Integration by Risk Analysis? Frontex and the Silent Harmonization of European Border Control

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HowSAFE Working Paper
No. 6, 2016

Research for this Working Paper was supported by a grant awarded through the Open Research Area Programme for the Social Sciences jointly funded by the ESRC (ES/K006169/1), DFG, ANR, and NOW (http://tinyurl.com/howsafe-project).
Abstract

Scholars have recently highlighted the important role of risk analysis in the European integration of border control, but fail to explain this assumed harmonization dynamics. This article illuminates this blind spot by harvesting insights from risk-based regulation research for European integration studies. An interpretive policy analysis of three cases – Eurosur impact level assessment, the Schengen evaluation mechanism and the Internal Security Fund – highlights how EU-level actors use Frontex risk analysis to foster harmonization. They do so by capitalizing on the promises of risk-based rationalization: efficiency, effectiveness, and transparency gains in regulation, de-politicization, and the maintenance of trust and solidarity in a regulatory regime. Findings indicate that risk analysis can advance European integration because it offers a multi-functional rationalization of border controls which legitimizes increased EU-level coordination without questioning national sovereignty. Such a silent harmonization may prove successful in other domains, too, but bears substantial implications for the accountability of decisions.

Keywords: European integration, risk analysis, risk-based regulation, border control, migration, Frontex
1 Introduction

Since the foundation of Frontex\textsuperscript{1} in 2004 a growing body of scholarly work has examined the role of risk analysis, one of the agency’s chief mandates. Rather than debating risk analysis as a governmental practice in the securitization of migration (e.g., Carrera et al. 2013; Léonard 2010) some authors have recently started investigating risk analysis as a regulatory tool to advance the European integration of border control against member states’ strong sovereignty claims. This article contributes to the few existing analyses of Frontex which, rather than focusing on the political implications of its activities, bracket normative evaluations in order to understand the regulatory role of its risk analysis mandate in European integration processes. By so doing, it also addresses the increasing relevance of EU-level risk analyses as an important venue for European integration research more generally speaking.

In the border control domain, Frontex’s risk analysis has been shown to shape political decision-making despite a weak regulatory mandate at EU level (Horii 2016); others argue that “the risk analysis modality” of Frontex has been a crucial means of institutionalizing and normalizing EU border regulation (Neal 2009, 351). Confirming this view, the agency itself considers “risk analysis as a corner-stone of the management of external borders … [and] a tool to contribute to greater management coherence” across member states (Frontex 2012, 7). There is only limited consideration so far, however, of why and how exactly risk analysis unfolds such an institutionalizing dynamics. If risk analysis has become a tool for “manag[ing] and control[ling] … the

\textsuperscript{1} Official name: The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. The article also uses ‘border agency’ or ‘agency’ as shorthand.
practices of Member State border security apparatuses”, as Andrew Neal (2009, 353) convincingly claims, we need to go one step back from this diagnosis and ask: why exactly does Frontex’ risk analysis advance the harmonization of external border control in Europe?

The article addresses this research question by analyzing the regulatory functions and appeal of Frontex’s risk analysis. To do so it reviews a wider turn to risk analysis as a form of rationalization in regulation research, especially in the rather member state focused literature on risk-based regulation (e.g., Baldwin et al. 2013; Black 2005; Hutter 2010; Rothstein 2006; Rothstein et al. 2006), translating key insights from this research branch into European integration studies. Such an integrated analysis of regulatory rationalization through risk analysis and European integration is able to show how both the Commission and Frontex (seek to) capitalize on the assets of risk-based rationalization – efficiency, effectiveness, and transparency gains in regulation, depoliticization, and the maintenance of trust and solidarity between adversarial stakeholders in a regulatory regime. The multi-functional rationalization of risk analysis is valued as an enabler of integration: risk analysis expands the coordination of border control EU-level authority in the domain in a manner that does not openly question member states’ sovereignty.

The argument is developed as follows. Section two delineates and embeds our empirical case in European integration studies: Frontex’s mandate for risk analysis as a case of formally weak European integration and strong intergovernmentalism. By reviewing studies which problematize the diagnosis of a weak mandate and consider Frontex’ risk analysis as an important tool for integration, the section sets up the article’s research focus. In section three, the paper reviews risk-based regulation research from the analytical lens of European integration. On the basis of this literature review, we
develop hypotheses about how and why the rationalizing functions of risk analysis could enable and expand harmonization in weakly integrated domains such as the border control case. Section four, our analysis, tests these hypotheses empirically, drawing on an interpretive policy analysis (e.g., Yanow and Schwartz-Shea 2006) of more than a dozen official documents and semi-structured interviews with seven officials\(^2\) at Frontex and the Commission’s DG Migration and Home Affairs. Three empirically important applications of risk analysis in European external border control are analyzed: Eurosur, the Schengen evaluation mechanism, and the allocation of resources from the Internal Security Fund. The last section summarizes findings and discusses implications for further research and policy-making. This is where risk analysis’ role as a strategy of depoliticization and coordinated intervention in one of the most politicized areas of European policy-making finds a place in our assessment.

2  **A weak mandate: Frontex’ risk analysis in European border control**

This section delineates our empirical case and locates it in European integration research. It introduces Frontex’s mandate for risk analysis, showing its central role in the agency’s formation, on-going tasks and activities. This mandate operates in a comparatively weak field of integration with strong national sovereignty claims and a lack of binding EU-level cooperation. The section also pinpoints, however, that risk analysis might serve as an informational regulatory tool that can deepen harmonization informally in this weakly integrated domain. By combining our descriptive case review

\(^2\) A list of anonymized interviewees can be requested from the author. Whilst seven interviews might seem few this sample covered all those involved in risk analysis at a strategic (rather than operational) EU level and willing to speak to a researcher. The intensifying refugee movements and repeated deaths during migrants’ crossings of the Mediterranean, and related public critique of Frontex, has rendered access very hard since spring 2015.
with a review of scholarly writing on Frontex’ risk analysis the section develops the article’s research question and sets the scene for the subsequent literature review of risk-based regulation and rationalization (section three) and our empirical analysis of the regulatory function of risk analysis in the European integration of external border controls (section four).

*Frontex’s Risk Analysis Mandate*

Frontex was set up in 2004 with the aim of “improving the integrated management of the external borders of the Member States of the European Union” as part of the Schengen acquis (CEU 2004, article 1.1). This mandate has included risk analysis at its core: “The Agency shall develop and apply a common integrated risk analysis model. It shall prepare both general and tailored risk analyses to be submitted to the Council and the Commission.” (ibid., article 4) Frontex provides the required analyses via a dedicated risk analysis unit (RAU), whose most relevant product is the annual risk analysis (ARA). In addition, there are quarterly reports by the Frontex risk analysis network (FRAN) as well as special risk analyses on the Western Balkans and the EU’s Eastern Borders. There are also ad-hoc briefings on singular emerging risks, often also in response to specific informational needs of the Commission or the Council (also Horii 2016).

The focus on risk analyses predates Frontex: the Seville European Council in 2002 had already stressed the importance of developing a so-called ‘common integrated risk analysis model’ (CIRAM) as a basis for establishing further cooperation in border management, joint operations, and more harmonized training for border guards. Consequently, in 2003, the Council promoted the establishment of a Risk Analysis
Centre (RAC) in Helsinki. Both CIRAM and the RAC have been integrated under the umbrella of Frontex.

Risk analysis is not just one function of Frontex, but has been described as the “inner core of the methodology of Frontex” by its first Executive Director, Illka Laitinen (House of Lords 2008, 25). The agency itself considers risk analysis as “the starting point for all Frontex activities, from joint operations through training to research studies.” (Frontex webpage, accessed 18 June 2015). This importance attributed to risk analysis is also reflected in the agency’s budget: while it decreased overall from 58.9 Mio € in 2012 to just over 55 Mio € in 2014, funds for risk analysis more than doubled from 2.45 Mio € in 2012 to more than 6 Mio € in 2014 (joint operations were cut down, by contrast). Though largely desk-based and comparatively inexpensive, risk analysis is the second largest item in the agency’s budget after joint operations (Frontex webpage, accessed 18 June 2015). Academics have thus concluded that risk analysis “forms the basis of its entire range of activities” for the European border agency (Pollak and Slominski 2009, 911) and has assume a role that is “equally important as border checks and surveillance” (Horii 2016, 246).

*Weak Integration of European Border Control…*

Frontex’s risk analysis mandate is set within a policy domain that is marked by rather weak integration. Legislation within Justice and Home Affairs may have been increasingly harmonized, with most being subject to co-decision procedures since the

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3 Helsinki was chosen as a headquarters not least because Finland had piloted the CIRAM within its own border control and had arguably uploaded its approach to the EU level (interviews with Frontex risk analyst on 3 February 2015 in Warsaw and with former Frontex adviser on 8 April 2015 via skype; also Horii 2016).

4 Under the impression of the refugee crisis the agency’s budget skyrocketed to 254 Mio €, with funds for risk analysis growing to 13.68 Mio € (Frontex webpage, accessed 17 May 2016).
Lisbon Treaty. In addition, Schengen countries have agreed on coordinating their border control operations as well as exchanging and pooling all relevant information – for example via the Schengen Information System. Regulations such as the Schengen Borders Code even lay down common sets of rules for local border guards control practices (CEU 2006). These developments are part of a process by which the EU has sought to harmonize national rules on external border controls since the Schengen Convention in 1985 (Mungianu 2013).

Yet, as “border control is seen by many [member states] as the core instrument of sovereignty” (Moses 2012, 605), the de facto level of harmonization has remained rather low. The enforcement and implementation of border controls remain “a matter of member states and their administrative authorities”, with the role of the EU being limited to “coordinat[ing] their responses” (Boswell and Geddes 2011, 145). As contemporary reactions to increased refugee movements from the Middle East indicate (e.g., reinstatement of internal controls or fence-building), border control is a highly politicized policy domain in which nation-states are unlikely to cease their sovereignty. Even soft forms of formal cooperation, for instance an open method of coordination, have been rejected (Caviedes 2004). Not surprisingly then, Frontex’s mandate for managing member state cooperation on external border control remains embedded in a governance structure pertained by “features of intergovernmental cooperation” (Mungianu 2013, 361; cf. Ekelund 2014). With the agency’s management board entailing one representative per EU country plus only two delegates from the Commission, Frontex’s activities are closely overlooked by member states and likely to be limited by their sovereignty concerns.

… or Integration by Risk Analysis?
Against this backdrop of a weak formal integration of operational cooperation in the border control domain, a number of scholars have highlighted that considerable *de facto* harmonization has been achieved through Frontex’s activities. This concerns, for instance, joint operations, the coordinated deployment of border guards and common training for national border guards (Mungianu 2013). Others have critically noted the agency’s tendency to “move beyond mere ‘regulatory’ or administrative powers and rather expand over ‘operational’ activities” without assuming accountability or liability for these activities (Carrera et al. 2013, 342). This resonates with a wider claim in the European integration literature that harmonization can be advanced in the absence of ‘hard’ regulatory mandates by facilitating coordination, peer review and information exchange through low level agencies (as claimed by accounts of ‘experimentalist governance’, see Sabel and Zeitlin 2010). Comparable silent harmonization processes have been identified for other security-related EU agencies such as Europol (e.g., Carrapiço and Trauner 2013) but also as a strategy of the Commission and the Parliament (Riddervold and Rosén 2016).

What precise role could risk analysis play in harmonizing weakly integrated domains? The article takes the cue from Johannes Pollak and Peter Slominski (2009) who have argued that, though lacking any supranational authority to enforce cooperation on external border control, Frontex is able to “support and link national and supranational authorities” by “provid[ing] the actors of bureaucratic governance with the sort of information and coordination activities that they need” (ibid., 906, 918). They consider Frontex’s role of providing (risk) information as essential in that regard:

> “the most important resources of Frontex are not its legal powers or financial means but information and knowledge … as a basis for cooperation, coordination and persuasion” (Pollak and Slominski 2009, 908)
This suggests that risk analysis serves as a means of “regulating by information” (Majone 1997) which can advance European integration in the border control domain (and potentially other weakly integrated domains). This also seems to be what Satoko Horri (2016) and Andrew Neal (2009) imply when submitting that Frontex’s risk analysis shapes political decision-making on border controls and has institutionalized cooperation beyond the Treaty mandate. As the authors do not offer a systematic explanation of this assumed integration process, the remainder of the article addresses the following research question: why and how does Frontex’ risk analysis advance the European integration of external border control? We continue with a literature review of risk-based regulation from the specific lens of European integration to develop an analytical framework for our subsequent empirical analysis.

3 Risk-based regulation meets European integration

The article reviews risk-based regulation literature next in order to develop hypotheses about the specific regulatory functions and appeal of risk analysis in the harmonization of European border control. As this branch of research has so far not been applied in accounts of European integration dynamics, this article also seeks to do important ground work by translating chief insights on risk-based regulation and the related rationality claims for our field of European integration studies.

Risk-based regulation (RBR) captures New Public Management (NPM) approaches which seek to optimize the use of scarce regulatory resources by means of risk-based priority-setting (on the origins of European RBR in Britain: Black 2005). Based on calculations of the likelihood times the impact of future societal harms (i.e. actuarial
risk\textsuperscript{5}, regulators define acceptable and tolerable kinds and levels of harm ex-ante and rationalize their decisions about interventions accordingly (Black 2005; Rothstein 2006). RBR is thus interpreted as a rationality project in which policy-makers force themselves to announce the “limits of governance” upfront based on a systematic calculation of risks (Rothstein et al. 2013). They would use risk analysis to design:

“an escalating intervention strategy which refrains from intervening in the low risk sphere, where the risk level defined as acceptable; intervenes proportionally in the medium risk sphere between the acceptability and tolerability thresholds, and intervenes most strictly and frequently in the high risk areas above the tolerability threshold” (Baldwin et al. 2013, 281f).

A number of more specific functions have been associated with RBR from the viewpoint of regulators\textsuperscript{6}: efficiency, effectiveness, transparency, de-politicisation, and more recently also trust and solidarity enhancement within the regulatory regime. As these functions entail important insights about the attractiveness of risk analysis as a rationality project and their appeal as a means of policy coordination and integration, we now review each function in depth and develop assumptions about their particular role in the harmonization of European border control (see summary in table 1).

\textit{The Efficiency and Effectiveness Functions}

Most importantly, policy makers cherish RBR for its ability to achieve a more beneficial allocation of scarce regulatory resources. In Britain it was hoped, for example, that by clearly stating acceptable risk levels ex-ante, state inspection activities

\textsuperscript{5} The actuarial concept of risk needs to be distinguished from political and socio-cultural notions of risk (Haines 2011).

\textsuperscript{6} This article cannot, and does not seek to, test the empirical validity of the promises of risk-based regulation. What matters here is the appeal of the rationalizing functions of risk analysis on regulators, making them likely to adopt risk analysis as a regulatory tool in European integration processes.
could be reduced by “up to a third, which means about one million fewer inspections”, without sacrificing effectiveness (Hampton 2005, 8). When adopted in the 1990’s in Britain, RBR counted as a remedy for the perceived ‘regulatory burden’ on industry (Black 2005). Reduced inspection and enforcement can go hand in hand with more effective regulation, it was argued, because high impact issues (e.g., explosions or asbestos in workplaces) as well as frequent non-compliers (i.e. those employers whose behaviour increases the likelihood of bad things happening) are being specifically targeted in RBR.

The efficiency and effectiveness promises of RBR are likely to support harmonization in weakly integrated domains because they smoothly tap into a wide-spread rationality project among member states. John Erik Fossum (2012, 395) has identified a clear “value-programming” of experimentalist governance in the EU which, he argues, is successful because it relies heavily on the efficiency and effectiveness metrics of NPM. The shared proclivity to accentuate efficiency and effectiveness values in policy-making is likely to heighten the acceptability of EU-level coordination among member states and their national border control authorities, especially so in times of tight budgets and austerity programmes. This concurs with insights from recent research on migration policy narratives which identified cognitive plausibility and compatibility with existing actor preferences as two chief conditions for their success (Boswell et al. 2011).

*The Transparency Function*

Transparency gains are expected of RBR because systematic risk analysis makes risks comparable and enables their rational treatment (OECD 2010). RBR could thus render regulation and enforcement fairer and more predictable for regulatees (Hampton 2005). The transparency function seems to be especially prominent at the early stages of regulation when direct intervention is not (yet) an option. This can be observed, for
example, in the case European flood risk management: Whilst not being able to prescribe flood risk management standards – such as exact dyke heights – the Commission requires member states to map flood risks in three probabilistic scenarios and to detail the respective harmful impact according to a common scheme. The harmonization of flood risk analysis through an EU Directive has not only increased risk transparency across Europe though, but has already trickled down into the national realms of standard-setting and come to re-define eligibility criteria for the funding of prevention measures (Paul et al. 2015). Such spill-over processes of risk analysis from information-gathering to standard-setting and enforcement has been describes as the “colonizing” dynamic of RBR which, once introduced, can increase the organizational scope of action (Rothstein et al. 2006).

Similarly to the flooding case border control is marked by the lack of an EU-level mandate to set or enforce standards. By making variable border risks, but also potential shortcomings in national approaches to managing these, visible Frontex’s risk analysis is likely to tempt disciplining process, either by self-infliction or by more open naming-and-shaming of bad performers (similar claims on the role of evaluation and benchmarking were made already by Majone 1997; they also feature prominently in the discussion of the open method of coordination and experimentalist governance). Risk analysis can thus be expected to foster expanded voluntary coordination because of the social pressures and spill-over effects resulting from benchmarking processes.

*The De-politicization Function*

Using the example of work safety in Britain, Steve Tombs and David Whyte (2013, 67) note that through RBR “regulation and enforcement … become technical matters of calculation, policy-oriented scientific discourses that transcend political contests”. This makes RBR part of a broader strategy in which governments, by
involving expert agencies and their knowledge in political decision-making and by portraying the issues they deal with as technocratic or managerial in nature, seek to increase their own legitimacy and scope for action (e.g., Flinders and Wood 2015). By spelling out the limits of interventions ex-ante regulators have been found to also manage the institutional risk of being blamed for things going wrong (Rothstein et al. 2006). Policy makers have welcomed precisely this function of RBR as one that induces an urgent rationalization of otherwise irrational public policy debates and regulation\(^7\) (for a review see: Shrader-Frechette 1990). Exemplary is the OECD’s (2010) suggestion that RBR can increase the acceptance of political decision-making as “neutral” science-based risk information would “ensur[e] that assessment is objective” (p. 21) and eventually enable regulators to “correctly identify and respond to risks” (p. 18).

De-politicization through risk analysis can be expected to play an important part in the highly politicized and controversial field of border control. Sergio Carrera and colleagues (2013) have argued that the deflection of liability and political blame may indeed be the very goal of ‘soft’ governance in the domain. The ‘discursive framing’ of Frontex (and other Home Affairs agencies) as technocratic, intelligence-driven and knowledge-providing agency is considered crucial in that regard.

By insisting on its ‘neutral’ risk analysis function, Frontex (but also the Commission) certainly seeks to moderate public concerns about its role in highly contested securitizing operations, such as push-backs in the Mediterranean (as rightly highlighted by securitization scholars, see section one). Yet, ‘objective’ risk analysis is not just

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\(^7\) The attempt to de-politicize political uses of risk analysis has to be assessed critically, of course.

Deborah Stone warns us that the “acceptability of a given level of risk is a political question, to be determined in the political arena” (Stone 2012, 141; also see Haines 2011). While focusing on the regulatory role of de-politicization in the harmonization of border control analytically, the article assesses political implications in its conclusion.
targeted towards critical voices in civil society. Due to the ‘rational’, ‘impartial’ and ‘objective’ character ascribed to risk analysis (e.g., Haines 2011; Stone 2012), it can be used strategically to create a neutral ground for member states and the Commission to settle conflicts about the directions and forms of European border control and its enforcement. This includes the possibility to depoliticize disputes about limited border control capacities in weakly performing member states and increase the likelihood of benevolent cooperation.

*The Trust and Solidarity Functions*

More recently RBR has also been associated with the enhancement of trust and solidarity between actors in multi-level negotiation settings (Paul and Huber 2015). By offering a transparent and seemingly a-political basis for joint decision-making (see the previous two functions), risk analysis can help moderate competing views and adversarial positions in negotiations and even serves to ‘inject trust’ in case of negotiation stalemates (ibid.). Analogous to this argument, Frontex’s risk analysis might be able to capture member states’ solidarity and mutual trust and enable voluntary cooperation on border control especially in the difficult circumstances we have witnessed with the ‘refugee crisis’. Coordination problems such as unequal migration ‘pressures’ on external border sections, unequal capacities of member states to react to such pressure, unequal financial means to handle migration crises and arrivals, and the continued unwillingness of some EU-locked member states to share the ‘burden’ are featured daily in contemporary news stories. The objectification of risks through risk analysis is hence likely to present a welcome tool for Frontex, the Commission, and the most affected member states, to demand more solidarity and coordination of border control across the EU. The agency may thereby also stabilize and legitimize its own role as chief risk informant and policy coordinator.
Summary of Hypotheses

The theoretically-derived functions of risk analysis in the harmonization of European border control, transferred into European integration studies from the literature on risk-based regulation, culminate in an overarching hypothesis. Frontex’s risk analysis contributes to the harmonization of border control, and potentially even expands EU-level authority beyond the limits of the Treaty mandate, because it offers a multi-functional rationalization of European border controls which legitimizes coordinated approaches without openly questioning member states’ sovereignty. The border agency’s focus on the ‘mere’ provision of risk information would not be a weakness then, but its use as a rationalizing tool would have to be understood as a crucial regulatory strategy to expand EU-level coordination in weakly integrated domains. These claims will now be tested and substantiated for our border control case whilst more general implications are discussed in the concluding section.

Table 1: The regulatory functions of risk analysis in European integration

<table>
<thead>
<tr>
<th>Functions of risk analysis (RA)</th>
<th>Functions of RA as evidenced in risk-based regulation research</th>
<th>Hypotheses on why RA could ‘silently’ harmonize policies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Efficiency/effectiveness</td>
<td>Optimal use of scarce resources, optimal prevention of societal harms in risk regulation, lifting ‘regulatory burden’</td>
<td>RA is principally welcomed by member states as compatible with their NPM--leaning rationality projects</td>
</tr>
<tr>
<td>Transparency</td>
<td>Comparability of risks, design of fair and predictable regulatory interventions, visibility of regulatory performance</td>
<td>RA fosters benchmarking processes which put soft pressure on member states to coordinate more and perform better</td>
</tr>
<tr>
<td>De-politicization</td>
<td>‘Technocratic’ and ‘managerial’ regulation beyond political contestation, pre-empting regulators’ being blamed</td>
<td>RA moderates political conflicts between member states and EU-level actors and depoliticizes blame for weak performance</td>
</tr>
<tr>
<td>Trust/solidarity</td>
<td>‘Neutral’ risk information as trust injection in adversarial negotiations and pledge for solidarity among stakeholders</td>
<td>RA addresses coordination problems and asymmetric burden-sharing in a ‘neutral’ manner and thus increases chances for benevolent cooperation</td>
</tr>
<tr>
<td>Overall</td>
<td>Rationalization of regulatory interventions and spending</td>
<td>Rationalization as a regulatory strategy to expand EU-level coordination without openly questioning national sovereignty</td>
</tr>
</tbody>
</table>
4 Analysing the regulatory functions of risk analysis in the harmonization of European border control

This section analyses three cases in which the Commission and Frontex apply risk-based rationalization: Eurosur, the Schengen evaluation mechanism, and the Internal Security Fund. Cases have been chosen because they cover three different dimensions of the EU’s regulatory regime and thereby promise nuanced insights: information-gathering, review and enforcement, and the allocation of Community money, respectively. They are also considered as the most important uses of risk analysis in European border control by Commission and agency experts. The analysis scrutinized how EU-level actors apply Frontex’s risk analysis and how they interpret its role in increasing harmonization and EU-level authority in border control. Evidence\(^8\) amounts to the claim that risk analysis can advance European integration because it offers a multi-functional rationalization of border controls which legitimize increased EU-level coordination without questioning national sovereignty.

*Risk-based Rationalization: a Magic Bullet for the Commission and Border Agency?*

Before detailing the three case studies it is worth considering the Commission’s and border agency’s general claims about risk-based rationalization as an interpretive anchor. Our expectations about the rationalizing functions of risk analysis (section three) seem to be validated. According to the agency’s own rhetoric, the use of Frontex’s risk analysis in decision-making is first of all associated with *efficiency and effectiveness gains*. It is:

\(^8\) All data presented in this section stems from an interpretive policy analysis (e.g., Yanow and Schwartz-Shea 2006) of seven field interviews and more than a dozen official documents.
“intended to facilitate and contribute to informed decisions on investments and concerted actions that are most likely to have sustainable effects on the management of the external borders and ultimately the internal security of the EU”; risk analysis is seen as a tool “in ensuring the optimal allocation of resources within constraints of budget, staff and efficiency of equipment” (Frontex 2013, 8).

Effectiveness also features as a key goal of the Council in its Frontex regulation:

“While considering that the responsibility for the control and surveillance of external borders lies with the member states, the agency shall facilitate and render more effective the application of existing and future community measures relating to the management of external borders” (CEU 2004, article 1.2).

Interviewees at Frontex highlight efficiency and effectiveness gains as important drivers for risk-based border control, too:

“We consider ourselves as intelligence-driven organisation which offers evaluations on a high level of quality of evidence to member states to enable efficient and effective border control.” (Frontex strategist, interviewed 2 February 2015, Warsaw)

“If your budget is limited and capacities for border control are limited, whilst flows remain the same or grow or become more complex, you have to know where exactly to provide support.” (Frontex risk analyst, interviewed 3 February 2015, Warsaw)

“With 80,000 km sea borders and 13,000 km land borders, you cannot be everywhere or stop everyone from entering irregularly. We could be funding a lot of different things, but we cannot. So you have to set priorities.” (Frontex risk analyst, interviewed 3 February 2015, Warsaw)

Such views are equally rehearsed by Commission officials who state that EU-level interventions in the border control domain require proof of their efficiency and effectiveness. Within the last decade, they claim, Frontex risk analysis has become a crucial litmus test for the necessity of proposed border control operations and funding
schemes. In that respect, “effective border control comprises risk analysis” (DG Home Affairs policy analyst, interviewed 5 February 2015, Brussels).

Beyond efficiency and effectiveness increases, the Frontex regulation also hopes that, in the absence of binding EU-level requirements for mutual support, voluntary *solidarity* between member states can be enticed:

> “The agency shall also provide the commission and the member states with the necessary technical support and expertise in the management of the external borders and promote solidarity between Member States” (CEU 2004, article 1.3).

Commission officials describe Frontex’s risk analysis as a means to establish the limits of border security ex-ante – thus relying on the reflexive character of RBR and its ability to mitigate their own institutional risks systematically (e.g., Rothstein *et al.* 2006). On the one hand, border integrity and security is to be fully ensured; on the other hand, regulators in Brussels accept that this is impossible to achieve and needs to be compromised with risk-based prioritization strategies:

> “We need to guarantee safe borders without illegal crossings officially, but of course, in reality, we do acknowledge that we cannot be one hundred per cent sure that there is no illegal crossing. So yes, we do focus on the riskiest border crossing points or modi operandi in practice.” (DG Home Affairs policy analyst, interview 25 March 2015, Brussels)

Such risk-based prioritization might imply, for instance, that “there are areas in Northern Lapland which are not really patrolled at all because the terrain is difficult for crossings and there is two meters of snow half of the year” (same interviewee).

*Transparency and de-politicization* were also discussed; indeed, risk analysis is to mitigate the highly politicized public perception of Frontex: “We create an evidence base for decision-making that takes place elsewhere, in the member states or with the
Commission … But we do not do policies.” (Frontex public relations officer, interviewed 2 February 2015, Warsaw) In order to ensure such a ‘neutral’ perception of the agency’s role as evidence provider (cf. Neal 2009), interviewees agree, “all of Frontex should be risk-based; everything the agency does should be justified by risk analysis” (Frontex risk analyst, interviewed 3 February 2014, Warsaw).

The article goes on to analyse the three main applications of risk analysis in European border control, establishing how and why Frontex’s risk analysis increases harmonization and EU-level authority in European border control.

*Case Study 1: Eurosur Impact Level Assessment*

Frontex’s risk analysis is used, firstly, to conduct Eurosur impact level assessment. The information exchange system Eurosur was designed in 2013 “to improve situational awareness and to increase the reaction capability at the external borders” (CEU 2013a). The border agency’s role as coordinator of evidence – member states submit situational pictures to the agency – has been strengthened within this framework. The use of Frontex’s risk analysis for the drafting of situational pictures is now mandatory (ibid, articles 9 and 10), thus arguably increasing the transparency of border ‘risks’ across the Union by creating a comprehensive and consistent data base.

More importantly, however, risk analysis shapes the border agency’s coordinated impact level assessment. This assessment forms the heart of Eurosur and arguably shapes decision-making far beyond the limits of the EU’s mandate in border control. Frontex regularly evaluates more than two hundred external land and sea border sections in the Schengen Area according to their level of irregular migration and cross-border crimes risk (‘impact level’). As typical for RBR, Eurosur impact level assessment applies a traffic light model. For each border section, Frontex evaluators
distinguish between unacceptable (red), tolerable (amber) and acceptable (green) risk levels. A detailed qualitative catalogue of indicators and scenarios serves as a benchmark for this risk analysis. The Commission then proposes an escalating set of interventions according to increasing risk levels:

- for low risk areas, routine local border checks are put in place;
- for sections tagged with medium level risk, national priority setting is required to aid local border guards;
- for high risk border sections, eligibility for Frontex joint operations and EU-level financial support are being proposed (for example via the Internal Security Fund, see below).

While in general, “[m]easures to be taken to reduce these [risks] remain the responsibility of individual member states … in the case of ‘high impact level’ [i.e. high risk] border areas, member states may request operational assistance from Frontex in the form of a joint operation or rapid intervention” (statement on Eurosur on Frontex’ website, accessed 17 July 2016). Risk-based impact level assessment thus justifies the conditions under which member states can access assistance from Frontex joint operations, all while clearly limiting EU-level support to high risk situations.

The risk-based rationalization of EU-level support for member states’ border control does not only relate to the efficiency (spending Community money only in high-risk border sections) and effectiveness of European border control (rendering ‘weak’ border spots transparent and triggering joint enforcement). In addition, the risk-based differentiation of impact levels and staggered access to EU-level support renegotiates the relationship between local, national, and EU-level border guard operations in a polyarchic setting. While member states remain responsible for border control in
general, the EU substantiates its role in coordinating operations and providing financial aid for high border risks. At the same time, the regulatory use of risk analysis in Eurosur severely limits member states’ ability to call for emergency response for any other than those border sections marked as ‘high risk’ in impact level assessment. This risk-based self-limitation of supranational governance is considered crucial in soliciting member states’ trust in the fairness of the regime and their willingness to fund joint operations.

In consequence, the use of risk analysis in Eurosur impact assessment, more precisely: the Commission’s ability to delimit joint interventions to border sections marked as ‘high risk’ in a process that member states can accept as efficient, effective and fair is hoped to reconcile member states’ sovereignty claims with the Commission’s attempt to harmonize border control. This validates and strengthens Frontex’s role as chief risk analyst and coordinator of joint operations in high-risk scenarios.

Case Study 2: The Schengen Evaluation Mechanism

Risk information by Frontex has become crucial for inspection decisions within the Schengen evaluation mechanism (CEU 2013b). The evaluation regime aims to ensure, “an effective, consistent and transparent application of the Schengen rules”, i.e. member states’ ability to provide sufficient staff, equipment, and training for their sovereign controls of external land, air, and sea borders (as stated on the website of DG Migration and Home Affairs, accessed 17 April 2016). For that purpose a peer review mechanism was already in place within the Council since 1999, but this was later deemed ineffective, too soft and not very transparent (Horii 2016). In response, the new evaluation mechanism has strengthened the role of the Commission. It carries out quint-annual planned inspections (five to seven member states are visited per year) but also, unprecedentedly, unannounced visits. When identifying weaknesses in the
implementation of effective border control, the Commission can recommend binding remedial action, including the reintroduction of internal border control as ultimo ratio.

Frontex’s risk analysis is the key reference point for the Commission’s reinforced role. The Commission relies on the annual risk analysis to schedule its inspections and set priorities for the evaluation period. As a DG Home Affairs official explains, “we need to evaluate what is sufficient for compliance and what is not in order to decide where to go” (interviewed 5 February 2015, Brussels). Especially unannounced inspections have to be risk-based and Frontex can also recommend visits of high-risk sites in that context (CEU 2013a, article 7). During inspections, member states’ willingness to include Frontex’ risk analysis results systematically in the design of their national border control strategies counts as a proxy for compliance.

The transparency function of risk analysis, firstly, plays a moderating part between integration-averse member states and a Commission keen on harmonizing border control approaches through an evaluation regime. Certainly, member states themselves demanded a technocratic approach hoping for more ‘objective’ results and more transparent compliance results than with the old peer review system. Yet, they did not want the role of the Commission to grow too important either. The Commission relies on risk analysis to assume this “political role” in a publicly justifiable and legitimate manner (DG Home Affairs policy officer, interviewed 5 February 2015, Brussels). Indeed, it proposed a chief role for Frontex’s risk analysis under the new Schengen evaluation regime precisely because the associated claim of transparency and objectivity could legitimize and make acceptable the Commission’s expanding authority in border control vis-à-vis sceptical member states (also Horii 2016). For example, it would have to offer a clear risk-based rationale when temporarily reintroducing internal border checks in the Union after a negative evaluation outcome. Non-compliance with
the Schengen *acquis* at the Finnish-Russian border – which is in “two metres of snow” and an unlikely spot for high border risks in Frontex’s sense – would trigger less urgent Commission recommendations than non-compliance at the Greek-Turkish border.

Secondly, the focus on risk analysis serves to de-politicize a highly sensitive issue and thereby render it enforceable at EU-level: by making member states’ potential non-compliance with the Schengen *acquis* visible in a seemingly objective and neutral manner, enforceability at a Community level is increased without openly questioning member state sovereignty. Risk analysis is seen to be enabling in that regard because it allows the Commission to “achieve improvements towards a more harmonized and effective border management without naming and shaming” (Frontex risk analyst, interview 3 February 2015, Warsaw). Further, by declaring Frontex’s risk analysis an obligatory reference point for member states’ own border controls the Commission has established an influential role for EU-level knowledge provision through the backdoor of a seemingly ‘soft’ evaluation mechanism. Member states’ political decisions in the domain have been shown to be shaped by the way in which Frontex has measured and analysed border risks (Horii 2016). In this context, the seemingly apolitical role of Frontex (critically: Léonard 2010) has certainly led member states to accept a growing EU-level coordination of border control. As a border agency officials argues:

> “risk analysis provides us with autonomy from politics … no-one tells our risk analysis team what to examine, what to find or recommend … [our] risk analysis is data-based and cannot be bended politically” (Frontex risk analyst, interviewed 3 February 2015, Warsaw).

Overall then, risk analysis seems to enable increased coordination between EU-level actors and member states on border control enforcement. The transparency and de-politicization functions of RBR have been central to claiming a more powerful role of the Commission in monitoring and enforcing compliance with the Schengen *acquis*. 
With Frontex insisting on the political neutrality of its risk analysis the Commission has been rather successfully seeking to expand the reign of EU-level risk-based regulation well into member states’ sovereign enforcement of external borders.

Case Study 3: The Internal Security Fund

Frontex’s risk analysis also helps justifying the allocation of Community funding via the Internal Security Fund (ISF). The ISF was set up for the period 2014-20 with a budget of 3.8 billion Euros to promote, inter alia, the management of external borders, and with the goal of achieving “a uniform and high level of control of the external borders by supporting integrated borders management, harmonising border management measures within the Union and sharing information among EU States, and between EU States and Frontex” (as stated on the website of DG Migration and Home Affairs, accessed 18 June 2016). Member states can apply for ISF funding by proposing specific measures – including for example the “setting up and running IT systems, acquisition of operational equipment, promoting and developing training schemes, and ensuring administrative and operational coordination and cooperation” (ibid). Submissions will then be reviewed and selected by the Commission. Frontex is to provide evidence on the submitted cases based on its risk analysis and the Eurosur impact level assessment.

The ISF constitutes a particularly far-reaching example of integration by risk analysis. As it allocates money directly to member states, the ISF entails a strong authority for the Commission to define and financially enforce EU-level border control priorities. A DG Home Affairs expert summarizes this role nicely, and not without proud: “we decide where the money goes” (interviewed 5 February 2015, Brussels). The realm of Frontex’s risk analysis has been considerably expanded in this context: “Frontex has its
foot in the door when approval procedures for multiannual national border control plans are decided upon” – its risk analysis is thus directly involved in the allocation of resources (Frontex strategist, interviewed 2 February 2015, Warsaw).

Similarly to the Eurosur impact assessment and the Schengen evaluation mechanism, the use of risk analysis offers the Commission the capacity to propose a meaning of ‘sufficient’ and ‘effective’ border control that is accepted as transparent and rationally-derived. It can hence expose weak performers and prompt Community-level measures in high-risk situations without prompting member state scepticism about such interference with national sovereignty. At the same time as expanding EU-level coordination on border control issues, Commission officials make the limits of the ISF ardently clear: “Frontex is not a financial instrument, it should not be called upon to provide financial support for member states’ own efforts and responsibilities in border management” (DG Home Affairs policy officer, interviewed 25 March 2015, Brussels).

First and foremost, member states have to comply with the Schengen acquis by drawing on their own national resources and by devising their own enforcement strategies. As they insist so zealously on their sovereignty, the same expert argues, “they cannot require the EU to assist in routine spending”. Again, this is a matter of efficiency and effectiveness of EU-level spending just as much as it is one of soliciting member states’ trust in a fair distribution of funds. Therefore, the Commission is careful to define the ISF, as well as Frontex joint operations, as additional support in exceptional situations with especially high border risks rather than a form of routine spending.

Consequently, the Commission uses risk-based rationalization to justify EU-level funding for border control systematically and define its limits ex-ante. Justification for fiscal priority-setting is directly drawn from Frontex’s risk analysis as a seemingly transparent and apolitical source for decision-making. The association with risk-based
rationality renders the ISF a financial governance tool which substantiates EU-level authority and softly incentivizes member states to accept a more harmonized assessment about what border risks actually are as well as a coordinated approach to managing border risks.

5 Conclusion

This article investigated the regulatory functions of Frontex’s risk analysis to determine how and why risk analysis can advance the harmonization of European border control (as suggested but so far not substantiated in the literature). By harvesting insights from risk-based regulation research for our field of European integration studies, the study scrutinized – both theoretically and empirically – the regulatory functions and appeal of risk analysis in decision-making. In so doing, it was able to explain a so far unaccounted dynamics of “integration by risk analysis” in an otherwise weakly integrated domain. We submitted that the regulatory promises of RBR – namely: efficiency, effectiveness, and transparency gains in regulation, depoliticization, and the maintenance of trust and solidarity in a regulatory regime – are well suited to harmonize formally weakly integrated domains (cf. table 1). Indeed, the analysis showed that the border agency’s mandate being ‘limited’ to risk analysis is not a weakness but can serve as a crucial regulatory remedy to incentivize a voluntary expansion of coordination in a weakly integrated domain.

The empirical analysis of three case studies – all fundamentally based on Frontex’s risk analysis – substantiated this claim. Overall, the Commission and the border agency sought to capitalize on the diverse functions of RBR mainly to justify EU-level spending and intervention priorities vis-à-vis member states. They used Frontex’s risk analysis to highlight strengths and weaknesses of member states’ border management
“without naming and shaming” (Eurosur and Schengen evaluation), to have member states commit to enforcement recommendations (Schengen evaluation), and, eventually, to have them buy into a more harmonized approach to European border control. With respect to the ISF, the use of risk analysis was meant to capture member states’ continued support for coordinated border controls by rendering funding decisions transparent and fair, thus soliciting solidarity and trust between member states in a fiercely contested domain. Within the Schengen evaluation mechanism, the ‘apolitical’ appearance of risk analysis enabled the Commission to justify unannounced visits and improvement recommendations for member states – otherwise a political hot potato. Here, the transparency and de-politicization functions of RBR were considered central to claiming a more powerful role of the Commission in monitoring and enforcing the Schengen acquis but also to incentivizing member states to adopt a more harmonized risk analysis and risk management strategy in their own governance realms. This dynamic might even consolidate in the future: Executive Director, Fabrice Leggeri, has made it clear that the increases in Frontex’s budget as a response to the refugee crisis at the onset of 2016 will be distributed with a risk rationale in mind: “Risk analysis … is an essential tool for deciding how these new resources should be allocated.” (Frontex 2016, 5).

As for discussing the article’s findings, they firstly entail implications for new research venues. With the relevance of EU-level or EU-induced risk analysis increasing across several policy domains (e.g., for flooding: CEU 2007) and DG Environment having already announced the development of a systematic approach to risk (see Paul et al. 2015), European integration research could benefit from considering the regulatory role of risk analysis more prominently. In the examples discussed here Frontex’s risk analysis served as a magic bullet which could simultaneously remedy coordination
problems and bypass official limits of supranational cooperation. There are good reasons to expect risk analysis to serve as a crucial regulatory tool for subtly harmonizing policies and enforcement more generally; especially in domains marked by weak integration but simultaneously high rationalization pressures. When faced with typical cross-border regulatory problems such as migratory movements, flooding, pollution or terrorist crimes, member states may be willing to park their sovereignty concerns and coordinate their approaches, albeit informally or experimentally rather than on a Treaty basis. In this context, the seeming normative innocence of risk analysis and its appeal as a ‘rationality project’ – though inevitably involving distinctly normative decisions on what to include in definitions of ‘harms’, ‘costs’ and ‘benefits’ etc. (Stone 2012) – offers a way to deepen such coordination without openly renouncing sovereignty or formally empowering EU-level actors. Future comparative research across agencies and policy domains – more prominently considering also member states’ uses of EU-level risk analysis – could substantiate and nuance these claims.

Secondly, the here discussed ‘integration by risk analysis’ entails considerable policy implications. For one, there is risk analysis’ uneasy relationship with liability and accountability for decision-making at the border (Carrera et al. 2013; Carrera and den Hertog 2015; Mungianu 2013). With Frontex’ risk analysis being mainstreamed as the basis for ever more decisions on border control by the Commission (and by member states themselves), including on funding and operations, its political impact increases without respective scrutiny of its liability for potential human rights breaches. Moreover, the article exhibited the silent expansion of EU-level authority as highly functional for European integration and bracketed questions of democracy for this analytical purpose. Yet, the dis-embedding of ‘integration by risk analysis’ from democratic decision-making and political debate remains problematic (e.g., Flinders and
Wood 2015; Fossum 2012). Our findings on the important regulatory role of risk analysis leaves those who demand more integration in the border control domain with an unresolved tension: while risk analysis contributes to desirable harmonization precisely because it appears as neutral and managerial, this de-politicization might simultaneously reify member states’ sovereignty concerns in the domain. Rather than articulating border control decisions as technocratic automatisms based on actuarial calculation ‘done in Brussels’, unrealistic control expectations might be better countered when the political choices behind regulatory applications of risk analysis are being openly debated across the multiple levels of European governance.

References


