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# The Externalization of the EU's Policy on Irregular Immigration

Vertical and Horizontal Venue-Shopping?

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# Abstract

The topic of this thesis is the EU's policy on irregular immigration. At the centre of the inquiry is the externally-oriented and externalizing approach to irregular immigration that has been adopted in the EU and the predominant use of external measures in the EU's policy to deal with irregular immigration at the cost of internal and protective measures. The EU's policy is questioned as the external measures that the EU has adopted are shown to be both ineffective in actually preventing irregular migrants from entering Europe and detrimental to the safety and human rights of irregular migrants and asylum-seekers. While the internal and protective measures are lacking in the EU's policy, it also seems that the EU treats the considerable challenges that occur within Europe, and which are estimated to involve several million people, with a complete ambivalence. In explaining the EU's policy on irregular immigration the *vertical and horizontal venue-shopping theory* is tested in the thesis. This subsequently opens up further questions regarding the national approaches to irregular immigration in the member states, the preferences of different actors involved in the policy-making process at the EU-level, and the policy-making character of measures relating to EU-cooperation with third countries.

*Key words:* Irregular Immigration, European Union, Justice and Home Affairs, Venue-Shopping

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# 1 Introduction

Irregular immigration and the increasing presence of irregular migrants<sup>1</sup> in Europe are currently high on the political agenda in several European countries and in the European Union (EU). Starting as a relatively neglected policy area, confined only to the Schengen framework and later to the loose third pillar constellation under the Maastricht treaty, irregular immigration has towards the end of the 1990s, and into the new millennia, gained increasing prominence on a European level. Today irregular immigration as a policy area lists as one of the EU's top priorities, covering several European-wide measures, such as border management, visa policy and EU-cooperation with third countries.

As irregular immigration is however a very complex phenomenon, the policy measures to deal with this can vary considerably. The EU has adopted a very specific policy approach to irregular immigration where it predominantly concentrates on an external dimension of the phenomenon. Equipped fore mostly with external measures, such as border management and visa policy, the main aim of the EU's policy is to prevent the entry of irregular migrants into Europe. In recent years this external approach has intensified as EU-cooperation with third countries has become an increasingly important measure within the EU's policy to tackle irregular immigration at its source, which subsequently has shifted the EU's policy-focus even further beyond the territorial confines of Europe, implying that the EU's policy is not only external, but further externalizing.

At the same time, however, internal and protective measures to deal with the broad-scale challenges of irregular immigration within the EU's territory have almost completely been ignored in the EU's policy. Here, the numbers of people lacking proper documentations and a legal status in the member states of the EU, continuously at the risk of marginalization and various forms of systematic and severe exploitation, are currently said to constitute of several million people.

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<sup>1</sup> In this thesis I have decided to use the terms 'irregular immigration' and 'irregular migrant(s)'. Although these terms are not conceptually entirely uncomplicated, they nevertheless seem far better than the usual prefix 'illegal' that is often used in this context. The term illegal is problematic as it has a direct and negative connotation to criminality, however most irregular migrants are not criminals; the term can obscure individuals' legal claims for asylum; and is also regarded as denying peoples humanity.

The terms irregular immigration and irregular migrants are preferred by most international organizations with a competence in migration, including CoE, ILO, IMO, OSCE and UNHCR. Conversely, the European Union is the only significant international actor that persists on using the term 'illegal immigration'. In this thesis the term 'illegal immigration' will only be used when signifying or quoting specific EU policies, documents or statements.

## 1.1 Aim of the Thesis

The aims of this thesis are to analyze and explain the general approach and content of the EU's policy on irregular immigration. At the centre of the inquiry will be the externally-oriented and externalizing approach to irregular immigration that has been adopted in the EU and the predominant use of external measures in the EU's policy to deal with irregular immigration at the cost of internal and protective measures. Another aim of the thesis is to test a theory, the *vertical and horizontal venue-shopping theory*, in order to explain this approach. This subsequently opens up further questions regarding the national approaches to irregular immigration in the member states, the preferences of different actors involved in the policy-making process at the EU-level, and the policy-making character of new measures relating to EU-cooperation with third countries in the EU's policy.

## 1.2 Research Questions

The central research questions put forward in this thesis relate to the EU's external, and externalizing approach to irregular immigration and the uneven allocation of measures in the EU's policy. As will be argued in chapter 2. this approach is puzzling as the measures adopted in the EU's policy are shown to be both ineffective in actually preventing irregular migrants from entering Europe and detrimental to the safety and human rights of irregular migrants and asylum-seekers. While the internal and protective measures are lacking in the EU's policy, it also seems that the EU treats the considerable challenges that occur within Europe, and which are estimated to involve several million people, with a complete ambivalence. The central research questions therefore are:

- *Why has the EU adopted an approach to irregular immigration that is so predominantly concentrated on the external dimension of the phenomenon instead of concentrating on the internal challenges?*
- *Why are external measures favoured as the main instruments to deal with irregular immigration in the EU's policy, while internal and protective measures have been largely ignored?*
- *What accounts for the further externalization of the EU's policy on irregular immigration in the form of increased use of EU-cooperation with third countries?*

## 1.3 Theoretical Argument

In order to explain this external/externalizing approach and the uneven allocation of policy measures in the EU's policy on irregular immigration, I have read through a broad academic material on the EU and immigration, and considered several different assumptions and partial explanations on why this could be the case. As a more concrete picture of how the EU's policy works, who takes the main decisions, and how the policy has developed throughout the years, several of these have successively been abandoned in favour for a more convincing explanatory account. A review and discussion of three of these alternative explanations will be provided in chapter 3. in order to motivate for the choice of explanatory account that has been applied in this thesis.

The explanatory account adopted in this thesis is the *vertical and horizontal venue-shopping theory*. This theory has initially been applied by Virginie Guiraudon<sup>2</sup> and further developed by Sandra Lavenex<sup>3</sup> to explain the rationales and tendencies in the EU's migration and asylum policies.

In short, the argument is that the EU's approach to migration policies is primarily shaped by the control and security-oriented preferences of Justice and Home Affairs officials with a certain *raison d'Etat* to hinder the entry of 'unwanted migrants' to Europe through 'remote control immigration policy', rather than to deal with the challenges that large-scale refugee flows or irregular immigration present in a more comprehensive manner. Shielded at the European-level from pluralistic domestic constraints and the interference of other European actors, JHA officials have been able to adopt their preferred restrictive, security-focused, and externally-oriented policy measures at the European level.

As migration policies at the EU-level however have began their hesitant but progressive move towards 'communitarization', followed by the inclusion of EU supranational institutions in the policy-making process, JHA officials have again been confronted with new constraints that could challenge their preferred policy approach. The logical next step for these has therefore been to *escape to the external*, and shift EU migration policies closer to the foreign policy domain of EU cooperation where the intergovernmental logic still reigns and from which the supranational institutions are normally excluded.

A full account of the EU's policy on irregular immigration interpreted and explained through the vertical and horizontal venue-shopping theory will be provided in chapter 4.

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<sup>2</sup> Guiraudon, Virginie (2000): *European Integration and Migration Policy: Vertical Policy-Making as Venue Shopping*, Journal of Common Market Studies 38(2): 251-71

<sup>3</sup> Lavenex, Sandra (2006): *Shifting Up and Out: The Foreign Policy of European Immigration Control*, West European Politics, 29(2):329-350

## 1.4 Theory-Testing Questions

To thoroughly examine if this account actually holds any proof would have been to study in-depth the policy-making processes on the European level and the different motivations behind relevant actors, through for example interviews with several JHA officials. However, as this has not been an option (lack of resources or relevant contacts), the inquiry has instead been conducted indirectly, so that certain assumptions on which the explanatory account is based on are examined further with regards to the set out research questions.

Firstly, it is asked if the EU is unique in its external approach to irregular immigration or if the national policies of the member states are similarly externally-oriented. If EU policies are driven by JHA officials favouring security-oriented and external measures, and circumventing pluralistic domestic constraints, as the explanatory account argues, then there should be a striking difference between the policy approaches at the EU and member state levels. The first theory-testing question is therefore:

- ***What approaches to irregular immigration are upheld on the member state-level? Are they predominantly externally-oriented or do the member states uphold more comprehensive approaches to irregular immigration?***

If the national approaches show clear disparities to the EU's approach, incorporating also internal and protective measures in their policies, then it is considered that the explanatory account has been strengthened.

The second theory-testing question relates to the different actors involved in (or excluded from as it may be) the policy-making process at the European level, and the preferences that these inhabit. According to the explanatory account, JHA officials are shifting the policy focus even further towards an external dimension, because they fear the inclusion of the EU's supranational institutions in the policy-making process as the preferences of these might differ considerably from the ones of JHA officials. The second theory-testing question is therefore:

- ***What preferences regarding the EU's policy on irregular immigration do the EU's supranational institutions inhabit? Are they more comprehensive, including also internal and protective measures, or are they as externally-oriented as the JHA officials'?***

If the supranational institutions show similar policy preferences as JHA officials what regards irregular immigration, there should not be any reasons for the JHA officials to *escape to the external* and the account should be considered erroneous. However, if apparent differences in the preferred approach do exist, it is considered to strengthen the argument.

Finally, according to the argument, JHA officials are shifting the policy focus towards a foreign policy domain in the EU, as this is assumed to provide JHA officials with some leverage from the intrusive involvement of the EU institutions in the policy-making process. It is assumed that this explains the recent increase in EU-cooperation with third countries in the EU's policy. As these new cooperation measures are not however placed within the second pillar of EU cooperation, the *Common Foreign and Security Policy*, where the intergovernmental logic of cooperation is more prevalent, it is not apparent if they actually do provide the JHA officials with the assumed rooms for manoeuvre. The third theory-testing question therefore asks:

- ***Which form of cooperation characterizes the new measures relating to EU-cooperation with third countries in the EU's policy: are the measures for mostly supranational or intergovernmental? Do they actually provide JHA officials with more rooms for manoeuvre?***

If these new measures are characterized by the supranational mode of policy-making then the explanatory account is considered to have failed in its predictions. On the other hand, if it can be shown that the intergovernmental logic is prevalent with regards to these new measures and that JHA officials have possibilities to bypass the supranational institutions, then the predictions are considered to have been corroborated and the explanatory account strengthened.

## 1.5 Method

In chapter 5. the analyses of these theory-testing questions will be conducted. In the first analysis regarding the national approaches I have relied on previous research. The ambition here is not to examine the national approaches in detail, but to give a general overview providing enough evidence that the national approaches do in fact differ from the EU's policy approach.

In the second analysis the main focus is placed on the preferences of the European Commission. The choice of this institution for further analysis is motivated as its preferences could have vital impacts on the EU's policy, due to its central initiative role. Here I have relied on official documents and proposals to discern its preferences with regards to the EU's policy.

In the third analysis, regarding the form of cooperation and policy-making character of the new measures relating to EU-cooperation with third countries in the EU's policy, I have focused mainly on measures such as joint border patrol operations and readmission agreements. Here the analysis is based on general overviews of these measures and previous research.

## 2 Irregular Immigration and the European Union

### 2.1 The External and Internal Dimensions of Irregular Immigration

Irregular immigration is said to be a very “complex and multi-faceted phenomenon”, including the illicit and clandestine crossing of borders and various other routes into irregularity, phenomena such as human smuggling and trafficking, as well as a situation whereby irregular migrants are constantly and systematically exploited and risk marginalization<sup>4</sup>. Correspondingly, the policies to deal with this phenomenon can span over a wide spectrum of policy areas, including foreign- and security policy, immigration- and citizenship policy as well as social- and labour policy .

To make some sense of all this, and to enable analysis, Figure 1. distinguishes the phenomenon of irregular immigration and the corresponding policies to deal with this into two separate dimensions: An external dimension, focusing on the entry of irregular migrants into European countries, and an internal dimension, with focus on their sustained residence of irregular migrants within these countries.

	<b>External Dimension</b>	<b>Internal Dimension</b>
<b>Irregular immigration</b>	Entry: illicit border-crossings and various other routes into irregularity, human smuggling and trafficking.	Irregular residence and undocumented labour; systematic exploitation and marginalization
<b>Policy measures</b>	Policies intended to prevent entry: border management, visa policy, carrier sanctions, transnational cooperation, etc.	Policies intended to deal with irregular residence and undocumented labour: Regularization, granting of minimum rights and social benefits, employer sanctions, etc.

**Figure 1. Two Dimensions of Irregular Immigration in Europe**

The left-hand side of the figure – the external dimension – is often the prime focus of the general debate regarding irregular immigration in Europe. According to the

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<sup>4</sup> Koser, Khalid (2005): *Irregular Immigration, state security and human security*. Paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration, 2

International Centre for Migration Policy Development (ICMP) in Vienna up to 300.000 – 400.000 irregular migrants enter Europe through various different ways every year<sup>5</sup>. The European Commission is unwilling to confirm this figure, due to the statistical uncertainties involved, but nevertheless stresses that the total annual inflow of irregular migrants into EU countries is at least up in the hundreds of thousands<sup>6</sup>.

The most common routes into irregularity in Europe comprise of people who have legally entered European countries but who have then overstayed their legal permissions for being there, by for example overstaying visas, resident-, and work- or study-permits. Other common routes also include people that through a number of ways have cheated their ways through the legal system of immigration, by for example counterfeiting passports and visas or by arranging sham marriages or fake adoptions<sup>7</sup>. Also many asylum seekers, who have entered Europe legally by applying for refugee status in a European country, but who have then been given a negative answer to their claims, disappear into irregularity. According to academic estimates, the above-mentioned routes, and in particular visa-overstayers, account for around 70-80 % of the total inflow of irregular migrants into Europe<sup>8</sup>.

The remainders, a clear minority, enter Europe through clandestine and illicit border-crossings. Every year thousands of people set out on life-threatening journeys to Europe, either on themselves or with the assistance of profiteering people smugglers. Often people are also forced or trafficked into Europe by criminal organizations that continue exploiting them upon arrival in the receiving countries<sup>9</sup>.

To hinder this activity European states have introduced various enforcement measures at their borders and pressed transit-countries in Eastern Europe and North Africa to do the same<sup>10</sup>. These measures range from the more traditional, such as barb-wire and electric fences, and specially-trained mobile border guards, to the more sophisticated ones such as the use of biometric data as well as advanced electronic surveillance systems<sup>11</sup>. There has also been an increase in

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<sup>5</sup> Mitsilegas, Valsamis; Monar, Jörg and Wyn Rees (2003): *The European Union and Internal Security – Guardian of the People?* Palgrave, MacMillan, 79

<sup>6</sup> Noll, Gregor (2006): *Asylsystemet, migrantnätverk och den informella arbetsmarknaden*, Europaperspektiv, Santerus förlag. 145

<sup>7</sup> Koser 2005, 5; Väyrynen, Raimo (2003): *Illegal Immigration, Human Trafficking, and Organized Crime*. World Institute for Development and Economics Research, United Nations University, 7

<sup>8</sup> Mitsilegas et al 2003, 79; Bigo, Didier (2005): *Frontier Controls in the European Union: Who is in Control?* Ashgate, Wiltshire, 133

<sup>9</sup> Mitsilegas et al 2003, 80

<sup>10</sup> Koser 2005, 5; Lavenex, Sandra (2001): *Migration and the EU's new eastern border: between realism and liberalism*, Journal of European Public Policy 8:1 February 200, pp. 24–42; Kruse, Imke (2003): *Creating Europe Outside Europe: Externalities of the EU Migration Regime*, ECPR Conference Marburg, 34

<sup>11</sup> Väyrynen 2003, 7

more indirect and distance-oriented measures, such as visa requirements and carrier sanctions<sup>12</sup>.

Although less highlighted in the mass media and in political discourse, the right-hand side of Figure 1. – the internal dimension – also presents a crucial aspect of irregular immigration in Europe involving marginalization and exploitation on a considerable scale. According to various academic estimates the total amount of irregular migrants residing within the member states of the EU presently comprises of at the lowest around 2 million people but can involve as many as 5 million people<sup>13</sup>.

Due to their illegal status and fear of detention and deportation, irregular migrants residing within Europe are often cut off from the rest of society and lack the most basic services that are taken for granted by most Europeans. These include any form of education or training, sufficient housing, rudimentary health care and even access to necessary medicines<sup>14</sup>.

Lacking the possibilities for legal employment, irregular migrants are frequently employed by the underground economy. Through undocumented labour, irregular migrants can sustain some form of descent living, however the work conditions involved in these are usually harsh and the wages are minimal<sup>15</sup>. Often the work conditions connected to undocumented labour can be exceedingly dangerous as well, as exemplified by the 18 Chinese cockle-pickers that were found drowned in the tidal waters outside Morecambe Bay, Lancaster (UK) in 2004. According to local police, their deaths were a direct outcome of the lack of safety preparations that is characteristic for undocumented labour<sup>16</sup>.

In extreme cases, irregular migrants residing in European countries become the prey of organized criminal gangs exploited under inhumane conditions as forced labour or sex-slaves and a growing amount of irregular migrants are also sold of as body parts on the European illegal market for human organs<sup>17</sup>.

The policy options available for authorities to deal with the internal dimension of irregular immigration are mainly focused on providing some form of rights or protection to irregular migrants or to counteract undocumented labour and other forms of exploitation<sup>18</sup>.

Regularizations, which have been employed in several southern European countries, are perhaps the most effective measures to counter exploitation and

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<sup>12</sup> Väyrynen 2003, 8

<sup>13</sup> Stalker, Peter (2002): *Migration Trends and Migration Policy in Europe*, International Migration Vol 40 (5), 23; Koser 2005, 6

<sup>14</sup> Platform for International Cooperation on Undocumented Migrants (PICUM) (2005): *Ten Ways to Protect Undocumented Migrant Workers*, Brussels, 9

<sup>15</sup> Reyneri, Emilio (2003): *Illegal Immigration and the Underground Economy*, National Europe Centre Paper No. 68, 56

<sup>16</sup> BBC 2004

<sup>17</sup> Väyrynen 2003, 12

<sup>18</sup> PICUM 2005, 8

marginalization, and as they provide authorities with valuable information of the scale of the phenomenon. Regularizations are however controversial and have attained much criticism<sup>19</sup>.

Other means to deal with the internal dimension of irregular immigration include providing some form of minimal rights, healthcare and social benefits to irregular migrants, without actually providing them with a legal status<sup>20</sup> while, sanctions on companies that employ irregular migrants and systematic workplace inspections are considered to be the most effective ways to counteract undocumented labour<sup>21</sup>.

## 2.2 European Union Policy on Irregular Immigration

European cooperation regarding irregular immigration started on a more concrete basis upon the signing of the Schengen Accord in 1985 and the Treaty Implementing the Schengen Accord in 1990. The free movement of people in Europe and the subsequent reduction of internal border-controls were feared to create a “security-deficit”, which motivated for several so called “flanking measures” to be introduced<sup>22</sup>. Under these, rules were adopted to establish a common control-regime of all immigration into the Schengen space, including labour immigration, family reunification, asylum and irregular immigration<sup>23</sup>. The measures that were specifically targeted at irregular immigration included higher standards regarding control and surveillance of common external borders, harmonization of national visa policies and the introduction of carrier sanctions in all member states<sup>24</sup>. Aside from these, initiatives under the Schengen framework were also undertaken to harmonize and make stricter national laws regarding human smuggling and trafficking as well as deportation practises<sup>25</sup>.

These measures were somewhat strengthened in the early 1990s when irregular immigration was included in the Justice and Home Affairs pillar of the EU, however, the real breakthrough occurred at Amsterdam. The Treaty of Amsterdam placed rules regarding visas, asylum and immigration under the EC-pillar of cooperation, thus signifying that policies regarding irregular immigration would now be governed under supranational auspices.

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<sup>19</sup> Demetrios G. Papademetriou, Kevin O’Neil and Maia Jachimowicz (2004): *Observations on Regularization and the Labor Market Performance of Unauthorized and Regularized Immigrants*, Migration Policy Institute Washington, D.C. Paper Prepared for the European Commission, DG Employment and Social Affairs, 33-37

<sup>20</sup> PICUM 2005, 9

<sup>21</sup> Martin, Phillips and Mark Miller (2000): *Employer Sanctions: French, German and US Experiences*, ILO, Genève. 6

<sup>22</sup> Ceyhan, Ayse (2005): *Policing by Dossier: Identification and Surveillance in an Era of Uncertainty and Fear*, Ashgate, Wiltshire, 156

<sup>23</sup> Treaty Implementing the Schengen Accord, Articles 3-8

<sup>24</sup> Albrecht, Hans-Jörg (2002): *Fortress Europe? – Controlling Illegal Immigration*, European Journal of Crime, Criminal Law and Criminal Justice, Vol. 10(1), p. 11

<sup>25</sup> Albrecht 2002, pp. 10-11

In the following European Council in Tampere 1999, and in the course of creating an *Area for Freedom, Security and Justice*, EU member states then signalled that tackling irregular immigration had now become one of the EU's top priorities and that resolute European-wide action was called for to provide for the 'consistent control of external borders to stop illegal immigration'<sup>26</sup>. This line was furthered in the Seville European Council in June 2002 where an increased focus on strengthening external borders and especially more cooperation with third countries in order to prevent irregular migrants from entering Europe were called for<sup>27</sup>.

These were shortly translated into concrete European policy acts in the Commission Communication on *Common Policies to Stop Illegal Immigration* and the Council adoption of the *Action Plan to Combat Irregular Immigration*, in 2001 and 2002 respectively. In these, the need to further strengthen European outer borders was made the main priority of the EU's policy on irregular immigration and enacted through several common initiatives that followed. These included the fortification of the Spanish enclaves Ceuta and Melilla, where 130 km electronically enhanced fences were erected<sup>28</sup>, extensive plans to create an electronic surveillance system covering the entire Mediterranean Sea as well as several European common projects, such as operations Ulysses and Odysseus, to reinforce control over the land-, water- and airways to Europe<sup>29</sup>. More recent initiatives, following this policy line, is the establishment of a common European agency for border management (FRONTEX)<sup>30</sup> and the introduction of small commando-boats, equipped with specially-trained and armed military personnel, to be employed in order to stop irregular immigration inflows<sup>31</sup>.

The Common Visa Policy has also been brought forward since the Amsterdam treaty as one of the main instruments to tackle irregular immigration. This has been done by creating a common list of "sensitive" countries containing high risks of irregular immigration on which visa requirements are to be placed<sup>32</sup>.

A new aspect in the EU's policy on irregular immigration that has also been increasingly relied upon in more recent years is EU-cooperation with third countries. Before the 2004 enlargement all candidate-countries in Eastern and Central Europe had been pressed to implement several measures regarding border control and immigration policy<sup>33</sup>, a strategy that now also was to apply to countries in North Africa, the Middle East and other regions. The main rationale

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<sup>26</sup> Presidency Conclusions, Tampere European Council 15-16 October 1999. Bulletin EU 10-99

<sup>27</sup> Presidency Conclusions, Seville European Council 21-22 June 2002. Bulletin EU 6-2002

<sup>28</sup> Harding, Jeremy (2001), *De Ovälkomna – Flyktingar vid den rike mannens port*, Wahlström & Widstram: Finland, 37

<sup>29</sup> Parker, Rodericj (2006): Joint Patrols at the EU's Southern Border, SWP Comments, 3

<sup>30</sup> Lavenex 2006, 340

<sup>31</sup> Parker 2006, 4

<sup>32</sup> Guiraudon 2000, 258

<sup>33</sup> Lavenex 2001

behind these new cooperative measures were to enable border patrol operations within the territorial waters of neighbouring countries, the repatriations of apprehended irregular migrants, and to assure that the countries neighbouring Europe equip themselves with the same measures to deal with irregular immigration as the EU has done. One current proposal regarding these measures also includes the establishment of reception centres for would be asylum-seekers and irregular migrants in the cooperating countries. This has not yet however become included in the EU's policy, but an agreement regarding this has already been reached between Italy and Libya, and the proposal is strongly supported by other influential member states, such as Germany, Austria and the UK<sup>34</sup>.

The EU's policy on irregular immigration can thus be characterized as predominantly concentrating on the external dimension of irregular immigration. The main instruments adopted by the EU are enforcement measures placed on common European external borders, as well as indirect and distance oriented measures to tackle irregular immigration more remotely. The policy focus has furthermore been given an additional externalizing push outwards with EU-cooperation with third countries, whereby the EU has effectively created a form of buffer-zone against irregular immigration far outside its own territory.

What comes to EU policies concentrated on the internal dimension of irregular immigration, these are limited to harmonizing and "beefing-up" rules regarding the detention and deportation of irregular migrants as well as criminal laws on human smuggling and trafficking. Some small notions regarding employer sanctions and workplace inspections have been made, however these have always been given minimal attention and never in the form of binding rules<sup>35</sup>. In fact, what regards regularizations or any other forms of rights or benefits granted to irregular migrants, the EU has consistently taken a strong stance against member states deciding to employ them, arguing that they are ineffective and only encourage further irregular migrants to head for Europe<sup>36</sup>.

Finally, it is worth noting that not a single EU policy, be it an internal or external measure, binding or non-binding, provides even the most basic form of protection to irregular migrants from exploitation and marginalization.

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<sup>34</sup> Lavenex (2006): *Shifting UP and Out: The Foreign Policy of European Immigration Control*, West European Politics 29(2), 343. In this context it can be mentioned that the UK has gone even further by proposing the establishment of *off-shore* reception centres for would be asylum-seekers and irregular migrants located at remote islands somewhere in the middle of the sea. Ibid. 343

<sup>35</sup> Williams, Walter (2005): *On the Political Logic of Anti-Illegal Immigration Policy*. Politics of Scale Conference, Canada, February 4-5 2005, 16

<sup>36</sup> European Voice, 3-30 August 2006, 1

## 2.3 Effectiveness and Consequences of the EU's Policy

According to several researchers these external measures that the EU employs in its policy, have in most cases failed to reduce the inflows of irregular migrants to Europe in any significant way<sup>37</sup>. Perhaps the most obvious sign of this is that the same security and law-enforcement authorities that uphold these measures repeatedly stress that irregular immigration to Europe continues without any noteworthy reduction<sup>38</sup>. Furthermore, the European Commission specifically mentions that it would be “unrealistic to believe that illegal immigration flows can be completely stopped” with the measures that the EU employs<sup>39</sup>.

Without going into detail, the reasons for this failure are mainly that the forces shaping migration, as well as irregular migration, are largely beyond the control of direct state intervention. These include burgeoning and ongoing conflicts and political instability in many developing countries, widening economic, demographic and security-related disparities between different parts of the world, as well as a multi-billion dollar migration industry, both legal and illegal, with vested interests in migrations continuing<sup>40</sup>; forces against which European countries, individually or in consortium, are rather powerless.

Regardless of the effectiveness of the measures adopted however, they nevertheless do have severe consequences for the safety and human rights of the irregular migrants themselves. According to a study made by UNITED, several thousand irregular migrants die every year at the borders of Europe, “often as a direct consequence of the repressive policies employed by European countries”<sup>41</sup>. In this context, it is also an established fact that the recent increase in human smuggling and trafficking – which is today estimated to produce annual revenues up to 7 billion dollars<sup>42</sup> – is partly a consequence of the increased measures to strengthen European borders; measures that have made clandestine border-crossings almost impossible without the assistance of professional people smugglers<sup>43</sup>. Furthermore, as people smugglers have started to transport irregular

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<sup>37</sup> Koser 2005, 2; Väyrynen 2003, 3

<sup>38</sup> Mitsilegas et.al 2003, 16

<sup>39</sup> Commission of the European Communities, *Communication from the Commission on Policy priorities in the fight against illegal immigration of third-country nationals*. COM (2006) 402 final.

<sup>40</sup> Koser 2005, 2; Väyrynen 2003, 3

<sup>41</sup> UNITED for Intercultural Action (2006): *The Deadly Consequences of “Fortress Europe” – More than 6700 Deaths*. Information leaflet no. 24.

<sup>42</sup> Mitsilegas et al 2003, 79

<sup>43</sup> Boswell, Christina (2003): *European Migration Policies in Flux – Changing Patterns of Inclusion and Exclusion*, The Royal Institute of International Affairs. pp. 52-73; Statham, Paul and Emily Gray (2005): *The Politics of Immigration and Asylum in Western Europe*. European Political Communication Working Paper, 18

migrants along more dangerous paths to avoid European authorities, the numbers of accidents that happen on these journeys have clearly increased<sup>44</sup>.

The indirect and distance oriented measures have also had a worrying effect on the safety of irregular migrants and jeopardized peoples' legal rights to apply for asylum in European countries. The visa requirements, for example, are placed on countries that experience some form of violent conflict or political instability as the people in these countries are considered to present high risks of becoming irregular migrants and head towards Europe. In effect, the visa requirements also deny access to safety for the people that need it the most<sup>45</sup>. As regards carrier sanctions, there have been several reported instances where shipping companies have thrown irregular migrants and asylum-seekers over board to drown rather than having to pay for the costs of returning them to their countries of origin<sup>46</sup>.

What regards the EU-cooperation with third countries it has been heavily criticized due to the poor human rights standards of the countries with which the EU has chosen to cooperate. For example Libya, which the EU cooperates with on joint border patrols and readmissions of irregular migrants and failed asylum-seekers, has a terrible human rights record and is neither party of the UN Geneva Convention nor has it currently any asylum procedures in place<sup>47</sup>. On the topic of establishing reception centres in these countries, it has been suggested that it would represent the out-sourcing of fundamental human rights commitments and place people outside the ordinary mechanisms of judicial control and away from public scrutiny, and thus markedly against the principles of liberal democratic states and the rule of law<sup>48</sup>.

And lastly, as the external dimension is primarily focused upon in the EU's policy, the internal dimension of irregular immigration gets largely ignored. Here, the millions of irregular migrants currently residing in Europe are continuously and systematically exploited and risk marginalization, without much hope of change in the near future.

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<sup>44</sup> Väyrynen 2003, 16

<sup>45</sup> Harding 2000, 46

<sup>46</sup> Bejenaru, Matei (2005): *Travelling Guide*, Brussels 104-115.

<sup>47</sup> Lavenex 2006, 340

<sup>48</sup> Noll, Gregor (2003): *Visions of the Exceptional: Legal and Theoretical Issues Raised by Transit Processing Centers and Protecting Zones*, *European Journal of Migration and Law*, 5(8): 303-342.

### 3 Alternative Explanations

After having now gone through the central elements of irregular immigration in Europe and the main body of EU policy measures to deal with this, the focus is now turned to understanding and explaining why the EU has adopted this approach. As stated in the beginning, the vertical and horizontal venue-shopping theory will be the main tool used to interpret and account for the EU's approach and policy choices. Before providing a more detailed account of this theory, some alternative suggestions regarding the EU's approach and choices of measures will first be reviewed and discussed below.

According to Noll, Hjarnø and Weiss<sup>49</sup>, the EU's policy on irregular immigration should mainly be understood as a reaction to fierce international competition, especially regarding the need for cheap labour in Europe. They all argue in similar ways that the lack of internal measures, especially dealing with undocumented labour, is due to the fact that irregular immigration actually plays a vital role for the European economy. This is because irregular immigration and undocumented labour provides flexible and cheap labour to European companies that are hard-pressed to become more competitive and effective in the current international competition. In an attempt to uphold some credibility that the European governments nevertheless are doing something about the inflows of irregular migrants into Europe however, they have set up a policy at the European level that, in all its spectacular features with armed border guards and probing marine vessels provide some assurance to the European publics that the situation is under control. This policy ultimately however does little to alter the situation, something that European governments are fully aware of. In essence, Noll thus argues, that the political will to actually deal with the problems that the irregular status of millions of people currently residing within Europe present, but at the same time having to confront the economic consequences of doing this, simply does not exist in Europe today<sup>50</sup>.

According to Geddes<sup>51</sup> the external approach and the choices of measures in the EU's policy can also be understood in terms of electoral politics. He argues that to develop effective measures to deal with the internal dimension of irregular immigration in Europe would necessarily include an expansion of the authorities'

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<sup>49</sup> Noll 2006; Hjarnø, Jan (2003): *Illegal Immigrants and Developments in the Labour Markets of the EU*. Aldershot, Ashgate publishers; Weiss, Anja (2003): *Raumrelationen als zentraler Aspekt weltweiter Ungleichheiten*.

<sup>50</sup> Noll 2006, 142

<sup>51</sup> Geddes, Andrew (2003): *The Politics of Migration and Immigration in Europe*. Sage Publications, London.

control and surveillance over individuals, the society and especially the labour market, and thus could negatively affect voting citizens. Incumbents therefore tend to concentrate measures regarding irregular immigration in areas that include less electoral risks, i.e. externally. To put this more bluntly, the favoured approach and the uneven allocation of measures in the EU's policy, according to the electoral argument, is because internal measures affect voting citizens and could lead to losses of votes, while external measures only affect foreigners, who cannot vote<sup>52</sup>.

Finally, Gillespie<sup>53</sup> suggests that the choices of measures in the EU's policy on irregular immigration can also be understood as an outcome of member states seeking more power in the EU. Gillespie asserts that Spain's attempt to achieve a more prominent position within the EU, and especially in the auspices of "high politics", has considerably shaped the policy choices on the EU-level regarding irregular immigration. Due to its geographical location and closeness to countries from where large numbers of irregular migrants enter Europe, especially Morocco, Spain has found itself in a favourable position to link migration and foreign policy and to emphasize the external dimension of the phenomenon in order to enhance its own role within the EU. By constantly pushing for a foreign policy dimension to irregular immigration, and by pressing for its own involvement in this process, Spain has been able to "co-operate as a first division European country and by doing so, facilitate its own eventual ascent into the lead group of EU countries"<sup>54</sup>.

All these three accounts provide important insights into the possible motives behind the construction of the EU's policy on irregular immigration. Without a doubt the role of the economy and the short-sighted interests to secure votes or to gain more prominent positions has an affect in all political activity.

However, these accounts place an all too central explanatory role on the member states as unitary actors holding intact preferences with regards to the EU's policy on irregular immigration. In contrast, the literature reveals that this is seldom the case. Most of the time, the EU's policy on irregular immigration has been the exclusive domain of interior ministries alone, while the rest of the governments, including the prime ministers, have taken a lesser role in this process<sup>55</sup>. These interior ministries, which are claimed to be central actors in the policy-making process on the European level are probably also affected by the different factors mentioned above, however, this is surely not their primary concern. As the following account in chapter 4. based on the vertical and horizontal venue-

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<sup>52</sup> Geddes 2003, p.159

<sup>53</sup> Gillespie, Richard (1996): *Spain and the Mediterranean: Southern Sensitivity and European Aspirations*, Mediterranean Politics 1(2).

<sup>54</sup> Ibid. 195

<sup>55</sup> Guiraudon 2000; Lavenex 2006

shopping theory will show, the preferences of these ministries are based on very different things than money or votes.

There are also other shortcomings with the above-mentioned accounts. None of them, for example, really take any account of the domestic policy-approaches to irregular immigration. According to the arguments of at least the economic and electoral accounts, the national policy-approaches of the member states should be fairly similar to the EU's approach. However, as the final analysis will show, the national approaches to irregular immigration actually differ quite considerably from the EU's approach.

Furthermore, none of these accounts really take much heed to changes in the EU's policy on irregular immigration either. As accounted for, the EU's policy has predominantly been concentrated on an external dimension of irregular immigration. However, recently this external approach has been further intensified, as EU-cooperation with third countries has shifted the EU's policy-focus even further outside the territory of Europe. What explains this externalizing tendency? Neither the need for cheap labour nor votes really captures this process. To some extent Gillespie's account of the role of Spain in the process claims to predict this externalizing tendency. However, on the other hand his account says nothing of the previous situation of a predominantly external approach and perhaps it overestimates the role of a country that has nonetheless played quite a minor role in European affairs.

## 4 The Externalization of the EU's Policy on Irregular Immigration as Vertical and Horizontal Venue-Shopping

In this chapter we will take a closer look at the vertical and horizontal venue-shopping theory and assess its predictions to the EU's policy on irregular immigration, its external approach and its choices of measures.

This account of the EU's policy on irregular immigration interpreted through the vertical and horizontal venue-shopping theory will highlight three main processes: First, the Europeanization of the policy-field has fore mostly been driven by autonomy-seeking Justice and Home Affairs officials, who have then achieved a central policy-making role at the European level, where they have been shielded from both domestic constraints and the interference from other actors in carrying out their policy preferences.

Second, the security and external aspects of migration policies has subsequently been emphasized, following a logic of 'remote control immigration policy', whereby the policy-focus has increasingly shifted towards the external dimension of irregular immigration.

Third, as the integration of the policy-area has progressed and the supranational aspects have been strengthened, the EU's policy on irregular immigration has moved even further towards an external focus, whereby measures that relate to foreign relations, such as EU-cooperation with third countries, have been stepped up.

In effect, the EU's policy on irregular immigration has taken on a predominantly external approach that is further externalizing, and that favours external measures over internal and protective.

### 4.1 The Europeanization of Irregular Immigration as Venue-Shopping

Traditional integration theorists, as well as many European politicians and citizens, have often regarded European integration as associated with a loss of state autonomy and the transfer of national sovereignty to Brussels. According to

Wolf however, the increasing concentration of policy-competences at the European level can also be regarded as strengthening the national governments<sup>56</sup>. Understood as a *policy-venue*, that is to say ‘the institutional location where authoritative decisions are taken on a given issue and where different constituencies are mobilized’<sup>57</sup>, the European level ‘can in fact strengthen the executive by establishing an additional political arena which is dominated by government representatives’, and that subsequently is shielded from the multitude of actors and pluralistic interests of the domestic arena<sup>58</sup>. Governments are not however unitary actors, and within governments politicians and bureaucrats have different interests. Whereas politicians seek re-election, bureaucrats fore mostly seek greater autonomy and influence over policy outcomes<sup>59</sup>.

Building on this, Guiraudon has argued that the process of ‘Europeanization’ of migration policies in the 1980s and 1990s were fore mostly driven by autonomy-seeking interior ministry and law and order officials responsible for migration control (henceforth JHA officials) attempting to circumvent domestic constraints which impeded on the realization of their policy preferences regarding migration policies<sup>60</sup>. She describes this process as *venue-shopping*, whereby political actors seek the policy venues where the balance of forces is tipped in their favour<sup>61</sup>.

The restrictive and security-oriented policy measures that JHA officials wanted to apply to asylum and immigration in the late 1980s were often constrained at the domestic level by party political pressure, judicial scrutiny and the attention of migrant aid organizations and various business interests that were opposed to these policies<sup>62</sup>. From the 1970s onward an increasing *juridicization* of migration policy had also reduced the arbitrary and discretionary powers of bureaucracies with regards to migration policy. In particular, certain categories of foreigners had become protected against expulsion, such as family members and long-term residents, and there was now also in place more precise legal procedures and appeals in cases of expulsion for irregular migrants and rejected asylum-seekers<sup>63</sup>.

At the European level however, JHA officials found forums in various European cooperative networks that provided them with some freedom from these

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<sup>56</sup> Wolf, Klaus-Dieter (1999), *The New Raison d'État as a Problem for Democracy in World Society*, European Journal of International Relations, 5(3):333-363.

<sup>57</sup> Baumgartner, F. And Jones, B. (1993): *Agendas and Instability in American Politics*, Chicago University Press: Chicago, 23

<sup>58</sup> Wolf 1999, 336. A similar line of reasoning is found in the logic of ‘two level-games’, (see Putnam, Robert 1988: *Diplomacy and Domestic Politics: The Logic of Two-Level Games*, International Organization 42:3) and liberal intergovernmentalist theorizing (Moravcsik, Andrew 1998: *The Choice for Europe – Social Purpose and State Power from Messina to Maastricht*. Ithaca, NY).

<sup>59</sup> Hix, Simon (2005): *The Political System of the European Union*, Macmillan. 366-367

<sup>60</sup> Guiraudon, 2000

<sup>61</sup> Ibid. 252

<sup>62</sup> Boswell 2003, 23-25

<sup>63</sup> Guiraudon 2000, 259

constraints to devise and implement the policies and measures that better suited their preferences<sup>64</sup>. Within these forums, decisions were typically made behind closed doors with little or no formal debate, and they did not have to answer to more representative bodies or international courts, such as the European Parliament (EP) and the European Court of Justice (ECJ)<sup>65</sup>. In fact, as most these forums were informal and did not initially take binding decisions, they did not actually have to answer to anyone.

Both regarding irregular immigration and migration policies more generally, the most relevant forums here were the TREVI-network, the Club of Bern and the STAR-group as well as the *ad hoc immigration group* of the Schengen Cooperation. After the signing of the Maastricht Treaty and the establishment of the Justice and Home Affairs –pillar, the most relevant forum became the High Level Group on Immigration and Asylum, with specific sub-groups on irregular immigration and on border control. All these forums and groups were characterized as detached from the domestic level and effectively shielded from the interference of supranational institutions with considerable rooms for manoeuvre for the participating actors<sup>66</sup>.

According to Guiraudon, this opportunity provided JHA officials with the initial motives to advocate for the Europeanization of migration policies, a request that was followed by European governments only happy to support international cooperation on migration control as it represented activism in the eyes of the publics, yet diffused the responsibility for and the efficacy of migration policies<sup>67</sup>. As decisions were seldom binding, this sort of international cooperation did neither threaten the national sovereignties of the member states in these sensitive issues, although this was often a voiced concern.

In other words, in order to circumvent domestic constraints, JHA officials shifted their activities to another institutional location, another policy venue, where they were better placed to realize the sorts of policies that better represented their preferences.

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<sup>64</sup> Ibid. 261

<sup>65</sup> Lahav, Gallya and Virginie Guiraudon (2000): *A Reappraisal of the State Sovereignty Debate – The Case of Migration Control*, *Comparative Political Studies* 33(2), 178

<sup>66</sup> Mitsilegas et.al 2003, 64

<sup>67</sup> Guiraudon 2000, 261

## 4.2 Accounting for the Security-focus and the External Approach

This shift of venues regarding migration policies did not become a specific focus of the domestic political debate or the media and, except for a hyped debate regarding its proclaimed threat to sovereignty in the midst of the Maastricht Treaty ratification-process, passed through without anyone really taking much noting to it. Although it did not initially have much affect on national policies, the shift of venues nevertheless had a significant effect on the general approach to migration policies on the European level, introducing an extensive emphasis on the security and external aspects of the policies.

At the domestic level, all the different actors involved in the policy-making process, and the heterogeneous interests, often meant compromises and assured that one single dominant approach seldom prevailed. Freeman describes the domestic policy-making process regarding migration policies as client-politics, where different groups, ranging from business to minority interests, were satisfied in one way or another, often leading to comprehensive approaches in migration policies<sup>68</sup>.

Gathering representatives from the same ministries and agencies, the new policy venues at the European level however were often relatively homogenous and thus favoured particular policy solutions over other, which subsequently narrowed the overall approach considerably. As Brussels-based European migrant aid organizations were either totally absent or weak, and the EU's supranational institutions kept firmly aloft, the policy solutions and the approaches that were adopted in these European-level policy venues were most often restrictive and security-focused, and increasingly had an external orientation<sup>69</sup>.

According to Guiraudon, the overt security-focus among JHA officials was apparent, at least if compared to other ministries and officials that were involved in migration policies on the domestic level, such as in labour or social ministries<sup>70</sup>. This security-focus is rather unsurprising considering that most JHA officials had professional backgrounds within the police, border-guards, and various other security-agencies and gendarmeries, such as the Italian *Carabinieri*, the French *Police de l'air et des frontières*, and the German *Bundesgrenzschutz*<sup>71</sup>.

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<sup>68</sup> Freeman, Gary (1995): *Modes of Immigration Politics in Democratic States*, International Migration Review 29(4), 892

<sup>69</sup> Guiraudon 2000, 262

<sup>70</sup> Ibid. 263

<sup>71</sup> Guiraudon (2003): *The Constitution of a European Immigration Domain: a Political Sociology Approach*, Journal of European Public Policy 10(2), 267-270; Mitsilegas et.al. 2003, 10-15

An aspect that only strengthened this security-focus was the frequent cooperation with other groups on the European level that were dealing with more explicit police or security-related issues, such as drugs and arms smuggling, organized crime and international terrorism. The affects of this cooperation can be noted from several EU policy documents, where issues spanning from irregular immigration and organized crime to fundamentalism and terrorism are all dealt with under the same headings and with the same security-toned rhetoric<sup>72</sup>.

The cooperation with other groups therefore also enabled JHA officials to create supposed linkages between irregular immigration, asylum and security-issues and emphasize the technical and logistical aspects that required their expertise and professional backgrounds in dealing with them. JHA officials thus ensured that they were the best equipped and competent to provide efficient solutions to the problems they had themselves identified. Here it can be noted that the aspects they emphasized clearly did not include 'softer issues' such as the integration of immigrants in European societies or dealing with marginalization, as these issues could perhaps better have been dealt with by people with different professional backgrounds, for example from labour or social ministries, or even the non-governmental sector. In contrast, they emphasized aspects that related more to police or security-related skills, such as how to spot bogus asylum claims or how to effectively intercept vessels carrying irregular migrants, which clearly belonged to their own fields of expertise<sup>73</sup>.

According to Guiraudon, the stretch from this narrow security focus within migration policies to an external focus was not far. Citing academic works of Didier Bigo and Ferruccio Pastore<sup>74</sup>, she asserts that the conceptions of large-scale immigration as a societal, cultural and especially security-related threat, and the linking to other security issues such as organised crime, terrorism and Islamic fundamentalism, blurred the distinctions between internal and external security and shifted the attention to the external sources of the phenomenon. Hindering the inflow of further 'security threats' into Europe almost naturally became the standard and simple solution to the newly identified problems<sup>75</sup>.

The external focus to migration policies and especially with regards to irregular immigration, did not however only originate from some blurry conceptual factors, but also had a much more practical aspect. A key element of the policies that were adopted on the European level followed what Aristide Zollberg calls 'remote

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<sup>72</sup> Buonfino, Alessandra (2004): *Between Unity and Plurality: the Politicisation and Securitisation of the discourse on Immigration in Europe*, New Political Science.

<sup>73</sup> Guiraudon 2000, 260

<sup>74</sup> Bigo, Didier (1996): *Policies en réseaux. L'expérience européenne*, Presses de la Fondation National de Science Politique, Paris ; Pastore, Ferruccio (2001): *Reconciling the Prince's Two 'Arms' – Internal-External Policy Coordination in the European Union*, Occasional Papers 30. The Institute of Security Studies in the Western European Union.

<sup>75</sup> Guiraudon 2000, 262

control immigration policy'<sup>76</sup>. The logic of remote control immigration policy was a way for JHA officials to ensure that the pool of prospective migrants to Europe could be sifted and sorted before they even arrived in the territories of receiving countries. This enabled the separation of the 'unwanted migrants' – ranging from the poor and unskilled migrants that would probably become future welfare-benefit collectors to the potential criminals and terrorists – from migrant categories that European countries actually welcomed, such as skilled workers, tourists and business people. The premise of remote control was also that, once the 'unwanted migrants' had arrived in European countries, it was more difficult to expel them because of the legal protection that had evolved at the domestic levels, which has been described above. This logic of remote control ensured that migration control measures were fore mostly placed on the external borders of the EU or even further beyond, so that the entry of migrants could be controlled, and hindered if needed be, long before their potential arrival to Europe would ever occur<sup>77</sup>.

Subsequently, measures with a more external-focus soon appeared on the agendas of the various European networks, and especially within the Justice and Home Affairs-pillar of the EU. These included cooperation with regards to strengthened checks at external borders and surveillance regarding people seeking entry to European countries, targeted visa requirements and a key role for overseas consulates in documentation controls, carrier sanctions and intensified pre-boarding checks, and the introduction of international waiting zones in airports and railway stations, where the legal protection regarding their expulsion did not apply<sup>78</sup>. These measures and the logic of remote control have carried on into the EU's policies on irregular immigration, however intensified with more security-features attached to them, especially in the strict carrier sanctions, visa policy and intensified border management that make out the core body of the EU's policy today.

### 4.3 Towards Further Externalization

Whereas Guiraudon was concerned with *vertical venue-shopping*, i.e. between the national and European level, Lavenex has added another dimension to the equation; *horizontal venue-shopping*, that is between different institutional settings at the European level<sup>79</sup>. She describes the recent *externalizing tendencies*

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<sup>76</sup> Zollberg, Aristide (1998): *Matters of the State: Theorizing Immigration Policy*. In *International Migration in the Remaking of America*. Russel Sage, New York.

<sup>77</sup> Guiraudon 2000, 263

<sup>78</sup> Lahav and Guiraudon 2000, 184-5

<sup>79</sup> Lavenex, Sandra (2006): *Shifting Up and Out: The Foreign Policy of European Immigration Control*, *West European Politics*, 29(2):329-350

in EU migration policies, especially with regards to the EU's cooperation with third countries, as a continued venue-shopping strategy to circumvent constraint on the JHA officials' behalf, this time on the European level vis-à-vis other EU actors. In short, she claims that as a reaction to altered circumstances on the European level, the JHA officials are now *escaping to the external*.

Several scholars have noted the 'multi-level' character of the EU, comprising of several different layers of policy-making and governance<sup>80</sup>. However, the EU is not only multi-level; it is also 'polycentric'<sup>81</sup>, in that it incorporates both a supranational polity as well as an intergovernmental organization. Whereas the former is characterized by the 'Community Method', implying a strong role for supranational actors in initiating policies (the Commission), in decision-making (co-decision through the EP) and in adjudicating (the ECJ), the latter centralizes the policy process in the hands of national executives.

According to Lavenex, as this complex institutional set-up transforms with the ebbs and flows of European integration, it creates new incentives for actors to strategically adjust their activities to the changed circumstances. If the 'balance of forces' are altered in certain policy-venues, and positions threatened, actors naturally start seeking new policy-venues that are more optimal for their purposes<sup>82</sup>.

With the ratification of the Amsterdam Treaty in 1999, it was specified that several immigration-related policies within the JHA-pillar would successively be transferred to the European Community-pillar and placed under the Community Method – i.e. they would be 'communitarized'. This reform considerably strengthened the roles of supranational institutions in the policy-making process: the Commission was given a right to legislative initiatives, the EP would have to be consulted on all matters, and the ECJ was granted some jurisdiction. The Nice Treaty, which entered into force in 2004, then reinforced the supranational procedures even further: legislation on checks at external borders, visas, third-country nationals, asylum and the temporary protection of refugees would now be passed by the co-decision procedure, introducing qualified majority voting (QMV) and making the EP equal to the Council<sup>83</sup>.

According to Lavenex, this change potentially constituted considerable threats to the JHA officials, in that they could re-introduce the constraints that they had faced on the domestic level in carrying out their particular policy preferences<sup>84</sup>.

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<sup>80</sup> See Marks, G., Hooghe, L., and Blank, K. (1996): *European Integration from the 1980s: State-Centric v. Multi-Level Governance*, Journal of Common Market Studies 34(3).

<sup>81</sup> Schmitter, Phillippe (2003): *Neofunctionalism*, in Wiener, Antje and Thomas Diez (eds) *European Integration Theory*. Oxford University Press, Oxford.

<sup>82</sup> Lavenex 2006, 330

<sup>83</sup> Hix 2005, 355

<sup>84</sup> Lavenex 2006, 330

As a reaction to these threats, JHA officials started seeking new policy venues to circumvent them. At the European Council in Tampere 1999 a possibility to do this presented itself. In the Presidency Conclusions it was stated that migration issues should be 'integrated in the definition and implementation of other Union policies and activities', including external relations<sup>85</sup>. This short but potentially vital statement opened up a whole new policy-field where JHA officials could have more leeway in carrying out their policy preferences.

With the exception of external trade, foreign relations have traditionally belonged to the intergovernmental domain of the EU, where supranational institutions have a lesser role and unanimity rather than QMV has been the rule. According to Lavenex, this domain, especially with regards to cooperation with third countries, provided JHA officials with new possibilities to circumvent possible constraint and bypass the interest of their potential adversaries by *escaping to the external*.<sup>86</sup>. Consequently, the 'partnership with countries of origin' and 'stronger external action' has figured prominently in the action-plans and the agendas of the JHA Council<sup>87</sup>.

With regards to the EU's policy on irregular immigration, a simple look at the bi-annual scoreboards of the realisation of the Tampere programme shows that the external dimension has extended each year to include new measures, programs and new countries<sup>88</sup>. First, these related fore mostly to the accession countries, but soon other countries and regions became increasingly the centre of focus, such as Hong Kong, Sri Lanka, Macao, and Morocco including other Mahgrep countries<sup>89</sup>, and on to, Albania, Ukraine, Russia, Pakistan and even China<sup>90</sup>.

Considering that the developments on the internal harmonisation of immigration and asylum policies has progressed with snails-pace, an area that is increasingly put under the Community Method, this remarkable development of the external dimension reveals the intensified activity of JHA officials in a policy domain where the supranational influence is lesser and the intergovernmental logic still prevails<sup>91</sup>. In effect, they have *escaped to the external*.

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<sup>85</sup> Presidency Conclusions, Tampere European Council 15-16 October 1999. Bulletin EU 10-99

<sup>86</sup> Lavenex 2006, 335

<sup>87</sup> Ibid. 337

<sup>88</sup> The bi-annual scoreboards on the realization of the Tampere programme can be found at:

[http://ec.europa.eu/justice\\_home/doc\\_centre/scoreboard\\_en.htm](http://ec.europa.eu/justice_home/doc_centre/scoreboard_en.htm)

<sup>89</sup> Communication from the Commission to the Council and the European Parliament - Biannual update of the scoreboard to review progress on the creation of an area of "freedom, security and justice" in the European Union (second half of 2002) COM/2002/0738 final.

<sup>90</sup> Communication from the Commission to the Council and the European Parliament - Biannual update of the scoreboard to review progress on the creation of an area of "freedom, security and justice" in the European Union (second half of 2003) /COM/2003/0812 final.

<sup>91</sup> Lavenex 2006, 246

## 4.4 Summarizing the Developments

As accounted for, the external focus in the EU's policy on irregular immigration has been a key component throughout the development of the policy-area. It is argued that this external approach has been adopted due to the central role that JHA officials have played in this policy-area. At the European level these have been shielded from various domestic constraints as well as other European actors that could oppose their preferred policy-approach.

The external measures applied in the policy have been the centre-piece of their preferred ways of dealing with irregular immigration, following their narrow security focus and the logics of remote control immigration policy. In this respect, internal and protective measures have not been considered as these do not fit into the preferred approach and do not strengthen their own roles as important experts in the policy-area.

However, as the integration of the policy has progressed, and new actors have been included in the policy-making process, these preferred approaches and measures could be challenged. This has forced the JHA officials to search for new policy-venues that are more optimal to their preferences. By shifting their activities towards a foreign policy domain of EU-cooperation, and intensifying measures that relate to EU-cooperation with third countries in the EU's policy, they have attempted to circumvent these new constraints. Subsequently the approach and measures in the EU's policy on irregular immigration have been even further externalized.

# 5 Analysis

As outlined in the introductory chapter, the final analysis is based on questioning some basic assumptions of the explanatory account with regards to the set out research questions. In the following the national approaches to irregular immigration in the member states, with a specific focus on the presence of internal and protective measures that would be in contrast to the EU's approach will be examined. Secondly, the preferences of the European Commission with regards to the EU's policy approach is focused upon, and finally the new measures relating to EU-cooperation with third countries and if these have provided JHA officials with increased rooms of manoeuvre is scrutinized.

## 5.1 National Approaches to Irregular Immigration

Without a doubt national approaches to irregular immigration include several of the restrictive and external measures that are also found on the European level. For example, targeted visa policies and carrier sanctions have been applied in almost all of the EU member states. These have been in place in some member states for a longer period of time, such as in the UK and France, while in other countries, especially in Southern Europe, they have appeared more recently as a result of EU-cooperation<sup>92</sup>. This does not however mean that the national approaches cannot also include internal and protective measures, and thus be in contrast to the favoured approach in the EU's policy. In this analysis we will focus on internal and protective measures, such as employer sanctions, regularizations and other rights and benefits bestowed on irregular migrants without actually providing them with a legal status, to assess if diverging approaches to the EU's policy are upheld on the domestic level.

According to Mateman and Reynoo counteracting undocumented labour is a key element in most European national approaches to irregular immigration<sup>93</sup>. Critics however infer that authorities, especially in Southern European countries, have shown certain reluctance in actually enforcing their policies, which has been accounted to the fact that irregular migrants and undocumented labour actually

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<sup>92</sup> Geddes 2003, 147

<sup>93</sup> Mateman, S and P.H. Rooney (2001): *Undeclared Labour in Europe – Towards an integrated approach of combating undeclared labour*, Regionplan Final Report, 81

plays an important economic role in their economies<sup>94</sup>. According to Boswell and Straubhaar, however, there are clear signs that this has began to change in recent decades. As authorities have become increasingly aware of the problems relating to undocumented migrant labour and due to concerns over net welfare costs of irregular migrants who do not contribute taxes or social payments, European countries have successively stepped up their actions<sup>95</sup>.

Germany, France and the Netherlands have all introduced tougher legislation, raised sanctions and improved enforcement<sup>96</sup>. In France, for example, fines for employing irregular migrants are currently set at 1.000 times the minimum wages, while the corresponding figure in Germany is 50.000 euros<sup>97</sup>. Although the Southern European countries are somewhat of laggards in this respect, Lahav and Guiraudon nevertheless infer that employer sanctions is nowadays a frequently applied measure in all national policies regarding irregular immigration<sup>98</sup>.

Regularizations are also effective ways in dealing with many of the problems that irregular immigration causes, such as systematic exploitation and marginalization. However they are also politically contested and their effectiveness has been under intense debate in many EU member states. The arguments against regularization are that they send signals that irregular immigration can be rewarded and may thus serve only to encourage further irregular immigration. On the other hand however, it is also claimed that regularizations contribute to the economy by providing increased taxes and social security contributions and effectively reduce the irregular labour force. There are also various legal, humanitarian and practical reasons where irregular migrants cannot be removed from the territory of the receiving countries, due to for example family and economic ties to the host society, whereby regularizations have been the preferred option<sup>99</sup>.

Regardless of the political debate however, several EU member states have nevertheless enacted both long-term and short-term regularization programs repeatedly over the last decades (see Table 1.). These have clearly been more frequent in Southern Europe, for example in Italy and Spain, but have also occurred on a larger scale in Northern European countries, such as in France and Belgium. Considering the amount of times EU member states have applied these measures, and their broad scale, it appears that they are more than just an exception in the national approaches to irregular immigration.

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<sup>94</sup> Geddes 2003, 146. See also chapter 3.

<sup>95</sup> Boswell, Christina and Thomas Straubhaar (2001): *The Back Door: Temporary Migration and Illegal Employment of Workers*, HWWA, 1-4

<sup>96</sup> *Ibid.* 1-4

<sup>97</sup> Martin and Miller 2000, 5

<sup>98</sup> Lahav and Guiraudon 2006, 23

<sup>99</sup> Levinson, Amanda (2005): *The Regularisation of Unauthorized Migrants: Literature Survey and Country Case Studies*, Centre on Migration, Policy and Society, University of Oxford, 9

Country	Year	Number regularized	Benefits granted
<b>Belgium</b>	1974-1975	7.448	1
	1995-1999	6.137	1
	2000	60.000	1
<b>France</b>	1973	40.000	1
	1981-1982	121.100	1
	1991	15.000	1
	1997-1998	77.800	1
<b>Germany</b>	1996	7.856	1
	1999	23.000	1
<b>Greece</b>	1997-1998	369.600	4
	2001	351.000	4
<b>Italy</b>	1987-1988	118.700	1
	1990	217.700	2
	1996	147.900	2
	1998-1999	350.000	2
	2002	704.000	1
<b>Netherlands</b>	1975	15.000	1
	1979	1.800	1
	1991-1994	2.000	1
<b>Portugal</b>	1992-1993	39.200	1
	1996	21.800	1
	2001	120.200	1
<b>Spain</b>	1985-1986	43.800	1
	1991	110.100	1
	1996	21.300	3
	2000	163.900	3
	2001	216.400	3
	2005	690.679	3
<b>United Kingdom</b>	1974-1978	1.809	1
	1977	462	1
	1998-1999	600	3

**Table 1. Regularizations in Selected European Countries, 1973-Present<sup>100</sup>**

(1= Permanent residence and work permit; 2= 2 year renewable residence and work permit; 3= 1 year residence and work permit; 4= 6 month residence and work permit)

Apart from employer sanctions and regularizations, measures that have been applied to deal with irregular immigration is to extend certain rights and benefits to irregular migrants, without however providing for a full legal status. These mainly include measures to deal with marginalization of irregular migrants, such state-sponsored shelters and health care, some form of education especially with regards to minors, and the right to receive free legal assistance.

The Platform for International Cooperation on Undocumented Migrants has conducted a study on how these measures are applied in different member states. In table 2. I have compiled the results of this data.

The information provided shows clear difference between European countries with regards to these rights and benefits, with Sweden and Denmark not extending

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<sup>100</sup> Demetrios et.al 2004, 33-37

any rights, while the UK, France Spain and Belgium providing for all of them. In general however, it seems that rights and benefits are present elements in most national policies regarding irregular immigration in Europe.

Country	Shelter	Health Care	Education and Training	Free Legal Assistance
<b>Austria</b>	Yes	No	Yes	Yes
<b>Belgium</b>	Yes	Yes	Yes	Yes
<b>Denmark</b>	No	No	No	No
<b>France</b>	Yes	Yes	Yes	Yes
<b>Germany</b>	No	Yes	Yes	No
<b>Italy</b>	No	Yes	Yes	No
<b>Netherlands</b>	No	Yes	Yes	Yes
<b>Spain</b>	Yes	Yes	Yes	Yes
<b>Sweden</b>	No	No	No	No
<b>UK</b>	Yes	Yes	Yes	Yes

**Table 2. Rights and Benefits extended to Irregular Migrants in Selected European Countries<sup>101</sup>**

## 5.2 Preferences of the European Commission

Throughout the development of the EU’s policy on irregular immigration the Commission has provided its full support for further cooperation. However, as this analysis will show, the Commission has also voiced preferences for a more comprehensive approach, including internal and protective measures, something that might challenge the adopted approach if the Commission would gain a stronger role in the policy-making process.

As early as 1974, after the shift towards more restrictive labour immigration policies in Western Europe following the international oil-crisis in 1973-74, the Commission has voiced a certain concern regarding the situation of irregular migrants in Europe. In its *Action Programme in Favour of Migrants Workers and their Families*, the Commission urged member states to consider the problematic situations with regards to migrants’ rights and their employment in EC member states, which could occur as the legal routes for labour immigration had become restricted<sup>102</sup>. In an attempt to build more concretely on this, the Commission proposed a draft directive in 1978 to *Combat Illegal Migration and Illegal Employment*, in which four objectives were specified: the strengthening of cooperation between member states with regard to irregular immigration and undocumented labour; the adoption of appropriate penalties; the fulfilment of employers’ obligations; and the protection of migrant workers rights in relation to the work they had to carry out<sup>103</sup>. According to Cholewinski, these objectives

<sup>101</sup> PICUM ongoing studies: Basic Social Rights. The full study can be retrieved from [www.picum.org](http://www.picum.org)

<sup>102</sup> COM 2250 of 18 Dec. 1974, p.24 *Action Programme in Favour of Migrants Workers and their Families*.

<sup>103</sup> COM (78) 86 final of 3 April 1978 (Explanatory Memorandum), 2

followed a *dual approach* to irregular immigration, resembling that of the United Nations and ILO, which was to prevent and counteract irregular immigration while also protecting the human rights of irregular migrants, both regarding their travel and their residence in receiving countries<sup>104</sup>.

Later in the 1990s, as policies on irregular immigration had become incorporated in the third pillar of the EU, the Commission repeated its support for this dual approach in its 1994 policy document on *Immigration and Asylum Policy*. Here the Commission stressed that aside from preventive measures such as border management and visa policy, the EU had to take further actions to ‘*identify persons illegally resident in the Community*’ in order to counteract exploitation and marginalization involved in their irregular residence in European countries, and to define ‘*minimum standards for the treatment of irregular migrants*’ to better facilitate for migrants’ rights<sup>105</sup>. This similar dual approach can be found in subsequent documents put forward by the Commission, such as the Commission Communication on *A Community Immigration Policy* and the *Annual report on the development of a common policy on illegal immigration 2004*<sup>106</sup>, in which the human rights side of irregular immigration and the need to tackle undocumented labour are noted and emphasized alongside more preventive measures to hinder the entry of irregular migrants.

In its proposal for a Council Directive on combating trafficking in human beings in 2002, the Commission took this line further by proposing that short-term residence permits would be granted to irregular migrants in order to encourage cooperation with the authorities<sup>107</sup>. This proposal was in sharp contrast to the adopted view in the JHA Council, as it actually meant providing irregular migrants with a legal status instead of working for their swift removal from the EU’s territory. The rationale of the Commission’s proposal was that victims of trafficking are hesitant to contact the police or other authorities as they fear automatic detention and deportation. If a short-term residence permit could be issued to these people in exchange for cooperation, the Commission argued, police activity in tracking down traffickers and criminal organizations keeping irregular migrants in various ‘sweatshops’ or ‘bordellos’, could be made immensely more efficient. The Commission further proposed that irregular migrants would receive state aid according to their needs, such as housing,

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<sup>104</sup> Cholewinski, Ryszard (2000): *The EU Acquis on Irregular Migration: Reinforcing Security at the Expense of Rights*, European Journal of Migration and Law (2), 364. The directive was however never adopted, mainly due to the Commission’s limited competencies with regards to third-country nationals at that time. Ibid. 364

<sup>105</sup> COM (1994) 23 final of 23 Feb. 1994, pp 27-28

<sup>106</sup> COM (2000) 757 final 22 Nov. 2000, Communication from the Commission to the Council and European Parliament on *A Community Immigration Policy*; Commission Staff Working Paper (2004) Brussels, 25 Oct. 2004: *Annual report on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders, and the return of illegal residents*

<sup>107</sup> COM (2002) 71 final 11 Feb. 2002: Proposal for a Council Directive *on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities*

medical and psychological care and social assistance if necessary, during the time they cooperated with the authorities<sup>108</sup>. This proposal however never made it beyond the JHA Council<sup>109</sup>.

With regards to the measures relating to EU-cooperation with third countries, the Commission has in fact supported such actions already from the 1980s<sup>110</sup>. However, the type of cooperation that the Commission has proposed is markedly different from the measures that the JHA Council has preferred and eventually adopted. The Commission has advocated for a more comprehensive approach addressing the ‘root causes’ of irregular immigration, which is aimed to remove the pressures causing migration and flight. The specific measures that the Commission has proposed in this are the targeted use of development aid assistance, trade, foreign direct investments and foreign policy instruments, such as conflict resolution, institutional capacity-building and post-conflict reconstruction<sup>111</sup>. A particular focus of the Commission has also been to improve employment opportunities in countries of origin as it mainly is the lack of work, the Commission argues, that creates irregular migrants<sup>112</sup>.

Although this approach is both preventive and external in essence, it nevertheless has received support from many experts and officials, as well as migrant aid organizations, as it aspires to address the problems of irregular immigration in a way that would not jeopardize the rights or freedoms of irregular migrants and refugees<sup>113</sup>.

### 5.3 EU-Cooperation with Third Countries: More Rooms for Manoeuvre?

The recent increase in EU-cooperation with third countries within the EU’s policy on irregular immigration dates back to the European Council in Tampere in 1999. In contrast to the approach that the Commission has advocated for, the JHA Council has developed these new measures in accordance with the restrictive and security-focused preferences outlined in chapter 4.2, including mainly joint border patrols and readmission agreements., as well as the promotion of strengthened border management and immigration policy in countries of origin and transit<sup>114</sup>. In this analysis we will examine if these measures have provided JHA officials with

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<sup>108</sup> Ibid. 11-12

<sup>109</sup> Decision follow-up, see Justice and Home Affairs Documentation Centre – Illegal immigration: [http://ec.europa.eu/justice\\_home/doc\\_centre/immigration/illegal/doc\\_immigration\\_illegal\\_en.htm](http://ec.europa.eu/justice_home/doc_centre/immigration/illegal/doc_immigration_illegal_en.htm)

<sup>110</sup> Boswell 2003b, 624

<sup>111</sup> Ibid. 626

<sup>112</sup> Ibid. 632

<sup>113</sup> Ibid. 624-5

<sup>114</sup> Parker 2006, 3

more rooms for manoeuvre and possibilities to bypass the supranational institutions.

With regards to joint border patrols the absence of supranational institutions and the dominance of the intergovernmental form of cooperation are very evident. Although the operational side of joint border patrols mainly include only EU member states, they have increasingly taken on cooperation with neighbouring countries, especially in the Mediterranean Sea as this enables operations in territorial waters. The main concentrations of these programmes have been located between the Canary Islands and West Africa, the waters around Malta and south-eastern Mediterranean<sup>115</sup>.

These joint programmes, with colourful names such as Ulysses, Alhambra and Hera, have until recently been coordinated solely by the JHA Council without the involvement of the Commission or the EP. This is because most of the measures that are included within joint border patrol programmes are defined as being of an 'operational nature', and thereby bypassing the formal legislative procedures, while the implementation of the measures falls solely under the responsibility of the member states<sup>116</sup>.

From 2006 onwards the coordination of these programmes and the responsibility of facilitating operational cooperation with third countries in these will fall on FRONTEX<sup>117</sup>. This decentralized agency is a network of seconded national experts, and thus could rather be characterized as intergovernmental than supranational in nature.

With regards to readmission agreements with third countries the intergovernmental form of cooperation is also prevalent, however not as clearly as with joint border patrols. Readmission agreements were brought forward after the Tampere Council as one of the central measures to tackle irregular immigration. Since 1999 the EU has subsequently conducted these agreements with Morocco, Sri Lanka, Russia and Pakistan (in 2000), Hong Kong and Macao (in 2001), Ukraine (in 2002) and Albania, Algeria, China and Turkey (in 2002)<sup>118</sup>.

Under article 63(3)(b) TEC the JHA Council authorizes the Commission to conduct the actual negotiations on their behalf, thus signifying a supranational presence in these measures. However, the same article also specifies that all decisions fall under unanimity requirements for the adoption of rules in the JHA Council, which nonetheless gives JHA officials a considerable advantage

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<sup>115</sup> Ibid. 1

<sup>116</sup> Monar, Jörg (2004): *The EU as an International Actor in the Domain of Justice and Home Affairs*, European Foreign Affairs 9, 405

<sup>117</sup> Lavenex 2006, 340

<sup>118</sup> Schieffer, Martin (2003): *Community Readmission Agreements with Third Countries – Objectives, Substance and Current State of Negotiations*, European Journal of Migration and Law, 344

compared to other policy-areas in the EU's policy on irregular immigration that have now been placed under the co-decision procedure<sup>119</sup>.

Differing also from the co-decision procedures is the EP's role in these agreements. According to the rules regarding readmission agreements (Article 300(2)(1)TEC) the EP has only a consultative role<sup>120</sup>. The EP's report regarding the readmission agreement with Hong Kong in 2001 however points to the fact that not even this is always respected, and that the EP sometimes gets completely bypassed in these negotiations. According to the report, the EP had not been consulted or kept informed at all during the negotiation process and found itself in the position of having to deliver its opinion after the agreement had already been reached and after the JHA Council had already adopted a decision authorizing the signing of the agreement<sup>121</sup>. According to Monar, this incidence clearly reveals a certain 'asymmetry between the European Parliament's powers on internal and external measures in this domain'<sup>122</sup>.

## 5.4 Confronting the Theory-Testing Questions

With regards to the set out theory-testing questions these analysis provide interesting facts that strengthen the explanatory account. Firstly, it was argued that the EU's policy on irregular immigration, the adopted approach and the choices of measures, have from the outset been shaped by the security focused and externally-oriented preferences of JHA officials who have been shielded at the European-level from pluralistic domestic constraints and the interference of other European actors, in adopting their preferred policies in the EU's policy. To the extent that this argument has any truth to it there should be a striking difference between the national approaches to irregular immigration and the EU's. As was shown in the first analysis, national approaches to irregular immigration do in fact differ markedly from the EU's approach. In virtually all member states some forms of internal and protective measures have been applied and are continuously relied upon. These included counteracting undocumented labour and employer sanctions, regularizations, as well as other rights and benefits extended to irregular migrants. With regards to the third theory-testing question, these facts give some strength to the explanatory account regarding the initial tendency of the policies becoming more externally-oriented and excluding internal and protective measures once at the European level.

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<sup>119</sup> Monar 2004, 403

<sup>120</sup> Ibid. 403

<sup>121</sup> European Parliament document no. A5-0381/2002 (Report of 7 November 2002, Rapporteur Graham R. Watson), 7

<sup>122</sup> Monar 2004, 403

Secondly, it was argued in the explanatory account that JHA officials are shifting the policy-focus even further towards an external dimension because they fear the inclusion of the EU's supranational institutions in the policy-making process as the preference of these might differ considerably from those of the JHA officials. It was shown in the second analysis, that at least the Commission holds preferences that contrast the adopted approach. The Commission has advocated for a *dual approach*, whereby activities and measures are not only focused on preventing the entry of irregular migrants into Europe, but also on their rights and protection within European countries. This has also been reflected in the proposed measures, as counteracting undocumented labour and severe forms of exploitation within European countries, and even providing for some form of legal status to irregular migrants, has been on the Commission's agenda. With regards to EU-cooperation with third countries, the Commission also contrasted the views held by the JHA Council as it has advocated for a more comprehensive approach to address the 'root causes' of irregular immigration. With regards to the second theory-testing question, this analysis gives some proof that JHA officials at least had ample reasons to believe that the further 'communitarization' of the policy-field and the inclusion of supranational institutions in the policy-making process, could have challenged their preferred approach to irregular immigration.

Finally, and with regards to the third theory-testing question, it was argued in the explanatory account that JHA officials were further shifting the EU's policy towards the external dimension, which has resulted in the increase in measures relating to EU-cooperation with third countries, as this is assumed to provide JHA officials with some leverage from the intrusive involvement of the EU institutions in the policy-making process. As was accounted for in the third analysis the new measures relating to EU-cooperation with third countries, especially joint border patrols and readmission agreements, do show clear signs of following an intergovernmental logic of cooperation, where the supranational institutions have a lesser role and JHA officials more rooms for manoeuvre.

## 6 Conclusion

In this thesis the EU's policy on irregular immigration, its external approach and the choices of measures, have been studied. The vertical and horizontal venue-shopping theory was applied to interpret and explain the EU's policy. The argument has therefore been that the EU's approach to irregular immigration and the uneven allocation of measures have been shaped by autonomy-seeking Justice and Home Affairs officials that have been able to circumvent both domestic constraints and the interference of other actors at the European level in carrying out their security-focused and externally-oriented policy preferences. As the "communitarization" of the EU's policy has progressed however, these have shifted the policy-focus even further outwards beyond the territorial confines of Europe, in order to access more rooms for manoeuvre and to bypass the interference of supranational institutions in the policy-making process.

These arguments have to some extent been corroborated by the facts that the national policies at the domestic level have shown striking disparities to the EU's policy approach, that the European Commission holds contrasting views to that of JHA officials, and that the new measures relating to EU-cooperation with third countries in the EU's policy have clearly provided new rooms for manoeuvre for JHA officials to circumvent constraints and bypass the interests of the supranational institutions.

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