns matters that can, in principle, be carefully studied and for which estimates can be reasonably accurate.” But: “In practice, a high level of assurance in measuring vulnerability is not warranted” (Frontex 2012, 28). While the model is not devoid of statistical indicators, it is skeptical about relying too much on them.

Even if risk in the CIRAM model is a function of threats, vulnerabilities, and impact, the vulnerability component of the model did not, before the 2016 Regulation, contain any systematic evaluation of individual member states. In the original Frontex regulation, there was no mandate for such evaluation, and risk analysis was largely restricted to the analysis of external risks and threats.

The idea of a Frontex-led evaluation of member states, however, is not new. A 2010 Commission impact assessment holds as a problem that there is “no use of the expertise of the Agency to evaluate Member States’ performance in the area of border management” (European Commission 2010, 16). The report states that mandating Frontex to carry out on-site inspections in member states would have “clear positive impacts on the core objectives of Frontex.” This solution is justified in terms of Frontex’s independence and expertise: “Frontex could provide a source of well trained experts and ensure a high degree of independence for the evaluations” (European Commission 2010, 39). The ultimate goal is “more effective border control.” Here, the two main themes of depoliticization and efficiency gains are clearly at the forefront. The final 2011 regulation contained a provision to assess member states’ equipment and resources. But according to an external evaluation report (Rambøll 2015), this provision was never enforced.

Why was the provision not enforced? The same evaluation notes that “the assessment of vulnerability remains a politically sensitive issue and could be met with resistance by some member states” (Rambøll 2015, 105). This resistance is confirmed in a Commission-initiated study. When member states

are asked about their opinions on future tasks of the agency, the “assessment of Member State resources” is the least popular alternative (DG Home 2014, 18). All this suggests that there was before 2015 little political will among member states to accept any supervisory power to Frontex.

The state of the field before 2015 can be summarized as such: Frontex was largely a coordinating agency. Risk analysis was central to Frontex, but the assessment of member states remained unenforced. This is evidence that the assessment of member states’ capacities was seen as politically contentious, while risk assessment itself was not. Moreover, the risk analysis procedure was relatively open to qualitative methods. This is evidence that risk analysis experts, before 2015, did not on the outset privilege a quantitative approach. As we will see, the developments after 2015 move away from this baseline.

The refugee crisis: Frontex in a changing political landscape

In 2015, as Europe experienced an unprecedented influx of migrants, another renewal of Frontex’s mandate came on the agenda. In his 2015 state of the European Union address, Jean-Claude Juncker announced that the Commission would propose “ambitious steps towards a European Border and Coast Guard before the end of the year” (Juncker 2015). In December, the commission released the proposal for a new regulation (European Commission 2015b). As we will see, the refugee crisis was a critical juncture in the evolution of Frontex. It allowed the Commission to propose more sovereignty-encroaching measures than ever before.

One of the main novelties of the proposed regulation was the so-called right to intervene. The Commission envisioned it as a highly supranational procedure, encroaching substantially on member state sovereignty. Vulnerability assessment is a central component of the right to intervene. If a member state does not comply with the Vulnerability Assessment recommendations, or faces “disproportionate migratory pressures at the external borders,” Frontex would be mandated to deploy European Border and Coast Guard Teams to the member state in question—even against the member state’s will (European Commission 2015b, Article 18).

The Commission suggested that the triggering of this procedure should be subject to an implementing decision by the Commission itself. In the accompanying communication, the Commission states that Frontex needs to be able to intervene when member states cannot cope with challenges on their own. The crisis has exposed that “despite several political calls to do so, some Member States have not activated the available border intervention mechanisms, leaving Frontex unable to intervene” (European Commission 2015a, 5). In other words, the external borders are too important to be left to “political calls” and the judgment of member states themselves. It is better to

bypass the political process altogether and treat intervention as a technical matter. This is an act of depoliticization. To ensure the legitimacy of such a drastic intervention process, it needs to be based on a solid, neutral and non-negotiable knowledge foundation. Vulnerability assessments are envisioned to fill that function.

We see here that the refugee crisis is not framed as a problem of *knowledge* but a problem of *inaction*. Decision-makers knew where the vulnerabilities were; the problem was a lack of political will to take action. This observation fits best with the political approach. Vulnerability assessment seems like a device to increase the legitimacy of the intervention mechanism and not simply a fact-finding device.

The proposal says little, however, about how the vulnerability assessment procedure would achieve the neutrality and objectivity suggested. This concerned some member states. Six member state parliaments submitted opinions to the Commission about the proposed regulation.³ A notable example is the Romanian Chamber of Deputies, which “considers that the analysis of vulnerabilities should be based on measurable and unitary criteria and should reflect, *in an objective way, the real situation* in the respective Member State” (Romanian Chamber of Deputies 2016, my emphasis). Here we see a member state explicitly voicing concerns about the procedure’s epistemic qualities. Concerns over the power of Frontex were voiced in the European Parliament as well. In a debate in the LIBE committee of the European Parliament, Ska Keller of The Greens worried that Frontex would get more power while fundamental rights protections and parliamentary and public control were not keeping up. “If you’re not changing the fundamental setup of Frontex,” she said, “you will just have another unelected official deciding on what other member states should do, and I don’t think that’s the way forward” (European Parliament 2016, 17:05:40).

The concerns over objectivity were taken into account. In its compromise suggestion of 9 February, the Council introduced a stipulation that “the Management Board shall *approve indicators*” for the assessment (Council of the European Union 2016a, 13, my emphasis), later changed to a “common vulnerability assessment *model*” (Council of the European Union 2016b, Art. 12(1)), before ending up with the common vulnerability assessment *methodology*.

The provisions on objective indicators and a vulnerability assessment methodology are included in the final regulation. Overall, the changes to the vulnerability assessment procedure are minor, compared to the commission’s

³ See all submitted opinions at the European Parliament’s documentation gateway ([https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2015/0310\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2015/0310(COD)&l=en)).

proposal. The same cannot be said about the right to intervene. The Council managed to water down the proposed supranational right to intervene, keeping it under tighter Council control. Nevertheless, the provision in the adopted EBCG Regulation has not lost all its teeth: According to Niemann and Speyer (2018, 27), the procedure still “encroaches substantially upon Member States’ sovereignty.”

The negotiations around a new Frontex regulation shows that member states and parts of the Parliament were concerned about the increased powers to Frontex. The most drastic increase in Frontex power was the intervention mechanism. Vulnerability assessments were presented by the Commission as its evidence base, conceivably an attempt to depoliticize the highly sensitive procedure. Member states did not object to this depoliticizing move. Instead, they placed their trust in depoliticization and took pains to introduce objective criteria and a specified methodology to the mechanism. In the end, they accepted increased powers to Frontex over the assessment of member states. Yet the Commission’s depoliticization attempt had its limits: Member states accepted an intervention mechanism, but under tighter Council control than the Commission had initially proposed.

Implementing the adopted Regulation: A call for quantification

After the Regulation was adopted, experts in the Frontex Risk Analysis Unit (RAU) were tasked with developing the first version of the Common Vulnerability Assessment Methodology. It eventually became clear that vulnerability assessment would require more resources and personnel than first envisioned, which led to the creation of a separate Vulnerability Assessment Unit. There is some evidence of a discrepancy between the Risk Analysis Unit and the Commission about the methodology:

So in the first meetings, there were very many discussions about where they should place themselves. And it is clear that the Commission had envisioned something else than what they had envisioned at RAU. [RAU] interpreted it based on how they maybe had worked earlier with risk analysis, since they were the ones who got [the task]. (IO3)

Very many member states in VAN [the Vulnerability Assessment Network] thought that one perhaps should take after FRAN [the Frontex Risk Analysis Network], how they worked there, how they in the beginning had a few areas they concentrated on that they developed as the mechanism settled. In the work on vulnerability assessment, my experience was that they started very broadly, very heavy all at once. (IO5)

We have seen that the Council and some member states pushed for the development of objective indicators for vulnerability assessment. The resulting procedure is heavy on quantitative reporting, at the cost of a rather high workload for member states (IO2; IO4; IO5). The first version of the vulnerability assessment methodology proposed that member states should report on quantified threat levels based on, for instance, the number of illegal border crossings or entries with fraudulent documents detected. They are also to report numbers on installed capacity, covering everything from the number of officers attending basic training, via the amount of equipment and vessels available, to detailed statistics on border sections and checkpoints (Frontex 2016). This was a departure from the way the Frontex Risk Analysis Network works, which is of a more qualitative nature:

The way we have been working in the [Frontex] Risk Analysis Network, when we assess risk, we use a framework called CIRAM. [...] But the focus there has been description, that is, a qualitative approach. Of course we use some data, we have a few indicators to define threats, and some on vulnerabilities, but it is a much more qualitative approach than one has taken to Vulnerability Assessment. (IO3)

An early version of the Common Vulnerability Assessment Methodology is explicit about the function of the *objective criteria* stipulated in the Regulation: “In this sense, the objective criteria will ensure the establishment of the Vulnerability Assessment as a *technical rather than political exercise*” (Frontex 2016, 12, my emphasis). This is an explicit attempt at isolating the assessment from politics. Furthermore, the methodology states that the Vulnerability Assessment Network should work towards “proposals for more elaborated and quantifiable objective criteria for the next round of vulnerability assessments” (Frontex 2016, 12). Furthermore: “the quantification of the objective criteria [...] will ensure full transparency on the method used and on the target levels of performance” (Frontex 2016, 28). In other words, it ensures the equal treatment of all member states. These are clear appeals to the promises of depoliticization and quantification. In that regard, this document provides “smoking-gun” evidence (see Collier 2011) that the experts and policymakers involved in drafting the document explicitly believed that quantitative indicators would help insulate the procedure against political interference. This evidence strengthens the plausibility of the political approach. But it is not on its own sufficient to conclude in favor of it. To do so, we need evidence not only that the methodology can fulfill a political purpose but also that its epistemic merits were of secondary concern.

Some risk analysis professionals do seem skeptical towards the promise of quantitative indicators. According to one member state strategic analyst, “the risk analysis shouldn’t drown in quantitative data. That’s not what

it is about” (IO3). At other points in the methodology document, we encounter warnings that “the measures employed for assessing threats, vulnerability and impact can be crude, simplistic or misleading. Expressing risk levels numerically may convey a false sense of precision to the decision-makers. [...] In most cases, *it is recommended to rely on qualitative assessments* and to classify risks in categories of significance” (Frontex 2016, 7, my emphasis). There is an inherent tension here: The methodology presents increased quantification as an explicit goal, while other parts of the same document remain skeptical about its utility or precision.

The epistemic merits of quantification

Can the choice of a quantitative approach be explained by epistemic considerations? As we do not have access to the vulnerability assessment reports themselves, it is difficult to evaluate their merit directly. But through second-hand sources, we can get an impression.

A study for the LIBE Committee of the European Parliament, completed in March 2016, is skeptical towards the purported neutrality of vulnerability assessments: “The portrayal of the Schengen Evaluation Mechanism as political, as opposed to the purely ‘operational’ Vulnerability Assessment, seems to ignore the political consequences that possible Vulnerability Assessment findings may have” (Rijpma 2016, 14).

This comparison calls for some elaboration. The Schengen evaluations have received critique for being too political (see Kaasik and Tong 2019). It is a member-state-led process which explicitly seeks to leverage “peer pressure” between member states (Regulation 1053/2013, Recital 11). Still, according to one informant, the benchmarking done in Schengen evaluations provides clearer criteria than the vulnerability assessments do:

It is unclear to me [...] based on which criteria one evaluates findings as vulnerabilities [in vulnerability assessments]. And again, which of these trigger actions. [...] I don’t think it’s apparent in the methodology either, how you categorize something as a vulnerability. Because according to the Schengen evaluation mechanism, things are really quite simple. If you don’t do things according to your obligations—that is, the Schengen borders code, the Visa Code and so on—you’re non-compliant. [...] You have a standard that [makes it] easier. But the vulnerability assessment is to me a little—I think it’s a little bit difficult. I haven’t quite understood it. (IO5)

According to this informant, the epistemic merit of vulnerability assessments is questionable. It is even weaker than the Schengen evaluations, which is, on the surface, a more explicitly political procedure. The insistence on the

technical nature of vulnerability assessments, if in fact they leave substantial space for analyst discretion or if clear criteria of evaluation are lacking, weakens the plausibility of a purely epistemic explanation.

One informant speculated that numbers may be easier for policymakers to trust or accept than “text,” i.e., qualitative evaluations: While the informant “does not like it,” numbers may be more “concrete to deal with than description” (IO3). Vulnerability assessments are closely linked to recommendations, and a recommendation based on an objective, numerical claim—as opposed to the discretionary judgment of a Frontex analyst—will be perceived as less controversial.

In summary, the final stage shows that the vulnerability assessment procedure that was developed after the 2016 Regulation is more quantitative than the preexisting risk analysis. Furthermore, we have evidence suggesting that this was a choice driven, at least in part, by political considerations. There were early disagreements about the method’s design between the Commission and the Risk Analysis Unit, and the quantitative approach to vulnerability assessment seems hard to justify on epistemic grounds alone.

Vulnerability assessment: Political or epistemic?

The evidence discussed so far reveals a causal sequence of events, in three main stages. (1) In the pre-2015 period, Frontex was a coordinating agency with hardly any supranational powers. Risk analysis was a central task of the agency, but it was largely oriented towards external risks and factors. The procedure furthermore relied in large part on qualitative methods. (2) The 2015 refugee crisis was a major exogenous shock to the European system of border management. As a result, the Commission was quick to propose a new mandate for Frontex, with unprecedented supranational powers. The refugee crisis was a problem of inaction, not one of knowledge. Vulnerability assessments must be understood as an attempt to ground the proposed intervention mechanism in objective evidence, thereby assuaging member states’ concerns about arbitrary or political power. Yet vulnerability assessments also entail supervisory power in their own right. (3) After the regulation was adopted, the vulnerability assessment procedure was designed as a highly quantitative procedure, in an explicit attempt to isolate it from political interference. Yet the possibility of discretion is not eliminated, especially in the translation from quantitative indicators to vulnerability levels and recommendations.

Taken together, the evidence weighs heavier on the side of the political approach. The shift towards more supranational power to Frontex was associated with a shift towards a stronger reliance on the assessment of member states’ vulnerabilities based on objective criteria. This does not seem like a spurious association: Objectivity, neutrality and quantification were central

issues when the regulation was negotiated and implemented. In this sense, the appeal to technical expertise helped legitimize increased powers to the agency.

Does this mean that the Frontex vulnerability assessments were introduced solely to legitimize more power to the agency? Some evidence points in the opposite direction. For instance, informants are not completely pessimistic towards the epistemic promise of the procedure. One informant stated that the goal of the vulnerability assessment is to know more. And it has worked—in sum, we now know much more about the situation at the external borders (IO2). Another informant was not convinced that we know more at the moment, but said that the mechanism will make us more aware of our vulnerabilities over time (IO5). A third informant said that the assessment of vulnerabilities was indeed missing under the CIRAM risk analysis model: You had an assessment of challenges and threats, but little evaluation of the current vulnerabilities (IO4). Vulnerability assessment was in this sense a logical continuation of the already established risk analysis procedure. The bulk of evidence nonetheless points towards a political interpretation. It would be too strict to allow for a political approach only if there were *no* epistemic merits to the procedure.

Now, political concerns come in many shapes. Some earlier analyses of Frontex have been premised on an assumption of strategic action only on the part of EU-level actors (notably Horii 2016; Neal 2009; Paul 2017)—an assumption which seems in this case not to hold. Take Regine Paul: “we suggest that *EU-level actors* draw on the rationalization promises of risk analysis (...) to justify increased coordination without challenging member state competency in the weakly integrated domain” (Paul 2017, 697, my emphasis). This argument frames EU-level actors as strategic “users” of risk-based governance, while the member states naively accept their promises—ultimately leading to more EU-level integration even against the member states’ interests. This narrative fits poorly with the present case study. Instead, the evidence suggests that also, or especially, member states place their trust in the technical neutrality of vulnerability assessments to safeguard their own interests. This is also a political or strategic appeal to expertise, but used to hold back EU-level integration rather than to promote it.

Furthermore, while vulnerability assessments play an important role in legitimizing possible Frontex interventions, member states also made sure that the final word on implementing said interventions was given to the Council. This is a transfer of sovereignty, but to a less invasive degree than treating interventions as a more technical question left to the Commission, as originally proposed. Instead, it is a transfer from each member state acting individually to the “club” of member states acting collectively in the Council (see Deleixhe and Duez 2019, 932). Even if member states accept the facts on a

given vulnerability, they want the measures to mitigate it to remain a political matter. While the appeal to expertise may have a legitimizing function, it is, in the case of Frontex, still embedded within a system where member states keep their hands firmly on the steering wheel.

Conclusion

This article has argued that technical expertise, through the Frontex vulnerability assessment procedure, played a central role in legitimizing more power to Frontex with the 2016 Regulation. Member states accepted supervisory power for Frontex, but only after ensuring that it would be based on objective criteria, following a largely quantitative procedure, and adhering to a predefined methodology. They also accepted a variant of the so-called “right to intervene,” albeit under tighter Council control than was originally proposed.

As such, the article has more general implications for theories on the legitimacy of the EU and its agencies. It shows a case where the legitimizing appeal of technical expertise—or at least policymakers’ trust in it—is strong, even in a politically contentious field with little access to “hard” scientific evidence. This finding implies that the notion of technical legitimacy may be more resilient than some researchers have suggested. Future research should continue examining the scope conditions for technical legitimacy in the European political system, both through closer examination of other “corner cases” and through large-N comparative studies.

This article’s findings also have theoretical implications for the risk-based governance literature. Earlier research on risk-based governance in Frontex has portrayed risk analysis as a one-sided use of knowledge by Frontex and the Commission to get member states on board with their policy objectives (Horii 2016; Paul 2017). I suggest instead that the appeal to technical expertise works because all actors appeal to it for their own reasons. The Commission’s stated goal was a stronger Frontex with more supranational power. It appealed to technical neutrality to legitimize such a move. But member states also sought an objective foundation for the new vulnerability assessment, thereby appealing to technical neutrality for their own political purposes. This article therefore challenges the idea that the appeal to technical expertise and risk-based governance is something only EU-level actors use strategically.

The article finally shows how the epistemic and the political may interact in practice: Many decision-makers had a large degree of faith in the epistemic quality of vulnerability assessment. And the procedure is not without epistemic merit. It allows Frontex to know more about member states’ vulnerabilities. Some baseline of epistemic credibility seems necessary for the procedure to fulfill a legitimizing function.

It should finally be noted that this article focuses on member state governments and EU-level institutions—a thoroughly elite perspective. The findings say nothing about the level of citizens and the public. Whether or not citizens and constituencies accept the promises of expertise and technical legitimation—and the *normative* implications of such legitimation in the field of border control—remain questions for future research.

Conflict of interest

The author has no conflict of interest.

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Appendix

List of interviews

Code	Position	Interviewed
IO1	Frontex public relations official	04.01.18
IO2*	Frontex Management Board member	15.02.19
IO3*	FRAN/VAN member	27.02.19
IO4*	National delegate, Frontex regulation negotiations	04.04.19
IO5*	VAN member	10.04.19

*) Translated to English by the author