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The External Dimension of EU Agencies and Bodies: Law and Policy Herwig CH Hofmann, Ellen Vos and Merijn Chamon (eds) Cheltenham/Northampton, MA: Edward Elgar Publishing, 2019

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Published in:
European Journal of Risk Regulation

DOI:
[10.1017/err.2020.69](https://doi.org/10.1017/err.2020.69)

IMPORTANT NOTE: You are advised to consult the publisher's version (publisher's PDF) if you wish to cite from it. Please check the document version below.

Document Version
Publisher's PDF, also known as Version of record

Publication date:
2020

[Link to publication in University of Groningen/UMCG research database](#)

Citation for published version (APA):

Wessel, R. A. (2020). The External Dimension of EU Agencies and Bodies: Law and Policy Herwig CH Hofmann, Ellen Vos and Merijn Chamon (eds) Cheltenham/Northampton, MA: Edward Elgar Publishing, 2019. *European Journal of Risk Regulation*, 11(3), 717-720. <https://doi.org/10.1017/err.2020.69>

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Book Review

The External Dimension of EU Agencies and Bodies: Law and Policy

Herwig CH Hofmann, Ellen Vos and Merijn Chamon (eds)

Cheltenham/Northampton, MA: Edward Elgar Publishing, 2019, 234 pp.

Reading the book under review here made me realise that legal scholarship has largely left the study of European Union (EU) agencies outside the scope of the sub-discipline of EU external relations law for too long. In most studies and textbooks on EU external relations law, the agencies are not even mentioned,¹ let alone are specific chapters devoted to them. The reason for this is simple: the process of “agencification” has largely been seen as belonging to the internal development of the Union and as a way to enhance its regulatory capacity in fields connected with internal policies “such as food and air safety, medicines, environment, telecommunications, disease prevention, border control, trademarks and banking, to name just a few”.² Yet, as this book reveals, (most) EU agencies are international legal persons in their own right and are increasingly active at the international level, and so “need to interact with third countries, international organizations and other non-EU bodies”.³ While this as such is not new and had been addressed by some contributors to this book and others earlier,⁴ the external dimension of EU agencies is still not a widely studied theme.

In general, the book comes at a moment in which the EU’s external relations are booming. Over the past decade, the Lisbon Treaty has been able to boost not only the Union’s activities in terms of free trade and other agreements that have become more and more “deep and comprehensive” – it also triggered a number of scholarly debates, in particular as a result of Opinions and judgments of the Court of Justice of the EU. Thus, we have seen (and still see) heated legal debates on, for instance, the extent to which non-EU courts and tribunals could be involved in EU law-related issues (including fundamental rights or investment) without affecting the EU’s sacred “autonomy”, the division of competences between the EU and its Member States in the conclusion of international agreements and the participation in international

¹ I quickly checked our own book on *EU External Relations Law* (RA Wessel and J Larik, eds, Oxford, Hart 2020) and found that we mention agencies a few times only, and merely in the context of the Area of Freedom, Security and Justice. *Mea culpa*.

² M Chamon, HCH Hofman and E Vos, “Introduction: EU agencies going global”, pp 1–10.

³ *ibid.*, at 5.

⁴ Eg A Ott, E Vos and F Coman-Kund, “European agencies on the global scene: EU and international law perspectives”, in M Everson and E Vos (eds), *European Agencies in between Institutions and Member States* (Alphen aan den Rijn, Kluwer Law International 2014) pp 87–122; and F Coman-Kund, *European Union Agencies as Global Actors: A Legal Study of the European Aviation Safety Agency, Frontex and Europol* (Abingdon, Routledge 2018).

organisations, or the gradual “normalisation” of the Union’s foreign, security and defence policy. It is certainly interesting to see how the external dimension of EU agencies fits into many of the current debates.

Despite its editors, the book offers not just a legal analysis, but also aims to be multidisciplinary by including a number of political science studies that go beyond the traditional legal questions. This is partly reflected in the book’s set-up, which contains four parts: the first on the legal framework; the second on a political science perspective; the third on legitimacy and accountability; and the final one on the impacts on third countries. The book also aims to present a “research agenda in a nascent field of research”⁵ that would not only include a further analysis of the role of EU agencies at the international level and the legal and constitutional limits, but also entail more empirical research to find out more about their actual international activities.

The constitutional limits to what agencies can do is perhaps one of the most classic themes in this field of research (keeping in mind the *Meroni* doctrine). Despite their somewhat autonomous status, EU agencies continue to be part of the EU’s legal system, and the principles of conferral, proportionality and institutional balance apply. And, indeed, their actions on the international plane may have consequences for the “mother organisation”. In that sense, it is also interesting that the EU treaties do not expressly provide for the establishment of agencies in general, which implies that in most cases their existence and competences are solely based on secondary law. As the authors argue, despite the 2012 Common Approach on EU Decentralised Agencies, what seems to be lacking is an overall act defining the constitutional limits and working arrangements.⁶

Apart from laying out the constitutional limits, the book’s merit is also to be found in its in-depth analysis of the concrete external activities of EU agencies. One particularly active agency is Frontex – these days known under its new name, the European Border and Coast Guard Agency. Indeed, in this case “the international dimension of Frontex is instrumental to the agency’s core mandate”.⁷ The specific chapter on this important agency assesses whether its actions remain within the mentioned constitutional limits (spoiler alert: that is largely the case). In the same Area of Freedom, Security and Justice we find Europol and Eurojust, two agencies that can actually be traced back to a legal basis in the Treaty. The chapter on these agencies also reveals the challenges relating to data transfer to third countries and related fundamental rights issues.⁸

While, as indicated, the legal approach is dominant in this book, it also contains a number of political science contributions. While these certainly provide added value to the book, they also reveal a weakness. Unfortunately, combining and confronting legal and political science approaches is largely omitted, despite that fact that it

⁵ Chamon et al, *supra*, note 2, p 9.

⁶ M Chamon and V Demedts, “Constitutional limits to the EU agencies’ external relations”, pp 12–33, at 13.

⁷ F Coman-Kund, “The cooperation between the European Border and Coast Guard Agency and third countries according to the new Frontex Regulation: legal and practical implications”, pp 34–58.

⁸ C Brière, “Cooperation of Europol and Eurojust with external partners in the fight against crime: a legal appraisal”, pp 59–77.

would have provided a clear added value. After all, it is in political science and European Studies that questions of “agency” have been developed to much greater depth than in legal studies. In that respect, it is indeed interesting to see the development of the “actorness” of EU agencies and their almost autonomous capability to “externalize EU standards, administrative practices and policy models to non-EU actors”.⁹ Indeed, particularly in relation to studies on “norm promotion” by EU agencies as part of the EU’s overall “normative power” ambitions,¹⁰ a relationship with the legal external competences of EU agencies would have been interesting.

A key aspect of agency studies concerns their legitimacy. After all, the less that the EU as such is able to keep its agencies at arm’s length, the easier it becomes for agencies to drift away and evade the checks and balances that were created for the mother organisation. The book addresses some of these questions. Thus, the “arm’s length” distance is challenged when EU agencies operate at the global level in all kinds of transnational regulatory networks, as is the case for most of the financial bodies. In many cases, these bodies enjoy quite some freedom in their contributions to setting global standards that will also have an impact on the EU.¹¹ Similar questions arise in relation to the roles of some agencies in the assessment of the equivalence of third-country rules or regimes with EU regulatory standards. As positive outcomes of these assessments would allow operators in third countries to become active in the EU, accountability questions may arise, and agencies must stay within their scope of competences.¹² In those situations, the question, for instance, is: what is the reach of the right to good administration, as monitored by the European Ombudsman? Questions have emerged regarding the extent to which the European Ombudsman’s functions can indeed be related to activities outside the EU and not involving EU citizens.¹³

Most contributions to the book clearly reveal how third countries are affected by the actions of EU agencies. This is particularly true for countries close to the EU, in which EU agencies have a role in “the extension of the EU regulatory state”.¹⁴ Moreover, the founding acts of some agencies indeed allow for third-state participation, allowing them – albeit limitedly – “to leave a mark on the *acquis* that they have committed to adopt”.¹⁵

The chapters thus all have a clear message, but a flaw of the book may be that they fail to speak to each other. While the themes of the chapters are clearly related, one misses reactions in one chapter to findings in another. This dialogue would have been particularly interesting between the various academic disciplines. In addition, there is a lot of repetition in the introductions of many of the contributions. For instance, after

⁹ S Chatzopoulou, “EU agencies – agents of policy diffusion beyond the EU”, pp 100–24, at 122.

¹⁰ H Ekelund, “‘Normative Power Frontex’? Assessing agency cooperation with third countries”, pp 79–99.

¹¹ M De Bellis, “Reinforcing EU financial bodies’ participation in global networks: addressing legitimacy gaps?”, pp 126–44.

¹² P Van Cleynenbruegel, “Accountability challenges for EU agencies in the context of third country equivalence assessments”, pp 145–63.

¹³ M Inglese, “EU agencies’ external activities and the European Ombudsman”, pp 164–81.

¹⁴ D Rimkutė and K Shyrokykh, “Transferring the *acquis* through agencies: the case of the European Neighbourhood Policy countries”, pp 183–203, at 202.

¹⁵ M-L Öberg, “Third countries in EU agencies: participation and influence”, pp 204–21, at 220.

a while, we are aware that there are more than forty such agencies, that the topic has been addressed in many studies (apart from the external dimension) and that agencies play an important role in the regulatory landscape of the EU. Here, some of the chapters unnecessarily repeat the introductory chapter.

Overall, however, this book is important, as it clearly reveals the many external dimensions of EU agencies. Agencies have been part of the EU's governance system for a while, and we have to thank the Academic Research Network on Agencification of EU Executive Governance (TARN) for its various studies and conferences highlighting the importance of agencies and making us aware of the many challenges in this area. This book on the external dimension of EU agencies is not only a valuable contribution to that project, but also sets the stage for a further inclusion of agency competences and activities in the sub-discipline of EU external relations law and the global reach of EU law more broadly.

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