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**EUAA Operations in Malta: legal remedies to *de facto* powers in the absence of legal certainty**

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Abstract

In Malta the European Union Agency for Asylum (EUAA) is involved in the decision-making processes on individual asylum applications. In spite of the Agency’s ability to enforce national border procedures and to affect the circumstances in which they are carried out, holding the Agency accountable for its actions seems to be prevented by the lack of clear allocations of tasks and the consequent inadequacy of the judicial remedies available. The contribution aims at shedding some lights on the *de facto* role played by the Agency on the island and on the different problems of effective judicial protection which stem from its action.

Keywords:

Enforcement, asylum law, EU Agencies, accountability

**I. Introduction**

Legal certainty consists in being able to anticipate the concrete evaluation that will be made in the enforcement of law with reference to the actions and situations performed. As a general principle of the EU legal order, legal certainty "aims to ensure that situations and legal relationships governed by [Union] law remain foreseeable".[[1]](#footnote-1) In the context of asylum procedures, this principle arguably encompasses at the very least the foreseeability of who takes the decision on the application for international protection and who is entitled to affect the procedure and the circumstances in which it is carried out. However, this condition has been imperiled by the entrance in the legal arena of actors holding powers which are not clearly defined, i.e. EU Agencies acting in the AFSJ.[[2]](#footnote-2) In the last decade EU migration agencies underwent a tremendous development of their mandates, tasks, and activities.[[3]](#footnote-3) This growth of powers presents two intertwined problematic issues: 1. the expansion frequently takes the form of powers established *de facto* rather than through clear legislative instruments; 2. the conferral - *de iure* or *de facto* - of extensive competences has not been implemented together with appropriate accountability mechanisms. The two aspects emerge with regard to the European Union Agency for Asylum (EUAA), established in January 2022 as a successor of the European Asylum Support Office (EASO), with the mandate of increasing convergence and ensuring the quality of Member States’ decision-making in their asylum procedures.[[4]](#footnote-4) EUAA is currently conducting operations in nine Member States (MS),[[5]](#footnote-5) finding room in their administrative systems by means of “asylum support teams” which are deployed on the basis of Operating Plans agreed with national authorities.[[6]](#footnote-6) The assistance to be provided by the Agency was designed to be ancillary to the role of national authorities in the enforcement of asylum law: the founding Regulation states that the Agency should have no direct or indirect powers in relation to the taking of decisions by Member States’ asylum authorities on individual applications for international protection.[[7]](#footnote-7) Nevertheless, the practical application of the law showed a different reality, as the Agency’s personnel has been substantially involved in the processing of asylum applications in some of the MS in which it operates.[[8]](#footnote-8) The paper will cover the case of Malta, where the Agency has been conducting its Operations since 2019. In recent years the island has seen a sharp increase in asylum applications, going from 23 in 2017 to 3406 in 2019, to 2281 in 2020.[[9]](#footnote-9) The purpose of this contribution is to examine what are the legal venues (or their lack thereof) available in EU law to challenge the role played by EUAA in the processing of asylum requests in the island. The analysis explores how EUAA can be held responsible for its acts and actions and how it can be called to face consequences in case of unlawfulness of its conduct. The central argument is that theinfluence exerted by the Agency in the field does not find a counterbalance in the remedies available to asylum seekers for potential violations. I will first give an overview of the growing involvement of the Agency in individual asylum decisions in order to set the framework for the analysis. Second, I will display the problems connected to the possibility of challenging the Agency’s acts which include assessments that affect asylum decisions. Third, I will analyze what remedies are available with regards to the Agency’s factual conduct. Finally, some conclusions will be drawn on how the lack of legal clarity and the existence of actions with real effect but no legal recognition create serious challenges for the rule of law.

**II. Exceeding EUAA mandate**

The initial design of the EU policy involving EU agencies foresaw a sort of executive federalism by virtue of which the national executives assume responsibility for the application of European law and the agencies should have only provided “purely technical evaluations”.[[10]](#footnote-10) In line with this view, EASO was conceived to function as a producer of expert knowledge in a context heavily affected by political considerations.[[11]](#footnote-11) The Agency was created to perform three main duties: 1. enhancing practical cooperation on asylum among MS; 2. provide support to MS whose asylum systems were under particular pressure; 3. contribute to the implementation of the CEAS.[[12]](#footnote-12) However, the clear-cut distinction between ‘technical’ advice and enforcement did not prove to reflect accurately the reality of EU law implementation. In the policy area of asylum, the so-called “hotspot approach”[[13]](#footnote-13) adopted by the Commission to face the migration crisis[[14]](#footnote-14) gave rise to an unprecedented degree of integration between agencies and the national levels.[[15]](#footnote-15) EASO personnel in Greece started conducting parts of the asylum process which entail discretion, such as conducting the admissibility interview and drafting the credibility assessment at the basis of the decision on asylum.[[16]](#footnote-16) The circumstances led scholars to claim that a composite administrative procedure emerged,[[17]](#footnote-17) thus raising doubts on who had the real decision making power.[[18]](#footnote-18) In spite of the Agency’s mandate, it was reported that EASO took a prominent position in the hotspots in Greece, replacing *de facto* national authorities in the decisions on individual applications.[[19]](#footnote-19) This scenario has been made possible by the unclear allocation of tasks, as the Regulation did not specify how the support should have been provided and the Operational Plans agreed with MS did not give detailed indications in this sense.[[20]](#footnote-20) In 2019, EASO started its operations in Malta, being involved in first instance asylum determination procedures, following the model that had been experimented in Greece since 2015, thus causing the same problems of lack of clarity and accountability gaps. The EUAA Regulation which entered into force in January 2022 did not solve these problems. In the Regulation it is emphasized again that the Agency should not prejudice national authorities’ competence to decide on individual applications for international protection.[[21]](#footnote-21) However, two points still pose some risks to legal certainty: 1. the legislation and the Operational Plans do not specify what are the boundaries which would prevent the assistance in processing asylum applications from turning into a replacement of national authorities; 2. the accountability regime of the Agency has not been considerably improved (although, as I will explain later, a complaint mechanism was introduced). As regards Malta, the Operational Plan states generically that the Agency provides “support with document analysis in the asylum procedure first instance processes” and “to the asylum procedure first instance processes -registration, Dublin procedure, personal interview, drafting of evaluation reports”.[[22]](#footnote-22) As analyzed below, the vague legislative indications and the incomplete provisions in the Operational Plan pose risks as to how to challenge the Agency's acts and conduct.

1. **The Agency’s Acts: challenging assessment reports**

Unlike what is foreseen for other Agencies, EUAA Regulation does not explicitly refer to the Agency’s acts with regards to their legal nature and to the ways available to challenge them.[[23]](#footnote-23) According to its founding legislation, the activities to be carried out by EUAA are supposed to materialize in “tools of a non-binding nature” such as “operational standards, indicators and guidelines”.[[24]](#footnote-24) The Operational Plan (OP) signed with Malta mentions among the acts of the Agency some “assessment reports” to be drafted by EUAA and to be delivered to support national authorities in the asylum decision-making processes.[[25]](#footnote-25) The purpose served by these assessment reports and the extent to which they provide mere support to national authorities or constitute discretionary decision-making tools are crucial factors to allocate responsibility. However, the OP signed with Malta merely provides that the Agency supports with document analysis in the first instance asylum procedure and provides assistance with registration, Dublin procedure, personal interview, drafting of evaluation reports.[[26]](#footnote-26) From this kind of indications it is not clear how the processing of an application is carried out by the Maltese authorities, nor what role is played in it by EUAA. Some practical aspects of the way in which the Agency’s ‘assessment reports’ are formed and adopted makes a difference in its engagement in individual decisions. For example, one thing is to conduct the interview at the basis of the credibility assessment in the presence of national authorities, another is to conduct it in complete autonomy. Another relevant element is how the assessment reports are created. If for example the Agency’s staff drafts its considerations on paper headed by national authorities, the observations of the two would blend and the possibility to discern who decided what would be ruled out. In such cases a credibility assessment leading to a certain decision could be the result of various elements assessed differently by EU and national staff. Also, the procedure through which the authorities embrace or refuse the Agency’s assessments is not specified in the OP nor in national legislation. In case of diverging opinions between the Agency and national officers, no standards procedures are established to ensure the transparency of the decision-making. In 2019 it was reported that an area of potential contention between EASO and national authorities emerged with regards to the type of protection to be recognized to nationals of countries such as Syria and Eritrea, given that Malta grants subsidiary protection in the overwhelming majority of cases. In that particular case, the Maltese immigration authorities declared to have had discussions with EASO prior to referring Sudan cases to the Agency’s Caseworkers, in order to acquaint them with national policy and to ensure that the Agency aligned its practice accordingly.[[27]](#footnote-27) The informality of these procedures imperil the certainty of law on one hand and the role of the EU Agency as producer of technical - and impartial - knowledge on the other.

Furthermore, the practice of differentiating the interviewer from the person formally entitled to take the final decision also raises some doubts regarding the compliance with EU law. In particular, Article 14 of the Procedure Directive states that: ‘[..]Personal interviews on the substance of the application for international protection shall be conducted by the personnel of the determining authority’.[[28]](#footnote-28) As the determining authority is formally the Maltese International Protection Agency, the norm would require its own staff to carry out the interview. In addition, the Qualification Directive regards the credibility assessment, included in the Agency’s mentioned reports, as constituting one of the crucial elements to assess the eligibility of the applicant for international protection.[[29]](#footnote-29) As regards the step that follows the interview, the CJEU held that the examination of the application for international protection by the determining authority is a “vitalstage” of the common procedures established by the Asylum Procedures Directive.[[30]](#footnote-30) If this vital stage builds upon the preceding interview conducted exclusively by EUAA, it is legitimate to doubt that the decision would be heavily affected - to say the least - by the evaluation given by the people present during the preceding phase. The risk which emerges is that national authorities simply endorse decisions that, essentially, have been taken by the Agency, which in turn assumed a leading role during the entire administrative procedure or most of it.[[31]](#footnote-31) On EUAA’s website it is emphasized that “The Agency does not replace the national asylum or reception authorities, which are ultimately entirely responsible for their procedures and systems”.[[32]](#footnote-32) The reference to an entire responsibility of its national counterparts tends to downplay the Agency’s role in those procedures and systems. Nonetheless, according to the CJEU case-law, in order to determine whether an act produces binding legal effects, it is necessary to examine the substance of that act and to assess its effects on the basis of objective criteria, such as its content. The Court specified that it might be taken into account: 1. the context in which the act was adopted; 2. the powers of the institution which adopted the act.[[33]](#footnote-33) As regards the latter, it follows from primary law that the final decision on international protection is formally attributable only to national authorities. Article 78(2)(e) of the TFEU in fact states that “the competence for the examination of international protection applications ultimately rests upon Member States”.[[34]](#footnote-34) The ‘ultimately’ seems to give a peremptory indication, thus presenting as irrelevant what happens in the step preceding the decision when establishing who is responsible. However, as pointed out by the CJEU, the context in which an act is adopted is critical to understand its authorship and the involvement of the Agency in crucial phases raises some doubts with regards to its neutrality.[[35]](#footnote-35)

**III. Remedies to acts**

Article 263 TFEU provides the legal basis for the review of the Agencies’ acts, as it states that the CJEU holds judicial scrutiny over the legality of the acts of bodies, offices or agencies of the Union.[[36]](#footnote-36) However, the judicial control over EUAA’s acts affecting individual asylum decisions presents some limits resulting from 1. the unclear allocation of tasks; 2. the CJEU’s position on the matter. As regards the latter, the CJEU limited its scrutiny to the acts of EU Agencies which produces effects *vis à vis* third parties.[[37]](#footnote-37) The formal status of the act does not prevent *per se* its reviewability by the CJEU,[[38]](#footnote-38) so the circumstance for which EUAA’s acts are formally non-binding would not in principle impede an annulment action ex art 263 TFEU. Nonetheless, the CJEU’s position on the reviewability of the agencies’ preparatory acts seems to bar this remedy.[[39]](#footnote-39) In fact, as regards decisions taken on the basis of opinions of an authority from a different jurisdiction - such as a formally Maltese national decision taken on the basis of an EUAA’s assessment report - the Court stated that such opinions must be considered as evidence that the national court should take into consideration.[[40]](#footnote-40) The Court’s position thus expresses a preference for indirect judicial oversight by domestic courts, thus giving rise to a situation in which the administrative level is becoming more 'integrated' while the judicial system remains based on a strict separation between the EU and the national levels of jurisdiction.[[41]](#footnote-41) This approach has been criticized by commentators who noted that agencies increasingly exercise *de facto* decision-making and regulatory powers also through non-binding acts, thus raising concerns with regard to the effectiveness of the range of remedies provided.[[42]](#footnote-42) Two main problems arise with regard to the reviewability of EUAA’s acts by the Maltese national Court. First, as mentioned before, the tracking of the decisions and the informal directives that could be given by either the Agency or the authorities to each other pose some challenges to the determination of the substantial authorship of the act. Second, the national Court may be reluctant to inquire into the merits of the acts of an Agency which was employed because of its expertise. The same CJEU expressed its self-restraint regarding the technical evaluation given by agencies, putting the agencies’ expertise as the reason for their limited judicial review.[[43]](#footnote-43) Therefore, there are legitimate reasons to suppose that national Courts would show the same deference at the prospect of evaluations given by experts. In any case, the *Foto-Frost* doctrine would impede the national court to annul a Community act.

**IV. The Agency’s action: challenging factual conduct**

The unclear allocation of tasks has particularly challenging consequences with regards to the Agency’s “factual” conduct, i.e. conduct that does not necessarily lead up to the adoption of an act, but which is still able to affect the administrative procedure. Such conduct can take the shape of a preparatory activity and, in spite of not bringing about a conclusive change in the legal position of the affected party, it adds or incorporates elements to it.[[44]](#footnote-44) Multi-phased processes such as the asylum procedure are stud with factual acts: the provision of information to asylum seekers or the management of activities in hotspots during registration or interviews for international protection are practical examples of how such factual acts can affect procedural and fundamental rights of asylum seekers. In the case of EUAA’ s involvement in refugee status determination, the procedure spans different jurisdictional levels, making the review of the legality of such acts a complex matter. An overview of the context in which EUAA is called to operate in Malta will serve to clarify the reasons why violations in the form of factual conduct are likely to occur.

In Malta EUAA conducts a large part of its operations in the detention center of Safi.[[45]](#footnote-45) The detention of asylum seekers in the island has a long history, as it was mandatory until 2015. In that year the reform of the reception system ensured compliance with the Reception Regulation and outlawed the automatic detention. However, from summer 2018 onwards, due to lack of space available in overcrowded reception centers, all asylum seekers except families and young children have been automatically detained upon arrival.[[46]](#footnote-46) Minors and vulnerable applicants were officially not supposed to be detained, but since all applicants arriving irregularly were brought to detention without any form of assessment, vulnerable applicants and minors were detained for months before a proper assessment was conducted. During the pandemics emergency, the authorities stated that the detention was related to COVID-19 measures and that it was ordered on the basis of the Prevention of the Disease Ordinance.[[47]](#footnote-47) However, no information or documentation on said measures was provided to detained persons and the detention often continued way beyond acceptable quarantine time-frames. In September 2020 1400 asylum seekers were detained,[[48]](#footnote-48) while in 2021 838 migrants were held under such measures, with 134 migrants still detained at the end of year, amounting to the total number of arrivals by boat.[[49]](#footnote-49) The conditions of the detention center of Safi have been deemed as “bordering on inhuman and degrading treatment as a consequence of the institutional neglect” by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).[[50]](#footnote-50) In addition to the poor reception conditions, some practices such as handcuffing asylum seekers while taking walks and not providing information on the length of their detention and the reasons on which it was based constitute blatant violations of human rights.[[51]](#footnote-51) The participation of EUAA staff on a daily basis in such a place raises some questions with regards to its indirect involvement in human rights violations, considering also that it has been reported that violations have been denounced by asylum seekers to the Agency’s personnel.[[52]](#footnote-52) The OP signed by EUAA with Malta states that: “During the implementation of this Plan, all personnel must apply a zero-tolerance attitude with respect to the infringement of fundamental human rights”.[[53]](#footnote-53) However, if the Agency’s operations are conducted in a place where violations occur systematically, it is hardly possible that the ‘zero-tolerance attitude’ is respected, at least in terms of witnessing the violations and refraining from taking action. This raises complex questions as to how the presence of EUAA validates implicitly practices not in compliance with EU law and how asylum seekers could ask for redress as for factual conduct there is no formal act that can be challenged through the actions analyzed in section III.

**V. Remedies to factual conduct**

In case of fundamental rights violations MS can be held accountable before their own national courts and before international courts, in this case notably the European Court of Human Rights (ECtHR). Malta was in fact condemned several times by the ECtHR for the detention conditions of individuals awaiting immigration proceedings.[[54]](#footnote-54) However, EUAA being an EU body, this solution is not available to hold the Agency responsible for the indirect involvement in a fundamental rights violation, as the EU is not (yet) a party to the ECHR. Three more venues could be potentially envisaged.

First, Article 51 (2) of EUAA Regulation provides for a complaint mechanism, which was introduced in January 2022. The provision states that ‘any person who is directly affected by the actions of an expert participating in an asylum support team, and who considers that his or her fundamental rights have been violated due to those actions, or any party representing such a person, may submit a complaint in writing to the Agency.’ Although the attempt to provide for a form of accountability is to be welcomed, the mechanism raises some doubts with regard to its effectiveness. First, the provision states that the mechanism is not to be used for claims against a national authority’s decision.[[55]](#footnote-55) However, as explained above, the participation of EUAA in the field merges into the decision formally attributable to national authorities. Therefore, doubts about the accessibility of this mechanism arise.[[56]](#footnote-56) Second, although the provision underlines the need to ensure adequate follow up, no form of redress for the victims of fundamental rights violations has been established.

Second, an action for failure to act ex article 265 TFEU could be brought. In fact, Article 18(6)(c) of EUAA Regulation states that the Executive Director shall, after informing the host Member State, suspend or terminate, in whole or in part, the deployment of asylum support teams where the ED considers that there are violations of fundamental rights or international protection obligations by the host Member State that are of a serious nature or are likely to persist. Given that Malta has been recently condemned by the ECtHR and heavily criticized by the CPT for the treatment of asylum seekers, the Agency should have suspended its operation following the indications of the Regulation. An action for failure to act has been recently brought against Frontex, which however, has pleaded the action to be manifestly inadmissible as the Agency states that the incidents for which the action was brought were isolated ones and therefore the conditions required by Frontex Regulation were not fulfilled.[[57]](#footnote-57) It is still to be seen how the Court will decide on the case, as the outcome could be relevant for the remedies available to hold EUAA accountable.

Finally, some commentators noted that an action for damages as provided in Article 340(2) of TFEU and Article 66 EUAA Regulation could be a suitable procedure in this context.[[58]](#footnote-58) Considering the problems explored above in employing the action for annulment ex article 263, the action for damages has been proposed as a mean to ensure the right to an effective remedy, as examined in particular with regard to Frontex by Fink.[[59]](#footnote-59) According to the applicable case law, in order to prove the EU’s extra-contractual liability, all three elements shall cumulatively subsist: an illegal conduct of the institutions or their servants; a real and certain damage; a causal link between the conduct and the damage claimed.[[60]](#footnote-60) As regards the first element, it could be easily argued that EUAA’s actions in some contexts are likely to fulfill this condition.For example, it would be unlawful to conduct an interview with asylum seekers violating their dignity or to indulge national practices blatantly violating EU law. The second element could also be easily verified, considering that fundamental rights are at stake. However, the causal link presents some hurdles as to the attribution of the conduct to the Agency. In fact, Maltese agents (such as the detention services in Safi detention center) work closely with the Agency’s staff, whose official mandate is that of supporting national authorities. As a consequence, it would not be easy to establish whether a damage would have been caused anyways - even without the Agency’s presence in the setting of the violation. An action for damages against Frontex has been recently brought before the CJEU, the decision of which could give some useful insights to assess whether this remedy will prove to be effective and whether the Court will interpret the requirement to prove a causal link in a different way.[[61]](#footnote-61)

**VI. Concluding observations**

The previous sections have shown that some hurdles still exist in challenging EUAA’s activities. As analyzed, these hurdles relate to the lack of clear allocation of tasks and to a system of remedies which does not take into account the *de facto* powers of the Agency. In the absence of clear legal indications, the risk of a situation in which a blame game emerges is high. In fact, where human rights standards are not respected (like in Safi detention center), it is likely that the authorities in the field would shirk its responsibilities counting on the presence of the authorities from the other jurisdiction present on the field. The reputation of one actor plays a role in this dynamic: in fact, the EU Agency staff is likely to be seen by national authorities and domestic Courts as holding a greater expertise which cannot be discussed. On the other hand, it is likely that the Agency staff would not impose on national authorities in the field to respect EU rules as its role should be to merely support the implementation of national policies. It could be argued then that the role of EUAA amounts to no more than that of a temp agency, providing personnel to be put at the disposal of national authorities. However, the adding of this other layer in the administrative practices is not without consequences. It was noted by Schneider and Nieswandt that: “With reference to the ‘expertise’ [EUAA] allegedly supplies, political, moral, or legal arguments are disarmed and subsumed under the logic of the neutral, efficient execution of tasks. In this way, the challenges and ambiguities of asylum administrative practices, which arguably render the field of asylum administration particularly vulnerable to heteronomous influences, are downplayed, even silenced”.[[62]](#footnote-62) As shown by the analysis, it is particularly problematic that the insertion of this layer of experts took place in the absence of clear demarcation of tasks, responsibilities and remedies. As a consequence, its impact on the fundamental rights of individuals found a shield from accountability in the legal uncertainty which governs the cooperation between the Agency and national authorities.

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 Case C-63/93 *Duff and Others v Minister for Agriculture and Food* [1996] ECJ EU:C:1996:51, para 20. [↑](#footnote-ref-1)
2. On EU Agencies: E Chiti, ‘An Important Part of the EU’s Institutional Machinery: Features, Problems and Perspectives of European Agencies’ (2009) 46(5) Common Market Law Review,1395; M Everson and E Vos (eds), *EU Agencies In Between Institutions and Member States* (Wolters Kluwer 2014); M Scholten and A Brenninkmeijer (eds), *Controlling EU Agencies: The Rule of Law in a Multi-Jurisdictional Legal Order* (Elgar 2021); J Alberti, *Le agenzie dell’Unione europea* (Giuffrè 2018). [↑](#footnote-ref-2)
3. M Scipioni, ‘De Novo Bodies and EU Integration: What is the Story behind EU Agencies’ Expansion?’ 2018 *Journal of Common Market Studies* 56; D Fernández-Rojo, *EU Migration Agencies: The Operation and Cooperation of Frontex, EASO and Europol* (Edward Elgar Publishing 2021). [↑](#footnote-ref-3)
4. Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 [2021] OJ L468/1. [↑](#footnote-ref-4)
5. Latvia, Lithuania, Greece, Cyprus, Italy, Malta, Spain, Belgium, Romania. [↑](#footnote-ref-5)
6. Article 18 EUAA Regulation. [↑](#footnote-ref-6)
7. Recital 14 EASO Regulation; Art 2(6) EASO Regulation. [↑](#footnote-ref-7)
8. The topic has been explored especially with regards to Greece, see E Tsourdi, *Holding the European Asylum Support Office Accountable for its role in Asylum Decision-Making: Mission Impossible?* German Law Journal (2020), 21, pp. 506–531; G Lisi and M Eliantonio, *The Gaps in Judicial Accountability of EASO in the processing of asylum requests in Hotspots*,European Papers (2019) vol 4, no 2, pp. 589-601; S Horii, *Accountability, Dependency, and EU Agencies: The Hotspot Approach in the Refugee Crisis,* Refugee Survey Quarterly, volume 37, Issue 2, (2018),209, pp. 204–230. [↑](#footnote-ref-8)
9. UNHCR Asylum Trends, available at: https://www.unhcr.org/mt/figures-at-a-glance#:~:text=2022%20Arrivals%20and%20Asylum%20Trends,is%205%25%20of%20total%20decisions.https://www.unhcr.org/mt/figures-at-a-glance, last access 02/12/2022. [↑](#footnote-ref-9)
10. The European Commission advanced in 2002 with regards to Agencies that: “The independence of their technical and/or scientific assessments is, in fact, their real raison d’être. The main advantage of using the agencies is that their decisions are based on purely technical evaluations of very high quality and are not influenced by political or contingent considerations”, The Operating Framework for the European Regulatory Agencies, at 5, COM (2002) 718 final (Dec. 12, 2002). Hofmann claims that ‘this model has always been a simplification of reality’. H C.H. Hofmann, ‘Composite decision-making procedures in EU administrative law’, in: H. Hofmann & A H. Türk (Eds), Legal Challenges in EU Administrative Law, Elgar 2009, 137. [↑](#footnote-ref-10)
11. C Boswell, ’The political functions of expert knowledge: knowledge and legitimation in

European Union immigration policy’ (2008) 15(4) Journal of European Public Policy 471; J. Parkin, ‘EU home affairs agencies and the construction of EU internal security’ (2012) CEPS Paper in Liberty and Security in Europe, 53. The idea of an Agency assisting national authorities in the effective implementation of the common asylum policy was first introduced in the Hague Programme of 2004. The programme, entitled “Strengthening freedom, security and justice in the European Union”, aimed to improve the capability of the Member States to cooperate in this policy area. European Council, The Hague Programme: strengthening freedom, security and justice in the European Union, 30 March 2005: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52005XG0303(01)>), last access 02/12/2022. [↑](#footnote-ref-11)
12. Recital 13 EASO Regulation. [↑](#footnote-ref-12)
13. Communication COM(2015) 240 final of 13 May 2015 from the Commission on a European Agenda on Migration. [↑](#footnote-ref-13)
14. On the lack of a systematic framework to this approach and an analysis through the lenses of international law, F Casolari: ‘The EU’s hotspot approach to managing the migration crisis: a blind spot for international responsibility?’ The Italian Yearbook of International Law Online (2016). [↑](#footnote-ref-14)
15. E Tsourdi, ‘Bottom-up Salvation? From Practical Cooperation Towards Joint Implementation Through the European Asylum Support Office’ (2016) 3(1)European Papers, pp. 997-1031. [↑](#footnote-ref-15)
16. C Ziebritzki “Chaos in Chios: Legal questions regarding the administrative procedure in the Greek Hotspots”, available at: <https://eumigrationlawblog.eu/chaos-in-chios-legal-questions-regarding-the-administrative-procedure-in-the-greek-hotspots/>, last access 02/12/2022. [↑](#footnote-ref-16)
17. E Tsourdi, supra note 15. [↑](#footnote-ref-17)
18. On composite procedures in general, H C.H. Hofmann, ‘Decisionmaking in EU Administrative Law – The Problem of Composite Procedures’ (2009) Administrative Law Review, 221. [↑](#footnote-ref-18)
19. S Horii, supra note 8, p 224. [↑](#footnote-ref-19)
20. E Tsourdi, supra note 15, p 1028.

All the Operational Plans agreed between EUAA and MS are available at: <https://euaa.europa.eu/operations/member-states-operations>, last access 02/12/2022. [↑](#footnote-ref-20)
21. Artt 11(3), 18(2)(j), 22(4) EUAA Regulation. [↑](#footnote-ref-21)
22. Operational Plan 2022-2024 Agreed by the European Union Agency for Asylum and Malta, pp 16-17. [↑](#footnote-ref-22)
23. Cfr for example Art 98 EBCG Regulation which explicitly refers to actions of annulment which can be brought before the CJEU against the acts of Frontex. Tovo noted that EUAA and EASA are the only two agencies whose founding Regulations do not identify to whom the acts are addressed nor by whom they are requested. C Tovo, Le agenzie decentrate dell’Unione Europea, p 276, note 44. [↑](#footnote-ref-23)
24. Recital 19 EUAA Regulation. [↑](#footnote-ref-24)
25. Operational Plan 2022-2024 agreed by The European Union Agency For Asylum and Malta, p. 16. [↑](#footnote-ref-25)
26. ibidem [↑](#footnote-ref-26)
27. M Mouzourakis on behalf of ECRE, ‘The role of EASO Operations in National Asylum Systems: An analysis of the current European Asylum Support Office (EASO) Operations involving deployment of experts in asylum procedures at Member State level’ (2018), p25. [↑](#footnote-ref-27)
28. Article 14 Directive 2013/32/EU of The European Parliament and of The Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), emphasis added. [↑](#footnote-ref-28)
29. Article 4(5)(e) Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast). [↑](#footnote-ref-29)
30. Case C-652/16, Nigyar Rauf Kaza Ahmedbekova, [2018] CJEU, para 96. [↑](#footnote-ref-30)
31. M Cometti, ‘La Trasformazione Dell’ufficio Europeo di Sostegno per l’Asilo in un’Agenzia Per l’Asilo: una lettura in prospettiva della proposta di riforma nel contesto del nuovo patto europeo su migrazione e asilo’(2021) Freedom Security and Justice [↑](#footnote-ref-31)
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