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Chapter 11

The Dynamics of EU Migration Policy: From Maastricht to Lisbon

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Introduction

EU migration policy, which forms part of the wider field of justice and home affairs (JHA), is a relatively young area of EU policy-making. The original text of the Treaty of Rome contained no provisions on the coordination or harmonization of asylum and immigration matters. The need to deal with such issues in a European context was first mentioned in the Tindemans Report of 1975, but only received more significant attention during discussions concerning the elimination of internal border controls, following the European Council meeting in Fontainebleau in 1984. Only with the Treaty of Maastricht did migration policy come into the Union framework. Since then, EU asylum and immigration policy has undergone an astonishing ascent from modest and obscure beginnings to an increasingly mature and vibrant field of EU policy-making. At the constitutional level it has shifted, in less than two decades, from an intergovernmental regime in which only a handful member states participated outside the Treaty framework, towards an almost fully communitarized EU policy area. At the EU legislative level—although processes have often been cumbersome and frequently reflected only the ‘minimum standards’ stipulated in the Treaty (of Amsterdam)—output in quantitative terms has been remarkable (Monar 2010). The rising importance of this policy field has also found prominent expression at the symbolic level. The ‘Area of Freedom, Security and Justice’, the broader frame within which EU asylum and immigration policy

falls, has been listed as one of the Union's fundamental objectives in the Treaty of Lisbon where it 'ranks' second, ahead of the SEM, CFSP, and EMU.

The purpose of this chapter is to explain this development of EU migration policy. Drawing on a revised neo-functionalist framework (Niemann 2006), four factors are suggested to account for processes of Europeanization in this field: (a) functional pressures; (b) the role of supranational institutions; (c) socialization, deliberation, and learning processes; and (d) countervailing pressures. An analysis of EU migration policy from a (revised) neo-functionalist perspective makes for an interesting case, both empirically and theoretically. In line with the edited volume's main research issue concerning the distribution of policy-making power between the member states and EU institutions, justice and home affairs have been described 'as a possibly decisive battlefield in the struggle between the predominance of the nation-state and supranational integration in Europe' (Monar 1998 137). JHA is close to the heart of national sovereignty, and thus thought of as one of the least suitable fields for the workings of the spill-over logic (Hoffmann (1995) [1964]), i.e. a hard case for neo-functionalist theory. Nevertheless, it has arguably become the most dynamic area of European integration. In addition, we witness differing and seemingly puzzling outcomes across the past three Treaty revisions, with the progressive results coming out of the Amsterdam and Lisbon IGC processes intermitted by the rather meagre outcome emanating from the Nice IGC. This variation across IGC outcomes, and the stop-and-go nature of communitarization processes in this field, further merits a closer investigation of EU migration policy, given the particular purpose of this edited book with its focus on Europeanization processes and their underlying dynamics (as well as *status quo* pressures).

As alluded to above, this chapter will concentrate on the history-making decisions reached at the level of EU Treaty revisions in order to highlight the most important developments and dynamics of EU migration policy (with particular emphasis on decision rules and the institutional set-up). This focus allows us to obtain the most substantial insights

and leverage on the main question(s) of the edited volume within the scope restrictions attached to this contribution. The conceptual framework utilized here goes beyond mere snapshots of particular events, also taking larger processes into consideration by looking at developments in between IGCs. Having said that, one of the inevitable shortcomings of this approach is that micro-level processes will get less attention than they may deserve (and would receive in a full-blown analysis). The chapter concentrates on migration policy broadly defined, which contains more specific issues such as asylum, legal/labour migration, irregular immigration, and the integration of immigrants. The chapter is organized as follows: the first section specifies my analytical framework. Section 2 analyses the development of EU migration until the Treaty of Amsterdam. The third section deals with the Nice IGC. Section 4 investigates the process leading to the last Treaty revision that culminated in the Treaty of Lisbon. Finally, conclusions will be drawn from my findings.

1. Conceptual framework

The following framework, based on a revised neo-functionalist approach ([Niemann 1998, 2006](#)), should not be regarded as a full-fledged theory. Rather, it posits a number of principles or conceptual axioms which might form a basis for more formal theorizing. The factors presented are intrinsically linked and in some measure interdependent and thus cannot necessarily be treated in isolation. The first three factors (functional pressures, the role of supranational institutions, and socialization, deliberation, and learning) are hypothesized as dynamics, while the fourth (countervailing forces) opposes/counteracts these integrational

logics. Therefore, integration is here treated as a *dialectical* process, subject to both dynamics and countervailing forces.¹

1.1 *Functional pressures*

Functional pressures emerge where, due to the interdependence of policy sectors and issue areas, the pursuit of the original goal requires additional integrative action (Lindberg 1963: 10). In modern polities and economies, interdependence between individual sectors and issues tends to be so extensive that it is difficult to isolate one policy area from another (Haas 1958: 297, 383). As such, functional pressures stem from the tensions, contradictions, and interdependencies arising in policy sectors encompassed by the European integration project, and its policies, politics, and polity. The pressures induce policy-makers to take additional integrative steps in order to achieve their original goals. Functional pressures constitute a structural component in the analytical framework. Functional pressures have a strong potential for causing further integration, as intentional actors tend to be persuaded by the functional tensions and contradictions. However, they do not ‘determine’ actors’ behaviour in any mechanical or predictable fashion. Functional structures contain an important element of human agreement, as their outcomes are only actualized where agents accept them as both credible and compelling.

1.2 *The role of supranational institutions*

¹ Although my framework strongly draws on neo-functional theory (Haas 1958; Lindberg 1963), it departs from this theoretical strand in several ways. How the framework relates to the original neo-functional approach and its later developments, its underlying assumptions, and inter-paradigm debating points is discussed elsewhere (Niemann 2006). Hence, this chapter focuses primarily on the empirical insights that the framework—and its analytical components—may provide.

The hypothesis that supranational institutions are promoters of intensified integration is supported through diverse rationales. Firstly, once established, institutions tend to take on a life of their own and grow beyond the bridle of those who created them (Pierson 1996). Secondly, concerned with increasing their own powers, supranational institutions become agents of integration, because they are likely to benefit from the progression of this process. Lastly, institutional structures (of which supranational structures are a part) invariably affect how actors understand and form their interests and identities.

The *Commission* is the most visible agent of integration and as such expedites and drives agreements towards integrative outcomes in a number of ways. For example, it can act as a promotional broker by upgrading common interests, e.g. through facilitating package deals. Moreover, taking advantage of its central position in a web of policy networks and relationships, the Commission can act as a bourse where problems and interests are traded and through which support for its policies is secured (Mazey and Richardson 1997). Further, the generally greater depth of expertise enjoyed by the Commission often affords it a substantial measure of influence (Nugent 2001).

The *Council Presidency*² has developed into an alternative architect of compromise, over the years. A number of pressures are faced by governments during their six-month stint, such as increased media attention and peer group evaluation, to assume the role of honest and promotional broker (Elgström 2003; Tallberg 2004). During their Presidency, national officials tend to undergo rapid learning processes about the various national dimensions, which induces a more 'European thinking' and facilitates 'European compromises' (Niemann and Mak 2010; Wurzel 1996: 272, 288).

In addition, the *European Parliament* (EP) has struggled, with no small degree of success, to transform itself from an unelected body with limited powers into an institution

² On the EU Presidency constituting an institution on its own, see e.g. Schout (1998).

commensurate in voice with the Council in the larger part of normal secondary legislation. The degree of interest group attention paid to it attests this growing clout (Bouwen 2004). The Parliament moreover shoulders the lion's share of the (perhaps insupportable) burden of the Union's legitimization. Even at the IGC level its role has (substantially) increased. The EP, arguably for self-aggrandizing reasons, has also been a habitual supporter of further integration (Corbett 2001).

1.3 Socialization, deliberation, and learning processes

It is hypothesized here that socialization, deliberation, and learning processes taking place in the Community forum expedite cooperative decision-making and consensus formation and thus tend to advance integrative trends. The gradual increase of working groups and committees on the European level has led to a complex system of bureaucratic interpenetration that brings thousands of national and EU civil servants into frequent contact with each other. This network constitutes a prime medium for such processes, due to the development of mutual trust and a certain *esprit de corps* among officials in Community forums. It is (implicitly) assumed that the significance of socialization and learning processes are positively correlated to the duration and intensity of such interaction (Lewis 1998; Lindberg 1963).

It is proposed here that not just the quantity, but also the *quality* of interaction is critical to effective norm socialization and learning processes. We can distinguish between (1) incentive-based learning—the adaptation of strategies to reach basically unaltered and unquestioned goals—and (2) more deeply rooted reflexive learning, i.e. changed behaviour as a result of challenged and scrutinized assumptions, values, and objectives (Nye 1987: 380), the mere incentives/interests of egoistic actors being inadequate explanation for the latter (Checkel 2001). Furthermore, given that actors make sense of the world and attribute meaning

to their actions through speech, the centrality of language to understanding social behaviour and learning cannot be ignored.

The notion of communicative action allows us to attain a more fundamental basis for reflexive learning and to more thoroughly integrate the role of communication.

Communicative action, as devised by Habermas (1981a, 1981b), describes a mode of interaction whereby actions are coordinated not via egocentric calculations of success but through acts of reaching understanding about valid behaviour. Actors participate in such interaction not in intractable pursuit of preconceived self-interest, but rather pursue their individual objectives under the condition that they can coordinate or harmonize their plans of action on the basis of shared definitions of the situation. Habermas distinguishes between three validity claims that can be challenged in discourse: first, that a statement is true, i.e. conforms to the facts; second, that a speech act is right with respect to the existing normative context; and third, that the manifest intention of the speaker is truthful.

Under 'communicative' behaviour the force of the better argument counts and actors attempt to convince each other (and are open to persuasion) with regard to these validity claims. By arguing in relation to standards of truth, rightness, and sincerity, agents have a standard by which to measure what constitutes a reasonable choice of action, through which they can reach agreement (Habermas 1981a: 149). While, in strategic interaction, actors engage in bargaining behaviours, in communicative action they *deliberate, reason, argue, and persuade* and may also undergo more profound learning processes. Rather than merely employing and amending means in pursuit of unaltered objectives, as in strategic action, actors redefine their very priorities and preferences in validity-seeking processes aimed at reaching mutual understanding. However, strategic action and communicative action are only ideal types, and agents combine different (complementary) modes of action in their behaviour (Risse 2000). Hence, we cannot expect constant learning. Nor can we expect unidirectional

learning, as the EU level is not the single source of learning, with the domestic and international realms also triggering socialization processes.

Socialization, deliberation, and learning processes work as an interface between structure and agency. Functional, exogenous and domestic structures become part of decision-makers' norms and values throughout processes of socialization and learning. Moreover, in seeking to devise the most 'valid' solution, actors tend to be more open-minded, i.e. beyond the narrow confines of their preconceived interests, and are thus more susceptible to persuasion by arguments derived from the wider structural environment.

1.4 *Countervailing forces*

Since integration cannot be conceptualized solely as a dynamic or integrative process, one must also consider countervailing forces. Hence, integration is assumed here to be a *dialectical* process, both subject to dynamics *and* countervailing forces. The latter may induce either stagnation or spill-back. Only by accounting for these countervailing forces can the relative strength of the integrative dynamics active in the process be accurately ascertained.

Governments' autonomy to act may be substantially circumscribed by *domestic constraints* (Hoffmann 1964; Moravcsik 1993). They may be hampered directly by agents such as lobby groups, opposition parties, the media/public pressure, or more indirectly by structural limitations, like a country's economy, geography, or administrative structure, especially where they substantially differ from the European mainstream, due to consequent adjustment costs of integration (Héritier 1999). Any such restriction on governments' autonomy to act may prove disintegrative, especially when countries face very diverging domestic constraints. This can also disrupt emerging integrative outcomes, as domestic constraints may lead to national vetoes or prevent policies above the lowest common denominator. Adverse bureaucratic pressures also follow this formula to a degree, when

constraints created at this level are not so much ideological in nature (cf. sovereignty-consciousness), but where bureaucracy proves inimical to integrative government actions which have adverse implications for bureaucrats' own interests or patronage networks.

Sovereignty-consciousness—of which nationalism is perhaps the most extreme form—encompasses actors' reluctance to transfer sovereignty to the supranational level and yield competences to EU institutions. Sovereignty-consciousness tends to derive from national traditions, identities, and ideologies and may be cultivated through political culture and symbolisms (cf. Callovi 1992; Meunier and Nicolaidis 1999). Actors driven by sovereignty-consciousness have been responsible for significant and serial setbacks to the development of the Community, as for example, during de Gaulle's and Thatcher's terms of office. Actors such as bureaucrats, though less prominent, may also represent sovereignty-conscious agents, especially when working in (such) ministries whose institutional culture leads them to self-identify as custodians of the last bastions of the nation state.

2. The Amsterdam Treaty revision

Migration policy was attributed to the sphere of intergovernmental cooperation within the third pillar by the Maastricht Treaty. Both the institutional balance and decision-making system of the third pillar differed considerably from that of the Community pillar. Decisions in the Council were taken by unanimity (except for procedural matters), the Commission had to share its right of initiative with the member states, the European Parliament merely needed to be consulted, and the Court of Justice was largely excluded from jurisdiction in the third pillar. However, under Article K.9 (the *passerelle* provision) there was the possibility of bringing JHA issues into the Community sphere if the members of the Council unanimously agreed to do so, but this provision was never used.

The Amsterdam Treaty divided the old third pillar into two parts: the first part became Title IV of the TEC on visa, asylum, and other policies related to the free movement of persons, and entered the community sphere. The second part, the significantly reduced third pillar (Title VI TEU), was composed of police and judicial cooperation in criminal matters and remained largely intergovernmental. The new Title IV TEC introduced mechanisms for the progressive establishment of an area of freedom, security, and justice. It laid down a general obligation on the Council to adopt—within a period of five years after the entry into force of the Amsterdam Treaty—the necessary flanking measures aimed at ensuring the free movement of persons. These contained measures concerning external border controls, including aims regarding asylum, refugees, and immigration (Article 63). The main thrust of the measures to be taken concerned the establishment of minimum standards, rather than common rules. During a five-year transitional period decisions were to be taken by unanimity in the Council on an initiative of either the Commission or a member state and after consultation of the EP. Thereafter the Commission would obtain an exclusive right of initiative and the question of whether all or part of the areas of the new title would in future fall under qualified majority and co-decision rules would be addressed by the Council subject to unanimity (Article 67). Consequently, no IGC was required to make such changes. As for the Court of Justice, it was agreed that references from the highest national courts would be permitted (Article 68). In addition, the well-tried, binding Community legal instruments (directives and regulations) were now to be used. Furthermore, the new Article 226 TEC provided the Commission with a means by which it might bring a case against a member state in case of faulty or insufficient implementation of legislation or Treaty obligations. Special provisions were adopted for the UK, Ireland, and Denmark in the form of non-application of, or opt-out from, Title IV (Article 69).

Generally, the 1996–97 IGC has been held to have made significant progress. First, the above analysis suggests that noticeable inroads in terms of supranationalization of Title IV

were made. Similarly, the new provisions were described as ‘decisive progress’ (Brok 1997: 377) or ‘a substantial qualitative leap’ (Schnappauff 1998: 17) when measured against the yardstick of the *ex ante* practice. Given the expectations held prior to the IGC, Title IV should be viewed as a real achievement attained ‘against all odds’ (Patijn 1997: 38). The new Title IV in particular fared very well viewed in light of the overall Treaty revision, and has been dubbed ‘the main improvement of the Treaty’ (Hoyer 1997: 71). Despite this progress, however, no small distance remained to be covered before arriving at a full-fledged Community method. Most importantly in that respect, qualified majority voting (QMV), co-decision, and full jurisdiction by the ECJ would only become possible after five years ‘if—and this is a big if—this move finds unanimous backing in the Council’ (Monar 1998: 138). As numerous observers rightly described such a change as ‘rather unlikely’ (van Selm-Thorburn 1998: 632; also Moravcsik and Nicolaidis 1998), there was a serious risk that Title IV remained only ‘a half-way house’ (Brinkhorst 1997: 49).

2.1 Functional pressures

During the IGC 1996–97, functional pressures provided a strong impetus driving communitarization of asylum and immigration policy. Two kinds of active functional pressures can be identified. First and foremost, there were pressures stemming from the free movement of persons objective, the realization of which necessitated progress in the areas of external border control, asylum, and immigration to compensate for the elimination of intra-EU borders. The principle of free movement of persons goes back to the four freedoms inscribed in the Treaty of Rome. The 1975 Tindemans Report first seriously placed its implementation on the Community agenda, and the adoption of the Schengen Agreement of 1985, the internal market project, and the Schengen Convention of 1990 gradually reinforced the objective (Den Boer 1997). The considerable significance that was attached to it was at

least in part because, amongst the four freedoms, the free movement of persons has the most direct bearing on the lives of individual citizens (Fortescue 1995: 28). Furthermore, failure to properly ensure this objective risked compromising the efficient working of the internal market (Commission 1985).

The functional rationale can be further explained as follows: states will be reluctant to give up control of their borders without a guarantee of equivalent protection at external frontiers. The possibility that the restrictive efforts of one member state might be undermined by the liberal policies of another—since ‘the free movement of persons also means free movement of illegal immigrants’ or rejected asylum-seekers—necessitates the adoption of common policies on asylum-seekers, refugees, and illegal immigrants (de Lobkowicz 1994: 104). Similarly, fears were voiced that the abolition of internal borders would lead to ‘asylum-shopping’ and an uncontrollable influx of illegal immigrants (Achermann 1995). The Dublin Convention sought to address the problem of asylum shopping, by determining the first entry state as the one having to deal with asylum applications. This, however, gave rise to the problem of arbitrariness, given member states’ differing standards of reception and varying interpretations of refugee status. Thus in turn minimum standards on the reception of asylum-seekers became necessary. To achieve this goal and other flanking measures, a greater use of Community methods was required both to expedite cooperation and to enable outcomes above the lowest common denominator. This rationale for supranationalization was the most widely accepted and articulated one among decision-makers (Benelux 1996; UK Government 1996).

Dissatisfaction with collective goal attainment in this area gave rise to further functional pressure. Effective cooperation in JHA—and particularly asylum and immigration policy—had become an increasingly important EU policy objective, but the relative weaknesses of the third pillar increasingly hindered progress towards the goal of effective cooperation. The third pillar is commonly identified as the chief obstacle to advancement in the run-up to the Amsterdam IGC (Lipsius 1995; O’Keeffe 1995; also for points below). The most important

flaws included: (1) overlapping competences between the first and third pillar. (2) The legal instruments of the third pillar were widely regarded as flawed and there was uncertainty concerning the legal effect, particularly concerning joint actions. (3) The unanimity requirement was always assumed to have been a severe obstacle to the adoption of measures under the third pillar. (4) The third pillar essentially lacked a generalized system of judicial review. As it affects individual rights, a strong claim could be made to seek judicial review in the areas covered by it. (5) Although the Commission was supposed to be fully associated in the area of JHA, it was suggested that it merely had the status of *observateur privilégié*. A communitarization of asylum and immigration policy promised to improve on these shortcomings and enable more effective cooperation. Policy-makers attached considerable importance to this rationale (Reflection Group 1995).

2.2 The role of supranational institutions

Supranational institutions played a substantial integrative role during the Amsterdam Treaty revision. Prior to the IGC, the *Commission* had laid the basis for its claim to increased responsibility in migration policy. By presenting well-researched, creative, and balanced proposals, the Commission displayed its aptitude and capacity to contribute to the management of this politically sensitive field (Myers 1995: 296). Secondly, the Commission made an integrative impact on the IGC by cultivating functional pressures. This practice began long before the Conference. Papademetriou (1996: 22) even suggests the Commission's deliberate promotion of the elimination of internal borders in the 1980s was consciously designed to generate spill-overs in areas related to the free movement of persons. The Commission repeatedly invoked this rationale both before and during the IGC (Commission 1996). Thirdly, although at IGCs the Commission is only one of many actors making proposals, it can still substantially influence the agenda, as the early decision-making stages

are of critical importance in terms of shaping actors' preferences (Peterson 1995). Its early, comprehensive, and well-argued proposals to the Reflection Group and IGC—together with its subsequent proposals on JHA—were significant in shaping the debate (den Boer 2002: 519; Moravcsik and Nicolaidis 1999: 72). Fourthly, the Commission made use of its greater overview of developments in the various member states and their legal systems. While during the negotiations on migration, member states representatives were often unable to see past (their) national perspectives and legislations, the Commission was able to contrast data and take a more holistic approach. It thus considerably advanced the substantive debate and eventually provided most of the formula for JHA communitarization (interview 1997; Beach 2005: 135). Finally, the Commission's careful cultivation of alliances with important actors, particularly the various Presidencies, further reinforced its agenda-setting ability (Dinan: 2000: 260; Gray 2002: 392).

The various *Presidencies* likewise contributed significantly to the decisions reached on asylum and immigration policy at the IGC. Both the Irish and Dutch Presidencies succeeded in their task as institutionalized mediator, finding acceptable compromises on Title IV which did not leave any party unduly marginalized. The Presidencies also played a critical role as promotional brokers, securing a progressive outcome and surpassing the lowest common denominator. Both 'Dublin II' and the Draft Treaty that went to the Amsterdam summit can be described as 'on the upper end of realism, keeping the momentum up at a high, but not too high, level of ambition' (interview 1997; den Boer 2002). These documents foresaw a short one-year interim period and an automatic switch to QMV thereafter, and a three-year period (with automatic change to QMV thereafter), respectively. In addition, the Dutch Presidency also succeeded in diverting the attention of senior JHA officials and ministers away from the IGC by shrewdly scheduling the Action Plan on Organized Crime, a sexy topic with much public appeal, parallel to the Conference. This limited the attention they could spare for the

IGC, leaving JHA issues to be negotiated by the more ‘progressive’ foreign ministries (interview 1999).

A further contribution to the progressive outcome at Amsterdam was provided by the *European Parliament*. The EP had, since the mid-1990s, begun to take a more constructive interest in JHA policy-making (Esders 1995). During the IGC itself, Parliament moderately contributed to the Title IV result through its cultivation of contacts with national elites, especially through political parties, an informal alliance with the Commission and by suggesting that it would make its assent to enlargement conditional on a satisfactory IGC outcome (interview 1999; Maurer 2002). McDonagh (1998), an Irish diplomat closely involved in the negotiations, praised the EP for its role in maintaining ambitions at the highest possible level.

2.3 Socialization, deliberation, and learning processes

In the course of the Amsterdam IGC, socialization, deliberation, and learning processes affected the outcome on migration policy in two respects. First, given that JHA was a relatively new EU policy-making field, the speed and extent to which the new decision-making structures, forums, and actor constellations allowed socialization, learning, and communicative action processes, and thus cooperative behaviours to take place, becomes a key question. Such processes were far from developed in the mid-1990s (Niemann 2000). Moreover, ‘the fact that [. . .] the ministers and ministries involved [were] not yet sufficiently accustomed to the working methods and disciplines of the Council to actively seek ways of making decision-making possible’ was referred to as one of two main features ‘most un conducive to progress’ (Fortescue 1995: 26–7). Few policy-makers realized that the cumbersome, rigid, and often uncooperative policy process in the area of JHA was an inevitable consequence of as yet underdeveloped socialization and learning processes;

routines which would emerge in time (Lipsius 1995: 249). Instead, participants tended to blame the intergovernmental institutional set-up. This attribution of failure to decision procedures rather than socialization processes further strengthened the rationale for communitarization. Hence, somewhat paradoxically, the very absence of well-developed socialization processes at the policy-making level served to exacerbate the pressure for institutional and decision-making reform in JHA at the Intergovernmental Conference (interviews 1997, 1999).

There remains, moreover, the question of the possible contribution of socialization, deliberation, and learning processes to integrative outcomes at the Amsterdam IGC itself. On the whole this contribution seems to have been limited, but nonetheless identifiable. The IGC Representatives Group allowed some scope for such processes. Meetings were held often, usually weekly. Informal dinners, working trips organized by the Presidency, and bi-lateral contact allowed representatives to get to know each other personally. Several members of the group noted that there was ‘something like a club-atmosphere’, in which ‘basic relationships of trust’ developed (interview with M. Scheich 1997). This seems to have facilitated and fostered the development of reciprocity as a collective understanding about appropriate behaviour in the Representatives Group. For example, as one official mentioned, ‘after we were granted our [Title IV] opt-out, it was clear to our delegation that we should be accommodating on other issues. Here, as often, there was no explicit talk about making a deal or returning concessions’ (interview 1997). In addition, as one official put it: ‘there was a feeling that we were very much responsible for the [outcome of the] conference. This collective responsibility was a source of motivation for making progress’ (interview 1999). Similarly, the provision for informal gatherings and trips afforded participants the opportunity to test ideas or voice opinions that they might not have made public in more formal settings. Moreover, officials noted that socialization processes and reasoned discussions allowed them to gain insight into their fellow participants’ interests and intentions, facilitating the resolution of deadlocks. Manfred Scheich,

the Austrian IGC Representative, remarked for example: ‘through private talks with Niels [Ersboll] I could finally understand why the Danes made so much fuss about the communitarization of asylum and immigration policy’. The acceptance of the special provisions for Denmark thus stemmed from this understanding of the stringency of domestic constraint imposed upon the Danish negotiators (interview 1997).

2.4 Countervailing forces

The effects of the countervailing pressures throughout the IGC 1996–97 were moderate. Immigration and asylum policy touch upon traditional prerogatives of states, and are thus subject to the effects of sovereignty consciousness. It has been held that ‘the competent ministers act as policemen of sovereignty’ (van Oudiz 1995: 395). As noted above, during the IGC negotiations, JHA ministers’ attention was, through the launch of the politically expedient Action Plan on Organized Crime, successfully diverted from the Conference by the Dutch Presidency. This development substantially reduced the impact of sovereignty-consciousness at the IGC (interview 1999). Nonetheless, sovereignty-consciousness did play a role in the Danish and UK opt-outs, though in those cases domestic constraints arising from geopolitical distinctness also contributed to the outcome (Devuyst 1998: 625; Monar 1998: 137). The most significant domestic constraints seem to have been those which eventually convinced German Chancellor Kohl to refuse an automatic switch to QMV after three years at Amsterdam. The Kohl government found it difficult to sell it at home, even to their own party. Several *Länder* governments opposed QMV for migration issues, mainly because they wanted to protect their prerogatives in an area where they have to bear the financial costs. Kohl needed the support of the *Länder* to get the Treaty through the *Bundesrat*. Lacking the political capital to secure both EMU and the shedding of more sovereignty over migration,

Kohl opted to prioritize EMU at the expense of migration reform (Moravcsik and Nicolaidis 1999: 68).

3. *The Nice Treaty revision*

The implementation of an actual, full-fledged introduction of the Community method would have brought about progressive outcome at the IGC 2000. This would have entailed switching the decision rule for migration policy from unanimity to qualified majority, granting the EP co-decision power rather than mere consultation, and bringing the field under the jurisdiction of the Court of Justice.³ A concomitant shortening of the transitional period (to three years) would have represented a remarkable step forward, but an automatic switch after five years would also have constituted considerable progress. The Title IV provisions in the Treaty of Nice, however, failed to come very close to this.

First, crucial areas of Title IV—the abolition of external border controls (Art. 62, 1), a balanced distribution of refugees (Art. 63, 2b), and residence of third-country nationals (Art. 63, 4)—went unaltered. Second, even where progress was made—new measures on asylum (Art. 63, 1) (measures on asylum) and on refugees under temporary protection (Art. 63, 2a)—these advances were made conditional on prior *unanimous* adoption of legislation defining common rules and basic principles (cf. new Art. 67, 5). Hence, a switch to QMV and co-decision was possible before the May 2004 date specified at Amsterdam. However, given the magnitude of the hurdle set with unanimous agreement on basic legislation, little utility was attached to this provision (Stuth 2001) and eventually no switches could be achieved during the transitional period. Additionally, it has been argued that the new Article 67 (5) merely derogated from the transitional period provisions and would therefore only be effective until

³ One of the remaining important restrictions included the lack of direct access to the ECJ by citizens.

May 2004 (Fletcher 2003: 542; but cf. Peers 2006). Thirdly, a number of changes made in a declaration annexed to the final act were merely procedural, i.e. not legally binding. Thus, as the Amsterdam Treaty has foreseen: the switch to the procedure of Article 251 was to wait until May 2004 in the cases of ‘freedom to travel of third-country nationals’ (Art. 62, 3) and ‘illegal immigration’ (Art. 63, 3b). In addition, it was agreed to change Article 62 (2a) (checks at external borders) to QMV and co-decision when agreement on the field of application concerning these matters has been reached. However, the final decision on these (non-binding) alterations was likewise subject to *unanimity*. Fourthly, none of the Nice provisions on Title IV accorded any expansion to the role of the Court of Justice. Finally, attempts to shorten the transitional period to three years were unsuccessful (Peers 2006: 44).

In light of these provisions the progress made at Nice cannot be described as significant, and indeed policy-makers and academics largely agree that the Treaty’s achievements were limited (Prodi 2000: 3; Stuth 2001: 11).

3.1 *Functional pressures*

Compared with the IGC 1996–97, the influence of functional rationales was felt less at Nice. Pressure from the free movement of persons objective was diminished. That the free movement of persons had not yet become a complete reality was acknowledged by several sources. However, the perceived deficiencies in terms of realizing this principle and the intensity of demanding progress in this area had both decreased compared with the discourse of the early and mid-1990s (Commission 1998). Compared with the previous IGC, this logic was less on the minds of decision-makers (interviews 2003/04). There was also (limited) functional pressure stemming from necessities for increased cooperation in the *same* issue area. The establishment of an area of freedom, security and justice, with Title IV as a significant constituent part, became an EU priority, with about 250 binding legislative acts

planned to that end (Monar 2000: 18). It was furnished with concrete aims and deadlines through the Amsterdam provisions, cemented by the 1998 Vienna Action Plan and further elaborated by the conclusions of the 1999 Tampere European Council. For some IGC delegations these developments warranted further reform of decision rules. However, many delegations argued that the improved Amsterdam provisions had been in use only for a few months and ought to be tested first (den Boer 2002: 533; interview 2004).

Since Edinburgh in 1992, a growing functional logic was at work from various European Councils through pressures stemming from the decision on future enlargement. Although an exogenous event, enlargement after those internal commitments largely became an endogenous source of pressure for reform of EU decision-making procedures. Once enlargement had become an agreed internal goal, difficulties were foreseen in terms of decision-making for policy areas ruled by unanimity, such as migration policy. Unanimity was already regarded as problematic by some even with only fifteen delegations. With twenty-five member states and the corresponding diversification of interests and increased heterogeneity, it was feared that those areas still governed by unanimity would become substantially susceptible to deadlock. However, the pressure of enlargement was limited as it was not (yet) perceived as immediately imminent (interviews 2002, 2004).

3.2 The role of supranational institutions

The *Commission's* assertiveness and influence in the area of migration policy was weaker during the IGC 2000 than during the IGC 1996–97. From the outset the Commission was put on the back foot. This was partly due to the resignation of the Santer Commission in 1999 and the subsequent priority of putting its own house in order and also due to the fact that the Commission, itself an item on the agenda, was more object rather than subject to the negotiations. As a result, the Commission was to be somewhat marginalized during the IGC

(Galloway 2001). The Commission did draw attention to some of the structural dynamics, such as the inadequacy of current decision rules for a swifter progress on the objectives set (Prodi 2000: 3). It is nonetheless generally conceded that the Commission's contribution was sub-optimal in that respect. For example, it contributed no substantial comprehensive paper on the extension of QMV in JHA (interview 2002). In addition, the Commission's poor relations with the Portuguese Presidency, and worse still those with the French Presidency, substantially limited its ability to set the agenda (cf. Beach 2005).

The two *Presidencies* during the negotiations were of varying efficacy. While the Portuguese acted largely as a facilitating, honest, and promotional broker, the performance of the French Presidency in the vital second half of the IGC militated against a progressive outcome on Title IV. Its approach concerning the extension of QMV in this area was, in accordance with its national position, not particularly ambitious (interview 2004). Even at relatively early stages it introduced fall-back positions (French Presidency 2000a). Secondly, the French Presidency provided little in the way of leadership, failing to effectively narrow the range of options on the table. It entered into the Nice summit still undecided about the basic approach to be chosen and still presented two different frameworks—staying within the realm of Article 67 or to work with declarations/protocols—which both afforded scope for further sub-options (French Presidency 2000b). Finally, the French Presidency drifted from the principle of impartiality, particularly in its advocacy of a shift in the balance of power between large and small member states (Gray and Stubb 2001). This had an adverse effect on its potential role as an honest broker across issue areas and also negatively impacted on the negotiating atmosphere.

The *European Parliament* failed to replicate the capacity it had demonstrated in the run-up to and during the Amsterdam IGC, and was unable to exploit the enhanced role afforded it in the IGC proceedings at Nice. For example, the EP missed the chance to take the initiative during the important agenda-setting phase waiting to submit its IGC opinion until such time

as the principal issues had already largely been framed (Gray and Stubb 2001: 9–10; Neuhold 2006).

3.3 Socialization, deliberation, and learning processes

Processes of socialization, deliberation, and learning were hamstrung throughout the Nice IGC. Crucially, national JHA officials and ministers—so successfully distracted at the Amsterdam IGC by the Dutch Presidency’s introduction of an Action Plan Against Organized Crime—were not so easily diverted from the defence of their IGC interests the second time around. A sizeable fraction of national JHA officials was sceptical of the Amsterdam provisions and sought to limit further loss of control (Guiraudon 2003: 279). Their views were fed into the formation of national positions through the process of inter-ministerial coordination. This led to strict and stringent instructions to IGC Representatives, militating against reasoned discussion on the merits of the issues at hand. Cooperative norms, such as reciprocity, that tend to lead to the realization of an enlarged common interest, were also countervailed by such constraints. Secondly, controversy stemming from disputes over the balance of power between small and big member states generated distrust among negotiators which was inevitably carried over to other areas, including JHA. Under such circumstances, socialization and communicative action processes were by and large stillborn. Thirdly, the large number of issues on the QMV agenda meant that even prominent and controversial ones, like JHA, were allotted insufficient time to accommodate reasoned debate on the pros and cons of extending QMV. Finally, the shorter life span of the Representatives Group left little time for intense enmeshment and socialization processes to unfold (interviews 2002, 2004).

3.4 Countervailing forces

The obstacles frustrating further supranationalization of migration policy had gathered additional strength in the run-up to the IGC 2000. Critically, in the absence of the distractions deployed at the Amsterdam IGC, sovereignty-consciousness JHA ministers were very alert and active in promoting their objectives. After the considerable integrational step taken at Amsterdam, national bureaucrats frequently sought to limit ‘agency loss’ (Guiraudon 2003: 279) during the legislative process and remained sceptical of further integration at the Nice IGC. Substantial extension of QMV in Title IV was vehemently opposed by France, but also by Germany and Britain. The opposition of the French and Germans has partly been attributed to the recalcitrance of (senior) officials in the respective interior and justice ministries (interviews 2002, 2004). Domestic constraints had likewise accumulated and consolidated, providing further check on communitarization of migration policy. The latter had gained increasing prominence in domestic politics, partly owing to rising unemployment in most member states. Elections scheduled or expected in the UK in 2001 and in Germany and France in 2002, resulted in a reluctance to abandon the unanimity rule lest opposition parties capitalize on the surrender of the national veto (Givens and Luedtke 2004; Prevezanos 2001: 3;).

4. Via the Convention to the Treaty of Lisbon

In a departure from the standard method of preparing EU Treaty reforms, the Laeken European Council decided to form a Convention on the Future of Europe. The substantive changes of this Treaty revision were already accounted for in the provisions of the Draft Treaty produced by this Convention.⁴ The provisions of the Lisbon Treaty constitute significant progress in this field: (i) a breakthrough was reached by agreement on QMV in the

⁴ Only cosmetic changes were made on migration in the subsequent IGCs leading to the Lisbon Treaty.

Council, co-decision of the EP, and full jurisdiction of the ECJ—i.e. the complete introduction of the Community method for the entire scope of the Amsterdam provisions (no small feat, given the considerable gap that was still to be bridged, prior doubts regarding breaking Amsterdam's 'double lock',⁵ and the relative failure to do so at Nice); (ii) in addition to the objectives stipulated in the Amsterdam Treaty, the Community method was also accepted for a broader range of measures on asylum and immigration (listed in Articles 62–63), which includes, for instance, a uniform status of asylum and the combating of trafficking in persons; (iii) the new structure of the Treaty abolishes, at least formally, the division of JHA into two different pillars. The pillar separation is sub-optimal, not least because of past conflicts concerning the legal basis of cross-pillar measures; (iv) in terms of policy objectives, the new Treaty uses the term 'policy' on asylum and immigration, rather than mere 'measures', thus implying a higher degree of integration.

The Treaty includes few safeguards and caveats: in the area of immigration, a prohibition of harmonization of member states' laws has been codified for the integration of third-country nationals. Moreover, member states' right to determine access to the labour market by third-country nationals remains unaffected by the Treaty. These new provisions have been held to constitute substantial progress in terms of decision rules and the institutional set-up in the area of asylum and immigration policy (Monar 2003; Thym 2004). The Convention process/period, as the decisive stage of the last Treaty revision, is the primary subject of the following analysis.

4.1 Functional pressures

⁵ Duff (1997: 21) characterized the Amsterdam provisions as such because the lifting of the national veto for the legislative process was itself subject to a veto in the (European) Council.

Overall functional pressures on migration policy decision rules had intensified in the run-up to and during the Convention, not least due to the ever growing pressure of enlargement. The provisions made at the Seville European Council of 2002 for signing the Accession Treaty the following year and the participation of new member states in the 2004 EP elections made enlargement an imminent reality. This put substantial pressure on issue areas that were subject to unanimity, such as migration. Enlargement was to be cited frequently at the Convention as a rationale to substantiate the need for reforming the decision rules of Title IV (cf.

Commission 2002a; EP 2003b).

Disappointment with modest legislative progress towards achieving the area of freedom, security and justice—and more particularly the concrete targets set in Amsterdam and Tampere (and later The Hague), further widened by subsequent European Councils—generated a further functional pressure. This was underlined by the ‘scoreboard’, a bi-annual update reviewing progress in this area, which cast doubt on the plausibility of compliance with the time limits that had been set (Commission 2002b). The European Council meetings of Laeken in 2001 and Seville in 2002 increased the pressure by echoing these concerns. Many observers, both in academic (Fletcher 2003: 535) as well as in policy-making (Belgian Presidency 2001) circles, attributed the lack of progress in this area to the unanimity requirement. During the Convention it was widely argued that dealing with the Tampere objectives and possible leftovers after 2004, but also for further objectives set thereafter and more effective decision-making in this area more generally, required that improved decision rules be instituted (Vitorino 2002a: 80).

The Laeken Declaration on the Future of Europe served to add further moderate functional pressure; by putting particular emphasis on greater simplification and efficiency, Heads of State and Government strengthened the rationale for Title IV reform. With the intricacy of its decision-making rules, Title IV provided much scope for improvement along these lines. Streamlining halfway decision-making provisions can go both ways: re-

nationalization or supranationalization. However, given the various other dynamics driving further communitarization, the bias was clearly in favour of the Community method. The Declaration had also called for more democracy and transparency. The two solutions at hand—increased involvement of the EP and a greater role for national parliaments—were not equal competitors, given the strong predisposition in favour of the Community method, and especially QMV. As ministers could be outvoted in the Council, greater EP involvement was held to be a surer remedy for the democratic deficit. Laeken was not the first summit where these aims had been enumerated,⁶ yet they were arguably formulated in stronger terms, pursued more enthusiastically and taken more seriously than at previous IGCs (interview 2004).

4.2 *The role of supranational institutions*

The *Commission* acted with considerably greater assertiveness in the JHA debate throughout the Convention than at the Nice IGC. The negotiating infrastructure suited the Commission. The deliberative decision-style which predominated at the Convention meant that explanations attached to propositions were considered more seriously and good arguments could quickly gain traction with negotiators. The Commission made powerful arguments in favour of further Europeanization by pointing to the impending enlargement or the inadequacy of current decision rules for effective implementation of agreed objectives (Vitorino 2002b). The Commission also contributed to the latter rationale by the timely initiation of the required legislative proposals. It was thus up to the Council to find agreement, which further spurred the revelation of problems attached to the unanimity rule. During the Convention the Commission was also able to take advantage of its considerable informational

⁶ Cf. Presidency Conclusions of Cannes (point IV), Madrid (pp. 1, 3), Helsinki (point I), Feira (point I).

advantages vis-à-vis other groups (Beach 2005), enjoying substantial administrative backing, a formidable institutional memory, and two representatives who had acquired considerable relevant experience of two IGCs (Barnier) and the Charter Convention (Vitorino). Vitorino, through his superior expertise and his credible reputation was able to shape the (JHA) debates in both the Working Group Freedom, Security and Justice, and in the Plenary (Beach 2005: 198; Goulard 2003: 374).

In contrast to its lacklustre performance at the Nice IGC, the *European Parliament* made a considerable impact on the last Treaty revision negotiations in the field of migration. EP members formed a very coherent and well-organized fraction, and were thus able to influence the Convention. EP members were among the most active ones at the Convention, also concerning Title IV issues, frequently intervening in Plenary and Working Group debates and contributing their own papers to the discussion (Maurer 2003). Klaus Hänsch (PES), Elmar Brok (EPP), Andrew Duff (Liberals), and Johannes Voggenhuber (Greens), who all supported further communitarization of Title IV, also played a prominent role in their respective political families. MEPs were, with few exceptions, in concert with the two Commission representatives, perhaps the most fervent supporters of the Community method concerning Title IV issues. EP members pushed the functional and exogenous rationales for further integration and thus became active agents of JHA integration (Brok 2002). Ultimately, MEPs and the European Parliament more generally were among the strongest if not the strongest, advocates of the Draft Constitutional Treaty (Beach 2005; EP 2003a), thus contributing substantially to its binding strength and endurance.

4.3 Socialization, deliberation, and learning processes

The markedly increased effect of socialization, deliberation, and learning processes at the Convention, which also influenced the outcome at subsequent IGCs, is perhaps one of the

most notable reversals since the Nice IGC. This was facilitated by several favourable conditions in the Convention setting: (1) the Convention began with an initial phase of listening and reflection during which expectations and visions could be freely shared. This generated a deeper understanding of other members' ideas and softened pre-conceived opinions (Kleine and Risse 2005). (2) The quantity of interaction—over fifty sessions of both the Plenary and the Praesidium held within eighteen months—reinforced the development of an 'esprit de corps' and a strong sense of responsibility for a successful outcome (Göler 2003). (3) Convention members enjoyed a remarkable degree of autonomy and were largely unbound by governmental briefs (Maurer 2003: 134; but see Magnette and Nicolaidis 2004). Moreover, in contrast to the preceding IGCs, domestic bureaucracies could do little to hinder the deliberation process as government representatives were not generally obliged to go through inter-ministerial coordination processes for the formation of national positions (Maurer 2003: 136). (4) The atmosphere, spirit, and negotiating structure made it very difficult for members of the Convention to reject something without explanation, or without entering into a reasoned discussion where one's arguments would become subject to scrutiny (Closa 2004: 201). In such an environment, good arguments, validated on the basis of accepted criteria, carried greater persuasive weight, and were therefore more likely to prevail in the debate.

Consequently, the strong functional (and exogenous) rationales for further communitarization were afforded a window to gain acceptance by actors and unfold their logic. In such deliberative process, one would expect negotiators to concur more fully with the final outcome, which would seem more likely to take the form of a reasoned consensus rather than simple compromise. My interviewing suggests that the Title IV Convention outcome was largely perceived as such. The same logic applies to the Draft Constitutional Treaty as a whole, albeit to a lesser extent, increasing the moral weight and impact of the Convention text and problematizing significant departures from this consensus for negotiators

at subsequent IGCs (Closa 2004), not least because member states were very much part of it. Moreover, there was a general feeling that the Convention had done a good job. The dominant policy discourse advocated retention of the provisions that the Draft Constitutional as far as possible (*Guardian* 14 March 2003; *Frankfurter Allgemeine Zeitung* 16 June 2003). Due to the substantial bonding strength of the Convention text, it also became the basis for further negotiations on most (non-institutional) issues at the subsequent IGCs. In a way, it turned into the default setting (Beach 2005: 199). The bonding strength, with regard to migration issues, was such that the Convention text on these issues was not reopened.

What has been presented above as socialization, deliberation, and learning is difficult to substantiate within given space limitations.⁷ Nonetheless, interviewees consistently described the negotiations in terms of arguing and reasoning, either without being prodded, or when asked to choose from a range of potential characterizations. In addition, negotiators generally avoided pointing to hierarchy, status, qualifications, or other sources of power when making their statements, and thus were presumably reluctant to add non-discursive authority to their arguments (interview with K. Hänsch 2004). Moreover, speakers' utterances in the plenary seem to be very consistent with their statements in other forums (e.g. Vitorino 2001, 2002a, 2002b), which is likewise suggestive of truthful arguing. Furthermore, 'powerful' actors did not prevail in the Convention where their arguments were not persuasive. For example, the German Foreign Minister, the UK government representative, and others sought to reintroduce unanimity for the (whole) area of immigration (Fischer 2003; Hain 2003). They were not successful as their case was not convincing given the powerful rationales for further communitarization pointed out above (interview 2004). Finally, it can be assumed that when issues which produced deadlock in a bargaining-like setting, such as migration issues at Nice,

⁷ But also see the general indications in the literature (Closa 2004; Göler 2003; Maurer 2003; Niemann 2006). For indicators of communicative action and persuasion, see Checkel (2001) and Niemann (2004).

can be advanced or resolved in a more discursive setting, deliberation and arguing are likely to have played a role (cf. [Kleine and Risse 2010](#)).

4.4 *Countervailing forces*

The impact of countervailing pressures was more limited during the Convention than during an IGC. The structure and environment of the Convention precluded much of the influence of countervailing forces. In the absence of inter-departmental coordination, representatives of national governments were not constrained by the influence of the various functional ministries ([Maurer 2003](#): 134–7). Thus, national civil servants and ministers responsible for JHA—previously identified as key agents of sovereignty-consciousness and a principal vector of domestic constraints—were largely excluded from the process. The few countervailing forces that managed to make it onto the Convention stage were largely overwhelmed by the impetus of the prevalent process of deliberation. It was more difficult for countervailing pressures to register in an open debate than during a process in which all participants have a *de facto* veto. Arguments stemming from countervailing pressures became subject to scrutiny in accordance with commonly accepted criteria and measured against other (pro-integrative) arguments. Teufel, representing the German *Länder*, UK government representative Hain, and others who tried to ‘water down’ the progressive emerging consensus, largely failed to assert their proposals, because their arguments were only accepted to a limited extent (interview [2004](#)). Most of the few modifications to Title IV issues, for example on immigrants’ access to the labour market, were made in the final phase of the Convention, also termed the ‘pre-IGC stage’, where bargaining behaviour began to (re-)emerge ([Norman 2003](#)).

The few exceptions to full communitarization, apart from the growing shadow of the IGC, can be explained by the exceptionally strong instances of countervailing pressures associated with them. Most notably, exclusion of the right to determine access to the labour

market by third-country nationals can be attributed to strong constraints in Germany. Here, the CDU/CSU opposition is said to have ‘blackmailed’ the government not to give in on that question, as otherwise it would block the domestic immigration bill in the *Bundesrat*. The government also feared that the conservative opposition would seek to make political capital from the issue, on which opinion polls suggested most Germans were rather sceptical and cautious (cf. *Frankfurter Rundschau* online 9 July 2003; 3 May 2004). Due to its considerable bonding strength, described above, the Convention text became the default position (Beach 2005: 199). This integrative base line to the negotiations, coupled with the fact that migration issues were almost entirely kept off the agenda, left little opportunity for countervailing pressures to exert significant influence on subsequent discussions leading to the Treaty of Lisbon (interviews 2004, 2007).

5. Conclusion

The revised neo-functionalist account—based on (a) functional pressures; (b) the role of supranational institutions; (c) socialization, deliberation and learning processes; and (d) countervailing pressures—presented in section 1 appears to provide a robust framework for an analysis of the past three Treaty revision negotiations concerning the Europeanization of migration policy. The variation in hypothesized pressures correlates to the outcomes at Amsterdam, Nice, and Lisbon, and the above analysis has substantiated the mechanisms and processes through which these dynamics and countervailing forces unfolded. It has been demonstrated that the EU has developed a complex but increasingly communitarized migration regime that has evolved from loose and modest intergovernmental cooperation outside the Treaty framework to increasingly supranational governance. The development is characterized in particular by greater involvement by the Community institutions and substantially more decision-making by qualified majority.

At the level of policy-making, since the late 1990s, the framework for EU migration policy has been arranged into sequential five-year plans that build on the provisions of the Treaty. The Tampere Action Plan (1999–2004) was followed by the Hague Programme (2005–2009), which was succeeded by the Stockholm Action Plan (2010–2014). These programmes indicate that the EU now plays a central role in setting the migration agenda. It is important to note, however, that these three programmes do not mean that all the specified goals have been attained. Areas such as asylum policy and the fight against irregular immigration have been substantially developed. In terms of asylum, the continuous flow of measures agreed since the mid-1990s has mainly attempted to standardize national approaches to the processing of asylum applications, the reception of asylum-seekers, and the recognition of persons in need of refugee or some other kind of protection status. In contrast, the evolution of EU policies on the integration of migrants and particularly on labour migration are lagging behind (Boswell and Geddes 2011). As for the latter issue, efforts to coordinate admissions policies at EU level have been obstructed by resistance from member states.

In addition, it should be emphasized that there is no EU-wide migration policy approach. With the establishment of ‘mutual recognition’ as a key principle of governance in the Union, and the use of directives that leave substantial leeway for member state administrations in terms of their implementation, there is considerable scope for adaptation with ‘national colours’ (Boswell and Geddes 2011). Furthermore, throughout the last decade member governments have often managed to maintain their national interests in the adoption of legislation on the basis of lowest common denominator agreements (e.g. Lauter and Niemann 2008). Member governments clearly cannot be written out of the equation altogether. They continue to play an important role in the policy process. However, they no longer constitute the only relevant actors as inter-institutional processes have become gradually more important as a result of (ongoing) Europeanization processes.

APPENDIX: Key events

<i>Date</i>	<i>Key event</i>
1990	<i>Schengen Convention</i> signed to implement the Schengen Agreement of 1985 whereby a subset of EC member states agreed to remove controls at their internal borders
1990	<i>Dublin Convention</i> determined the state responsible for asylum applications lodged in one of the Community member states
1992	<i>Treaty of Maastricht</i> : established intergovernmental cooperation on justice and home affairs within the third pillar of the Treaty on European Union
1995	<i>Schengen Convention</i> came into effect
1997	<i>Treaty of Amsterdam</i> : immigration and asylum policy switched to the first pillar; a five-year deadline was established for adopting (minimum standards) on a number of issues, including asylum reception, refugee recognition, and temporary protection; Schengen Convention integrated into the EU Treaty
1999	<i>Tampere European Council</i> (five year action plan: 1999–2004): called for a ‘common European asylum system’, partnerships with countries of origin, fair treatment of third-country nationals, and measures to stem irregular migration
2000–2004	<p><i>Adoption of EU legislation on:</i></p> <ul style="list-style-type: none"> • Minimum standards on granting temporary protection (directive, 2001) • Dublin II (new Dublin Convention) (regulation, 2003) • Minimum standards for the reception of asylum-seekers (directive, 2003) • Minimum standards for the qualification of refugees (directive, 2004) • Minimum standards on asylum procedures (directive, 2004)
2001	<i>Treaty of Nice</i> : some extension of qualified majority voting on migration issues
2004	<i>Hague Programme</i> : set out a new five-year action plan (2005–2009) that built on the Tampere measure; reaffirmed the objective to create a common European

	<p>asylum system; restated the goal of a balanced approach to migration management with measures to tackle illegal immigration; proposed to work with member states at improving immigrant integration policies</p>
2005	<p><i>Frontex</i> set up in Warsaw to coordinate operational coordination at the EU's external border</p>
2009	<p><i>Stockholm Action Plan</i>: set the legislative agenda for 2010–2014 and committed the EU to (a) a global approach based on partnership with third countries; (b) common rules on family reunification; (c) a real system for sharing responsibility for refugees across the Union; (d) uniform international protection status</p>
2009	<p><i>Treaty of Lisbon</i>: marked the full communitarization of migration policy within the Treaty framework; asylum and immigration became 'normal' EU issues, with QMV in the Council, co-decision of the European Parliament, and full jurisdiction of the European Court of Justice</p>

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