

Depoliticization through agencification in the EU's Area of Freedom, Security and Justice

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Introduction

Agencies have been considered as important instruments of depoliticization in the EU's Area of Freedom, Security and Justice (AFSJ). Designed as technocratic expert bodies to support operational co-operation among member states, they have been part of a strategy of EU decision-makers for keeping potentially salient issues like migration, border control and the rule of law out of broader public debates (Wolff, 2015, pp. 138–42).

However, more recently, AFSJ agencies, their mandates and activities have, in some measure, been repoliticized. The newly created European Public Prosecutor's Office (EPPO) has led to serious concerns from legal experts and national representatives due to its far-reaching implications for national judicial systems. Strikingly, controversies emerged regarding the EU's 'hotspot approach'² to the unprecedented migration flows in 2015/16, in which the European Asylum Support Office (EASO) plays an increasingly important role. Similarly, the EU's border agency Frontex has attracted serious criticism from NGOs and citizens for whom the agency is emblematic of 'Fortress Europe'.

Following Hegemann and Schneckener (2019, p. 137), I conceive politicization as the 'opening up of the political process to include a broader variety of actors, arenas and arguments'. In this contribution, I join the 'definitional consensus' (Zürn, 2019,

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² European Commission (2020), *The hotspot approach to managing exceptional migratory flows*. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/2_hotspots_en.pdf (Accessed: 26 October 2020).

p. 977) and operationalize politicization along three dimensions: (i) the salience of an issue, (ii) the range of actors involved and (iii) the polarization of opinion (de Wilde et al., 2016, p. 4).

Politicization has ‘significant effects on the quality of political decision making’ (Zürn, 2014, p. 48). Because politicization constrains decision-makers, they may adopt strategies to deal with it. This chapter raises the question of what the implications of politicization are for decision-making regarding AFSJ agencies. More precisely, I investigate how politicization leads decision-makers to strengthen the role of agencies to manage such politicization. The analysis of relevant policy documents reveals how EU decision-makers present AFSJ agencies as preferred policy instruments in the pursuit of a depoliticization strategy. In a second stage, I explore recent ‘(re) politicization backlashes’ against such agencies themselves, questioning the relative success of the ‘depoliticization through agencification’ strategy.

The objectives of this chapter are fourfold: (i) to go beyond narrow understandings of politicization by investigating its different forms in the understudied context of AFSJ agencies; (ii) to explore the implications of politicization for decision-making practices in terms of EU policymakers’ depoliticization strategies; (iii) to go beyond static understandings of politicization by linking processes of de- and repoliticization; and (iv) to expose normative implications of politicization by scrutinizing the sustainability of depoliticization strategies.

Studying the (de)politicization of core state powers

The AFSJ is one of the most recent areas of EU activity. Formally included in the EU’s institutional framework as ‘Justice and Home Affairs’ by the 1992 Maastricht Treaty, it covers asylum and immigration policy, border management and police and judicial co-operation. These policy areas ‘substantially affect [...] the state’s core coercive and redistributive powers and the identity and self-determination of national communities’ (Schimmelfennig, 2020, pp. 352–3). The integration of such core state powers is thus particularly sensitive regarding national sovereignty, and bears considerable potential for politicization (Genschel and Jachtenfuchs, 2016, p. 49).

While many consider politicization as an essential characteristic of post-Maastricht European integration, few authors have analysed the phenomenon in the context of the AFSJ. After all, the AFSJ is one of the EU’s main new areas of activity and, as demonstrated above, particularly prone to politicization.

Whereas politicization is neither good nor bad by nature, it does impose certain constraints on political actors. Consequently, EU decision-makers may adopt strategies for ‘politicization management’ (Schimmelfennig, 2020). Among those, we find depoliticization strategies. Such strategies ‘aim to “reclaim the shadow”; that is, while recognising the need to intervene, they are targeted at making the new conflict of integration deliberately and explicitly less visible, less polarising and less salient’ (Bressanelli et al., 2020, p. 335).

Flinders and Buller (2006) provide a useful framework for analysing depoliticization. They distinguish between three elements of depoliticization: (i) 'an acceptance that the *principle* (macro-political level) of depoliticization is an appropriate one for governments to pursue'; (ii) 'the *tactic* (meso-political level) used to realize this goal'; and (iii) 'a particular *tool or form* (micro-political level)' to support the principles and tactics of depoliticization (ibid., p. 298). In the present chapter, I focus on the meso (tactics) and micro levels (tools).

Here, the tactic adopted by EU decision-makers corresponds to institutional depoliticization. Institutional depoliticization consists of establishing a 'formalised principal-agent relationship [...] in which the former (elected politician) sets broad policy parameters while the latter (appointed administrator or governing board) enjoys day-to-day managerial and specialist freedom within the broad framework' set by the principal (ibid., p. 298–9). One form of institutional depoliticization is the creation of 'non-majoritarian' institutions (Majone, 2001), such as EU agencies.³

Which tools may decision-makers, then, use to support the tactic of institutional depoliticization through agencification? The following insights from (de)politicization literature provide some ideas.

According to Bressanelli et al. (2020, p. 335), the three main components of depoliticization strategies are: (i) to 'turn to decision-arenas that are secluded and reserved for narrow special interests and epistemic communities'; (ii) to 'display consensus-seeking behaviour' in negotiations in case of visible conflict, 'with wider communication conducted in technical terms'; and (iii) to 'produce outcomes that are problem-driven and presented as output-oriented and responsible'.

Moreover, securitization theorists have ascribed the matter of security a particularly depoliticizing effect. Following the Copenhagen School's argument, decision-makers may frame issues as security threats and, thereby, facilitate the adoption of measures that would otherwise have been difficult to adopt. We can conceive securitization as an 'extreme version of politicization' (Buzan et al., 1998, p. 23), though only on one of the dimensions defined above (increase in salience of a securitized issue) whereas the range of involved actors and polarization of opinion are intended to decrease. Accordingly, I consider securitization as a tool whereby extreme politicization on one dimension (salience) contributes to achieving overall depoliticization:

One [sic] the one hand, securitizing actors use alarmist security rhetoric in order to draw public attention to a specific issue and enable a certain political response. On the other hand, the effect of successful securitisation moves is not to open up political debates and public controversies, but rather to constrain 'normal' democratic politics by narrowing the choice of available policy options, limit the repertoire of political actions and reduce the number of legitimate actors, arenas and arguments (Hegemann and Schneckener, 2019, p. 135).

³ Lacking an official or generally accepted definition of 'EU agencies', I define them as permanent bodies under EU public law, established by the EU institutions through secondary legislation and endowed with their own legal personality (Chamon, 2016, p. 10).

So far, scholars have mostly studied the depoliticization strategies of EU actors in the context of the Eurocrisis. There is, notably, no investigation of how policymakers deal with politicization in the AFSJ by delegating authority to EU agencies.

In fact, though, ‘depoliticization through agencification’ has happened increasingly in this area. Thus, the AFSJ is being depoliticized through the use of EU agencies as the preferred policy instruments (Wolff, 2015, p. 131). Wolff argues that they were originally ‘conceived as expert bodies that coordinate the work of the member states’ – ‘[b]y removing issues from the political debate, agencies [...] help legitimize policy making and “neutralize” the policy debate’ (ibid., pp. 141–2).

However, Wolff also draws attention to a certain repoliticization of AFSJ agencies: ‘[t]heir creation, mandate, and operations have in fact been highly politicized’ (ibid., p. 141). This view of AFSJ agencies as in-between de- and (re)politicization suggests that politicization processes can have important implications on EU governance. Nonetheless, we still lack a more thorough exploration of this phenomenon.

The present chapter, therefore, proposes to examine in two stages what the implications of politicization are for decision-making practices in the AFSJ.

First, I analyse what role EU agencies play as part of a depoliticization strategy in this field. The preceding insights from the literature provide us with four tentative hypotheses in this regard:

- i. To depoliticize potentially salient and controversial issues, EU decision-makers frame AFSJ agencies as expert bodies aimed at the operational support of member states.
- ii. Outcomes of decision-making on AFSJ agencies tend to be problem-driven and presented as output-oriented and responsible.
- iii. Decision-making regarding AFSJ agencies tends to exhibit consensus-seeking behaviour in cases of conflict.
- iv. EU policymakers revert to securitization strategies to legitimize and facilitate the creation or strengthening of AFSJ agencies.

Second, the chapter explores if the ‘depoliticization through agencification’ strategy of EU decision-makers is limited by a certain (re)politicization of AFSJ agencies, their mandates and activities.

As noted in the introduction to this volume, it is crucial to specify the ‘what’, ‘when’, ‘where’ and ‘how’ of studying politicization. Here, I study the politicization of EU policies (those of the AFSJ) and EU institutions (EU agencies) – rather than the politicization of the EU itself. Regarding the moment of politicization, I study ‘dramatic’ and ‘exceptional’ moments of crisis (like the 2015/16 migratory flows), but also the politicization of ‘everyday’ politics, for example through the increased involvement of specific institutional actors (Kauppi and Trenz, 2019, p. 263). The main arena of politicization included here is the institutional one, since I am interested in the depoliticization strategies of EU decision-makers – through the strengthening of other institutional actors, that is, EU agencies. However, I also consider politicization more broadly in the media and citizens’ arena. Regarding the ‘how’ of studying the

politicization of the AFSJ, I opt for investigating its implications using a qualitative-interpretive approach rather than measuring causal links between politicization and presumed consequences.

Politicization of the AFSJ

Because of the close connection between AFSJ policies and national sovereignty, this area of activity has become an important object of politicization. Before analysing EU decision-makers' depoliticization strategies, let us first retrace the politicization of the AFSJ along the three conceptual dimensions defined above: (i) salience; (ii) range of actors; and (iii) degree of polarization.

First, the *salience* of the AFSJ implies an increased level of public awareness of the topic, and requires that 'the population assigns key importance to international institutions for managing a growing proportion of problems' in that context (Zürn, 2014, p. 52). Surveys show that Europeans have indeed attached great importance to essential elements of the AFSJ. When asked what respondents think are the most important issues facing the EU at that moment, immigration, terrorism and, more recently, crime reliably rank among the top answers of European citizens (Eurobarometer).

The high salience of AFSJ-related issues also implies that citizens place certain expectations on the EU to act on those matters. The EU is, thus, 'increasingly held accountable for problems and failures' in the field (Hegemann and Schneckener, 2019, p. 143). For example, after the Brussels terrorist attacks in March 2016, public reactions included accusations that 'the EU had not done enough', but, at the same time, also allegations that, with its counter-terrorism efforts, the EU 'is creating problems itself' (ibid.).

Another prime example are the unprecedented 2015/16 migration flows to Europe (see Gellwitzki and Houde, chapter 4). While immigration had already been an important issue for Europeans before that, the high influx of asylum-seekers, refugees and other migrants – and the resulting political complications – have made it a consistently high-profile issue. Topics like the danger involved in migrants' routes and the question of how to receive and integrate those arriving have led to 'heated political debate' (Bossong and Carrapico, 2016, p. 6).

Second, the *range of agents of politicization* in the AFSJ – that is, 'the individuals or groups who participate in the political process' (Zürn, 2014, p. 51) – has expanded over the past years. Several treaty reforms have strengthened the European Parliament's (EP) involvement in the field. Together with the expansion of qualified majority voting in the Council, this has reinforced the potential for politicization of AFSJ decision-making (Occhipinti, 2014, p. 100). Although, since its empowerment, the EP has moderated its traditionally critical positioning on AFSJ policies (Trauner and Ripoll Servent, 2016), it still represents an 'important platform for public deliberation' (Hegemann and Schneckener, 2019, p. 144).

Along with the EP, national parliaments also hold an important position in the AFSJ, leading to further expansion of the involved actors. According to Article 69 TFEU (the so-called ‘yellow card’ procedure), national parliaments play a special role in ensuring compliance of legislative proposals on criminal law and police co-operation with the principle of subsidiarity (Van Keulen, 2014, p. 18).

Societal actors and NGOs have also gotten more involved with the AFSJ. Organizations such as Amnesty International have put pressure on EU actors on various issues (Hegemann and Schneckener, 2019, pp. 143–4). For instance, NGOs like EDRI, Access Now and Statewatch, but also MEPs and think tanks voiced criticism regarding the 2013 ‘Smart Borders’ legislative package (Jeandesboz, 2016, pp. 233–4).

In sum, ‘the range of actors active and interested in European security increasingly reached beyond technocratic and administrative experts’, and there is now ‘a growing range of critical voices’ (Hegemann and Schneckener, 2019, p. 145).

Third, matters concerning the AFSJ are increasingly *contested* and opinions *polarized*. Today, the debate on the AFSJ ‘features a broad array of opinions with different views that cannot be reduced to a purported elite consensus’ (ibid.).

As stated, the 2015/16 migration flows have provoked major conflict. Asylum and migration policy had already been the object of fierce political struggle prior to 2015, however. In 2011, a French-Italian row erupted over the treatment of asylum-seekers fleeing the Arab Spring upheavals, which finally resulted in a reform of the Schengen Borders Code. Phull and Sutcliffe have noted that EU migration, asylum and border policy is a ‘sector that is frequently controversial as a result of its connection to state sovereignty’ (2016, p. 178). Accordingly, the 2015/16 events ‘led to an unprecedented depth of politicization and to a more uncompromising clash between security and other values’ (Bossong and Carrapico, 2016, p. 4), like human rights and freedom of movement.

Another striking example is the Brexit referendum. Before the vote on the UK withdrawal from the EU, fierce debate arose between the ‘Remain’ and the ‘Leave’ camps. Both sides actively campaigned on key aspects of the AFSJ, like immigration, security and freedom of movement. While ‘Leave’ employed catch phrases like ‘Let’s take back control of our borders’,⁴ the ‘Remain’ campaign argued that ‘[w]e are safer thanks to the European Arrest Warrant’, and that the EU is ‘[g]ood for young people who are free to travel, study and work abroad’ and ‘for security’.⁵

Studying politicization management through discourse

This chapter is interested in how decision-makers in the AFSJ attempt to manage politicization by reverting to ‘depoliticization through agencification’. I examined this question in the context of three agencies: the EPPO, EASO and Frontex. These

⁴ Vote Leave Ltd., *Why should we Vote Leave on 23 June? Vote Leave, take back control*. Available at: http://www.voteleavetakecontrol.org/our_case.html (Accessed: 20 October 2020).

⁵ Campaign Posters of Britain Stronger in Europe (The In Campaign Ltd).

are active in the three major fields of activity of the AFSJ: EU criminal justice, the Common European Asylum System (CEAS) and the Schengen regime, respectively.

Epistemologically, the chapter adopts a discourse-analytical approach in the sense that I consider the discourse on AFSJ agencies as a vehicle for both meaning (how EU decision-makers perceive such agencies) and action (the translation of meaning into reality through concrete political decisions). Accordingly, I do not consider discourse as neutral, but as motivated by political interests, ideology, etc. The goal was therefore to study how, in the official discourse, EU decision-makers put forward AFSJ agencies as instruments of depoliticization. In that sense, I conceive 'depoliticization through agencification' as a discursive strategy of politicization management (see Gheyle, chapter 11).

I conducted a qualitative analysis of 211 official documents, issued by the Commission, the Council and the European Council between 1999 and September 2020.⁶ I used the software MAXQDA to code the data. In a directed approach to coding, I examined the relevance of a set of themes deducted from existing conceptualizations (see hypotheses) while being open to additional themes emerging during the analysis. This combination of deductive and inductive approaches allowed me to complement existing insights with new elements emerging from the analysis. Whenever the data revealed relevant themes not covered by the deductive hypotheses, I added them to my code list.

I conducted the analysis in an overall interpretive manner to appreciate the meaning that decision-makers attribute to AFSJ agencies. Some mixed-methods elements allowed me to assess the comparative relevance of themes in terms of occurrence and relationships between themes (see Table 3 in the annex).

Depoliticizing the AFSJ through EU agencies

The results confirmed, with some limitations, the four hypotheses derived from existing literature on the 'depoliticization through agencification' strategy: (i) EU decision-makers frame AFSJ agencies as expert bodies aimed at the operational support of member states; (ii) outcomes regarding AFSJ agencies tend to be problem-driven and presented as output-oriented and responsible; (iii) decision-making tends to exhibit consensus-seeking behaviour in cases of conflict; and (iv) policymakers revert to securitization strategies to legitimize and facilitate AFSJ agency expansion. I discovered three additional forms of depoliticization throughout the analysis, namely a focus on (i) sovereignty, (ii) externalization and (iii) preparedness.⁷ The subsequent paragraphs present each of those themes. Table 1 provides an overview of the results regarding the four deductive themes, including meaningful examples from the analysed

⁶ The communications, European Council conclusions, outcomes of Council meetings, press releases, reports, speeches and statements were collected from the Commission Press Corner and the Council Document Register. Documents had to mention EPPO, EASO or Frontex in a meaningful way to be included in the dataset.

⁷ These are the inductively generated themes that were (i) meaningful as forms of depoliticization and (ii) relevant in terms of occurrence.

data to illustrate the argument. Table 2 provides the same overview with regards to the inductively discovered themes. Table 3 in the annex shows the coverage of the themes inside and across the three cases.

The idea that AFSJ agencies serve as policy instruments aimed at the *operational support* of member states and the production of *expert knowledge* proved highly relevant, however only for the EASO and Frontex. As Table 3 shows, in these two cases, between 10 and 16 per cent of coded segments referred to operationalization (understood as reference to practical tasks performed by the agencies), agencies' mission to provide support to member states and/or to produce expert knowledge (including the gathering and sharing of information). Moreover, the results show that these three themes – operationalization, support and expert bodies – frequently occur simultaneously. The example from the data quoted in Table 1 illustrates how this was phrased in the context of EASO.

As expected, the discourse on AFSJ agencies included many references to *problem-driven, output-oriented and responsible results*. References to problem-driven outcomes, including outcomes driven by challenges or limitations of the status quo, were particularly relevant, especially for the EASO and, even more so, the EPPO. How this was phrased for the latter, for example, is shown by the quotation in Table 1. AFSJ agencies and their activities were seldom framed as problem-driven, output-oriented and responsible all at once, though. Rather, only one or two of those elements was emphasized at a time.

Moreover, the results show that EU decision-makers may display *consensus-seeking behaviour* or hide conflict when it occurs. This was most relevant for the EPPO, and only to a lesser extent for the EASO and Frontex. In the analysed documents, this theme showed a certain proximity to the previous theme (problem-driven, output-oriented and responsible outcomes). The quote from a follow-up document on the 2015 *European Agenda on Migration* (see Table 1) illustrates how an emphasis on consensus-seeking was combined with problem-driven and output-oriented results.

Fourth, the *securitization* theme was generally very important: around 11 per cent of all coded segments referred to it in some way (see Table 3). The results also show that securitization was understood in diverse ways across the case studies. Regarding the EPPO, security was overwhelmingly understood as protection of the EU budget against crime. Regarding the EASO and Frontex, security was framed variously in vague and general terms, in terms of protection of the EU borders (Frontex) or in terms of protection of people in need (EASO and Frontex). Sometimes, references to securitization were combined with problem-driven outcomes. The example quoted in Table 1 shows how this was phrased in the case of Frontex.

Table 1. Results of the Analysis (Deductive Categories)

Theme	Example from data	Relevance	Combinations
(i) Expert bodies aimed at operational support of member states	'[The EASO] will [...] provide operational assistance to national administrations in order to improve the quality and coherence of their decisions, for example by bundling and making available information on the countries of origin, organising joint training sessions and coordinating asylum teams made up of experts whose task will be to assist Member States faced with an emergency.' ⁸	EASO Frontex	Subthemes often used simultaneously
(ii) Problem-driven, output-oriented and responsible results	'Existing EU bodies such as the EU Anti-Fraud office, OLAF, cannot prosecute in the Member States but have to hand over their files to national bodies. This can make it more difficult to pursue cross border cases and to bring cases to a timely conclusion. The new EU public prosecutor will do exactly that – make sure that criminals are brought to justice and that misspent money is recovered much more quickly.' ⁹	EASO EPPO	Often only one of the subthemes at a time
(iii) Consensus-seeking behaviour	'Over the last six months, the European Commission has consistently and continuously worked for a swift, coordinated European response. It tabled an extensive series of proposals designed to equip Member States with the tools necessary to manage the large number of arrivals, many of which have already been adopted by the European Parliament and the Council.' ¹⁰	EPPO (EASO) (Frontex)	Often used together with theme (ii)
(iv) Securitization	'[The European Border and Coast Guard] was established in 2016, building on the existing structures of Frontex, to meet the new challenges and political realities faced by the EU, both as regards migration and internal security. The reliance on voluntary contributions of staff and equipment by Member States has however resulted in persistent gaps affecting the efficiency of the support the European Border and Coast Guard Agency could offer.' ¹¹	EPPO EASO Frontex	Often used together with 'problem-driven outcomes'

⁸ Barrot, J. (2008) *The future of EU asylum policy: working towards a genuine area of protection*. [Speech presented at the Ministerial conference 'Building a Europe of Asylum' extended to civil society in Paris, France]. 8 September, p. 5.

⁹ European Commission (2017), *Joint Statement by Commissioners Oettinger and Jourová on the European Parliament's consent to establishing the European Public Prosecutor's Office*. Brussels, 5 October, p. 1.

¹⁰ European Commission (2016), *Communication from the Commission to the European Parliament and the Council on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration*. Brussels, 10 February, p. 3.

¹¹ European Commission (2019), *EU delivers on stronger European Border and Coast Guard to support Member States*. Brussels, 8 November, p. 1.

In addition to the four themes distilled from the literature, the analysis revealed three other ways in which AFSJ agencies were framed to depoliticize potentially salient and contested issues: emphasis on (i) national sovereignty; (ii) externalization; and (iii) enhancing preparedness. Table 2 summarizes the results regarding those inductive themes.

The first additional tool of depoliticization was a focus on *national sovereignty*. As stated, the integration of core state powers bears a high potential for politicization. Emphasizing national sovereignty can help depoliticize the delegation of authority to the EU by reassuring member states and national publics that the creation/strengthening of EU agencies is not a threat to national prerogatives. This theme was predominantly relevant in EPPO documents. The quote in Table 2 provides an illustration.

Second, the analysis showed that *externalization* is an important tool of depoliticization. Here, externalization refers to the external dimension of agencies' activities, meaning co-operating with and carrying out activities in non-EU countries. This was particularly relevant for the two migration agencies: EASO and Frontex. In migration policy, a focus on externalization (by addressing root causes of migration, preventing departures or increasing returns) may shift the perceived problem from the internal to the external, thereby decreasing the potential for internal politicization. In the analysed texts, externalization was frequently combined with references to EU agencies as expert bodies aimed at operational support (see example in Table 2).

A third important theme that emerged during analysis was the goal to enhance *preparedness*, meaning the agencies' ability to (re)act, e.g. based on sufficient equipment and general readiness. By framing the strengthening of EU agencies as necessary to be prepared for effectively and efficiently tackling potential problems, EU decision-makers may legitimize such decisions and, thereby, depoliticize related problems. The idea of preparedness is closely linked to the 'problem-driven and output-oriented outcomes' theme, since preparedness is a condition for the output to be adequate. The preparedness theme was frequently combined with other themes, specifying how to achieve preparedness, e.g. through expertise or operational capacity. For the EPPO, the two sub-themes 'effectiveness' and 'efficiency' were most relevant, and they often occurred together with references to problem-driven outcomes and security (see example in Table 2). For the EASO and Frontex, general preparedness was more relevant. Moreover, the analysis of code relations showed that preparedness was often framed here in terms of operational capacity, expert knowledge and/or externalization.

Table 2. Results of the Analysis (Inductive Categories)

Theme	Example from data	Relevance	Combinations
(i) Emphasis on national sovereignty	'The proposal [on the EPPO] is based on respect of the national legal traditions and judicial systems of the Member States.' ¹²	EPPO	
(ii) Externalization	'The Council today agreed a partial general approach on the proposal on the European Border and Coast Guard (EBCG), covering the provisions linked to return and cooperation with third countries. [...] The proposed rules will allow the European Border and Coast Guard Agency (Frontex) to provide technical and operational support to member states in return operations. They will also contribute to strengthening cooperation with third countries, by giving the agency wider scope for action and not limiting its possibilities for cooperation to neighbouring countries.' ¹³	EASO Frontex	Often used with themes 'expert bodies' and 'operational support'
(iii) Enhancing preparedness	'Not least, the EPPO should have a slim and lean structure to efficiently protect the EU budget in a cost effective manner. We will build on existing resources to generate economies of scale. In short, we want to better tackle fraud at lower cost. To sum up, the EPPO will add value by bringing changes in the cycle of enforcement - detection, investigation, prosecution and trial. This cycle of enforcement has proved to be weak, uneven and fragmented.' ¹⁴	EPPO EASO Frontex	Often combined with other themes ('expert body', 'operationalization', 'problem-driven outcomes')

Those results and their summary in Tables 1 and 2 show that how decision-makers put forward EU agencies in an attempt to depoliticize the AFSJ differs to some extent between the EASO and Frontex, on the one hand, and the EPPO on the other hand. Some tools of depoliticization are mostly limited to either the EASO/Frontex or the EPPO. In the analysed documents, above all the EASO and Frontex were framed as expert bodies with a big focus on operationalization and externalization (of migration policy). Other discursive categories, however, such as the focus on national sovereignty and – to a lesser extent – consensus-seeking behaviour were rather limited to the EPPO.

¹² European Commission (2013), *Communication from the Commission to the European Parliament, the Council and the national parliaments on the review of the Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office with regard to the principle of subsidiarity, in accordance with Protocol No. 2*. Brussels, 27 November, p. 4.

¹³ Council of the European Union (2018), *Outcome of the Council Meeting Justice and Home Affairs*. Brussels, 6 and 7 December, p. 5.

¹⁴ Reding, V. (2013) *Strengthening the basis for EU criminal law and judicial cooperation*. [Speech presented at the CRIM Special Committee, European Parliament in Brussels, Belgium]. 19 March, p. 5.

Mission failure? (Re)politicization of AFSJ agencies

How sustainable are such depoliticization strategies in the context of AFSJ agencies? Wolff (2015) has already alluded to AFSJ agencies' struggle between politicization and depoliticization. By means of indicative examples, this section considers how these agencies have become (re)politicized. The goal here is exploratory: without claiming to deliver a complete account or definite answers, signs of a 'politicization backlash' hint at a potentially important phenomenon that deserves further investigation. Based primarily on media coverage and NGO activities, and along the three dimensions of politicization (salience, range of actors and polarization), I explore how the projected 'depoliticizers', the EPPO, EASO and Frontex, have become an object of politicization themselves – an evolution that may challenge the 'depoliticization through agencification' strategy of EU decision-makers.

The EPPO itself and related issues have gained salience in recent years. First, the very idea of establishing such a body has raised concerns regarding national sovereignty and the subsidiarity principle.¹⁵ Second, the nomination of the first European Chief Prosecutor has sparked open interinstitutional conflict, increasing the salience of the EPPO and rule of law issues.¹⁶ The range of actors who have politicized the EPPO includes politicians in different arenas (members of national and European parliaments, national governments), academics and practitioners in the field of EU criminal justice. Generally, opinions on the necessity of the EPPO are polarized between proponents, who demand determinate action against EU fraud, and those who consider the body a violation of national sovereignty in the sensitive field of criminal justice.

Regarding the EASO, notably its role in the 'hotspots' at the EU's external borders (Lisi and Eliantonio, 2019),¹⁷ but also its activities more generally have gained salience.¹⁸ Important points have been primarily the agency's respect of normative standards, like standards of accountability or asylum-seekers' fundamental rights. Another salient aspect has been the alleged maladministration of the agency. The actors involved in this politicization of the EASO range from politicians over academics and NGOs to EU control bodies – like OLAF, the EU Ombudsman, the European Court of Auditors and the European Data Protection Supervisor – that have opened investigations into

¹⁵ The 2013 Commission proposal on establishing the EPPO was followed by an important involvement of national representatives (Fromage, 2016, pp. 13–14). Ultimately, parliaments in eleven member states expressed concern about the proposal not respecting the subsidiarity principle, triggering the 'yellow card' procedure. Because of continued resistance by some member states, the EPPO was ultimately set up under enhanced co-operation among, to date, twenty-two states.

¹⁶ The EP and the Council were unable, during several rounds of negotiations, to agree on a candidate. Laura Codruța Kövesi, ex-head of Romania's National Anticorruption Directorate and the EP's preferred candidate, encountered fierce opposition from her own government who lobbied against her in the Council. The Romanian government's attempt to obstruct the nomination of Kövesi, whose fight against corruption had become inconvenient for Romanian leaders, provoked lively debates about the rule of law.

¹⁷ GISTI (2016) *EU-Turkey Statement: the Great Deception*. Available at: https://www.gisti.org/IMG/pdf/rapport_gisti_mission_gre_ce_2016_eng_complet_light.pdf (Accessed: 26 October 2020).

¹⁸ ECRE (2017) *Agent of Protection? Shaping the EU Asylum Agency*. Available at: <https://www.ecre.org/wp-content/uploads/2017/01/Policy-Note-04.pdf> (Accessed: 26 October 2020).

EASO's activities.¹⁹ Opinions on the EASO are, thus, also quite divergent: some see the agency very critically whereas others consider it more favourably as guardian of the CEAS.

Among the three cases studied here, Frontex has probably been (re)politicized in the most striking way. Frontex has gained exceptional salience over the past years regarding its activities at the EU borders and its respect for normative standards, like migrants' fundamental rights and standards of accountability and transparency.²⁰ A broad range of actors has contributed to the (re)politicization of Frontex: again, EU control bodies like the Ombudsman and the CJEU,²¹ as well as NGOs and citizen movements, MEPs²² and researchers (see Bossong, 2019; Karamanidou and Kasperek, 2020). Recently, media reporting on the alleged involvement of Frontex in violence against migrants, and illegal pushbacks at EU borders have put an additional spotlight on the agency.²³ This has resulted in an increased awareness among citizens of the agency and its activities, but also in renewed calls for better accountability mechanisms. In light of these events, the EP has even set up a Frontex Scrutiny Working Group to assess the agency's functioning.²⁴ Generally, involved actors defend increasingly polarized opinions regarding the agency: one extreme presents Frontex as a solution to the perceived problem of migratory pressure – the other extreme, as an incarnation of 'Fortress Europe'.

While the preceding discussion only provides a snapshot, it still suggests that (i) an important number of issues relating to the three agencies have gained salience over the years through (ii) the involvement of a broad range of actors (politicians, NGOs, EU control bodies, academics, citizens) who (iii) defend increasingly polarized opinions.

¹⁹ European Court of Auditors (2018), *Annual report on EU agencies for the financial year 2017*, https://www.eca.europa.eu/Lists/ECADocuments/AGENCIES_2017/AGENCIES_2017_EN.pdf (Accessed: 26 October 2020), p. 211-230;

POLITICO (2018) 'Watchdog Finds Range of Misconduct at EU Asylum Agency'. Available at: <https://www.politico.eu/article/watchdog-finds-misconduct-at-european-asylum-support-office-harassment/> (Accessed: 26 October 2020);

Wiewiórowski, W. (2019) *Letter concerning a consultation on EASO's social media monitoring reports (case 2018-1083)*. Brussels, 14 November.

²⁰ ECRE (2018) *Comments on the Commission Proposal for a Regulation on the European Border and Coast Guard*. Available at: <https://www.ecre.org/wp-content/uploads/2018/11/ECRE-Comments-EBCG-proposal.pdf> (Accessed: 27 October 2020);

PRO ASYL (2019) *Frontex – eine Grenzschutzagentur der Superlative?*. Available at: <https://www.proasyl.de/news/frontex-eine-grenzschutzagentur-der-superlative/> (Accessed: 27 October 2020);

SEEBRÜCKE (2019) *Frontex unterstützt illegale Polizeiaktionen*. Available at: <https://www.facebook.com/SeebroeckeSchafftsichereHaefen/posts/896092214096296/> (Accessed: 27 October 2020).

²¹ Judgment of the General Court of 27 November 2019, *Luisa Izuzquiza and Arne Semsrott v European Border and Coast Guard Agency*, Case T-31/18.

²² Strik, T. (2020) *More than 100 Members of European Parliament joined my call on the European Commission to immediately investigate the shootings at the Greek-Turkish border*. Available at: https://twitter.com/Tineke_Strik/status/1260177579815899137/photo/1 (Accessed: 27 October 2020).

²³ Deutsche Welle (2019) 'EU border force Frontex implicated in migrant abuse'. Available at: <https://www.dw.com/en/eu-border-force-frontex-implicated-in-migrant-abuse/a-49892097> (Accessed: 27 October 2020);

Bellingcat (2020) 'Frontex at Fault: European Border Force Complicit in "Illegal" Pushbacks'. Available at: <https://www.bellingcat.com/news/2020/10/23/frontex-at-fault-european-border-force-complicit-in-illegal-pushbacks/> (Accessed: 27 October 2020).

²⁴ European Parliament (2021) *Frontex: MEPs to investigate alleged violations of fundamental rights*. Available at: <https://www.europarl.europa.eu/news/en/press-room/20210222IPR98303/frontex-meps-to-investigate-alleged-violations-of-fundamental-rights> (Accessed: 25 March 2021).

These opinions range from the view that these agencies are useful solutions to certain problems, to the view that these agencies are either unnecessary, intrusive or harmful in some way. All this points to an important ‘repoliticization backlash’: whereas the agencies were intended to circumvent public attention, they and their activities have instead made them salient again.

Conclusion

This chapter has shown that politicization has important implications for decision-making practices in the AFSJ. Decision-makers in the field may feel compelled to act on politicization, and EU agencies in particular – like the EPPO, EASO and Frontex – play a significant role in decision-makers’ depoliticization strategies.

Such strategies allow decision-makers to move issues from the public arena, and the potential for politicization that such a publicity implies, to an arena of ‘restricted access’. To do this, especially the EASO and Frontex are presented as policy instruments supporting operational co-operation among member states and providing expert knowledge. This is combined with a narrative of preparedness that legitimizes agency expansion to enhance capacity-building. These themes are connected with a focus on externalization, making it possible to shift perceived problems linked to migration management outside the purview of domestic politicization.

The chapter revealed another important tool of depoliticization, applied in all three cases: securitization and/or problematization. Certain issues – protection of the common budget against crime, of common borders against migratory pressure, of people in need against risks to life or fundamental rights violations – are framed as (security) problems. This legitimizes and facilitates the proposed solutions: the expansion of AFSJ agencies.

Simultaneously, the chapter has shown that ‘depoliticization through agencification’ strategies may not be that sustainable. Hence, a certain ‘(re)politicization backlash’ limits the effectiveness of such strategies. Concurrently to being put forward as ‘depoliticizers’, AFSJ agencies have gained salience in recent years – the agencies themselves and their ‘right to exist’, like in the case of the EPPO, but also their activities (at external borders) and their implementation of certain normative standards (accountability, fundamental rights, transparency, etc.). Whereas the aim of depoliticization strategies is to focus on ‘instrumental questions about problem-solving and effectiveness’, mounting politicization increasingly adds ‘procedural issues and normative aspects’ to the debate (Zürn, 2014, p. 59). The range of politicizing actors in this context is considerable. Politicians at the EU and national level, but also EU courts and control bodies, NGOs, citizen movements, academics and practitioners have discussed and, sometimes, harshly criticized AFSJ agencies and their activities.

This concurs with Flinders and Buller, who assert that one ‘paradox of institutional depoliticization is that the process of delegation away from elected politicians may well stimulate greater political and legislative attention than would otherwise have been the

case' (2006, p. 303), and that 'depoliticization and politicization may actually take place concurrently' (*ibid.*, p. 313).

Accordingly, some of the identified depoliticization tools are explicitly intended to depoliticize AFSJ agencies themselves. Thus, when establishing the EPPO, decision-makers emphasized the respect for national sovereignty since '[t]he assignment of authority to international institutions is contested and requires justification' (Zürn, 2014, p. 47). 'Depoliticization through agencification' in the AFSJ may, therefore, aim not only at depoliticizing connected, potentially salient issues, like migration. It may also aim at defusing contentious aspects of agencies themselves.

Moreover, the chapter has shown that EU decision-makers do not use the depoliticization tools highlighted in the analysis in a uniform way across the three cases. Future research may shed further light on the reasons for this. More research is also welcome on the '(re)politicization backlash' of EU agencies that the present chapter was only able to briefly touch upon.

One goal of this chapter was to expose normative implications of depoliticization strategies. The '(re)politicization backlash' resulting from the violation of normative standards by AFSJ agencies suggests that EU decision-makers should not pursue depoliticization to the detriment of accountability and control (Horii, 2018). Especially depoliticization tools like the externalization of EU migration management may seem like a comfortable solution (in the sense of 'what the eye does not see, the heart does not grieve over'). But European citizens appear to be less and less willing to accept breaches of fundamental rights and transparency standards in the name of the EU.

All this demonstrates that it is a challenging task – not only for decision-makers, but also for a researcher – to deal with distinct but intertwined processes such as politicization, depoliticization and repoliticization in a coherent way.

While discussing only a narrow aspect of EU politicization, the present chapter nevertheless suggests that politicization has important implications for EU policy-making. Decision-makers currently seem caught between strategically responding to politicization with depoliticization, on the one hand, and a certain backfiring of this approach in the form of (re)politicization, on the other hand. This confirms suspicions that politicization challenges 'the technocratic behind-closed-doors logic of decisions and decision-making processes in and about international institutions' (Zürn, 2014, p. 52).

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Appendix

Table 3. Coverage of Codes

Codes	EPPO		EASO		Frontex		Total	
	Percentage*	Number of segments	Percentage*	Number of segments	Percentage*	Number of segments	Percentage	Number of segments
Problem-driven outcomes	11.9%	76	6.3%	45	4.6%	49	7.02%	170
Output-oriented outcomes	1.1%	7	2.9%	21	3.2%	34	2.56%	62
Responsible outcomes	3.0%	19	0.3%	2	0.3%	3	0.99%	24
Sovereignty	4.9%	31	0.7%	5	0.9%	10	1.90%	46
Securitization...	20.2%	129	7.8%	56	8.5%	91	11.40%	276
...Protection of the EU budget	15.8%	101	0.4%	3	0.8%	9	4.67%	113
...Protection of EU taxpayers	3.9%	25	0%	0	0%	0	1.03%	25
...Security of EU citizens	1.4%	9	0%	0	0.2%	2	0.45%	11
...Security of borders	0.3%	2	1.4%	10	3.0%	32	1.82%	44
...Protection of people in need	0%	0	4.5%	32	3.0%	32	2.64%	64
Externalization	0.6%	4	7.8%	56	10.6%	113	7.14%	173
Operationalization	3.8%	24	15.3%	110	15.7%	167	12.43%	301

Codes	EPPO		EASO		Frontex		Total	
	Percentage*	Number of segments	Percentage*	Number of segments	Percentage*	Number of segments	Percentage	Number of segments
Expert body	1.1%	7	11.7%	84	10.3%	110	8.30%	201
Support	0.2%	1	15.5%	111	12.1%	129	9.95%	241
Consensus-seeking behaviour	6.9%	44	3.9%	28	3.9%	42	4.71%	114
Preparedness...	7.2%	46	10.9%	78	12.6%	134	10.65%	258
...Effectiveness	9.2%	59	4.0%	29	5.2%	55	5.90%	143
...Efficiency	8.5%	54	6.6%	47	5.2%	55	6.44%	156
SUM	100%	638	100%	717	100%	1067	100%	2422
N = Documents	92 (43.6%)		68 (32.2%)		93 (44.1%)		211 (100%)	

*based on the sum of coded segments per case.