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Title:
European Immigration Policies as a Problem

EUROPEAN IMMIGRATION POLICIES AS A PROBLEM:

STATE POWER AND AUTHORITARIANISM

The development of immigration policy as a means of asserting state power in the EU and its member states

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Abstract

European immigration policies as a problem: state power and authoritarianism

This PhD thesis addresses the JHA aspects of European immigration policies (external border controls and activities to counter illegal migration) as crucial to the development of the EU's Area of Freedom, Security and Justice (AFSJ). Using Jessop's strategic-relational approach to state power (2016) and Bacchi's approach to analysing problem representation in public policy (2009), this research investigates developments in this policy field at the EU level and at the national level in Italy and the UK over twenty years to identify and explain their dynamics and their structural and systemic effects. This research views the EU as an ambitious and sophisticated state-building exercise whose stages are well documented, using extensive documentation from the EU and national levels to answer the key research questions it poses:

1) In what ways have the JHA aspects of immigration policy formulation and implementation in the EU, Italy and the UK exceeded the remit of migration control?
2) If so, why and how is this happening?
3) What are the consequences of these shifts in terms of authoritarianism?
4) Are immigration policies creating more problems than they are solving?

The answers are provided by focusing on the strategic biases and modes of intervention which apply to immigration policy formulation and implementation, including the promotion of hierarchical relations, the assertion of state power and an intensification in its reach and effects for the people it targets and beyond. The PhD's main finding is that the structural and systemic effects of immigration policies at the EU and national levels are more geared to creating series of problems to justify state intervention and the expansion of state power(s) capabilities and structures than to solving a problem. JHA aspects of immigration policies are currently a threat, not just for migrants, but also for European societies, due to their expansive effects which threaten to undermine their positive values and normative frameworks.

Supervisors: Ms. Ann Singleton, Prof. Christina Pantazis

Dedication and acknowledgements

This thesis is dedicated to my mother and father.

Author's declaration

I declare that the work in this thesis was carried out in accordance with the requirements of the University's Regulations and Code of Practice for Research Degree Programmes and that it has not been submitted for any other academic award. Except where indicated by specific reference in the text, the work is the candidate's own work. Work done in collaboration with, or with the assistance of, others, is indicated as such. Any views expressed in the dissertation are those of the author.

SIGNED: Yasha Maccanico   DATE: 27 December 2019

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LIST OF TABLES AND FIGURES

LIST OF ACRONYMS/SYMBOLS

* : indicates that the author has translated the quotation himself

AFSJ: the Schengen Area of Freedom, Security and Justice

AN: Alleanza Nazionale (National Alliance)

AP: Action Plan

CEAS: Common European Asylum System

CFSP: Common Foreign and Security Policy

COO: Country of Origin

COSI: Committee for Operational Cooperation on Internal Security

CPT: Centro di Permanenza Temporanea (Italian detention centre "for temporary stay")

CU: Eurodac Central Unit

EASO: European Asylum Support Office

EBG: European Border Guard

EC: European Community

ECJ: European Court of Justice

ECHR: European Convention on Human Rights

ECtHR: European Court of Human Rights

ECFR: European Charter of Fundamental Rights

EEA: European Economic Area

EEAS: European External Action Service

EIM: environmentally-induced migration

EIS: European Information System

EP: European Parliament

ESP: European Situational Picture

EU: European Union

EUD: European Union documents

GAM: Global Approach to Migration

GAMM: Global Approach to Migration and Mobility

HMRC: Her Majesty's Revenue & Customs authority

ILO: Immigration Liaison Officer

INPS: Istituto Nazionale della Previdenza Sociale

ISS: Internal Security Strategy

IT: Information Technology

JHA: Justice and Home Affairs

JO: Joint Operation

JRO: Joint Return Operation

LEAs: law enforcement agencies

LN: Lega Nord (Northern League)

MB: Management Board

MS: Member State

NCC: National Coordination Centre

NHS: National Health Service (UK)

NL: national legislation documents

NSP: National Situational Picture

OLAF: the European Commission's Anti-Fraud Office

PCTF: Police Chief Task Force

PP: policy programme documents to develop the AFSJ

QMW: qualified majority voting

RPP: Regional Protection Programmes

SBC: Schenger Border Code

SCIFA: Strategic Committee on Immigration, Frontiers and Asylum

SIAC: Special Immigration Appeals Commission

SIS: Schengen Information System

SIS II: second-generation Schengen Information System

SoS: Secretary of State

SRA: Strategic-Relational Approach

TCN: third country national

TEC: Treaty establishing the European Community

TEU: Treaty on the European Union

TFEU: Treaty on the Functioning of the European Union

TPSN: SRA model on "territory, place, scale and network"

UAM: unaccompanied minor

UDHR: Universal Declaration on Human Rights

UNHCR: United Nations High Commissioner for Refugees

UNCRC: the 1989 UN Convention on the Rights of the Child

UK: United Kingdom

UKBA: United Kingdom Border Agency

VIS: Visa Information System

WPR: What is the Problem Represented to be? (Bacchi, 2009)

GLOSSARY:

Anagrafe: municipal residents register
Prefetto: government envoy responsible for security, among other issues
Questore: local police chief

Chapter 1: CLARITY IN A COMPLEX CONTEXT

1.1 Policy as a problem rather than a solution

This thesis addresses an apparent paradox that applies to immigration policy in Europe at a supranational level in the European Union and at the national level in two member states (UK and Italy): the expansion in immigration and border control activities resulting from implementation of the principle of free movement within the EU. Abolishing controls at internal border points could have been assumed to be a policy heralding a decrease in the importance of border controls, immigration authorities and their respective normative frameworks, yet the opposite appears to be happening. Enacting freedom of movement for EU citizens has led to the establishment of a category, third-country nationals (TCNs hereafter), whose mobility must be stifled and who must be excluded from the rights enjoyed by lawful citizens of the European polity, thus serving to create a European identity "in relation to others" (Eriksen, 1993: 111). Developments in this field, the justice and home affairs aspects of immigration policy, must also be considered in terms of their instrumental function. This concerns the development of the coercive dimension of the EU state within the framework of the Schengen Area of Freedom, Security and Justice (AFSJ). An approach that highlights the role of restrictive immigration policy within a "state-building" process, enables evaluation of characteristic features which apply in this context, in association and in relation to national jurisdictions. Eckes (2014: 186) associates the EU AFSJ's development to aspirations of statehood:

"*By offering its citizens an area of freedom, security and justice (AFSJ), the Union barely linguistically disguises an aspiration to assume core state functions.*"

This view contradicts repeated assurances in EU documents concerning first the Justice and Home Affairs (hereafter JHA) policy field within the framework of the intergovernmental third pillar and later the AFSJ itself. These claimed that internal security is a matter for member state (MS hereafter) governments, as is confirmed by article 72 of the Treaty on the Functioning of the European Union (Peers, 2011). Such assurances resulted in initial regulatory frameworks for EU bodies and agencies which stressed their role as facilitators or hubs for information gathering and analysis. The functional goals of agencies like Frontex (the EU agency for control of external borders) were defined as "coordination" and "support" at the service of MS interior ministries and law enforcement agencies, which perform "technical" and "operative" functions.

The Schengen framework began with the 1985 Schengen Agreement to abolish internal border controls and barriers to free trade between France, Germany, Belgium the Netherlands and Luxembourg in the context of negotiations over the single market, as some governments (Denmark and the UK in particular) opposed this move. The 1990 Schengen Convention came into force in 1995, formalising and implementing a commitment to lift border controls. The Schengen area had been joined by Italy in 1990, Portugal and Spain in 1991 and Greece in 1992. The Schengen area now includes 26 countries including most EU MSs (except for Bulgaria, Croatia, Cyprus, Ireland, Romania and the UK), and four states which joined it but are not MSs (Iceland, Norway, Switzerland and Liechtenstein). As noted by Hayes (2007),

"*the vast majority of the 142 provisions in the 1990 Convention concerned 'compensatory' security measures rather than 'free movement'*".

Cooperation between MSs on JHA matters including migration and asylum, criminal law and police cooperation, started outside the EU framework in the 1970s through "relatively informal and secretive working groups… set up at ministerial level", including TREVI (Rijpma, 2014:54). In November 1993, the Maastricht Treaty replaced *ad hoc* cooperation on policing, immigration control and security issues. The treaty defined JHA competences as "areas of common interest" and brought them within the EU constitutional structure in a system comprising three "pillars". The first pillar was supranational and dealt with economic, social and environmental policies and the second pillar concerned the Common Foreign and Security Policy (CFSP). The third pillar, the most relevant to this thesis, was organised on an intergovernmental basis to deal with JHA matters, including the need to combat 'illegal' migration into the EU. Key aspects of the Maastricht Treaty concerned the development of systems to maintain law and order and an internal security system (Hayes, 2007). The 1999 Amsterdam Treaty's article 1(5) stated that the EU must

"*maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime*".

This marked the start of AFSJ, which supranationalised the migration, asylum, borders and visa parts of this field under the first pillar. The third pillar was renamed Police and Judicial Cooperation in Criminal Matters. Yet, its influence in the migration field continued in the guise of police and judicial cooperation in the fight against crime ('illegal migration') and organised crime (smuggling and/or trafficking networks). The Community pillar structure ended on 1

December 2009 with the entry into force of the Treaty of Lisbon. This treaty provided scope for the European Court of Justice (ECJ) to address immigration policy-related human rights violations by bringing into force the European Charter of Fundamental Rights (ECFR) (Geddes and Acosta Arcarazo, 2013). Conversely, it established the standing committee for operational cooperation on internal security (COSI, see below).

The JHA field's intergovernmental bias may have caused problematic outcomes regarding states' coercive functions, policies and operative practices at the national and EU levels - through joint or coordinated activities-, influencing interaction between these two levels. These need to be further problematised, considering the contrast between the supranational and intergovernmental dimensions of the EU level. Steps have been taken to rein in the intergovernmental bias in the JHA policy field, for instance, by bringing it increasingly within the "community system". The Lisbon Treaty extended application of the EU's "ordinary legislative procedure" and elevated the ECFR's status (Acosta Arcarazo, 2014; Bronzini, 2016). However, provisions in the same treaty promoted unaccountable operational practices by MSs' interior ministries and law enforcement agencies. The relevance of the Lisbon Treaty's article 71 establishing COSI - tasked with implementing multi-annual policy cycles to tackle "organised and serious international crime" in the framework of the Internal Security Strategy (ISS) - cannot be underplayed (Peers and Bunyan, 2010). COSI is relevant to immigration policy because it focuses on combating "illegal immigration", listed as "EU crime priority A" in the Operational Action Plan for 2015 within the framework of the "EU Policy Cycle for organised and serious international crime" (Council of the European Union, 2014). Rijpma (2014:72) has highlighted that COSI was afforded "primacy" in the context of the ISS "in line with the Stockholm Programme". The establishment of this "policy cycle" would serve as a "reference framework" for internal security, ensuring a coherent and methodologically sound approach. Policy would be prepared based on risk assessment; the Council would set policies and prepare multi-annual strategic plans for the priorities set; development and implementation of annual operational action plans would follow; the final stage was evaluation (ibid).

The structuring of coercive state functions at the EU level may be indicative of whether the EU and its MSs are moving towards what Poulantzas described as "authoritarian statism" (1978:203). However, isolating this process from national jurisdictions in which its effects play out would be counterproductive, because it would maintain analysis at the theoretical level, far removed from the actual effects of selected approaches and policy options. This is a valid

reason to focus this thesis on JHA aspects of immigration policy in two longstanding MSs, Italy and the UK. This makes it possible, rather than focusing on discourse as is more common in document-based policy research, for this work to concentrate on a policy field's material expressions, or the "institutional materiality of the state" (Poulantzas, 1978).

Researching policy and legislative developments at the EU level and in two MSs, may assert the value of analysing EU policy in context, rather than treating it in isolation. The latter option risks overlooking the distance between normative developments and implementation, where their effects play out. This gap may be bridged by analysing the interaction, over twenty years, between the national, supranational and intergovernmental levels. This exercise acquires relevance in this context because MSs maintained a large degree of sovereignty in the security and immigration policy fields. Developments in EU JHA policy largely advanced through intergovernmental cooperation on policing, immigration control and security issues. This afforded the European Council (representing MSs) "the role of both executive and legislature, while the EU parliament and courts were marginalised" in the third pillar (Hayes, 2007:20).

If the same policy (like the detention of migrants) is enacted in different contexts and gives rise to similar problems, the problem may lie in the policy option itself, rather than in the way specific MSs implement it. Decades of institutional, academic and activist research and documentation on the operation of detention centres in MSs have consistently revealed this practice to be harmful. The problems that are raised about such centres concern violence, the rule of law and human rights, which means that decisions to "externalise" this policy option to third countries cannot be regarded as 'innocent' (see Figure 1). Likewise, outcomes beyond the EU's borders that mirror or intensify such policies' harmful effects in the EU, cannot be included in the category of unforeseen or unintended consequences, conceptualised by Merton in 1936 as "The Unanticipated Consequences of Purposive Social Action" (Merton, 1936). These remarks apply to several aspects of EU policies against 'illegal' migration and those of its MSs. This makes it important to find a route to address its underlying premises.

Figure 1: Migreurop map of typologies of camps within and beyond the EU's borders (Migreurop, 2015).
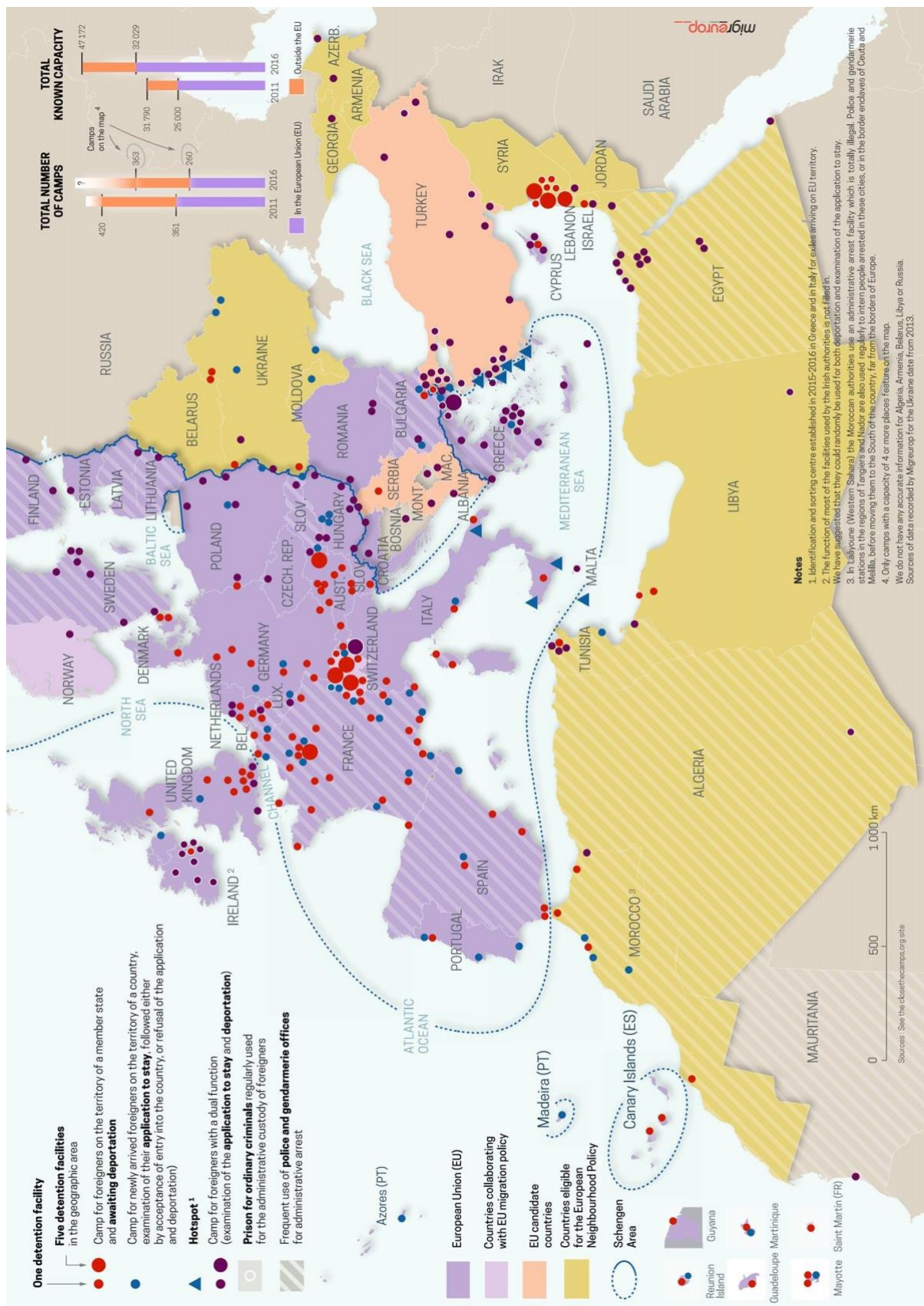
In policy research, an important distinction may be drawn between research "of" policy or "for" policy (Hill, 2012:5). The former examines the contents, output and process of policy, evaluation straddles both categories, and the latter provides information for policy makers to ascertain "what works", process advocacy to improve the system and policy advocacy to introduce options and ideas into the policy process. This work falls within the first category and challenges policy contents, output and processes to affect the direction of immigration policy, which may have become a problem. This is necessary because immigration policies may be leading to the institutionalisation of multiple forms of exclusion, discrimination, punishment and harmful consequences, for its targets and beyond. This thesis is not a purely oppositional exercise. Its critical dimension is meant as a building block to make a contribution "for policy" by challenging some "structural selectivities" (Jessop, 2008), as a positive contribution to enable change in this policy field's direction and rationale.

Such change may result if analysis of JHA aspects of immigration policy at the national, intergovernmental and EU levels, reveals structural binds that lead to them producing problems, rather than providing solutions. This may result from in-built biases, crisis tendencies and from the means developed to implement policy in practice. Failure to acknowledge problems caused by policy, and the incorporation of such problems into institutional reasoning as justifications, may result from other phenomena's status as "ignored insecurities" (Palidda, 2016). This research identifies immigration policy's structural effects and consequences, in EU MSs and beyond, using this policy field's self-presentation, strategies and implementation as they appear in official documents. Evidence of a possible a drift towards authoritarian statism may mean that immigration policy is a threat, rather than a solution (Andersson, 2014). This may contribute to developing a research agenda to rein in its excesses. Such an agenda may require that the risk analyses developed to assess threats posed by immigration and migrants be applied to policies adopted and implemented to manage migration and fight "irregular" immigration.

After outlining elements of this thesis' concerns and research strategy to make sense of developments in immigration policy, it develops a route within policy studies to address its underlying premises and material expressions. This means examining their implementation in European (EU and MS) immigration policies and practices. It is not a comparative study, because the relationship between national governments and development of the EU's JHA policies was marked by the prevalence of an intergovernmental approach. Attempts to rein in this intergovernmental bias include the Lisbon Treaty that asserted the EU level's influence in this policy field. However, this treaty also reinforced the "technical" and "operative" implementation pathways and procedures by interior ministries and law enforcement agencies (LEAs) acting in cooperation with EU agencies like Frontex and Europol (Peers and Bunyan, 2010). Making sense of these developments requires moving away from comparative frameworks that emphasize conflict between the EU and national levels. These two levels have interacted, co-constituting the JHA policy field, and MS authorities have defended their competences and interests through the Council. A theoretical framework, interpretative key and narrative strategy are needed to disentangle developments which may be more coherent than they appear. Material aspects that emerge from official documents at three levels clarify their interaction in terms of the outcomes they produce, using national legislation, EU legal instruments and policy documents. These elements make it possible to analyse breaks, shifts and continuities to understand what developments in this field mean for state theory in a unique context (development of security structures of an emergent EU state).

This thesis addresses the apparent paradox of the growing importance of border and immigration controls and authorities to enable freedom of movement in the EU and abolish internal border controls. It moves away from "country vs. EU" polemics in the political sphere which often apply to official statements by politicians with a view to public consumption within their MSs. This research focuses on institutional efforts to assert official authority and state power that may undermine legal frameworks and guarantees at the national and EU levels. The development of EU security structures, viewed as a state-building effort within which MS interior ministries and LEAs seek to maintain and expand their margins of action, may undermine competing positive values.

The interplay between the national, EU and intergovernmental levels' interests in strengthening national structures while constituting supranational ones, enables critical analysis of the kind

outlined by Jessop and Sum (2016). They focus on identifying "structurally-inscribed strategic selectivities" to explain how

"*sense- and meaning-making systems legitimize the orders of discourse, social forms and social practices associated with particular hegemonic and/or dominant social arrangements*" (2016:108).

The nature of these "sense- and meaning making systems" is outlined in Chapter 2's account of the theoretical framework for this thesis. Chapter 5 on governance and strategic selectivities focuses on EU policy documents from different five-year periods to track concrete developments and the rationales used to achieve them. Chapter 6 focuses on legislative and regulatory instruments from the national and EU levels, which translate strategic outlooks into concrete measures and structures, as effects of strategic selectivities. This provides a gateway into the ideological and material effects of a critiqued object, in this case the JHA aspects of European immigration policies. Such ideological effects go beyond "the framing and content of beliefs" and depend on the "form of hegemony or domination at stake", with domination encompassing "the effects of the structuration of social relations" and their "operation in biased ways". Beyond semiosis and ideology, this approach seeks to understand how

"*discursive, structural, technological and agential selectivities are condensed to form specific dispositives that help to secure hegemonies and domination*" (ibid).

Exploring the theoretical premises for this order of inquiry, Jessop and Sum include an acceptance of complexity which enables "critique based on second-order observation of specific forms of misrecognition that reveals the blind spots of given imaginaries", rather than a critique of discourse as misrepresenting reality. Beyond complexity theory, they signpost five approaches conducive to critical policy studies. They are: critical realism; Jessop's Strategic Relational Approach (SRA) to explore "*the biases inscribed in specific structures*" in relation to "*differential constraints and opportunities*" for actors; Marxist critique; Foucauldian truth regimes; and cultural political economy as informing critiques of semiosis and structuration to develop critiques of ideology and domination (Jessop and Sum, 2016:105-106).

The unit of analysis for this thesis is the JHA dimension of European immigration policies which, and this is the underlying hypothesis, may work towards dismantling limits to the state's scope for interventions involving coercion and exclusion. The three levels are relevant because they are relevant to identify trends concerning the assertion of state power and a possible drive

towards authoritarian statism, conceptualised by Poulantzas (1978). At the national level, this would lead to legal, ethical and human rights concerns not to impede executive authorities' efforts to fight so-called "irregular migration". At the supranational level, within a state-building framework, to long-term justification for creating and developing the EU's security apparatus. At the intergovernmental level, to shield problematic practices enacted at the national level from possible challenge by EU institutions or supranational courts, and to expand their scope by normalising such practices across the EU's territory.

This thesis concerns the way in which power and inequality operate in society, which Gilbert (2008:9) describes as "recurring issues or questions in social research". Using qualitative methods applied to official documentation fits the need to delve beneath the surface to reveal systemic patterns. Citing Gubrium, Silverman notes the advantages that qualitative methods offer in terms of their ability to reveal "the 'what' and 'how' of institutional processes", accessing phenomena that are beyond the reach of quantitative research (2007:85-86). In line with the early Frankfurt school's tradition of critical research, it employs a non-positivist, broadly "constructivist", perspective. This perspective views knowledge as transitive, and social science as striving to provide the best possible interpretations and answers to explain specific social phenomena at a given time (Baert, 2005:91). From this perspective, social actors are viewed as constantly accomplishing social phenomena and their meanings (Bryman, 2008:692). Other relevant elements of critical theory include its rejection of "value-free sociology" as proposed by Weber. In contrast, critical theorists assigned sociology an emancipatory function, asserting the need to voice judgement in the presence of obvious injustices (Baert, 2005:110-120), and for researchers to reflect on their own position.

This work's contribution to policy studies, beyond describing problems linked to approaches adopted in immigration policy in their decisional, implementation and execution phases, is to lay the foundations to challenge their premises. This entails setting short- and medium-term objectives to disrupt incremental developments in policy-making and policy implementation. These may take on the form of serial problem-solving exercises whose effects are a social burden due to their inherent characteristics. Expansive dynamics in public policy concerning security and the technologies servicing it (Amoore and de Goede, 2008, with regards to risk analysis; Paul, 2017, regarding Frontex and immigration policy) may be interpreted institutionally as contributing to the "public good" in the context of security and policing (Loader and Walker, 2001; Brodeur, 1994). These dynamics may work towards altering social

reality and normative frameworks for policy implementation purposes. This means that timely diagnosis of their direction, rationale and effects is crucial to understand their nature.

Analysing European immigration policies by interrogating official documents about their strategic selectivities, using the analytical lens of state power and its limits, is a route to develop a critique that encompasses a wide range of outcomes. These outcomes reflect the development of the EU and the AFSJ as a state-building exercise, within which immigrations policies have an instrumental function. This outlook contributes to achieving a degree of clarity in a complex policy field. Power and the intensification of power relations are viable analytical tools because they: a) underlie this thesis' research themes; and b) lend themselves to operationalisation and analysis despite the impossibility of quantifying power precisely. Operationalisation may be undertaken in comparative terms, as an increase in the powers granted to an agent, body or agency, or an extension in their scope in terms of targets and geography. A decrease in power may be identified when a practice deemed unlawful by a court of law is suspended or abandoned by a government; or in developments that increase an individual's or a group's vulnerability, or limit their options, agency and prospects. Examples may include measures linking immigrants' resident permits to employment contracts (weakening their position *vis-à-vis* employers) or introducing differential treatment and controls due to membership of a "*suspect community*" (Hillyard, 1993; Pantazis and Pemberton, 2009, 2011; Kundnani, 2014).

Power relations, their proliferation or shifts in their intensity, may result from criminalisation or suspicion directed at individuals or groups that increases their vulnerability. State bodies' authority to intervene against certain phenomena or groups identified as problems is part of this theme. The expansive nature of such processes includes creation of procedures and bodies to implement policy goals and the co-optation of agents required to actively comply with official policy targeting people and groups. Hence, actors may be simultaneously granted and subjected to official power by these requirements. Their compliance with instructions to enact differential treatment may contribute to disempowering a policy's targets. This factor enables abuses to be committed by a wider array of actors than those identifiable as state agents. The balance of power, and power dynamics between national and EU authorities and frameworks in the JHA policy field, is a further focus of this research. These relationships may be conflictual, convergent and/or ambiguous, depending on the matter at hand.

Critical research into the JHA aspects of EU and MS immigration policies stirs up a number of debates, within academia and beyond. These concern state theory and critical state theory,

notions of governance, governmentality and multi-level governance, politics, geography, sociology, state crimes, law, ethics and philosophy. The texts this work examines have been conceived and negotiated with a view to public and/or institutional consumption for the purpose of enacting change. They function in the context of pre-existing social practices which have their own ground rules. Analysis of these three levels of documentation (national, EU legislation, EU JHA intergovernmental cooperation through the Council) begins with a chronological overview, followed by analysis of specific documents. The documents may include examples of extreme cases (Silverman, 2013:147), because this research explores the boundaries of power and shifts over time. The empirical analysis examines the relationship between state power and its limits, including law and human rights. It is relevant for state theory, policy studies, immigration studies, security studies, EU studies and ethics. Proportionality, cost and rationality are further underlying themes, in the framework of a critical approach to examine the impact of immigration policies on societies where they are implemented.

Analysing developments at the national and supranational levels amounts to recognising these levels' existence, in addition to the (executive, technical and operational) intergovernmental dimension enacted through the workings of the Council and EU agencies. However, notions of interaction between levels, of influences beyond the state and of pluralism in theoretical frameworks including multi-level governance and governmentality, may conceal agency and meaning in relation to long-term systemic trends in which the state is central (see Chapter 2). Analysing whether immigration policies have amounted to a "power grab" at three levels (over 20 years in a transformative phase), is a means to achieve clarity regarding their coherence and underlying rationales. This does not exclude the existence of conflict and discord (nor of tactical or instrumental alliances) between approaches adopted at different levels. In fact, attempts to assert power at one level may conflict with those to maintain power at a different level. However, this approach may contribute to clarify aspects of institutional efforts deployed against a potentially beneficial phenomenon identified as problem to tackle. This thesis shows that apparently irrational aspects of this policy field's development over time may be explained by the distance between European immigration policies' strategic purposes and their stated goals. Jessop's state-theoretical work (2008; 2016) on contemporary developments analyses the EU and the changing nature of statehood. The SRA provides the theoretical framework for this work that focuses on "structurally-inscribed strategic selectivities", the state and its power(s) (Jessop, 2018).

This thesis is tailored to meet two purposes: providing clarity in a context which appears intractable due to its complexity using state power as an interpretative key; and translating the performative language in official documents into the concrete reality it contributes to create.

Chapter 2 develops Jessop's theoretical approach to analysing state power beyond the scope of immigration policy. It investigates the JHA field's power effects in advanced capitalist societies and the emergence of new forms of statehood, of which the EU is a prime example with unique characteristics. It encompasses theories of power as relational and of the state as a strategic site to define, intervene and develop structures to implement and pursue adopted policy courses. Chapter 2 draws on academic literature on immigration policy within the JHA field at the supranational and intergovernmental EU levels, and in two MSs, Italy and the UK, the empirical focus of this thesis. Chapter 2 asks what JHA aspects of immigration policies have become, and why, theorising their instrumental use by states to enhance their powers (a "power grab"). Over time, as they are codified and implemented in practice (at the EU and national levels), they may turn into a "wrecking ball" affecting normative frameworks, population groups and territories that are supposedly beyond their scope.

Chapter 3 explains the methodology and conceptual framework used in the empirical chapters (4-6) to examine the selected documentation. The underlying hypothesis is that there may be cases in which policy and the "*strategic selectivities*" (Jessop, 2008:223) it enacts are more of a problem than a solution, beyond this policy field's limited scope. This may result from expansive dynamics and systemic effects that become disproportionate in relation to the goals that are pursued. Testing the relationship between developments in this policy field and Foucault's reading of racism as a power-enhancing instrument to restore the sovereign's power over life and death by enabling a population to be divided into hierarchically ordered categories that are subject to differential treatment (1997:227) is an element of this strategy. Operationalising Jessop's SRA by examining the selected documents' relationship to hierarchy (power), governance (strategic selectivities) and government (structures) provides entry points to capture this policy field's "formal" and "substantive" material aspects, and why recognising them is important for 21st century state theory.

Chapters 4-6 detail the findings produced by operationalising this theoretical outlook and methodological approach, applying them to the selected documents. The corpus of official documents draws on the national (Italian and UK immigration laws between 1995 and 2014),

EU and intergovernmental levels (legislative instruments, policy documents including mid-term programmes to establish the AFSJ, Council conclusions and documents) to examine the interaction between the three levels. The aim is to establish whether current EU and national immigration policy approaches should be analysed to perfect their implementation, or whether urgent reassessment is necessary. The second option would entail scaling them back as a result of significant harmful dynamics they have set in motion for migrants, the EU and its MSs. This analysis examines whether EU immigration policy represents an improvement over the sum of its [national] parts, in terms of the standards it asserts. This may be assessed by considering whether they contribute to neutralising problematic practices enacted by MSs in their territories. Chapter 4 focuses on hierarchy and state power(s) as they emerge from the entire document selection as a means of achieving clarity in a complex policy field. Chapter 5 focuses on EU policy documents to examine governance and strategic selectivities, to understand if, and how, they may amount to a power grab at different levels. Chapter 6 concentrates on national laws, EU Regulations and Directives, to analyse government and structures, as concrete expressions of policy.

Chapter 7 brings together the findings from the empirical chapters (4-6) to draw out the relationship between the formal and substantive aspects of state power as they emerge from the documents, and the importance of recognising these coexisting dimensions. This reflects Jessop's interest in identifying *"a certain apparatus and operational unity horizontally and vertically"* (2016:66-68) which led to the SRA's development, including the notion of "multiscalar metagovernance" (2008:198-224), while employing the concept of state power. It assesses the merits and shortcomings of using state power and authoritarian statism as means to research the effects of European immigration policies as a possible burden for European societies on the basis of findings from the empirical chapters. This knowledge is interrogated in relation to the intrinsically problematic nature of the EU's JHA policy field (Peers, 2011) and the research aims and questions, to develop a research agenda. This agenda challenges policy outlooks inherently linked to the production of harm and insecurity, and expansive institutional effort to stifle people's capabilities and security.

This thesis examines immigration policies in Europe to address questions of fundamental importance for democracy, civil liberties and social justice concerning the relationship between people and states. The use by states of security concerns and policies to prevent illegal migration to limit rights and liberties for individuals and groups, while the scope for intervention and grounds for control, punishment and exclusion expand, represents a threat for

people's security (Dal Lago, 2004; McGhee, 2010). The explicit purpose of the international human rights framework is to protect individuals from states. At present, the limits human rights pose for state power are often presented by serving ministers as undermining their efforts to guarantee security and an effective migration management system, viewed as synonymous. This research deconstructs legislative and policy developments in the field of immigration on the basis of their implications for people's rights and state power(s), inquiring as to whether they represent a shift towards "authoritarian statism" (Poulantzas, 1978). Linking the national and EU levels makes it possible to examine the extent to which key aspects of such a trend may be intensified, neutralised or limited by the institutional workings and development of the EU's structures in the JHA policy field.

This thesis addresses the following research questions:

1) In what ways have the JHA aspects of immigration policy formulation and implementation in the EU, Italy and the UK exceeded the remit of migration control?

2) If so, why and how is this happening?

3) What are the consequences of these shifts in terms of authoritarianism?

4) Are immigration policies creating more problems than they are solving?

Answering these questions contributes to achieving three research aims. Firstly, to establish the extent to which the current approach to developing and enacting immigration policy inherently implies eroding rights and legal safeguards and an increase in coercive state power(s). Secondly, to detail how national authorities influenced the development of EU immigration policy and structures and were, in turn, influenced by these, bearing in mind the existence and interaction of intergovernmental and supranational frameworks. The third aim is to identify the long-term "strategic selectivities" (Jessop, 2007; 2016) that apply to JHA aspects of immigration policy in terms of harmful outcomes, collateral damage and supposedly unintended consequences. Methodologically, this thesis harnesses the explanatory potential of official documents as empirical sources to produce knowledge about complex policy issues and dynamics. In wider terms, it reconstructs the history of the present using institutional documents on a well-documented and highly sophisticated state-building effort. The underlying question is whether immigration policy is more about improving migration management or about asserting state power at different levels.

Chapter 2: STATE, POWER AND IMMIGRATION POLICY

2.1 The state: fictional and redundant?

The state is a notoriously intractable research subject, to the point that in a discussion with Jessop (2016), whose strategic-relational approach (SRA) this research is based on, Hay went so far as to suggest that its analytical purchase would make it desirable to treat it "as if" it existed as part of an approach he terms "as if realism" (Hay, 2014). Proposing its treatment as "a conceptual abstraction, yet one to which we might still accord a very significant generative and causal power", Hay suggests that it does not have any agency itself and foregrounds its role of definition and construction of "a series of contexts within which political agency is both authorized (in the name of the state) and enacted (by those thereby authorized)" (2014:460). This interpretation has important points of agreement and departure from the approach adopted in this thesis. These include the relational character of the state as not possessing agency or power itself, while it is important in creating contexts which mould power relations, in the first case, and scepticism as to its unity, in the latter case. In fact, definitions provided even by leading authorities on state theory, past and present, tend to be tentative. An often cited reference is that of Weber's account of the state's exercise of a "monopoly of legitimate violence" and the workings of its bureaucratic-administrative apparatus. Bourdieu's courses on the state in the *Collège de France* in 1991-1992 (2012) highlighted that the "symbolic" violence of definition, language and knowledge should be added to physical violence, as well as foregrounding the "fictional" character of the state's self-portrayal. He tentatively defined the "field of state power", that of administration and public service, as involving "possession of a monopoly of legitimate physical and symbolic violence". The "symbolic violence" referred to includes the use of language in state acts, definition of context and official knowledge, which is closely connected to statistics as the measurement of phenomena to be acted upon by officialdom (2012:13-30)*.

Bourdieu stressed the difficulty of conceptualising the state and warned against studying it through its own forms of reasoning, logics and rationale, noting that it is deemed to play a neutral and disinterested role in the public space. He draws on Durkheim's idea of the state and its neutrality as reflecting a logical and moral integration of the social world based on agreement, in the first case around ways of thinking, perceiving and constructing reality and in the second one around a set of values. Thus, it draws its legitimacy from a quasi-religious fiction whereby it exists to serve the common good, while "state acts" (like reports by state-

appointed commissions), are deemed to represent "a point of view that is not a point of view, but rather, an ideal condensation of all points of view". At the same time, Bourdieu presents administrative science as "the discourse state agents produce about the state... a veritable ideology of public service and the common good" (2012:53-54)*.

Bourdieu describes the Marxist view of the state as an inversion of this idea whereby the state is an apparatus of coercion and maintenance of public order, but this is for the benefit of dominant groups. This leads to strategies of inquiry focusing more on who the state does things for than on the structuring of its mechanism, reducing it to function and replacing a divine state with a diabolical one. In this sense, the state becomes a principle of orthodoxy, consensus on the meaning of the world and a collective fiction or well-founded illusion enabling it to fulfil its functions of social preservation aimed at preserving conditions for the accumulation of capital.

The SRA's conception of the state relies on three main sources, two of which (Poulantzas and Gramsci) rely on a Marxist outlook whereas the third (Foucault) moves beyond it to observe the mechanics, or the workings of power systems and power relations beyond the state (Rabinow, 1984:57). Their compatibility stems from their treatment of the state and state power as relational, of the state as a site of strategy, and from their interest in effects and sources of state action including coercion, domination, discipline and hegemony. At the same time, each of them in different directions, they accept the challenge of making sense of the complexity which results from their respective outlooks in relevant ways for this thesis.

In Foucault's case this refers to a move away from structure as a factor implicating the relegation or "evacuation" of the "event", while taking care not to repeat "what was done with the concept of structure" with that of the event:

"It's not a matter of locating everything on one level, that of the event, but of realizing that there is actually a whole order of levels of different types of events, differing in amplitude, chronological breadth, and capacity to produce effects".

Rather, Foucault views this as requiring the ability to "distinguish among events, to differentiate the networks and levels to which they belong, and to reconstitute the lines along which they are connected and engender one another". He advocates a move away from analysis of the symbolic field or signifying structures towards "the genealogy of relations of force, strategic developments, and tactics" and switches the point of reference from "language and

signs" to "war and battle", from "relations of meaning" to "relations of power". Posing the problem of power and discourse, and especially that of the mechanics of power, its exercise, specificity, techniques and tactics, was difficult when the left and right were engaged in an ideological struggle in the second half of the 20th century. The right would focus on matters of constitution, sovereignty and analysis in juridical terms; conversely, the left posed the same questions in reference to the state apparatus. The right would decry Soviet socialist power as totalitarianism and the left would denounce power in western capitalist systems as class domination, but this adversarial approach limited the possibility of analysing power relations as such. Further, subordination of power as an issue to "the economic instance and the system of interests which it served" by Marxists, meant consigning power-related themes which had limited economic significance (psychiatric internment, the mental normalization of individuals, or penal institutions) to the margins (Rabinow, 1984:58).

This leads us to a further question because, beyond the intrinsic and ontological difficulty of conceptualising the state itself, it became an unfashionable subject of research due to the prominence of frameworks foregrounding governance and governmentality rather than the state. Building on a Foucauldian outlook that highlighted the inability of previous conceptual frameworks to enable understanding of "the exercise of power in modern societies", Rose and Miller (1991/2010) focused on "political power beyond the State" by juxtaposing government and the state. Foregrounding "problematics of government" and relocating the state within this field, they advocate analysis of "political rationalities" and "governmental technologies" to connect "the lives of individuals, groups and organizations to the aspirations of authorities in the advanced liberal democracies of the present" (273-274). They deem attempts to account for government by relying on "the power of the state" to be obsolete, preferring to analyse its articulation into "the activity of government", its relation to other authorities, the resources it employs and the devices and techniques which make its tactics operable (275). Their approach concerns how authorities problematise the nature and exercise of their power, language is viewed as performative (with discourse used to reveal "systems of thought" and "systems of action"), and knowledge as a "vast assemblage of persons, theories, projects, experiments and techniques" to enable government. They marginalise the state's importance by suggesting that it "should first of all be understood as a complex and mobile resultant of the discourses and techniques of rule". Like Foucault (see above) they focus on "warfare". They view it as requiring and inspiring new practices of government, an important insight for this study which

researches a policy field in which extraordinary responses are enacted to "govern" ordinary and largely predictable phenomena.

This study accepts elements raised by Foucault as well as Rose and Miller concerning the state's reliance on "an elaborate network of relations formed amongst the complex of institutions, organization and apparatuses that make it up, and between state and non-state institutions" (274). This includes countless external interests and agents whose influence may affect state action and those which may be entrusted tasks by the state. This leads to reservations as to the possibility of treating states as "unified actors with considerable autonomy" in view of "the characteristics of modern forms of political power" (274). At the same time, theorists who continue to assign the state central importance in their work do not necessarily disregard such difficulties and complexity when it comes to researching the state and state power. This is true of contemporary state theorists like Jessop and Hay, as well as earlier authorities in this field like Poulantzas and Gramsci, among others.

This is an important aspect of Jessop's account of the SRA and its theoretical foundations. He focuses on Gramsci "as a spatial theorist", highlighting the influence he assigned to "international forces and a country's geo-political position" in "overdetermining" the "internal balance of forces" (2014:12), alongside "an interest in place, space and scale" (2014:14). Gramsci's conceptualisation of the state in its inclusive sense as encompassing political society and civil society augments its continuing relevance in the light of the preceding discussion. He takes into account influences beyond the nation-state's boundaries and outside the state's formal structures. In this sense, he opposed identification of the State with Government as the reappearance of the "corporative-economic form" which confuses civil and political society from the perspective of his general conception of a state which encompasses elements pertaining to civil society. This leads Gramsci to clarify that the "State = political society + civil society, that is, hegemony armoured by coercion" (Gramsci, 2012:274)*. Further, he notes that the coercive state element subsides with the progressive assertion of conspicuous elements of a regulated society (the ethical State or civil society) (ibid). The relevance of these notions for research into expansive coercive capabilities introduced in the context of immigration policies and implemented beyond their narrow scope, is that they may be indicators of the submission of civil society and resistant or recalcitrant elements to political society and executive power. That is to say that the nature and dynamics of such developments in this policy field may be able to alert academia and society at large of a drift towards authoritarian statism which may be a symptom of a systemic crisis.

Gramsci also emphasised the "historical specificity of all social relations" and "issues of periodization, historical structures, specific conjunctures, and social dynamics". He viewed strategy as "sensitive to temporality and spatiality", emphasizing the "complex conjunctures and situations" resulting from the "interweaving of different temporalities" alongside attempts to identify the "possible futures" beyond "a path-dependent present". At the same time, Gramsci was aware that mobilization was required "in and across specific places, spaces, and scales, each with their own distinctive determinations and strategic selectivities" to transform "spatio-temporal horizons of action" in relation to notions of "war of position" and "war of manoeuvre" (Jessop, 2014). Again, as with Foucault and with Rose and Miller, we find reference to a logic of war which is far removed from the state's self-presentation (Bourdieu's "ideology of public service and the common good", see above).

While Foucault's preference for focusing on "relations of power" appears to support this line of inquiry, he viewed them as existing in interpersonal relations throughout society, which would seem to contradict the possibility of their proliferation as well as reducing the influence of structure. However, he recognised its possible assertion from above, drawing a useful distinction between disciplinary power as targeting individuals or bodies and biopower as a means of targeting a population in order to "normalise" it. Further, his analysis of "racism" stressed that its power effects were more important than its substance. It was intrinsically bound to biopower and was based more on a "constant state of war" within which the "sovereign" could exercise a "right over life or death" than on race. This enabled race to be instrumentally used to introduce a break "within this domain of life over which power has taken charge", or within "the human race's biological continuum", embodied by distinction between races, hierarchisation, classification as "good" or "inferior", and expansive subsequent fragmentations (1997:227-234)*. Thus, it was of "vital importance", according to Foucault in a regime of biopower, to institute a sovereign's "right to kill" for the sake of making "life in general… more healthy and purer". This idea resonates with the notion of penalising certain categories to preserve the common good. He specified that this does not "simply mean direct murder" but also what may indirectly lead to death: "exposing people to death, multiplying the risk of death for some [people], or, more simply, political death, expulsion, rejection, etc." (1997:229). Several of these aspects have been and remain relevant to the study of European immigration policies and their implementation during the selected time frame, especially regarding their instrumental use to disrupt longstanding institutional arrangements and normative frameworks.

Poulantzas' accounts of the developmental tendencies of "authoritarian statism" (1978:203-216) and of the "institutional materiality of the state" (1978:76-120) are key references for a thesis that recognises differences between the present and the historical context within which they were developed. Regarding authoritarian statism, he wrote of

"*intensified state control over every sphere of socio-economic life combined with radical decline of the institutions of political democracy and with draconian and multi-form curtailment of so-called 'formal' liberties*" (1978:203-216).

Jessop (2016:211-230) notes that Poulantzas identified nine tendencies including "power shifts from the legislature to the executive" and "a decline in the rule of law… in favour of particularistic, discretionary regulation". Further, a reorganization of the dominant ideology integrates "certain liberal and libertarian themes" while displacing "notions such as the general will and democracy in favour of instrumental rationality and technocratic logic". As political parties' influence declines and their role changes, parallel power networks grow, as does a "reserve repressive para-state apparatus" to pre-empt "popular struggles and other threats to bourgeois hegemony". Such changes also affect the forms of consent (more plebiscitary and populist) and forms of legitimation (technocratic and/or neo-liberal).

Poulantzas developed a framework to account for state power by analysing what he termed "the institutional materiality of the state" (1978:49-120). His analyses of knowledge and power, on one hand, and of the law, the framework of the state and its techniques of power on the other, are important for a study based on official documents and the codification of strategy at different levels. Knowledge and power are viewed as part of an organic relationship involving intellectual labour and political domination in the capitalist state, thus embodying the separation between intellectual and manual labour (1978:56). This is crucial for the framework of state apparatuses and for the "permanent exclusion of the popular masses".

Poulantzas pays attention to the structuring of the state, including the separation between politics and the economy. "Individualization" is viewed as enabling the state to lay claim to "national sovereignty and the popular will" and to represent "the unity of a body" while it works "to exercise a hold over a divided social body" (1978:63). He provides a rich picture of techniques of power and modern tendencies towards authoritarian pursuits, explaining the sometimes violent or oppressive nature of law and definition as well as foregrounding spatial and temporal matrixes which link him to Foucault as a genealogist and to Gramsci's emphasis on concrete conjunctures.

Jessop's strategic relational approach (SRA) builds on the points of convergence between Foucault, Poulantzas and Gramsci. These are: the state as a site of strategy; power as relational; and attention paid to systems of domination and the scope for resistance. Important peculiarities underlying this approach include its state-theoretical outlook and a focus on the structuring of power relations and domination from above, over time, on different scales and in varying territories, identifiable through what he terms "structurally-inscribed strategic selectivities".

His relational conception of power excludes the existence of "power in general" or "general power" but rather, it seeks "to establish the weight of different sets of particular powers and how they combine, if at all, to produce specific structures of domination" (2016:92). Jessop views power as one or several classes' capacity "to realize their specific interests", as a concept designating "the relationship between one class and another" and "the horizon of action occupied by a given class in relation to others". The opposition between different class interests and their relative capacities to realize them makes "the field of power… strictly relational". A corollary is that it is not measurable and the specification that it is not "a quality attached to a class…, but depends on and springs from, a relational system of material places occupied by particular agents" (2008:147).

This is key for Jessop's definition and concept of the state as neither an "instrumental depository (object) of a power-essence" on behalf of the "dominant class" nor as a "subject possessing power equal to the quantity it takes from the classes which face it". It is a site of strategy to organise the dominant class' relationship to dominated classes, a site and centre for the exercise of power which does not possess any "power of its own" (2008:148). It operates as a capitalist state or as a state within capitalist society, the latter being Jessop's preferred option for analysing contemporary European states.

Dimension	Definition	Significance for SRA	Crisis Aspects
Three formal dimensions			
Modes of representation	These give social forces access to the state apparatus and to its capacities	Unequal access to state Unequal ability to resist at distance from state	Crisis of representation
Modes of articulation	Institutional architecture of the levels and branches of the state	Unequal capacity to shape, make and implement decisions	Crisis of institutional integration
Modes of intervention	Modes of intervention inside the state and beyond it	Different sites and mechanisms of intervention	Rationality crisis
Three substantive dimensions			
Social basis of state	Institutionalized social compromise	Uneven distribution of material and symbolic concessions to the ' population' in order to secure support for the state, state projects, specific policy sets, and hegemonic visions	Crisis of the power bloc Disaffection with parties and the state Civil unrest, civil war, revolution
State project	Secures operational unity of the state and its capacity to act	Overcomes improbability of unified state system by orienting state agencies and agents	Legitimacy crisis
Hegemonic vision	Defines nature and purposes of the state for the wider social formation	Provides legitimacy for the state, defined in terms of promoting common good, etc.	Crisis of hegemony

Table 2. Six dimensions of the state and their crisis tendencies. Source: Jessop, 2016: 58.

2.2 The state in the strategic-relational approach: neither fictional nor redundant

The basic definition of the state proposed by Jessop (2016:49-51) encompasses its three conventional components of state apparatus, state territory and state population, with the addition of state discourse or political imaginaries. Thus,

"*The core of the state apparatus comprises a relatively unified ensemble of socially embedded, socially regularized, and strategically selective institutions and organizations* [Staatsgewalt] *whose socially accepted function is to define and enforce collectively binding decisions on the members of a society* [Staatsvolk] *in a given territorial area* [Staatsgebiet] *in the name of a common interest or general will of an imagined political community identified with that territory.*"

The SRA offers a framework to analyse the state, which is far from being passive or neutral due to in-built biases which favour certain actors and interests, with their degree of actualization depending on changing balances of forces, strategies and tactics. Structures are not "absolutely constraining", but rather, "strategically selective*"*, thus providing "scope for action to overwhelm, circumvent, or subvert structural constraints" (2016:55), meaning that success in attaining strategic goals cannot be guaranteed. The SRA analyses the state as a social relation in terms of: 1) the exercise of state power; 2) an institutionally and discursively mediated condensation; 3) a changing balance of forces; 4) these seek to influence the forms, purposes and content of the polity, politics and policy; 5) in specific conjunctures marked by opportunities and constraints; 6) which are linked to the wider natural and social environment.

Adding discourse and political imaginaries to the tryptich of apparatus, territory and population allowed Jessop to develop a six-dimensional view of the state which includes three formal and three substantive dimensions (see figure 1). In this model, the former comprise "modes of representation" (access), "modes of articulation" (institutional architecture) and "modes of intervention" (inside and beyond the state). The latter include the "social basis of the state" (instutionalized social compromise), "state project" (securing operational unity and capacity to act) and "hegemonic vision" (its nature and purposes for the wider social formation) (Jessop, 2016:58, table 3.1 "Six dimensions of the state and their crisis tendencies"). From the SRA's analytical standpoint, this enables various adjustments that are compatible with its relational treatment of structure and agency, and the importance it assigns to the "strategic context of action and the transformative power of actions" (55). An important effect is that structure, the opportunities it offers and the constraints it imposes, is viewed as affecting different actors in

different ways. At the same time, agency "depends on strategic capacities that vary by structure as well as according to the actors involved". The SRA identifies "specific strategies pursued by specific forces in order to advance specific interests over a given time horizon" (conflicting with other forces striving to advance their own interests) to explain the biased composition of opportunities and constraints. This privileges analysis of strategic context and of whether "politically relevant actors" choosing a course of action do so on the basis of routines or habits, or whether they analyse strategic action and possible shifts in the "changing 'art of the possible' over different spatio-temporal horizons of action" (55).

This matters for two reasons: firstly, it enables analysis of how strategic goals and paths to achieve them are set and enshrined as necessary purposes of a society; secondly, it accounts for complexity and for shifts in existing strategic terrains and contexts. These are continuously created, reproduced, reinforced or scaled back and, in any case, they are constantly evolving, being constituted and/or dismantled. To spell this out, this thesis looks at European immigration policies over twenty years as part of the development of the EU's AFSJ and as constituting state powers and apparatuses for their exercise within a state-building exercise at the supranational level. It considers the hypothesis that immigration policies in member states may be efforts to reassert state power in the field of law and order at a time when other competencies are being eroded. At the intergovernmental level, cooperation through the Council and EU agencies may be means of Europeanising problematic national practices while shielding them from accountability and oversight by the courts within the framework of international law and human rights conventions.

The table's last two columns detail these six dimensions' crisis "aspects" and their significance from the SRA's outlook, which illustrates how this approach accepts and strives to make sense of complexity while embracing transitiveness and continuous evolution to reflect strategic aims and changing balances of forces. Its interest in power and inequality is clearly expressed in relation to two formal dimensions: modes of representation, as "unequal access to the state" and "unequal ability to remain at a distance from the state"; and modes of articulation, as "unequal capacity to shape, make and implement decisions". This focus crosses the boundary into the state's substantive dimensions, as noted in relation to the "social basis of the state" whose significance for SRA lies in the "uneven distribution of material and symbolic concessions to the 'population' in order to secure support for the state, state projects, specific policy sets, and hegemonic visions". For the three remaining categories, the SRA is interested in their defining characteristics and instrumental function. These are the "different sites and

mechanisms of intervention" for modes of intervention; the way in which a state project "overcomes improbability of unified state system by orienting state agencies and agents"; and how a hegemonic vision "provides legitimacy for the state, defined in terms of promoting common good, etc." (2016:58).

Crisis tendencies are also highlighted in relation to these six dimensions of the state, as "crisis of representation", "crisis of institutional integration" and "rationality crisis" for its formal dimensions, and as "legitimacy crisis" and "crisis of hegemony" for state projects and hegemonic visions, respectively. The crisis tendencies listed for the remaining substantive dimension, "the social basis of the state" which rests on the "institutional social compromise", relate to all of these, and are arranged in growing degrees of intensity. They include 1) "crisis of the power bloc"; 2) "disaffection with parties and the state"; and, finally, 3) "civil unrest, civil war, revolution".

Jessop identifies five ideal-typical forms of representation: clientelism, corporatism, parliamentarism, pluralism and *raison d'état*. Jessop notes that the latter "is a limit case of intervention without formal channels of representation" and "has become more relevant in recent decades", in relation to terrorism, political protest, civil disobedience, whistleblowing and investigative journalism. Its legitimation relies on notions of threats "to the security of the state", of "society", or to a "significant national or public interest". This research explores its relevance to a policy field which has been construed as part of a continuum with security (Bigo, 2013) and in which emergencies may have been deliberately construed, constructed and maintained over long periods in order to neutralise normative limits to state power. In order to preserve security, the *raison d'état* allows acts which are normally "ultra vires", which means they exceed legal powers or may be plainly illegal. Jessop argues that the consolidation of "authoritarian statism" means that "now", the principle of jurisdictional control over its use (possible veto, inquiry, post-hoc legislative or electoral sanction) is "more often honoured in the breach rather than observance" (2016:62-65).

With regards to the "institutional architecture of the state", the SRA does not interpret the concept as implying a "static view of the state apparatus", because of regular attempts to reorganise relations and varying forms of politics "across different branches of government" (executive, bureaucracy, courts). The distribution of territorial and functional power among its parts is viewed as significant, as are "the relative weight of executive and legislative branches of government" and the issue of whether "there is at least formal scope for oversight and veto

of executive actions by an external authority or power (judiciary, church, or mob)" (2016:66). Jessop's account does some fundamental work to bring back the state and its materiality centre stage, not to hark back to distant times and 20th-century Marxism, but to account for contemporary developments that subsequent frameworks appear unable to capture. He makes a conscious effort to incorporate the emerging EU within this approach by highlighting the importance of "relations between national territorial states and emergent trans- or supranational state forms, as well as among central, local, regional, and parastatal forms of rule". This makes it suitable because it does not escape complexity but seeks to explain developments by focusing on "mobilization of resources", the "formal and substantive coordination of its different branches and activities", allowing scope for analysis of efforts to secure the "unity of the state apparatus" (2016:66-68).

Specific arrangements referred to earlier, like an intergovernmental bias in the JHA/third pillar, concern the institutional architecture of the EU and the possibility of strategic biases being inscribed into its structures, what Jessop terms strategic selectivities. This may unduly influence policy-making in this field by neutralising potential conflicts or a possible plurality of outlooks, as its long-term key players were the executive power (interior ministries in particular), and technical and operative agencies or forces (police, security and immigration authorities). If we add the involvement of stakeholders interested in this policy field's expansion that profit from its use of IT solutions and cutting-edge technologies, we may be in presence of a "*power bloc*". Further, creation of a specific agency (or structure) to coordinate developments in this policy field and single-mindedly pursue its goals (Frontex) that straddles the national, supranational and intergovernmental levels in an apparently ubiquitous way, mirrors developments concerning the stand-alone treatment of economic goals as technical.

Jessop noted that "the relative dominance of departments or ministries can underwrite the hegemony of specific material and ideal interests", citing the example of the pre-eminence of national security in the USA. He views "the establishment and expansion of the Department of Homeland Security as a key transformational moment in the rise of the permanent state of exception". This entails a structural dominance which may become "truly hegemonic" if combined with a "hegemonic project". Even in the absence of this condition, however, "state structures can undermine the pursuit of a project favourable to a class or class fraction other than the structurally privileged". The combined analysis of "forms of representation and the internal architecture of the state" is viewed as offering a perspective on the "forms and extent

of 'despotic power'", or "the state's ability to act freely without the need for institutionalized negotiations with civil society groups." (2016:69-70)

In reference to the table above, this may be viewed as excluding the possibility of representation for alternative viewpoints whose existence is certified by activities embarked upon by private citizens to support migrants left in destitution by the implementation of official policies in this field throughout the EU (TNI, 2018). Issues pertaining to institutional architecture and strategic selectivities and their possible structural embedding may produce hierarchies whereby views, information and evidence promoting development along a predetermined path may prevail over elements challenging chosen courses of action. Such issues are explored below, but it is important that the existence of Gramscian "power blocs" or "hegemonic blocs" pertaining to the substantive dimension of the "social bases of state power" may play a decisive role in defining and setting boundaries for horizons of action. The expression "power bloc" refers to "a durable alliance among dominant classes and class fractions that structures the politics of power and defines 'the art of the possible' on the political scene". "Hegemonic bloc" is defined as a "broader ensemble of national popular forces mobilized behind a specific hegemonic project", reflecting a historical unity and a durable alliance organised by a class which exercises "political, intellectual and moral leadership". Both depend on the management of "inherently unstable equilibria of compromise through appropriate offensive and defensive strategies and tactics". Over time, this may help them to create a "historical bloc", that is, "a mutually supportive relation among the economic base, juridico-political organizations, and the moral and intellectual field" (2016:72-73).

The inherently fictional nature of the state (Bourdieu, 2012) and its possible redundancy resulting from recognition of the influence and agency of non-state actors coupled with overlapping national and supranational policy regimes may be viewed as discouraging the approach adopted by focusing on state power. However, it questions theoretical assumptions which may have important implications by impeding the investigation of structural biases and their systemic effects on relations between states and the societies in which policies are implemented. Specifically, this applies to notions of institutional unity towards achieving common goals, dynamics and direction in situations marked by constant flux and the need for adequate frameworks to capture and make sense of developments at different levels and in multiple contexts over time beyond their treatment as case studies.

State power and Jessop's six-dimensional conception of the state provide solid foundations for moving beyond piecemeal analysis, while accounting for multifarious transformations that are underway. These cannot be adequately identified or examined without a framework to account for complexity, implying that obstacles for academic inquiry into state power and damaging systemic and societal effects of expansive coercive capabilities also apply to policy-making, implementation and evaluation. This narrows the scope for changes to be introduced and for challenging the premises for such endeavours. To put it plainly, this thesis asks whether, and how, a selected policy course whose premises are problematic has been allowed to wreak havoc for 20 years, often straying beyond its supposed scope and the EU's geographical boundaries. Its damaging effects on the ground are documented by institutional bodies at the national and EU levels, courts, NGOs and academics, without this leading to significant changes. This may point to the existence of "a spiral of path dependency" (Jessop, 2016:56). Huysmans views what Jessop terms "spatio-temporal fixes" (2016:144-147) in this context as the lasting "securitization of immigration, asylum and refuge" as part of the "European integration process", at least since the 1980s and 1990s (2006:63). His insights into "security framing" view it as equating immigration with an obstacle to society's pursuit of "freedom from threat" and as intensifying "processes of inclusion and exclusion" by promoting migrants' treatment as a "collective force", thus obscuring differences between individuals (2006:58-62).

The proposed framework offers scope to open a route to challenge the foundations of the EU's integrated border management system in theory and its implementation in practice in member states and beyond, due to externalisation. It does so through its relational understanding of state power, which the state neither possesses nor exercises, and through a conception of the state as a site of strategy geared towards advancing certain interests to the detriment of others. Jessop points out that neither power nor interests should be conceived in general terms. Interests

"*must be related to structural constraints and conjunctural opportunities in given circumstances and to potential trade-offs among different sets of interests across different spatiotemporal horizons*" (2016:93).

Recognition of complexity makes the state an "institutional ensemble and not a subject". Its particular conception of the common good (even where there is consensus) "has partial implications". Its unity is relative and in flux, and "the exercise of state powers is always subject to structural constraints and resistances" (2016:88-89). The SRA is peculiar in that it pays attention to "structural contradictions, part-whole paradoxes and other sources of strategic

dilemma" which are reflected in its treatment of "the strategic interplay between strategies and structures". The next section focuses on the role structures and policies play in asserting relations of domination and hierarchy. These must be considered to account for contemporary developments, including the way in which chosen policy options are channelled and enacted at the levels this thesis examines.

To do so, it challenges accounts that view the state as redundant in view of contemporary developments impinging on its autonomy, capabilities and competencies. It may even turn out that in the interplay between the national, intergovernmental and supranational level, a policy course requiring enhanced latitude for the exercise of state power over individuals, specific groups and society due to its intrinsic nature or transformative ambition is felt by each as desirable. This would not exclude the possibility of significant clashes of interests or temporary breakdowns in coordination and/or cooperation. Yet, it could signal a stand-alone collective interest in creating and maintaining effective, relatively unchecked pathways to develop the migration management system. The exercise of such power may become an end in the context of a policy mission which is difficult to accomplish in practice at the national level, and its instrumental purpose may lead it to stray from the formal scope and bounds of a policy field if developing structures is itself a goal. Developing an integrated system to manage a timeless, numerically vast and historical phenomenon in a systematic and fault-proof way driven by absolute goals and incremental management principles with a large availability of public resources is a formidable enterprise. In effect, a natural, potentially beneficial and largely self-regulating phenomenon may have been predetermined as an existential threat to the EU and its member states to justify the expansive development of security structures.

The "well-founded illusion" (Bourdieu, 2012:25) which is the state remains a crucial site for the setting of strategy (of which policy is a part) and for organising modes of intervention at the service of the "state project" and "hegemonic vision" identified by Jessop as "substantive dimensions of the state" (2016). Lending substance to developments in this field requires capturing and examining the evolution of Poulantzas' "institutional materiality of the state" (1978), aspects of which include Gramsci's concern for evolutionary principles of "variation, selection and retention" (Jessop, 2016). Hence, analysing national legislation and mid-term strategic and programmatic EU policy documents over time may prove a formidable way to draw out the institutional materiality of the state and its effects, on the ground and in the structuring of its institutional architecture. My familiarity with such documents through my work for Statewatch makes me aware that, beyond strategy, they are rich in data about material

aspects like the modes of intervention, technologies, procedures and safeguards that are adopted and/or discarded. Beyond their intrinsic empirical value as documents that play a role in formal institutional settings, establish the state of play from an institutional viewpoint and chart prospective courses of action, they reveal insights relevant to the SRA's interest in "power, interests, domination and state effects" (Jessop, 2016: 90-120).

Structuring principles	Fields of Operation			
	TERRITORY	*PLACE*	*SCALE*	*NETWORKS*
Territory	Actually existing frontiers, borders, boundaries that constitute the state as power container	Integrating places into a territory, managing uneven development	Federal systems Multilevel government	Interstate system, state alliances, multiarea government
Place	Core-periphery, borderlands, empires	Locales, milieu, cities, regions localities, globalities	Globalization, glurbanization (global-local and urban-global articulations)	Local, urban, regional governance or partnerships
Scale	Scalar division of political power (unitary state, federal state, etc.)	Local – global areal (spatial) division of labour	Nested or tangled scalar hierarchies Scale jumping	Parallel power networks, nongovernmental international regimes
Networks	Cross-border region, virtual regions (BRICS, Four Motors, etc.)	Global city networks, poly-nucleated cities, intermeshed sites	Networks of differently scaled places	Networks of networks, spaces of flows

Table 1. Towards a multidimensional analysis of sociospatiality. Source: Jessop et al., 2008

This chapter has focused on whether research into systemic and structural issues connected to a specific policy field can benefit from contemporary state theory that relies on 20th century Marxist sources, re-worked in Jessop's SRA to incorporate contemporary developments. These include existing and emergent supranational governance frameworks, the agency of non-state actors and the European Union. It relies on relational conceptions of the state and state power as means of making sense of developments in Bigo's "security-immigration continuum". Bunyan described the EU's JHA policy field as "the most critical area of European Union activity, the one that most affects people's liberties" (2012:33). In this field, Bigo highlighted the role of security professionals in the "governmentality of unease beyond the state" in the context of the "transnationalization of (in)security" (2009:11), noting that they are not homogeneous and may sometimes compete against one another. The creation of "transnational bureaucratic links between professionals of politics, judges, police, intelligence agencies, and the military" contribute to creating a "transnational regime of truth" (2009:13), with important implications for state theory. He points to sociological works which "identify a transversal field of processes of (in)securitization" in which the "dominant positions" are occupied by a "number of professionals from public institutions" such as the police or military (2009:14). This transnational field supposedly lessens the performativity of governments' reliance on the "rhetoric of sovereignty, citizenship and the 'raison d'État'", while politicians' management capabilities are called into question, including the "correspondence between their beliefs and actual situations".

These observations are relevant to the expansion of EU competencies in the JHA policy field in relation to the "multiscalar metagovernance" framework proposed by Jessop regarding statehood and the EU, whereby an expansion in its role is promoted in response to government and governance failures (2008:198-224). They also help to clarify that using the state and state power as interpretative keys does not imply discarding or ignoring developments concerning governance networks beyond the national state, nor is it a way to ignore the agency exercised by non-state actors, agents or interests. Rather, this strategy is designed to examine the relationship between government and governance in European immigration policies at the national, intergovernmental and supranational levels by enquiring as to their nature, dynamics and the extent to which they are sometimes mutually reinforcing, while they sometimes clash. In this sense, the strengthening of state power *vis-à-vis* individuals and collective groups may

be viewed as a means **and** a goal in pursuit of policy objectives whose definition and purposes require its limits to be overridden.

Jessop (2016:140) accounts for such concerns through his "multidimensional analysis" of the state's "sociospatiality", which rests on four elements: territory, place, scale and networks (TPSN). Each of these is treated as both a "field of operation" and a "structuring principle". At the same time, their aspects involving "sociospatial contradictions and dilemmas" are presented in binary terms (2016:134). For territory, the dilemma or contradiction is between "bordered" and "cross-border" relations; places may either be "containers" or "connectors"; the scale may be "single" or "multiscalar"; and networks may be "enclosed" or form part of a "network of networks". Regarding "territory" in the context of "state formation", Jessop views the "key issue" as concerning "the ability to extend territorial control through the logistics of space-time distantiation and through the bureaucratization of a central authority". "Places" are more closely related to "everyday life", "direct interaction among social forces" and between individuals, and have "temporal depth" connected to "collective memory and social identity" whose "social and strategic settings for direct interactions" are "strategically selective". "Place making" is viewed as framing "social relations" in spaces of proximate daily interaction and as a means of "differentiation" of such frameworks (2016:130). "Scale" is a key interest in this research referring to the "nested hierarchy of bounded spaces of differing size, e.g. local, regional, national, global". The fourth and final aspect in this breakdown is "networks", which need to be placed "in a broader spatiotemporal, strategic-relational context" although its referents in this context are primarily spatial. Yet, a "flat ontology perspective" focusing on "flat, decentred sets of social relations characterized by symmetrical connectivity to centred ensembles of power relations... organized on functional or flow lines rather than on territorial or scalar principles" is deemed at "risk of neglecting... hierarchical relations... within and among networks" (2016:136-137).

In fact, relations between networks do not exclude the possibility of "inequality and asymmetry", that is, "the uneven capacities of networked agents to pursue their own distinctive strategies and realize their interests". These arise from networks' grounding (in "global cities or marginal places"), the "different scales at and across which they operate" ("dominant, nodal or marginal") and the territorial interests they are linked to ("e.g. centre vs. periphery or strong vs. weak states, imperialism, or empire") (2016:137). The relationship between such aspects and European immigration policy is explored in the empirical analysis, yet two further "scalar concepts" are relevant here. The "scalar division of labour", whereby different scales have

"different tasks or functions" in a "vertical hierarchy of scales", which is seldom an ideal type, often involves "tangled hierarchies of powers" in "multilevel or multitier government arrangements", and in which the "most powerful institutions or actors" are not necessarily at the top. In reference to the EU "as a state in the process of formation", Jessop notes that "some national states have greater power over the EU than EU institutions have over them" (137). The second scalar concept is "scale jumping", whereby an actor seeking to "make policy, resolve conflicts, exercise power…" etc. does so at the most favourable scale for their interests. This is relevant regarding efforts to promote given policy options regardless of compatibility with pre-existing regulatory frameworks which, as a result, may need to be circumvented or undermined. Focusing on hierarchy may contribute to understanding the advance of restrictive immigration policies and the practices they promote in the context of complex relationships between the national, supranational and intergovernmental levels.

In this sense and *per se*, restrictive immigration policies play an important role by introducing breaks and segmentation among the people present in a territory, leading to hierarchies and procedures to establish and develop various forms of discrimination or "social sorting" as management principles (Lyon: 2003). This observation relates to Foucault's reading of racism as a means for enhancing the power of the "sovereign" over people's life and death (1997:227). Foucault highlighted the expansive character of discrimination and discriminatory practices as compatible with the exercise of "biopower", serving to normalise the idea that undermining certain groups, or working towards their disappearance, may be positive for society as a whole (228). McGhee supports these views by observing how limits to state actions including human rights which supposedly apply to everyone are being redefined to exclude significant groups from their protection. He points to their conversion into "differential privileges" – as the "rights citizens enjoy over non-citizens, as the rights the law-abiding majority enjoys over 'undesirable' others, whether they be failed asylum seekers or foreign national terror suspects" (2010:166). Linking these to "neo-biopolitics" in "new border controls…, counter-terrorism strategies and the managed migration system", he argues that the UK is on "shaky ground" regarding its human rights and humanitarian commitments, and details authorities' quest to find shortcuts to neutralise them. Examples include political attempts to turn article 2 (the right to life) and article 17 (forbidding activities to destroy or limit "the rights or freedoms set forth herein", in reference to criminal or terrorist groups) of the ECHR into "trump cards" to subordinate human rights to "public security" concerns (2010:177).

This thesis falls within the tradition of critical state research because it identifies the state and state power as relevant subjects of academic enquiry (Hillyard et al, 2004; Scraton, 2007; Coleman et al, 2009; Whyte, 2009; Bourdieu, 2012). This may be done by examining developments "from above", including those at the institutional and policy level and the implementation practices that follow (Dal Lago, 2004; Hayes, 2007; Bonelli, 2010; Mucchielli, 2008; Peers, 2011) or "from below", by analysing their effects on specific target groups with an emphasis on the substance and consequences of institutional practices in specific contexts (Hillyard, 1993; Bonelli et al, 2004; Scraton, 2007; Pantazis and Pemberton, 2009, 2011; Peirce, 2010; Pepino et al, 2012; Kundnani, 2014). Coleman et al stress the need to "understand the state's institutional and discursive power" for the sake of "progressive social change". Such an effort should not merely

"*focus upon the state's practices and statements with respect to the marginalised and powerless… but also with respect to the state's relationships with the powerful, including the relationships between and within different branches of its institutional apparatus and the different blocs and fractions who develop policies and put them into practice*" (2009:15).

This requires tracking the nature of the measures, laws, and technical and operative modes adopted under the rubric of immigration policy, their effects in terms of the powers which different bodies and agents assume, and finally the institutional architecture structuring the exercise of such powers. Whether ordinary checks, balances and the separation of powers which supposedly apply to avoid possible excesses by the political executive are strengthened, maintained, circumvented or neutralised, may be crucial to identify what Jessop terms "strategic selectivities" to reveal possible in-built biases in a policy field. Hierarchy is an important concept in power relations, as are the specific hierarchies which apply (and supposedly apply) in different parts of the national state apparatus and in its relations with supranational bodies in various conjunctures, in the policymaking fields and in the bodies and agencies required to enact policy. This may be reflected in structural arrangements pertaining to the institutional architecture of the state and the establishment of EU state structures, which may be examined in the light of the four strategies identified by the SRA for handling "contradictions and their associated dilemmas" (2016:146). These are "hierarchization" (some contradictions are more important than others), "prioritization" (one aspect of a dilemma has priority over others), "spatialization" (reliance "on different territories, places, scales and action networks" to address certain contradictions and aspects while displacing others to the margins) and "temporalization" (different aspects of a contradiction are treated in turn, a subset

of contradictions or a dilemma is focused on one-sidedly, neglecting other aspects until it becomes urgent to address them). Empirical information from official and mid-term strategic policy documents may prove useful to examine how such strategies apply to the development of the EU, as they often feature assessment of the state of play (what has been done) and plan priorities for further developments. This applies to the creation of EU agencies to drive and coordinate specific policies, and to the nature of the practices and technologies employed to do so, which may be analysed in terms of their relationship to legal, ethical, political and pragmatic limits which supposedly apply and the outcomes they produce.

Gramsci proposed a continuum between "hegemony" and "coercion" (Jessop, 2016:183), whereby the former depends on lasting consensus within the state in its wide sense (below) and the latter grows in prominence when dominant forces' hegemony breaks down. In this context, for "governance", Jessop also proposes four different modes (2016:168) for which he provides typical examples: exchange (market); command (the state); dialogue (network); and solidarity (love). Fontana's study on hegemony and power notes that where Macchiavelli wrote of two aspects of politics, "force and consent" or "*dominio* and *direzione*", Gramsci conceives of the "integral state" as "political society + civil society" or as "dictatorship + hegemony" (1993:143). This representation of the "double nature of power and the state" explicitly deems "pure force" as inadequate to "achieve a lasting rule over society" or a "permanent and stable hegemony" in the absence of a "sociopolitical order capable of instilling its particular cultural and moral beliefs in the consciousness of the people" (144). Macchiavelli shared this view, noting that while "force and violence" are key to the "origin of the state" because "establishing a kingdom or constituting a republic" may require the use of "extraordinary means", inscribing them into the "general principles of the state defeats their original purpose" (144-145). Gramsci's focus on the ideological and cultural apparatus and the role of intellectuals in achieving hegemony is reflected in the educational role Macchiavelli assigns to "the prince" in creating a "political entity" and overcoming "a divided and atomistic condition" to establish "a superior sociopolitical and sociocultural order" (147).

In his prison diaries, Gramsci wrote about a "crisis of authority" underlying the "modern crisis". This means that if the dominant class has lost consensus, it no longer "directs" and remains solely "dominant", the holder of pure coercive force. This reflects the detachment of popular masses from "traditional ideologies" and disbelief in what they previously held to be true. He argues that the crisis is based on an intermediate phase ("*interregno*", between reigns), during which the old order is dying "and the new one cannot be born yet: in this *interregno,*

the most varied morbid phenomena take place" (2012:245-246).* Hence, the evolution of a new supranational order (the EU) at a time when nation states attempt to cling on to an increasingly limited sovereignty reflected in the maintenance of their "law and order" (Bauman, 2006:4) functions enshrined in the third pillar JHA field until very recently, is fascinating. Maintaining a restrictive immigration policy approach may serve an instrumental purpose for both levels, whose common denominator is the development and implementation of policies, structures, practices, procedures, technologies and places established for the exercise of state power. Power relations deriving from these processes may be deemed heightened in the context of a policy field and its substantive appendages (places, bureaucracies, procedures, etc.) that are intrinsically based on discrimination against non-Europeans, thus undermining their position in society. The early stages of a European immigration policy were developed through the "early experiment in reinforced intergovernmental cooperation that was launched in 1985 in Schengen" (Pastore, 2004:95) that later developed into the EU's third pillar (JHA).

Notions of government and governance are relevant to the relationship between national and supranational levels (applied respectively to member states and the EU), with the former viewed as more hierarchical and the latter as more network-based. After defining the EU's character as either "a territorial state in a continuing, contested process of formation" or "its future as a potential nation-state" (2016:157), Jessop highlights what he views as limits of both government- and governance-centred accounts. He stresses that rather than being "a purely technical matter", governance "always involves specific objects, techniques and subjects" (who may be recalcitrant) and that despite its "techno-economic, political, and ideological functions in particular contexts", it is "always conducted under the primacy of the political". This refers to state concerns to manage "the tension between economic and political advantages" and its duty to uphold "social cohesion". This tension is relevant to its "problem definition" processes, monitoring of the effects of forms of governance, and its "ability to pursue its hegemonic or dominant project" (2016:157). Both governance and meta-governance (second order governance associated with attempts to overcome problems leading to governance failure) do not merely involve finding technical solutions to "neatly framed problems". Rather, they affect the general "balance of of forces" (2016:158). In fact, Jessop views government and governance as

"often linked through contested practices of meta-governance or collibration, that is, through the rebalancing of different forms of governance within and beyond the state, in the shadow of hierarchy" (2016:177).

Moving beyond "mainstream governance studies" and governmentality studies, with its "micro-analytical and antistatist" bias, Jessop challenges accounts of a move from government to governance as resting "on a narrow view of the state as a juridico-political apparatus that governs through imperative coordination" (2016:183). This means ignoring other modalities of state power, implying that its use of other techniques of rule are indicative of a "retreat". This view is countered by its involvement in countless activities involving markets, constitutions and "the juridical reregulation of organizational forms and objectives", among many others (ibid). Jessop points to the involvement of state managers in actively promoting new forms of governance beyond the state to improve efficiency, effectiveness, transparency and accountability, leading to "good governance". Noting that this may "serve the interests of the state apparatus and state managers, by facilitating its own reproduction" and "other forms of domination" (2016:171-172), he cites Joseph to highlight that appearances are sometimes deceptive. For instance, "new forms of global governance" seem to point to "a disaggregated, decentred world with new spheres of authority, no single organising principle, and greater flexibility, innovation and experimentation in use of control mechanisms".

Joseph argues that "this disaggregation and decentring is, paradoxically, the result of strategies carried out by the dominant states. [Yet]… what is mistaken for global governance is a neoliberal form of governmentality pushed by states, pushed on states and pushed *through* states" (2016:172). This fits with the purpose of this study to account for the interaction of the national, supranational and intergovernmental levels and how agents (including states) may simultaneously exercise and be subjected to power and power relations. It supports the idea that rather than treating different levels as separate or competing, or as requiring comparative analysis, it may be worth examining how their interactions and autonomous actions work towards a common goal or goals. The nature of such goals is captured by Jessop's six-dimensional theory of the state which incorporates substantive aspects and ideological dimensions, the most relevant of which are "state project" and "hegemonic vision" (2016:58). These may serve to introduce, normalise and expand policies and practices based on an underlying rationale whereby undermining certain people's position for the benefit of others contributes to the common good.

In his reconstruction of "racism and the state" in the UK, Burnett (2009:51) argued that the 1978-1997 period began with the "racialization" of mugging as a "black" crime and policy flowed through a "prism that articulated a zero-sum numbers game in which more immigration meant less cohesion and order". This idea is nothing new, as can be appreciated from countless contributions by critical criminologists and sociologists around issues of definition, criminalisation, public order interventions, discrimination, criminal justice, penal institutions and antiterrorist activity, including repressive developments in immigration policy (Hall et al., 1978; Sivanandan, 1982; Hillyard et al, 2004; Scraton, 2007; Burnett, 2009; Coleman et al. 2009). Here issues of domination come into play, including Foucault's work on the systemic power effects of racism as initially creating a break between members of a population which can then be reproduced and extended to subject various categories of people to punishment, exclusion and control measures for the common good. In a similar way, immigration policy as it is being implemented in Europe entails excluding people whose mobility has been illegalised from enjoying rights supposedly meant for everyone. This effectively dehumanises them, opening the way for series of diverse actors and population groups to be excluded following existing procedures developed with regards to the first group which was targeted. This is why two research questions touch upon expansive dynamics which implementation of restrictive immigration policies entails, at a time when human rights were restricted for so-called "irregular" TCNs. For example, the violence of detention and denial of freedom for such migrants has been normalised, lowering the protection levels they are afforded. Costello (2012:257-258) notes that:

"*The right to liberty is ubiquitous in human rights instruments, in essence protecting all individuals from arbitrary arrest and detention. It should go without saying that deprivations of liberty require the strongest possible justification. Yet, in practice, immigration detention is increasingly routine, even automatic, across Europe*".

2.4 Immigration policy from theory to practice: a route towards authoritarian rule?

One route to attaining clarity entails focusing on hierarchy, viewed as institutional architecture featuring in-built strategic selectivities and/or preferential pathways for certain types of intervention. This section builds on notions of hierarchy and of the uncompromising nature of governance as expressions of power relations and attempts to advance a *state project* that rely on imposing or securing consent for a *hegemonic vision* in this policy field (above). Table 1 views both of these as *substantive dimensions* of the state that may provide an entry point and insight into its ideological aspects and motives. These pertain to governance and may be hardwired into institutional workings through the setting of policy goals and objectives whose accomplishment may be more or less realistic, ambitious or achievable in given contexts. Legislative and practice-based attempts to do so in practice within and beyond state's territories through intervention by state authorities fall within the realm of government, implementation and enactment, whose effects and materiality are analysed by enquiring about their relationship to normative frameworks which could be expected to rein in a policy field's excesses.

Such concerns mirror those relevant to developments in policy fields like economic management, international development and security, in which the one-sided pursuit of goals relies on autonomous "technical" and/or "operative" management, selective attention paid to normative frameworks, and mechanisms to limit possible disruption. This may result from a "utopian" outlook akin to "social engineering" in structural readjustment programmes such as those promoted by international financial institutions like the IMF which raise the issue of the economic profession requiring an ethical code (De Martino, 2011). It may result from a supposed "tyranny of experts" steering international development agendas towards "authoritarian development" (Easterly, 2013) since their inception, partly through avoidance of necessary debates framed in binary terms. These include those between a "blank slate" vs. "learning from history"; the "well-being of nations" vs. "that of individuals"; and "conscious design" vs. "spontaneous solutions" (2013:25-35). To advance, the desire for blank slate forms of reasoning upon which to impose transformative policies requires crises, emergencies or disasters, either real or engineered. This applies especially when attempts to obtain legitimacy for such shifts through the political system are impossible or have failed (Klein, 2014). Gallino (2015) has gone so far as to suggest that European banks and governments have enacted a *coup d'état* in the economic sphere. Analysing the North Atlantic Financial Crisis, Jessop observed a shift whereby:

"policies recently deemed improper and even reckless and, therefore, beyond the repertoire of government action, are redefined as essential to the national and, indeed, global interest in 'timely, targeted and temporary' (but by no means token) measures to recapitalise financial institutions, renew business confidence, and restore capital accumulation" (2014:217).

This may appear a digression from this study's immediate concerns with the nature and effects of European immigration policies. Yet, it is motivated by concern about similar dynamics coming into play to enable rationalisation of the harm caused by policies in order to justify their continued and incremental development. It also means hypothesizing that developments in other fields that impact on what executive authorities may or may not do in the exercise of their functions, neutralising limits which apply or rendering them unenforceable, may exist in and may be spreading across the migration management field. Bronzini (2016) has praised the upgrading by the Lisbon Treaty of the EU Charter of Fundamental Rights to the rank of treaty law. He points to its significant effects through the ECJ's case-law in fields including immigration, while acknowledging limits concerning austerity measures adopted within the framework of the EU's economic governance. These resulted from the ECJ's lack of competence to reach decisions on austerity measures imposed in the context of rescue plans (the European Stability Mechanism is an international treaty) and those proposed in application of EU economic governance mechanisms to rein in public finance deficits (based on recommendations to member states). As a consequence, the ECFR is deemed ineffective to guarantee basic subsistence levels and/or access to welfare systems, an obstacle which diminishes its potential for strengthening the rule of law, and the bond between the EU and its citizens by affirming their fundamental rights.

This makes it important to understand how sanitised accounts of policy initiatives in official documents and acts relate to harmful outcomes for their targets and beyond while focusing on structural and systemic issues using state power as an interpretative key. It means bridging the gap between theory and practice without relying on observation of experiences from below. In fact, the examined empirical materials are drawn from institutional workings of various bodies in state apparatuses and entities developed to resemble state apparatuses. As a result, this section covers a lot of ground on the basis of existing research to draw up an inventory of the knowledge about JHA aspects of this policy field that is available and to identify areas where further research to provide a fuller picture and propose different courses of action is urgently needed. This is methodologically important because there has been a proliferation of studies focusing on immigration policy at the institutional level (from 'above') and with regards to its

consequences for the people it targets (from 'below'). It also enables an excursion into material produced by NGOs, academics and courts at the local, national, EU and European levels to enable assessment immigration policies' impact as falling within the scope of official documents which may focus on efficiency and goal attainment while underplaying unintended consequences. Moreover, it is a way to challenge unbalanced official viewpoints that may result in relevant detrimental effects of policy only being recognised once they can be fitted into a rationale that uses them to further existing plans (Nutley et al, 2007:51).

A clear example of this concerns the deaths over more than 20 years of people trying to reach the EU by taking to the sea across the Mediterranean and other stretches of water including the Atlantic Ocean, which was prominent in the first decade of the 21st century. Weber offers an account of NGO efforts to document these deaths and institutional attempts to neutralise such findings' effects by drawing on "post-Holocaust literatures on moral exclusion and the sociology of denial to identify systemic processes that prevent these deaths from being recognised as large-scale human rights abuses" (2010:35). I must declare an interest. For several years I actively sought out information on these deaths for *Statewatch* from the media, official sources and NGOs, until I was thankful to learn that others were accomplishing this macabre task in more systematic fashion (see the *Fortress Europe* and *UNITED for Intercultural Action* websites).

Weber offers insights including a preference for the term "*illegalised*" rather than "*illegal*" or "*irregular*" migrants, or the Italian variation "*clandestini*", primarily used for stowaways until it became synonymous with illegalised migrants, to acknowledge "that this status is actively constructed by governments through the denial of opportunities for legal entry" (2010:36). Further, she stressed the link between the success of Spain's electronic system for the surveillance of the Andalusian coast (SIVE, integrated electronic border surveillance system), currently presented as a best practice in EU documents and use of more dangerous and deadlier travel routes by migrants (ibid). Addressing who, where, how, why and in what ways people die "alone and they die en masse attempting to evade European border controls", Weber argued that responsibilities sometimes included the actions of border guards or coastguards (willingly in the case of violence or the piercing of inflatable dinghies at sea, or by mistake when rescue operation go awry). The reinforcement of internal borders, with their appendages, including detention centres and deportations, also plays a part. In the UK context, the catalogue of typologies of deaths resulting from this policy field include "*promotion of work-related deaths through work bans and employer sanctions; deaths due to exposure, protest, starvation and*

self-harm following withdrawal of government support; exposure to racist violence arising from internal dispersal policies; and choosing death over deportation in the face of publicly announced removal targets effected through early morning raids by 'snatch squads'" (2010:39). Drawing on Cohen (2001), she explored forms of "literal" -the event did not happen-, "interpretative" -a rhetorical strategy that admits "raw facts" but uses less pejorative terminology (i.e. returns or removals rather than deportations)- and "implicatory" denial -active justification or denial of "moral responsibility" for "harmful actions"- adopted by states regarding an issue some refer to as "death by policy" (Webber, 2004). Cohen viewed these collectively as constituting a "deep structure" that he described as "ideological".

While there would be more to say about this, there is a lot of ground to cover, which means there is only scope for a glance at different methods for deflecting blame away from state authorities. These include attaching blame to relevant deviant "others" (like traffickers) and/or victim blaming (migrants do chance their luck, after all) and ways to "normalise" what she terms "systemic harm against specified groups", drawing on Kelner and Hamilton's post-Holocaust research. They include "distanciation", "neutralisation", "dehumanisation" and "authorisation", and Weber refers to them in an effort to understand what evidence could suffice to move "Europe's conscience" to change, reverse or significantly alter the policies of the time (2010:43). She documents tactics deployed by NGOs to prove that a problem exists and how "European governments could be held to account in the short term for deaths that result from the defense of their borders" (2010:53), identifying the "system of state sovereignty itself" as the "main barrier to recognising the full implications of the structural violence associated with border controls" (ibid). This is because the separation between "insiders" and "outsiders", or "citizens" and "non-citizens", enables the neutralisation of human rights, because if fundamental rights were recognised to all human beings "without distinction, the wellbeing of citizens could not be weighed more heavily in the balance than the lives of non-citizens" (ibid). This raises the issue of whether policies pursued in this field could have different outcomes from those outlined in this section, considering how they were originally framed and then developed in coordination (with differences and tensions) between the national, supranational and intergovernmental levels. In terms of the SRA and state projects, it raises the issue of whether attempts to constitute the EU's population and EU citizenship require subordinating TCNs (with specified exceptions), and the acceptable lengths which state authorities may go to in order to achieve this. This also brings us back to Foucault's view of racism as a route for restoring sovereigns' power over people's life and death.

Another important issue at stake concerns the required burden of proof (if any such benchmark exists) for a problem to be acknowledged as such, in the first place, and for it to then be acted upon within the policy making, policy implementation and policy evaluation processes. For the time being, we will not focus on the counting of the dead, although Weber refers to a count of over 13,000 since the mid-1990s "at the time of writing" (2010:50). This was surely an underestimate as it was difficult to obtain such knowledge in the absence of the efforts, resources and interests which have subsequently been deployed for this purpose. Such efforts were deployed once the discourse surrounding these deaths was harnessed to justify the intensification and furthering of policies on occasion of significant shipwrecks to argue that the EU must do more to prevent these deaths for humanitarian reasons (Andersson, 2014; Heller, 2017; Cuttitta, 2018). Maritime operations to prevent "illegal migration" in Spain and Italy were rebranded as operations to save lives, leading Andersson to identify a new nexus beyond "immigration-as-security" which he termed a "humanitarian-policing nexus" (2014:150-152; 2015). It must be recognised that the death of thousands of migrants has been a feature of efforts to impose restrictive immigration policies at the EU and national level since the 1990s. Solemn official recognition of the problem around the time of the Arab Spring revolts (2010-2011) has not resulted in its disappearance, quite the opposite.

The most reliable source of information currently available on sea crossings and deaths in the Mediterranean is the IOM's Global Migration Data Analysis Centre, and its Missing Migrants Project reports that there were 14,570 deaths in the Mediterranean from January 2014 to mid-July 2017.[1] The trend is not improving, as there were 5,143 dead/missing migrants in the year 2016, up from 3,784 in 2015, and from 3,283 in 2014. At the same time the policies enacted, including attempts to shut down the Eastern Mediterranean route between Turkey and Greece, appeared to push migrants towards the most dangerous travel route across the Central Mediterranean from Libya to southern Italy (Lampedusa and Sicily in particular). This can be appreciated in the IOM's Missing Migrants Project website's "Mediterranean" and "Europe's Migration Emergency" sections. This recalls how the closure of the route towards southern Spain produced a noteworthy increase in deaths during attempted Atlantic crossings to the Canary Islands from the west African coast between 2005 and 2009 (APDHA, 2009, 2015:16).

While the aforementioned figures follow this thesis' 1995-2014 timeframe, they are indicative of unsavoury trends and supposedly unintended consequences which have regularly blighted

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[1] https://gmdac.iom.int/map-tracking-migrant-deaths-and-disappearances (accessed on 21.7.2017) and http://missingmigrants.iom.int/ (accessed on 21.7.2017)

this policy field without significantly altering its course up to the present day. This acquires further importance due to the EU's attempts to externalise its immigration policies beyond its territorial boundaries through bilateral cooperation between member states or the EU and their African counterparts while using these deaths to justify doing so. The nature of these deaths has rarely been expressed with greater clarity than in an article by Nieves García Benito from Tarifa on the Andalusian coast facing Morocco, one of the first places in the European borderlands where corpses began arriving, washed up on the beach. Benito links administrative procedures to death:

"*The large majority of sub-Saharan and Moroccan citizens who apply for entry visas to Europe have their applications denied. With a visa, they would cross the Strait in a ferry, which would result in the problem of corpses disappearing*. (Weber, 2010:38)"

Further, she addressed issues of responsibility for deaths she first became aware of in 1989:

"*Dead people appear, who haven't been killed by anybody. Who truly kills them? The dinghy-captain, another wretched person who undertakes the journey as well? The law? Rather, it seems like a horror story in which the culprit fails to appear. They say the local people are showing solidarity, when what they are doing is cleaning up the beaches of dead people. The complaints that are voiced never receive any answer* (2010:44)".

More importantly, Benito foregrounds the experiences of people towards whom normalisation tactics of "literal denial" -of the events even happening-, or geographical and conceptual "distanciation" -of potentially concerned observers or the public at large from the site of the events- cannot be successfully enacted due to their first-hand experience. They are witnesses whose lives are negatively affected:

"*If I may, as a citizen living on the beach front and who has seen more than one dead body, as a result of my nature, as a human being, I wish never to see any more corpses on our beaches*" (Benito, 2003).

This experience is shared by other dwellers of the European borderlands, in an emphatic way for Italian and Greek islanders, as documented in Bellu's (2004) investigation that revealed a "phantom" shipwreck that resulted in over 300 deaths in 1998 off the Sicilian coast. The everyday lives of fishermen in Portopalo had already been affected because they began finding corpses in their nets and experienced problems when they reported the problem or when they rescued people, due to the judicial procedures this would entail. In the wake of the shipwreck,

they were raising scores of corpses from the sea, yet they failed to report this because investigations into the event would have serious consequences for their livelihoods due to limits imposed on fishing activities and the likely impounding of the vessels involved during inquiries. Italian authorities were interested in denying the event as they were already accused by fellow member states of inadequately controlling their borders, to the point of dismissing the testimonies of survivors who were disembarked in the Greek Peloponnesian islands and detained by the Greek police, as "unreliable". Kobelinsky's research (2015) on the "trajectory of bodies" found in Spain and "unidentified" in the context of a study on the "border as a space of death" noted a macabre development: "immigration" had become a valid category in official forms to fill in the "reason of death" box.

This discussion on deaths and immigration policy establishes that significant aspects are often neither prominent nor acknowledged in the policy and legislative documents this thesis examines. Yet, they provide relevant context and, where adequately documented, they may be taken for granted. This is as true of tens of thousands of deaths of would-be migrants travelling towards Europe since the 1990s, as it is of the proliferation of people smuggling operations and traffickers, and of the violence and abuses illegalised people suffer at the hands of state authorities and criminal groups within and outside the EU. It applies to the proliferation of sites ("places", in Jessop's model) in which regimes seriously affecting people's freedom and liberty are imposed whose conditions resemble and reproduce issues relevant to penal establishments and prisons, viewed as sites within which power relations are exacerbated. Crucially, this discussion offers an insight into why Jessop's development of a "six-dimensional" understanding of the state to encompass its "substantive" and "formal" dimensions helps to account for the workings of the "deep structure" Cohen described as "ideological".

2.5 Limits of the 'immigration as security' approach in JHA policy

Concentrating on the JHA aspects of immigration policy reflects an interest in what Bigo termed the "continuum of insecurity" entailing the conflation of different phenomena including terrorism, public order, policing and immigration (Guild, 2009). Walker and Ashley unpacked the concept of security at the political level as a label legitimating "practices of violence and coercion, perceived as the side effects of the necessary protection of a certain political community" (Bigo and Tsoukala, 2009:2). Critical academics and professionals from different disciplines noted the conflation of concepts such as national security and criminal justice on the one hand (Hudson, 2003; McCulloch, 2010; Peirce, 2010; Petti, 2008), and internal and external security on the other (Bigo and Tsoukala, 2009; Dal Lago and Palidda, 2010). Prospective claims by institutional security actors including the EU Counter-Terrorism Coordinator, Gilles de Kerchove, reaffirmed their findings through claims that quickly developing the "external aspects" of JHA was a priority. He identified "a clear need to design methods, procedures and principles to improve the internal security dividend from the EU's external policies" (Kurowska and Pawlak, 2012:ix-xi).

A responsibility to guarantee security is inherently bound to the state's very existence, identified within "social contract liberalism" by Hudson as "the reason each person gives up a measure of freedom" (2003:32). Establishing what security entails in practice for different people is more complex, considering debates over the ontology of security in critical security studies. Drawing on Gaillie, Smith describes it as an "essentially contested concept" because "no neutral definition is possible" (2005:27), raising the possibility that enhanced state power to guarantee security may ultimately undermine it for some. Booth (2005:33) recognises security as "primordial and deeply politicised", underscoring its instrumental function as a label and "powerful political concept" to prioritise an issue, energise opinion and move material power (2005:23). He views "realist" orthodoxy in this field as affected by "multiple and overlapping flaws" including an ideological outlook which self-defines as "objective" to marginalise alternative viewpoints, alongside an ethical outlook which is "hostile to human interest" (2005:5-8). The importance of studying immigration policy in this context is two-fold. Firstly, it concerns the establishment of blocked systems whose outlook prioritises security solutions to perceived problems (Huysmans, 2006) which may be read as the material embodiment of strategic selectivities in institutions at the national and EU levels, over time if they are maintained. Secondly, unlike certain heinous forms of crime, placing human mobility

within a security frame is ontologically questionable and produces problematic outcomes for its targets' security.

Gramsci's observation that there are two ways of killing, one of which involves "making life impossible" for specific groups of people, is relevant to policies whose implementation requires crude processes of labelling, separation and hierarchisation to apply mechanisms of exclusion and punishment. Expanding power vested in authorities to counter real or perceived threats includes developing surveillance systems that are variously described as establishing a "culture of control" (Garland, 2002) or as "social sorting" reliant on technological advances enabling multiple forms of "digital discrimination" (Lyon, 2003). A further tendency enables state authorities to arrogate power(s) to punish individuals and/or groups through targeted policies, demonisation as "folk devils" (Cohen, 2002) and dehumanisation (Dal Lago, 2004), even in the absence of criminal offending. In a study on "life and rules" and the relationship between law and society, Rodotà stressed that the former has a "dark side" and the state's monopoly of the lawful use of violence raises the "problem" of the sites where it is exercised and its limits:

"*Law 'tames' society, it frees it from toxins. But this proclaimed function that it has does not suffice to make its dark side disappear, its intimate coercive attitude, that many consider brings it closer to that which it should neutralise, violence, to be precise. Thus, the association between law and the modern state which makes the latter a monopolist of lawful violence, is immediately accompanied by the problem of the sites within which lawful authority and violence may be exercised and, hence, of the limits of the law itself and of its immunising function to guarantee the survival of community.*" (2007:10)*

Beyond examples of the risks of enhanced state power justified using security in 20th century authoritarian regimes affecting EU member states in western (Germany, Italy, Spain and Portugal) and eastern Europe (countries of the Warsaw Pact and Greece), its assumed neutrality as a "public good" (Loader and Walker, 2001, in the context of policing) is debateable. Studies on the police and policing by Bunyan (1977), Hall et al (1978), Scraton (1987, 2007) and Palidda (2000) all question the assumed neutrality of policing and the "myth" of policing by consent. Palidda extends this to the contested nature of security, in reference to dominant classes, groups and individuals:

"*Hence, security is not a politically 'neutral' concept, but a privilege that is reserved to individuals, to the social groups that have managed to make the rules that correspond to their interests, morality and worldview prevail.*" (2000:160)*

The conflation of policy fields caused conceptual shifts with important systemic effects including the advance of "actuarial justice" (Hudson, 2003), the "security state" (Pantazis and Pemberton, 2013) and a move towards "prevention" in security and policing activities whose implications are seldom recognised in policy documents. Eckert notes the impact of "this seemingly innocent word" in terms of elevating the importance of "suspicion… as grounds for action". Prevention implies "the idea of controlling potentials, of surveying future possibilities, of controlling not what people are doing or are planning to do, but what they might at some point do" [emphasis in original] (Eckert, 2008:13). This has obvious implications for people's ability to defend themselves, their security and the basic principle of "innocent until proven guilty". McCulloch portrays this as a shift in policing from investigating criminal acts towards "pre-crime" practices enabling adoption of "serious sanctions… in advance of or without charge or trial" which "can be imposed or continued despite a non-guilty verdict" (2009:630).

Scholars note a further trend, the encroachment of war into peace. Joxe describes the "barbarization of peace" resulting from the "proliferation of civil wars and never-ending external operations", "strategies of international policing" and "new wars" whose goals are "political and social", rather than "national political" or "traditional imperial" objectives as happened in the past (2010:36). Maneri's discursive approach in examining "the political economy of bellicose metaphors" leads him to identify a "peacetime war discourse" acting as a "disciplinary regime" which is hard to contest as it is "loved by politics" and "welcomed by the media" (2010:166). He highlights its regressive role as:

"*a powerful instrument of social control. Freedoms acquired through struggle and otherwise untouchable have, with a few strokes of the pen, been sacrificed on the altar of the discourse's objectives. Wars around crime, drugs, terrorism and security have released military personnel and police forces from the binds of red tape and exempted them from any accountability. Entire categories of individuals are normalized by repressive apparatuses deployed for that specific purpose*" (2010:169).

The effect of treating different phenomena as security threats was dealt with in depth by Huysmans' (2006) analysis of the securitization of immigration policy. He portrays "security knowledge" as the "political and normative practice of representing policy questions in an existential modality" and "a political technique of framing policy questions in logics of survival with a capacity to mobilize politics of fear in which social relations are structured on the basis of mistrust". Fear and insecurity, as reasons for state intervention, are inherently dangerous

concepts. They obstruct thoughtful deliberation, discussion and debate, and they overcome previously established rules, limits and barriers by mobilising powerful emotions, making extreme actions appear plausible or inevitable. The direction of contemporary security and immigration policies in the national and supranational jurisdictions appear to reflect a narrowing of concerns and of the scope for reasoned judgement in policymaking and implementation. Jessop terms this "fast policy", in the context of "a decline in the power of the judiciary… and the legislature… and with enhanced power for the executive" (2008:194). This relates to both the dichotomies Walker applied to the early phases of development of the EU's AFSJ and to Poulantzas' description of the "developmental tendencies of authoritarian statism", which are useful means to examine such developments. Jessop emphasizes important tensions regarding "fast policy" of the kind which a securitarian "doxa" fostered by "security professionals" and the "transnationalization of (in)security practices" (Bigo, 2009:10-48) entails, including

"*an emphasis on rapid policy formulation and neglect of implementation serves the interests of efficiency criteria and productivity at the expense of concern with effectiveness and thereby reinforces strategic rationality and exchange-value over deliberation and use-value*" (Jessop, 2008:194).

Jessop deems this "temporal compression" irrational from a policy-making perspective despite serving "some interests in *politics-* or *polity-making* terms", antagonistic to the rule of law and formal bureaucracy and, crucially, as narrowing "the range of participants in the policy process", while it "limits the scope for deliberation, consultation and negotiation" (2008:194).

In Italy, regarding developments targeting migrants since the 1990s and beyond, sociologist Alessandro Dal Lago highlighted their treatment as "non-persons", in terms of humankind being divided (c/f Foucault on racism, above) between "*persons*" and "non-persons" through "implicit and explicit social labelling and exclusion mechanisms"* (2004:9). He explored attacks against "universalism", the political-moral outlook whereby humans are deemed equal by right, where diversity is plurality related to a shared and equal human condition, by a "differentialist" focus on cultural separateness that mythologises "national and cultural roots" (ibid). In doing so, he stresses migrants' conceptualisation (often discursive and by political, institutional and media figures) as "enemies of society" and a source of fear from which society must "defend" itself, a process to which the political left and right, alongside intellectual classes, have contributed (2004:123-137). Analyses in this vein were later conducted by

Bonelli (2010), Maneri (2011) and others (Palidda, 2017; Bellinvia, 2013) to account for and explain mainstream centre-left political parties' conversion to support "security" agendas that require undermining the position of migrants in France and Italy.

The crucial question is how practices and policy approaches continue advancing despite judicial certification of their unlawfulness by national, international and supranational courts which would theoretically result in such courses of action being abandoned. One especially productive line of analysis concerns the dualism between rights and responsibilities as a means of undermining the status of rights as "no longer thought of as inalienable, as due to everyone simply by virtue of their humanity" (Hudson, 2003:189). This fits in with observations by its advocates and critics on the adhesion by social democratic or centre-left-wing parties to the doctrine of security which has come to incorporate immigration as a key element through Bigo's "insecurity continuum" (2002).

In the UK, this dualism was noted and critiqued by Fairclough (2000) in his critical discourse analysis of New Labour's use of language during the Blair years, whereas it was supported by Giddens in his defence of the "third way", as a "new social contract" which "stresses both the rights and responsibilities of citizens". Giddens added that the "precept 'no rights without responsibilities' applies to all individuals and groups" (2000:165). Once enacted, this conditionality of rights in association with restrictive approaches in immigration policy has led to the introduction of preconditions which vary from country to country for the purpose of excluding migrants, especially "illegal migrants", from the protections they afford. A recent example in the context of the refugee crisis that has been unfolding since 2015 was a European Commission document entitled "no registration, no rights" (European Commission, 2015). It proposed that fingerprinting asylum seekers and migrants arriving in "hotspots" established in Italy and Greece was a precondition for their enjoyment of rights that are supposedly meant for everyone [its self-definition as a 'non-paper' may indirectly point towards its contents' irregularity].

McGhee (2010:166) and several others (see Guild, 2009; Mitsilegas, 2015) argue that rights are becoming privileges enjoyed by citizens over non-citizens, hinting at problems this entails in terms of human rights compliance and institutionalised discrimination enabling persons and groups to be subjected to differential treatment. However, it is time to recognise that while the primary targets of immigration policies are TCNs, they increasingly also affect EU nationals. Measures introduced to limit the possibility for spouses of British citizens who are TCNs

moving to the UK unless certain preconditions are met are an example of this. They include income levels, institutionalising a further form of discrimination based on wealth and earnings. Again, this would appear to contravene their right to family life under the ECHR's article 8, but it contains a long list of exceptions:

"*except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health and morals, or for the protection of the rights and freedoms of others*".

The interaction between states' responsibility to guarantee security on the one hand, and to respect rights and the rule of law on the other, is relevant due to the former's instrumental function to neutralise limits applicable to state power. This explains a focus on positive values that may be undermined through policy to capture the destructive potential of restrictive immigration policies' JHA aspects and to enquire as to the modes of definition, intervention and articulation of immigration as a security problem with far-reaching systemic implications. For the two countries in question, several years apart, Maccanico (2008) and Webber (2016) highlighted unrealistic sets of conditions migrants were deemed to have to fulfil in order NOT to be deemed security threats or to enjoy the protections afforded by the international human rights framework. In the first case, wide-ranging conditions were required to register in the *anagrafe* [municipal residents' register] without which migrants could be treated as security threats, while in the UK "references to the obligation on ministers to comply with international law when carrying out their duties" were removed in 2015.

Webber referred to mechanisms used to justify the blanket treatment of migrants and asylum seekers as threats that undermine the idea of "reasonable grounds of suspicion" to justify police interventions as "short cuts" (2016). Maccanico noted that Italian citizens would often have problems complying with the preconditions introduced for registration in the *anagrafe*, necessary for migrants not to be deemed security threats (including income, home size and other socio-economic criteria) in reference to the so-called "security package" approved in May 2008. Such developments reflect McGhee's (2010) arguments about attempts to identify "trump cards" to neutralise rights and legal safeguards in the name of security in wholesale fashion. This justifies research into whether the JHA dimension of European immigration policies is becoming a wrecking ball dismantling social, legal, ethical and infrastructural limits to states' coercive powers, thus enabling them to incrementally assert their authority.

Guild (2009:188-190) notes tensions between "collective security" and the "individual's claim to empowerment – individual security". The "typology of European inclusion and exclusion, as viewed from the perspective of security and the individual" she draws up comprises ten categories, certifying both the stratification of entitlement to inclusion and expansive dynamics stemming from use of discriminatory procedures. For those involving "exclusion by the state", such claims are based "on grounds of security". Guild concludes, in a reflection relevant to this work's theoretical outlook, that "substantial change" is underway in the EU, and "the fundamental transformation" concerns "the position of authority and the consequences of that authority for individuals". Mitsilegas (2015) highlighted how immigration policy poses serious problems for the integrity of the rule of law; others including Carens (2014) and Bertram (2018) question it from an ethical viewpoint in connection with undue exclusion from citizenship and the prospect of people who deserve it attaining security of status. Further long-standing concerns relevant to the exercise of state power include the proportionality of penal and other forms of punishment (Beccaria, 1995).

The empirical analysis addresses such concerns alongside law (which Poulantzas considers an expression of "the institutional materiality of the state"). Yet, it is more interested in unpicking the formal procedures, authorised blueprints for action and structural developments (expressions of the state's institutional architecture, for Jessop) which enable state power(s) to be exercised beyond the limits which theoretically apply and sometimes beyond the law's reach. This makes it a priority to analyse policy in view of its nature as a source of legislative activity and as a means of eluding the reach of judicial authority and mystifying what it means in practice. Further, recognising the existence of formal and practical limits to state action should not detract from understanding that states intrinsically have the possibility of violating their own rules when they deem it necessary, especially in the context of security and JHA policies. This likelihood is an expression of its power to call a "state of exception" (Agamben, 2005) or to transgress its own rules for repressive purposes (Poulantzas) through the notion of "raison d'État" (the higher interests of the state), entailing that "legality is always compensated by illegalities 'on the side', and that state illegality is always inscribed in the legality which it institutes" (1978:84). Bourdieu views this as a characteristic of officialdom and the state as representing a collective social body, whereby a state may violate society's fundamental norms, but these must be publicly upheld, recognised and exalted in the process (2012:83). Jessop proposes the SRA to solve certain limits (incoherence and the risk of tautology) he views as applying to studies on the strength and weakness of states (whereby, for instance, "predatory

states have a significant measure of despotic power" and developmental ones "enjoy a balance of despotic and infrastructural power"). The solution of adopting "a SRA to the variability of state capacities by policy area, over time, and in specific conjunctures" also appears useful to decipher the implications of the JHA aspects of immigration policy on the relationship between state power and its limits over time (2008:77).

Chapter 3: STRATEGIC SELECTIVITIES AND SYSTEMIC EFFECTS

3.1 Methodology - Outlook

There are three main strands to this research. First, a quest for intelligibility using state power as an interpretative key to make sense of immigration policy developments at different levels in an apparently intractable context. Second, conceptualisation and reinterpretation of state interventions as enacting a power grab linked to an ill-defined and expansive state project. Thirdly, examination of the relationship between strategic selectivities and normative and regulatory frameworks setting limits to state power(s). The unit of analysis are JHA aspects of immigration policies and their development over time at three levels, and the empirical sources are official policy, political and legislative documents. They include legislation from the national level and Directives, Regulations, Recommendations, Resolutions, Agreements, Council Conclusions, Pacts, Action Plans, Commission Communications and Framework Decisions from the EU and intergovernmental levels. Three successive mid-term (five-year) policy programmes for the development of the EU's AFSJ, the Tampere Council Conclusions (1999) and the Hague (2005) and Stockholm (2010) programmes are included. So is the initial Regulation to establish Frontex (operative since 2004/2005), as an embodiment of the EU's migration policy that operates at and influences all three levels in an information gathering, support, coordination and operative role. Developments relevant to what has become the Global Approach to Migration and Mobility (GAMM), described as the "overarching framework of the EU external migration and asylum policy" in the Commission's Migration and Home Affairs website, are also included.

The methodology for this research is experimental, inevitably so, as it aims to devise a research method and negotiate a route to deal with policy as a problem by relying on its inherent characteristics in an important transformative phase whose developments are well documented. This is partly thanks to the 1049/2001/EC Regulation on access to documents. Aradau et al (2015) stress the need to craft new routes in critical security studies in relation to a tendency to "privilege words over things" (2015:58), alongside a need to move away from analysis focusing primarily on the discursive constitution of the security field because it is also constituted "materially" (Loughlan et al, 2015). Buerger and Mireanu go further, suggesting a need for "proximity" and a focus on the operation of practices which are sometimes deeply "oppressive", involving "diffuse and mundane actions and objects". This is viewed as a form of "close engagement with the flow and the infrastructures of the everyday and the mundane,

and those discriminated by security practices" (2015:119). They reflect an interest in concrete, measurable and/or countable elements to provide "materiality" to a research whose outlook is theoretical, but far from abstract. The selected institutional level and document-based analysis avoids close engagement with the people discriminated and targeted by immigration policies, but the systemic means enabling their position to deteriorate and rights to be subordinated to other concerns is examined.

The initial step involves simplification grounded in a need to make developments intelligible. This is unlikely to be achieved in complex fields unless there is a chance to grasp their main drift in order to avoid infinite sidetracks, by accepting complexity (Geyer et al, 2010) and apparent irrationality to achieve a degree of coherence. The proposed route to do so is the expansion or accumulation of state power to assert and implement policy. This may result from a state building effort (at the EU level), from strategies for MSs to maintain sovereignty in certain fields (at the national level) and from states' collective will to coordinate their activities in a given field while allowing themselves margins of action (at the intergovernmental level). Enhanced power(s) and the proliferation and/or intensification of power relations are feasible means of testing such an outlook. It is worth recalling that Agamben's views concerning a "permanent state of exception" linked to homeland security and based on a static view of power, "the structural relation between bare life and the sovereign" (Boukalas, 2014:127), views the extent to which this is revealed as significant. Boukalas highlights the importance of following Jessop's and the SRA's interest in "historical conjunctures", that is, paying attention to "forms of power in their temporality" within the framework of a "double polity managing permanent (actual and anticipated) crisis" (ibid). Analyses on authoritarian statism note the transformative force of the concept "homeland security" (2014:125). Boukalas views a third phase of authoritarian statism emerging at the turn of the millennium on this basis, leading to a shift in "state-form" involving "a radical intensification of the political exclusion of the population, combined with a drastic expansion of coercive state control over society" (ibid). In specific terms, he refers to "vague, open-ended legislation that systematically lifts limitations to executive power"; the judiciary losing control and oversight of the police and its interventions; and the compromising of due process, reversal of the burden of proof and emphasis on "guilt by association" (ibid). These are collectively deemed detrimental to the rule of law and to the legal system's logics and functioning, degraded into an instrument to be "used at will by the administration in its pursuit of its political goals" (2014:125-126).

As was suggested concerning economic governance, reinforced by these observations on homeland security, an underlying theme is that such imbalances undermine competing positive values including the rule of law, solidarity, non-discrimination, human rights and democratic standards. This would make it important to resist the stand-alone management of immigration as a priority and 'technical' pursuit framed within the security and JHA policy fields, and to understand what problems arise from: 1) its definition as a problem; and 2) the way the problem is defined. This task may be accomplished through Bacchi's (2009) WPR [What's the Problem Represented to be?] approach to challenge problem representation in policy analysis using a six-question blueprint to delve beneath the surface and understand "governmentalities" or "governmental rationalities". It means identifying the courses of action they promote and the extent to which these are inevitable, considering official representations of the problem and the prevalent and/or available means of intervention. The existence of immigration policy-specific agencies, programmes, approaches, legislation and action plans enable a straightforward examination of its modes of representation, articulation and intervention (three formal dimensions of the state in Jessop's six-dimensional scheme). The WPR's focus on "problematization" leads to an initial emphasis on "What is the problem represented to be in a specific policy?", followed by analysis of the rationales for proposal, presuppositions underpinning proposed change, silences in understanding what needs to change and likely effects of understandings of problems. Its final question seeks avenues to "question, disrupt or replace" given problem representations. The SRA's attempts to identify and track "structurally-inscribed strategic selectivities" and the WPR's focus on governmental rationalities differ, although they share an interest in blocked systems, ideological and genealogical dimensions of the state and public policy, while seeking ways to challenge them.

Despite their obvious differences, these approaches are not just compatible, but they can reinforce each other in ways that suit this research. Bacchi's six-question approach complements Jessop's six-dimensional view of the state which strives to account for ideological drivers (state project and hegemonic vision) by providing alternative entry points into the rationality employed to achieve predetermined outcomes. The contrast between Jessop's focus on the state as a site of strategy and strategic power, influenced by and affecting elements beyond its limits, and Bacchi's more Foucauldian interest in governmental rationalities in policy, is overcome by the attention both pay to the scope for change and blocked institutional workings. These sometimes materialise as discursive strategies that limit thinking and discussion of possible alternatives, or as plans which, if maintained over time,

may result in what Jessop terms "path dependencies" or "spatio-temporal fixes" (2016: 56, 144-147). Huysmans refers to this as lasting securitization (2006:63) in the context of policies concerning immigration, asylum and refuge framed within a security-minded approach.

Using the JHA aspects of immigration policy, or examining the relationship between immigration and security policies and law in the context of development of EU structures in relation to state sovereignty and member states' attempts to maintain their competencies, is nothing new (Peers, 2011, 2014, 2017; Acosta Arcarazo & Murphy, 2014; Andersson, 2014; Bilgic 2013; Guild, 2009). Likewise, the selected theoretical sources (from Poulantzas to Gramsci and Foucault) establish continuity with Marxist state theory and postmodernism. These are linked by an interest in different forms of power and mechanisms of government and governance whose reach spreads beyond the boundaries and interests of the state. Jessop's theory is a foundation and starting point due to how it bring these sources together in coherent and relevant ways. He explores how forms of what he terms "governance and government in the shadow of hierarchy" (2015:164-185) enable policy analysis to address power as domination. Despite their differences, Bierbricher argues that Foucauldian notions lie comfortably alongside neo-Marxist theory in this context:

"*the governmentality perspective and the strategic-relational approach have to be considered two of the most promising resources for gaining a critical understanding of the state – a task that is as urgent as ever*" (2013:402).

Without wishing to assign excessive significance to national states' sovereignty, Bierbricher stresses that "the national scale and the respective governing apparatuses remain neuralgic points in the newly emerging networks of transnational governance" (ibid).

Despite this thesis' theoretical outlook, operationalising research approaches requires understanding what features can be gauged, certified, measured or counted. This relates to the aim to strengthen theoretical arguments by enabling examination of policy and practice in ways that illuminate their "materiality", both on the ground and in institutional processes. These include the creation and/or reinforcement of specific parts of the state's institutional architecture. The motivation for analysing "structurally-inscribed strategic selectivities" in this field, beyond the research aims and questions, is to understand whether the harmful effects it produces are inevitable given how it is framed, deployed and the stages of its piecemeal development. The SRA's reliance on Gramsci and his focus on principles of variation, selection and retention over time, on the use force and hegemony as modes of domination, and on geographical scope in terms of territory, place, scale and network are suited to this endeavour. Foucault's ideas on biopower, governmentality, governance, archaeology and the microphysics of power, technological advances and interests or influences beyond the state are also important, but the most relevant one in this context is his analysis of systemic effects and expansive dynamics of racism and discrimination as power enhancers. Poulantzas' work on factors pointing to the rise of authoritarian statism (updated to account for later developments and changed contexts) allows to conceptualise why some developments which may appear rational from a state-centred policy development viewpoint can prove dangerous. Bringing these perspectives together to capture the nature and dynamics of European immigration policies and practices for diagnostic purposes requires understanding what can be observed and measured, considering the availability of information beyond the empirical document selection's contents.

UKBA's development is connected to legislation introduced in 2009, the Borders, Citizenship and Immigration Act, whose impact made it a candidate for selection as an item of legislation for the empirical chapters. Two of its predecessors, the 1999 Immigration and Asylum Act and the 2002 Nationality, Immigration and Asylum Act, are pieces of legislation whose analysis also features to outline a chronology of immigration policy development and the sequential emergence of concerns UK governments deemed worthy of addressing. Towards the end of this work's timeframe, the 2014 Immigration Act was passed with the explicit purpose outlined by the Home Secretary, to "create a hostile environment" for illegal migrants in the UK.

As was done for the UK, each of the laws selected for analysis are drawn from different periods after dividing of the 20-year timeframe into four distinct five-year periods: 1995-1999; 2000-2004; 2005-2009; and 2010-2014. Relevant differences include the UK opting out of full membership of the Schengen area (Peers, 2011) and enjoying greater autonomy in its legislative choices, and the frequent treatment of immigration as an emergency in Italy (Vrenna et al, 2011). This resulted in a constant production of ad hoc measures and special procedures. Further, from an EU perspective, Italy is a frontline state at the EU's southern Mediterranean border, whereas the UK is an island state in its rearguard, and this may have significant implications considering the emphasis placed on preventing so-called "secondary movements" at the EU level. The final piece of legislation chosen for Italy is drawn from measures introduced in piecemeal fashion from 2010 to 2014, often in multi-purpose laws which include provisions relevant to immigration policy (funding, regulations for specific categories, fight against certain forms of crime or abuse, etc.). Some acts concern different stages in emergency procedures or corrections to previous normative interventions once they are found to be deficient following judicial scrutiny of cases in which they were applied. This is true of the law selected from the final five-year period. A more recent overhaul of immigration and asylum law enacted in the context of the European Agenda on Migration (2015-2019, ongoing) by interior minister Marco Minniti and justice minister Andrea Orlando (law 46 of 13 April 2017) followed this study's cut-off point. Law no. 129 of 2 August 2011 contains provisions on "*the free movement of EU nationals and the repatriation of citizens from third countries*", to perfect the reception into national law of Directives 2004/38/EC (on freedom of movement) and 2008/115/EC (the returns Directive). It followed the ECJ's 11 April 2011 judgement in *El Dridi vs. Italy* (Case C-61/11 PPU) which deemed that several aspects of the application of law 94/2009 contradicted both the spirit and the letter of Directive 2008/115/EC, resulting in a demand for Italy to comply. It documents a case in which the means available to the "supranational" level (albeit judicial, the ECJ) strove to rein in a MS government's excesses, with a degree of success.

Regarding policy programmes at the supranational level, we already mentioned the three programmes to develop the AFSJ: they are the Tampere Council Conclusions (1999), the The Hague Programme (2005) and the Stockholm Programme (2010). They have already been the subject of research, but not in the way that is proposed here, consisting in the relation between mid-term policy programmes and their systemic effects in terms of power and dynamics, and

their contents' usefulness for diagnostic purposes. Their intrinsic logics, alongside the means and practices by which they are implemented, developed and changed, relaxed and intensified, reveal a lot about strategic selectivities, while their drivers may be rooted in the substantive, more ideological, dimensions of the state. Although these formal measures may help to indicate the direction of travel in terms of the redefinition of rules, rights, powers and the scope for institutional interventions, they are often breached in practice due to emergencies and/or political influence asserted to adopt pragmatic solutions to achieve goals. Judicial proceedings, rulings and sentences offer evidence of this, as do reports by NGOs and interested observers including journalists. In other cases, legislation is directly problematic in terms of its legality and relationship to the rule of law principle, despite political attempts to legitimate certain provisions or to present them as normal.

The choice of these policy programmes was automatic, but selecting other measures at the supranational and intergovernmental levels was harder due to an abundance of measures and plans that could qualify (from directives, communications, conventions and framework decisions to council conclusions, action plans, recommendations, resolutions, common positions, regulations, etc.). This meant using selection based on thematic interests, a wide overview of the JHA aspects of migration policy and balance, with items from each of the 20 years, bearing in mind the timeframe's division into four five-year periods and taking into account preliminary choices outlined above. These themes include Frontex, externalisation, concrete structures and the nexus between JHA policy and migration policies. The 2008 Returns Directive was obligatory for reasons outlined earlier. An attempt is made to provide a narrative account to reflect the concerns of the SRA framework (especially in Chapter 4 on hierarchy and state power(s)) and Bacchi's WPR (in Chapter 5 on governance and strategic selectivities) that focuses on problems and omissions.

Considering that the analysis of empirical documents relies on the SRA (Jessop, 2016) as its primary method, flanked by the WPR (Bacchi, 2009), the former having a broadly Neo-Marxist outlook and the latter more Foucauldian, the choice of documents from an abundant inventory involved the following considerations. The SRA focuses on the setting and development of given approaches to policy and on the strategic and relational impact of the measures, practices, sites, resources and technologies enacted and deployed for such purposes. The WPR is more concerned with asking questions to reveal priorities, assumptions, absences and rationalities. While the SRA applied to government and governance at the national, supranational and

intergovernmental levels allows research to reveal direction and changes in scope regarding both power(s) and its dynamics in a given policy field, the WPR is concerned with presentation, problematization and policy as "problem production" (2009:x). By challenging the "grounding premise" or "presumption" of "conventional approaches to policy analysis" that policy strives to solve social problems, Bacchi suggests

"*that 'problems' are **endogenous** -created within- rather than **exogenous** -existing outside- the policy-making process. Policies give shape to 'problems'; they do not address them*" (ibid).

This chimes with the idea of policies (and the problems they are supposed to resolve) serving other objectives than their purported aims, as Andersson (2014) argues in relation to incremental immigration policy initiatives serving to develop the corresponding business sector (the "business of bordering Europe"). This research hypothesizes that apart from economic interests beyond the state playing a role as drivers of restrictive immigration policies (Jones, 2017), policy plays an instrumental function to justify, develop and roll out the EU's security structures. Specifically, it may frame a problem in such terms that such effects persist and/or intensify over time.

Bacchi questions problematizations through a six-question approach to disentangle the intrinsic nature of policy that may be viewed as a problem questioning rather than a problem solving approach. The WPR shares the SRA's concerns over problematisation, blocked institutional and ideological frames, assumptions and the damaging effects of policy. The six questions used to examine the empirical document selection are (Bacchi, 2009:xii):

"*1. What's the problem represented to be in a specific policy?*
2. What presuppositions or assumptions underlie this representation of the problem?
3. How has this representation of the problem come about?
4. What is left unproblematic in this problem representation? Where are the silences? Can the 'problem' be thought about differently?
5. What effects are produced by this representation of the 'problem'?
6. How/where has this representation of the 'problem' been produced, disseminated and defended? How could it be questioned, disrupted and replaced?"

These questions address the relationship between problem production (Q1) and the rationales for proposal, deep-seated presuppositions underpinning proposed change, possible silences in understanding what needs to change and the likely side-effects of a given understanding of the 'problem' (Qs 2-6). Further, the second part of Q6 mirrors an ulterior motive for this thesis, a concern over viable ways to rein in expansive policy-engineered sequences of problem-solving exercises which may lead in a harmful direction (through what Jessop terms "*path dependencies*"), like an authoritarian drift.

3.3 Materials and treatment

The analysis of legislative and policy documents covers a 20-year period and the three levels it focuses on. For Italy, the legislative acts are the Turco-Napolitano law of 6 March 1998, no. 40 (law 40/1998 hereafter), the Bossi-Fini law of 30 July 2002, no. 189 (189/2002), law no. 94, of 15 July 2009 (94/2009) and law no. 129 of 2 August 2011 (129/2011). The corresponding texts to be examined for the UK are the Immigration and Asylum Act 1999, the Nationality, Immigration and Asylum Act 2002, the Borders, Citizenship and Immigration Act 2009 and the last immigration law adopted within this study's time frame, the 2014 Immigration Act. The timeframe's four-fold division assisted the selection, although it should be considered that the research outlook is that it is not important which specific documents are included because the aim is to provide an overview of JHA aspects of this policy field which, in methodological terms, also ensures replicability.

As far as mid-term policy programmes were concerned and as mentioned above, the Tampere Conclusions (1999), The Hague Programme (2005) and the Stockholm Programme (2010) were necessary inclusions. Regarding special interest categories, from a copious catalogue of potentially relevant documents, Regulation 2007/2004 establishing the EU Border Agency (Frontex) appeared crucial, as did the 2012 Global Approach on Migration and Mobility (GAMM). Another crucial legislative document is Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying TCNs. It sedimented the system compelling states to expel and allowing them to detain TCNs residing illegally in the EU. It also introduced safeguards, at the behest of the EP, into procedures in response to longstanding problems concerning human rights, legality and perceived excesses, documented in official fora, courts of law and by NGOs.

Many initiatives and models in the wide-ranging document selection are intertwined and interact, and the analysis attempts to bring out the relation between them, which also means that some were chosen to illustrate the journey over time of certain concepts. Even an untrained eye will notice that some years are missing from this list (particularly where the year in question is covered by previous selections) and that the selection of texts is heterogeneous in terms of their nature and contents. This relates to the exploratory and experimental nature of this thesis, which also means that it resulted from an informed choice based on an assumption: it was important not to analyse texts in too much detail or with excessively strict criteria, because evidence of strategic selectivities in this policy field is widely scattered. The selection is also

based on theoretical and thematically informed choices, some of whose strands tracked in the three empirical chapters are readily identifiable. They are based on Jessop's theoretical approach, especially his reliance on Gramscian ideas of space, time, conjunctures and, most of all, his concern with "principles of variation, selection and retention" of modes of intervention and with scope in terms of "territory, place, scale and network" (TPSN, see chapter 2).

Different strands followed on the basis of the selected texts include the geographical scope, development and impact of measures for and approaches to controlling migration. This includes technological means and agencies deployed (hence the inclusion of documents on databases -SIS and Eurodac- and agencies). After their initial introduction, these are liable to change, expand their remit, roles, resources, and/or functionalities, or even be stalled or abandoned altogether.

This thesis strives to identify what these empirical materials can tell us about the nature of statehood and the assertion of policies that may be "immanently" harmful, drawing on Jessop's updating of Poulantzas' 1978 outline of the tendencies of "authoritarian statism" to account for later developments. Its key features are:

"1) the transfer of power from the legislative to the executive branch and the growing concentration of power within the executive; 2) decline in the rule of law as conventionally understood plus greater resort to soft law, pre-emptive surveillance and policing and emergency measures; 3) a transformation of political parties from transmission belts that represent public opinion to the administration and, relatedly, from major forces in organising hegemony into vehicles for relaying state ideology and justifying policies to the population; 4) the rise of parallel power networks that cross-cut the formal organisation of the state, involving links among industrial and financial elites, powerful lobby groups, politicians from the 'natural' governing parties, top bureaucrats and media magnates, with a major share in shaping their activities" (2015:488-489).

The official documents selected offer the advantage of being on the record and of not being disputable regarding their validity, as they resulted from either a consensus or institutional processes at a given point in time. A wealth of documentation laden with relevant information on the progress of different forms of intervention under the heading of immigration policy is available, which could shed light on several theoretical debates beyond what is currently the

case. Awareness of this situation is why this exercise is repeatedly referred to as experimental: there is a treasure available for academics who wish to delve in it. Working since the 1990s for Statewatch, which specialises in document analysis monitoring developments at the EU level in relation with those at the national level, the author has been exposed to them for some time, occasionally translating the first available version in English (i.e. the Prüm Treaty). Apart from extraordinary contents that featured in those produced within the framework of immigration policy initiatives, their nature and tone appeared to degenerate in a way that conceives of any limitation to what is allowed to restrict migration as undue interference with migration management. This includes human rights, the rule of law, a duty of solidarity which features in some states' constitutions (including Italy), and principles of non-discrimination. More recently, this instrumental rationality turned against anything which may obstruct or impede the deportation of people classified as "irregular", "illegal" or "clandestine" (term often used in Italy). Beyond this instrumental form of reasoning (or govern-mentality), expansive dynamics in a field that supposedly only affected migrants and borders mean that it is now increasingly impacting on Europeans, on territories outside its external borders and on people who had previously acquired rights. This is seldom considered in theoretical accounts of immigration policy and in politics, producing effects that embody what Palidda (2010, 2011, 2016) has repeatedly termed "ignored insecurities", among which this work theorises that a drift towards "authoritarian statism" may be included.

CONCEPTS KEY

Model	Formal	Substantive		
Hierarchy & state power(s) chapter 4	Representation	Social basis of the state	Strategy	Clarity
Governance & strategic selectivities chapter 5	Articulation	State project	Objectives	Power grab
Government & structures chapter 6	Intervention	Hegemonic vision	Implications	Wrecking ball

3.4 Justifying and clarifying the conceptual model

The conceptual model for the empirical chapters is based on Jessop's six-dimensional view of the state which underlies the SRA's outlook, alongside his formula to account for the functioning and exercise of state powers as "government and governance in the shadow of hierarchy". To highlight the presence of more elements than those that are normally recognised, Jessop points to the "formal" and "substantive" aspects of the state.

Formal aspects include modes of representation, modes of articulation and modes of intervention. The official documents this study analyses relate to this formal dimension, at the levels of policy approaches to tackle "illegal immigration" and the regulation of structures established for this purpose. They are selected from the top institutional echelons rather than

those relating to more technical and operative levels of cooperation to avert criticism of their selection as opportunistic and/or as being hand-picked to support a preconceived thesis. At other levels, the developments and shifts hinted at in these documents, particularly in terms of the relationship between forms of intervention and normative frameworks, are more explicit. At this level, there is scope for change, as various actors are involved in scrutiny and approval.

The substantive aspects provide an entry point to gain understanding of intent by seeking out the vision, ideology and transformative effects that are sought, which may be key drivers of institutional initiatives in a policy field. Such substantive aspects include the social basis of the state, state projects and a hegemonic vision. While these aspects and the measures' power effects are not the story that these documents are meant to tell, viewing them over a mid- to long-term period allows shifts in context and circumstances to shine through, particularly where they take stock of what has been done and propose subsequent steps to enact.

For this study's purposes, official policy and legislative documents provide a formal account of developments in this field. They also offer plentiful evidence of their substance in material terms, among which the focus is on state power at different levels and the powers that descend from it and which authorities are allowed or sometimes compelled to exercise for the purposes of developing the AFSJ or in pursuit of EU states' "common interests".

In more concrete terms, this work foregrounds these documents' informative value and potential for producing knowledge if they are used in a way that enables them to tell us the real story that underlies their representation in substantive terms, without disregarding their formal aspects. This means that the "what" of the detrimental effects of European immigration policies in Europe and beyond over two decades is taken for granted, whereas the analytical focus is structural and systemic, on "how" failing policies continue to be developed destructively.

This requires setting apart the thesis' three theoretical aspects and hypotheses to make sense of the interaction between different institutional levels in this field. These are clarity, to be attained by focusing on hierarchy and state power in chapter 4, a possible power grab at different levels to be gauged by focusing on governance and the strategic selectivities it may promote in chapter 5, and a wrecking ball in terms of government and the structures created to enact and perfect actual implementation in chapter 6.

Thus, each chapter has formal and substantive dimensions.

The formula of "government and governance in the shadow of hierarchy" has three foundations.

1) Clarifying that different modes of coordination operate on the basis of their relative primacy in the political order and of various stakeholders' differential access to institutional support and resources.

2) Governance and government mechanisms operate at different scales, so success on one scale may depend on practices and events at other scales, and there may be issues and disjunctions in temporalities between these respective mechanisms which may hinder coordination.

3) Rather than developments at the levels of governance and government being contradictory regarding the EU, they may be mutually constitutive, with improved government implying enhanced governance and vice-versa. This means that states can use networks to enhance their power to govern, while networks rely on sovereign state power to maintain or create the conditions for effective governance.

Chapter 4 provides an overview of all the selected documents to draw out what they mean in terms of hierarchy, the mode of representation they embody (formal), the social basis of the state (substantive) and their strategy to attain clarity regarding the nature and evolution of state power in this context. It may increase, decrease or take on different forms, while travelling in a specific direction that needs to be identified, in strategic terms.

Chapter 5 examines policy documents, including three five-year plans to develop the AFSJ, Conclusions, Communications, Recommendations, Resolutions and formal policy proposals on "illegal migration", JHA and migration policy and externalisation. Focusing on governance, it analyses their inherent meaning through the proposed modes of articulation (formal), their relation to a state project (substantive) and their objectives to gauge whether the strategic selectivities the documents embody amount to a power grab.

Chapter 6 examines official documents treated as instances of government and actual interventions like the creation of structures and normative frameworks, national laws, EU

Directives and Regulations. Focusing on government, it draws out the modes of intervention (formal) enacted, linking them to a hegemonic vision (substantive) and to underlying implications of their implementation through available structures in relation to existing normative limits that may need to be overwhelmed (the wrecking ball).

CHAPTER 4: HIERARCHY AND STATE POWER(S)

Hierarchy from an SRA outlook refers to uneven power relations, strategic biases that undermine certain groups' position and structural arrangements that affect the nature of policy making and implementation. Empirical analysis of documents in this chapter investigates the relationship between state power(s) and its limits. The power effects resulting from policies pursued over time allows understanding of what hierarchy means in practice. Hierarchy concerns power relations, strategic objectives and their relation to rules, including legal and normative limits. Hierarchy and legally sanctioned state power(s) identify who, or what body, may do what to whom, where, and in what geographical, physical, circumstantial and strategic contexts. Hierarchies divide humanity into ranked categories for which differential treatment applies in procedures to implement policies and the laws, regulations and practices they entail. Chapter 2 included Foucault's view of a population's division into groups ranked hierarchically as a way of enhancing authorities' (the "sovereign") power over subjects.

Relevant aspects of hierarchy and state power(s) shed light on the categories Jessop foregrounds to represent a six-dimensional state with "formal" and "substantive" aspects. This chapter examines the document selection to draw out its meaning in terms of hierarchy and state power(s). Distinguishing between this policy field's formal and substantive aspects is a route to achieve clarity about the nature and evolution of state power(s). Hierarchy may be direct or indirect: some documents define hierarchies; other documents build on, refer to and/or develop practices involving pre-existing hierarchies. State power(s) may increase, decrease or take on different forms, but they may travel in consistent strategic directions that should be identified through what Jessop terms "structurally inscribed strategic selectivities" (chapter 5).

The breakdown of the documentation into five-year periods (as detailed in chapter 3) is shown in Tables 1-4 below.

Table 1. Empirical documents, part 1 (1995-1999)

EUD1	Council Regulation no. 2317/95 of 25 September 1995 (visa list)	3 October 1995
EUD2	Council Recommendation of 22 December 1995 (combating illegal migration)	10 January 1996
EUD3	Council Recommendation of 22 December 1995 (expulsions)	10 January 1996
EUD4	Council Resolution of 26 June 1997 (unaccompanied minors)	19 July 1997
EUD5	Council Resolution of 4 December 1997 (marriages of convenience)	16 December 1997
EUD6	Presidency Conclusions - JHA – Cardiff	15/16 June 1998
NLIT1	Turco-Napolitano law, Legge 6 marzo 1998, no. 40	12 March 1998
PP1	Tampere European Council Presidency Conclusions	15/16 October 1999
NLUK1	Immigration and Asylum Act 1999	11 November 1999

Table 2. Empirical documents, part 2 (2000-2004)

EUD7	Council Regulation (EC) no. 2725/2000 of 11 December 2000 (Eurodac)	15 December 2000
EUD8	EU/ACP Partnership Agreement, Cotonou, 23 June 2000	15 December 2000
EUD9	Council Directive 2001/51/EC of 28 June 2001 (carrier sanctions)	10 July 2001
EUD10	Communication from the Commission to the Council and the European Parliament on a common policy on illegal migration	15 November 2001
NLIT2	Bossi-Fini law, Legge 30 luglio 2002, no. 189	26 August 2002
NLUK2	Nationality, Immigration and Asylum Act 2002	7 November 2002
EUD11	Council Regulation (EC) no. 407/2002 of 28 February 2002 (Eurodac rules)	5 March 2002
EUD12	Council Directive 2002/90/EC of 28 November 2002 (facilitation)	5 December 2002
EUD13	Council Regulation (EC) no. 343/2003 of 18 February 2003 (asylum responsibility)	25 February 2003
EUD14	Presidency conclusions, Brussels 12-13 December 2003, "III. Freedom, Security and Justice"	12/13 December 2003
EUD15	Council Regulation (EC) no. 2007/2004 of 26 October 2004 (Frontex)	25 November 2004

Table 3. Empirical documents, part 3 (2005-2009)

PP2	The Hague Programme: Strengthening Freedom, Security and Justice in the European Union	3 March 2005
EUD16	Communications from the Commission. A Strategy on the External Dimension of the Area of Freedom, Security and Justice.	12 October 2005
EUD17	Council Presidency Conclusions, Part IV and Annex I: Global Approach to Migration: Priority Actions Focusing on Africa and the Mediterranean	15/16 December 2005
EUD18	Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 (Schengen Borders Code)	13 April 2006
EUD19	2008 Council Conclusions annex - European Pact on Immigration and Asylum.	24 September 2008
EUD20	Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 (Returns Directive)	24 December 2008
NLUK3	Borders, Citizenship and Immigration Act 2009, 21 July 2009	21 July 2009
NLIT3	Legge 15 luglio 2009, no. 94 (security package)	24 July 2009

Table 4. Empirical materials, part 4 (2010-2014)

EUD21	Regulation (EU) No. 265/2010 of the European Parliament and of the Council of 25 March 2010 (long stay visas)	31 March 2010
PP3	The Stockholm Programme: An Open and Secure Europe Serving and Protecting Citizens	4 May 2010
EUD22	Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 (EASO)	29 May 2010
NLIT4	Legge 2 Agosto 2011, no. 129 (reception of European norms)	5 August 2011
EUD23	Communication from the Commission, The Global Approach to Migration and Mobility	18 November 2011
EUD24	Regulation (EU) No. 1052/2013 of the European Parliament and of the Council of 22 October 2013, (Eurosur)	6 November 2013
EUD25	Council Presidency Note to delegations on an effective EU returns policy	26 February 2014
EUD26	Council conclusions on EU Return Policy, Justice and Home Affairs Council meeting, Luxembourg, 5 and 6 June 2014	6 June 2014
NLUK4	Immigration Act 2014.	14 May 2014

4.1 Part 1 (1995-1999): hierarchy at the service of state power(s)

Part 1 shows the value of analysing hierarchy and state power(s) jointly because state power(s) and their exercise are means to enforce hierarchical relations between population groups. Identification, documentation and controls enable states to assert hierarchies defined by policy and law. For JHA aspects of immigration policies, the main hierarchical distinction is between insiders and outsiders. In the context of the EU's development and the institution of freedom of movement, the customary hierarchy between citizens and foreign nationals is replaced by a clear distinction between EU nationals and third country nationals (TCNs). TCNs are divided into legal residents and unauthorised entrants or residents, and plans are to integrate the first group and for the others to be either denied entry or caught, detained and expelled. The reason given for developing a restrictive EU border regime is that a common policy againt illegal migration is a necessary corollary of the creation of the Schengen Area of free movement for EU citizens. PP1 foregrounds economic and demographic criteria, the EU and MSs' labour needs and their reception capacity for asylum seekers to calculate the level of immigration that should be allowed.

Hierarchy defines population groups for states to impose differential regimes that entail developing and implementing practices and procedures. Some practices may subject people to the exercise of state power(s) for public policy purposes that strays from ordinary normative frameworks. These include denial of legal status, detention, deportation and the delicate issue of rights that everyone supposedly enjoys. Documents from earlier JHA cooperation between MS ministries are cited as enabling these practices, sometimes providing guidelines, as do laws in several MSs. Human rights are formally acknowledged as having hierarchical prevalence over policy that limits what states may do to people.

The purpose of hierarchies in this field is to restrict mobility for specified categories of people by introducing criteria and preconditions most of them cannot fulfil. Criteria for issuing visas to the citizens of countries for which this requirement is imposed enable discrimination based on nationality in relation to EU, EEA and EFTA nationals, as well as to TCNs whose admission is not subject to entry visas. Differential treatment results from the collective conceptualisation of some third countries' citizens as "immigration and security risks", the priority criteria in EUD1 (see chapter 6.1).

Council Regulation (EC) no. 2317/95 (EUD1) harmonises visa policy by establishing a list of countries whose nationals' mobility into the EU is subordinated to visa requirements. In schematic terms, EUD1's codification of hierarchy may be represented as follows:

1. EU citizens (EEA, EFTA)

2. Third country nationals (exempted from visas)

3. Third country nationals (subjected to visa requirement to cross the EU's external borders)

Each requirement for granting visas in national and/or harmonised procedures EUD1 envisages would enact new hierarchical relations affecting mobility between people who can comply and those who cannot.

Differential treatment is allowed by the inclusion pathways provided in the immigration policy regime's own rules. EUD5's purpose is to subject "marriages of convenience" to checks because they may result in TCNs legally obtaining residence permits and/or leave to enter. Reference to human rights instruments is made to claim that control measures do not violate rights protected by the UDHR and ECHR like "the right to marry and to found a family" (art. 12 ECHR, art. 16 UDHR) and the "right to respect for family life" (art. 8 ECHR).

Like in other documents that recommend or resolve that harmonisation involving the exercise of state power(s) is necessary (EUD2), MSs should introduce checks on specified conditions, or "adopt equivalent measures to combat the phenomenon", if they have not yet done so. EUD5 states that it does not promote "systematic checks" unless cases involve "well-founded suspicions". However, there is nothing to stop mere acquisition of rights for a TCN through marriage being treated as an element of suspicion. This subordinates marriages involving one spouse who may acquire rights from matrimony to those between EU citizens, between an EU citizen and a legally resident TCN, or between two legally resident TCNs.

Part 1 contains evidence of direct creation of hierarchies resulting from positive obligations states must comply with. EUD4 institutes distinctions between categories of TCNs who have entered or reside in EU territory without authorisation to fulfil protective duties regarding minors and in recognition of the specific vulnerability of unaccompanied minors (UAMs). UAMs are TCNs "below the age of eighteen" who entered a MS's territory without an adult responsible for them "whether by law or custom, and for as long as they are not effectively in the care of such a person", and those "left unaccompanied" after entering EU territory. A two-

tiered system results from the protection children are afforded by the 1989 UN Convention on the Rights of the Child (UNCRC). Children enjoy an improved set of safeguards over adults. Under the UNCRC, children's rights must be respected "without discrimination" (art. 2), a child's best interest shall be a "primary consideration" in all actions concerning them (art. 3) and states must provide protection and assistance to minors seeking refugee status or recognised as refugees (art. 22). Protections in the form of legal guardianship, adequate care and child-sensitive asylum procedures are envisaged in EUD4's art. 3 on "minimum guarantees for all unaccompanied minors".

A hierarchical distinction divides TCN UAMs recognised as refugees or registered as asylum seekers from UAMs who entered and are staying irregularly in the EU. This distinction should enable "appropriate protection" for the former and procedures to organise returns for the latter, whose "unauthorized residence… must be temporary". Tensions concern conflicting objectives like states' duties to return illegal entrants and not to return children in violation of their human rights or best interest. UAMs' relatively privileged situation in asylum procedures means that evidence is needed and controls by medical staff may be necessary to ascertain this status (art. 4.3). A further distinction between UAM asylum seekers allows over-16s to be placed in reception centres for adults (4.4d). Returns of UAMs to their COOs, but also to "a third country prepared to accept him" in art. 5 are significant for state power(s), as are provisions made to define conditions enabling this (see chapter 5).

The link between hierarchy and state power(s) is prominent in Part 1 and the definition of categories subjected to differential treatment is a feature of EU immigration policy since its inception. Differential treatment may be for positive purposes like providing safeguards to comply with hierarchically prevalent human rights normative instruments (EUD4), to subject people to restrictive entry regimes (EUD1) or to enhance controls on phenomena like marriages (EUD5). If inclusion in a category has positive effects, checks are introduced to prevent abuses (EUD4, EUD5). Establishing special regimes for protected categories legitimates denial of rights or of capabilities (including mobility) for others. Procedures are necessary to operationalise hierarchies to enable interventions allowing the exercise of state power(s) through legislation, data collection practices and the development of structures. Priorities in Part 1 include a need for identification and documentation to clearly establish identity, and resolving problems in obtaining travel documents from third countries' authorities to enact expulsions. These priorities should be addressed by working on visas and against document

fraud (PP1), through enhanced cooperation with third countries and their consular offices (EUD2, 3, 4, 6 and PP1) and, in extreme cases, use of a unilateral EU "laissez-passer" document for returns (EUD3). TCNs who withhold documents or information to obstruct deportation may be punished, also by using penal measures (EUD2).

EUD2 sets the scope of immigration controls and for the exercise of state power(s) by state and non-state agents as including employment, residence, marriages and social service provision to improve state authorities' control. Control functions are assigned to categories which are neither objects of immigration policy nor agents of law enforcement and immigration control authorities. Checks require enforcing hierarchical relations involving differential treatment for:
(1) EU nationals (including EFTA and EEA country citizens and family members);
(2) foreign nationals who may be suspected of residing illegally; and
(3) foreign nationals who have entered or are residing without authorisation in a MS's territory.

Beyond identity and status, foreignness or foreign appearance thus become pretexts for suspicion to justify controls.

Regarding state power(s), EUD2 includes the power to check documentation that foreigners should carry to prove legality of status in several situations. If a TCN's position is unlawful and if they will or may be detained, a 1992 Recommendation by MS ministers responsible for immigration prescribes conditions for detention and expulsion practices that MSs should follow. Detention should be used to obtain travel documents to expel undocumented migrants, involving COOs' consular authorities if necessary. Penalties which "may fall under criminal law" should be imposed on "Foreign nationals who have deliberately brought about their illegal position, particularly by refusing to supply travel documents". Coercive aspects and acknowledgement of possible resistance to expulsion is accompanied by evidence of MS ministers' role in setting powers they exercise.

EUD2 assigns people in specific situations power over others (TCNs) that affect the latter significantly. The former are subjected to the state's power(s) to compel people to enact control measures they may or may not agree with, accept and/or like to enforce. Authorities and staff responsible for providing benefits, social services and health care should be assigned duties to check people's residence status, also to verify entitlement to services. Expansiveness and the

way in which MSs are urged to apply measures and principles to exercise state power(s) without limits to these measures' extent being provided, are strategic selectivities (chapter 5).

EUD3 instructs MSs to cooperate in expulsions by allowing transit through their territory on request from another MS and asserts their common interest in executing expulsion orders and solving problems including coordination, logistics and document procurement. MSs' right to deny entry to people deemed illegal should be subordinated to a "common interest" in enacting expulsions when MSs order them. This promotes a prevalence of EU interests over national sovereignty to enable "concerted action" between MSs, although responsibility for complying lies with MSs. The system to enact EUD3's principles in practice shows the intricacy of inter-state and EU/MS cooperation.

EUD6 (Cardiff European Council Conclusions) sets intergovernmental priorities during the UK government's presidency in 1998. EUD6 does not foreground immigration policy beyond references to the Amsterdam Treaty (a key passage in the JHA policy field and the AFSJ's development) and the "Action Plan on the influx of migrants from Iraq and the neighbouring region". The Action Plan (AP, hereafter) illustrates tensions between EU border policy to prevent illegal entry and binding international commitments to refugees, their right to flee and seek asylum, and their protection. EUD6's section on enlargement points to hierarchical "system blocks" preventing new MSs from influencing previously developed policy frameworks. EU accession states must comply with the "Copenhagen criteria" (point 63) and adopt the Schengen "acquis". Their progress will be monitored.

Human rights instruments are formally acknowledged as limiting state power(s) through references to the UDHR, the ECHR, the Geneva Convention on Refugees, its Additional Protocol and the UNCRC. The AP conflates immigration, asylum and JHA policies. The AP acknowledges a duty to respect the Geneva Convention by providing a compliant reception system for refugees, but devises ways to prevent people reaching it. Other concerns are subordinated to those for effective external border controls and expansive interventions against "illegal immigration", framed as a fight against "organised crime". EUD6 prioritises fighting irregular migration over the needs of people escaping persecution or conflict, by promoting JHA measures and assisting reception capabilities in regions people have reasons to leave.

The Tampere European Council Conclusions (PP1) mid-term policy programme to develop the EU's Schengen AFSJ consolidates piecemeal developments into a coherent plan for a EU JHA jurisdiction to be enacted by MSs (chapter 5). PP1 provides a basis for countless initiatives in subsequent years to develop the Union "by making full use of the possibilities offered by the Treaty of Amsterdam". PP1's hierarchical aspect is to send "a strong political message to reaffirm the importance of this objective", to do which it "has agreed on a number of policy orientations and priorities which will speedily make this area a reality". This message prioritises the AFSJ's components. PP1's transformative and prospective function sets mid-term strategic selectivities that are crucial for what Jessop terms "state projects". PP1 reiterates the European Council's intention to "place and maintain this objective [creation of the AFSJ] at the very top of the political agenda". The scope of measures in PP1 is structural, to promote EU security, law enforcement, JHA cooperation and integration goals. The AFSJ's four pillars outline objectives whose development is presented uncritically to enable the exercise of state power(s), primarily through the justice system and law enforcement. PP1 transforms developing EU security and JHA structures into an end and a source of authority, with immigration policy at its core.

"Pillar A" aims to develop a common EU asylum and migration policy, conflating these two policy fields. Pillars B, C and D concern "creation of a genuine area of justice", the "Unionwide fight against crime" and "stronger external action". All these pillars are relevant to JHA aspects of migration policy if unauthorised mobility, including refugees escaping persecution, is viewed through a law enforcement lens foregrounding illegal entry and status. The pillars' shared features include strengthening and developing EU state capabilities in the guise of "security" and "justice", viewed as prerequisites for "freedom". External projection of EU JHA policies to assist third states' development is meant to contribute to achieving its own strategic goals. Point 25 of PP1 reaffirms that accession states must develop state power(s) to manage migration regardless of their views. They must "must accept in full that [Schengen] acquis and further measures building upon it", because the "European Council stresses the importance of the effective control of the Union's future external borders by specialised trained professionals".

PP1's strategic selectivities and governance aspects are examined in Chapter 5, but it also concerns state power(s). It welcomes plans to strengthen EU "common foreign and security policy" (CFSP), including development of "a European security and defence policy" for which

a CFSP High Representative was appointed. For the sake of EU citizens and as they supposedly demand, "freedom" (including freedom of movement), must be "enjoyed in conditions of security and justice accessible to all" (point 2). Justice systems in the AFSJ must be accessible to all EU citizens in equal conditions, and harmonisation can stop criminals "exploiting differences" in MSs' judicial systems (5). Common efforts to tackle the threat serious crime poses for freedom and legal rights should involve the "joint mobilisation of police and judicial resources… to guarantee that there is no hiding place for criminals" (6). Freedom cannot be "the exclusive preserve" of EU citizens. It should not be denied to people drawn to it by conditions in their COOs "whose circumstances lead them justifiably to seek access to our territory". Clear principles and guarantees for asylum seekers must underlie common EU policies "on asylum and immigration" involving "consistent control of external borders to stop illegal immigration and to combat those who organise it and commit related international crimes". Policies must comply with the Geneva Convention and enable the EU to "respond to humanitarian needs on the basis of solidarity". Integration policies are necessary for legally resident TCNs (points 3, 4). Substantively, recognition of refugees' and asylum seekers' rights appears to legitimate denying mobility to other migrants.

Pillar A details the components of the "separate but closely related issues of migration and asylum". These are the external projection of EU policy through "partnership with countries of origin" (I); a Common European Asylum System (CEAS, II) that maintains the "principle of non-refoulement" involving clear mechanisms for assigning responsibility; rules for fair treatment of TCNs (III); and "management of migration flows" (IV). Section IV lists priority areas to develop cooperation and mutual technical assistance between MS border control services. Its emphasis is on law enforcement to prevent "trafficking of human beings" and dismantle criminal networks.

Next, this chapter examines legislation adopted in Italy (1998) and the UK (1999), focusing on hierarchy and state power(s). National legislation makes the meaning of EU policy more concrete and lends it materiality. NLIT1 offers evidence of codification of EU policy guidelines into national law, sometimes anticipating measures not yet agreed upon at the EU level. NLUK1 offers evidence of the inherent direction of EU migration policy because it is at a different development stage, builds on a longstanding normative framework, and continues the production of hierarchies and state power(s) to assert this policy field's objectives.

The 1998 Turco-Napolitano law (NLIT1) introduces a comprehensive legislative framework to "discipline immigration" and "norms on the condition of foreigners", replacing the 1990 Martelli law. NLIT1 deals with asylum and refugees, regulating legal entry and economic management of migration by organising entry quotas based on Italy's perceived needs. NLIT1 introduces measures to punish illegal entry, including facilitation, and to regulate expulsions, refusal of entry and detention (see chapter 6). NLIT1's provisions also promote migrants' integration and participation in public life, respect for national and international human rights and asylum standards, and apply constitutional principles forbidding discrimination. NLIT1 provides more favourable conditions for minors to safeguard their rights than EU policy proposes, forbidding the deportation of children if a parent or guardian is not expelled with them. This rules out some prospects envisaged in EUD4 and EUD6.

In terms of hierarchy and state power(s), distinctions between Italian citizens, EU nationals and TCNs are codified into general rules that apply in sectors including health, education, housing and employment. Different statuses and their relative worth are created and applied to TCNs in a range of situations. Beyond a distinction between legal residents and people who live in Italy without authorisation, hierarchies apply to different entry visas and residence permits issued to "foreigners", most evidently between short-term "*permessi di soggiorno*" [residence permits] and long-term "*carte di residenza*" [residence cards].

Different temporary residence permits apply for subordinate, self-employed and seasonal work, for study and family reasons, medical care reasons, and political or humanitarian asylum. Obtaining and renewing each permit requires interaction with public authorities, application to the local police and checks on applicable conditions to issue or refuse issuing a crucial document for TCNs' lives. Before entry, TCNs requiring visas must apply to Italian consular offices in their COOs and this procedure's outcome depends on fulfilling several requirements. Special access regimes apply for social services, healthcare, education, housing and social protection, employment and the possibility of residing legally in Italy.

NLIT1 introduces measures deriving from EU immigration policy including clear distinction between EU nationals and TCNs. For family reunification, NLIT1 introduces checks on social and economic criteria including income, accommodation and the ability for TCNs to support themselves and any family members who may join them. Again, protected rights are sometimes subordinated to other criteria. NLIT1 is balanced despite enforcing consequences deriving from

different legal statuses by establishing detention centres as "centres for temporary stay" (CPTs) to enact expulsions and granting local police chiefs [*questori*] authority to order expulsions. Expulsions may be ordered by the interior minister for public order and national security purposes and by *prefetti* [interior ministry envoys responsible, among other tasks, for security]. Administrative formalities like renewing residence permits institute periodic controls on the formal regularity of various aspects of TCNs' lives. Control functions increase power differentials between people due to their consequences, which partly depend on how people exercise powers entrusted to them.

NLIT1 regulates various types of residence permits, visa issuing, the setting of country quotas, administrative procedures, fines, sentences, border security, border police functions and powers. It provides for deployment of technology, creation of databases, definition of criminal offences, establishment of detention centres and rules governing detention and expulsion. NLIT1 pays attention to formal rights without altering its essence as a law to assert hierarchy enabling the exercise of enhanced state power(s) to check foreigners' compliance with requirements and "discipline migration". Regulatory aspects relevant to government and structures are analysed in Chapter 6.

NLUK1 introduces provisions in different areas of the immigration and asylum system, supposedly to "modernise and integrate it". This entails asserting the dichotomy between "British citizens and those who qualify for entry" and "those who do not", by adopting:

"*a more flexible and streamlined system of immigration control capable of providing an improved quality of service to British citizens and those who qualify to enter or remain in the United Kingdom, as well as strengthening the necessary controls on those who do not*" [explanatory notes, background, 3].

NLUK1 was adopted by a Labour government facing criticism for an increase in asylum applications and public perception that the UK was "a soft touch" in this field, leading to tighter regulation and restriction of entitlements for refugees and asylum seekers. As noted above, some of its measures are innovative and go beyond what EU policy requires. They address new problems like immigration counselling, restrictions for asylum seekers and practices like confiscating vehicles to collect fines or demanding financial security to be granted entry. Measures in NLUK1 include asylum seekers being barred from access to benefits, to be

replaced by food vouchers (£35 per week per adult), dispersal on a "no choice" basis to accommodation around the UK to reduce their concentration in London and the south-east, and speeding up asylum procedures to have them adjudicated within six months. Fines of £2,000 per passenger illegally entering the UK in vehicles are introduced, alongside restrictions and checks on marriages for immigration policy enforcement purposes. NLUK1 regulates immigration advisors by instituting an official register to be held by the Secretary of State [SoS]. A framework is provided to detain asylum seekers, and more immigration liaison officers [ILOs] will be deployed abroad to prevent travel to the UK on forged documents. The powers immigration officers exercise to detain and arrest people are expanded, as are grounds to authorise searches, controls and the seizure and copying of material.

For people who are not in the UK, fast-track appeals are instituted for people denied entry clearance to visit family members. A pilot test is envisaged to introduce a requirement for applicants to provide a financial security before entry clearance is granted. Entry for authorised people should be speeded up through greater flexibility at ports of entry, and the SoS may decree that visas or entry clearance be treated as equivalent to leave to enter. Visa holders would only undergo quick checks on identity, travel documents and entry clearance unless other circumstances have changed. The SoS may decree changes to use new technologies, speed up people's passage through immigration controls and use resources more efficiently.

Provisions on controls at entry ports extend powers to "require advanced notification" about passengers from carriers of the arrival of passengers who are not EEA nationals. "Statutory gateways" will enable information exchange "for specified purposes between the Immigration Service, police and HM Customs and Excise". Further purposes may be specified to create "additional gateways" for information exchange involving agencies that may be set up. Carriers' liability legislation is strengthened to collect "charges incurred by carriers by bringing inadequately documented passengers" to the UK. Civil penalties may be imposed on the people responsible that applies to "all vehicles, ships or aircraft" used for illegal entry. These may be detained until charges are paid for carrying illegal entrants. The SoS will publish a code of conduct for road hauliers to prevent their vehicles being used for illegal entry. Such measures' effects on people's lives at a personal and professional level should not be underestimated.

4.2 Part 2 (2000-2004): legislative and structural developments

Part 1 documents a drive to create hierarchies and establish identity to introduce legal measures and exercise powers to prevent and punish irregular migration across the EU (EUD1, EUD2). There is scant evidence of immigration policy addressing a problem beyond references to EU citizens demanding or requiring effective immigration policies, including measures to prevent misuse of the asylum system by TCNs to enter and stay in EU territory (EUD6, PP1). A common EU policy against illegal immigration is supposedly necessary to implement freedom of movement within the AFSJ for EU nationals and legally resident TCNs (PP1). The hierarchical prevalence of human rights is a recognised limit to state power(s) (EUD1-6, PP1). Governance documents claim formal compliance with rights but often interpret such limits as problems to be solved through coordinated MS action (EUD3, EUD6). PP1 refers to a future European Charter of Fundamental Rights (ECFR) to formally guarantee human rights in a EU jurisdiction for which it substantively promotes expansive law enforcement and migration management inscribed within a JHA model.

The national case studies examine legislation to establish a comprehensive normative framework incorporating EU requirements (NLIT1) and to modify an existing system to improve efficiency, responding to inputs to erode guarantees for protected categories (NLUK2). A principle that emerges from EUD2 is that being foreign or foreign appearance enables differential treatment of legal residents, by amounting to an element of suspicion that someone may be irregularly present in a MS. Information gathering, information exchange and cooperation between state authorities at different levels, including in third countries, are deemed necessary to enhance state capabilities. This policy field's external projection includes deporting people to their COOs or countries that will take them (EUD3, EUD4), cooperation with consular authorities to procure travel documents, and other forms of cooperation. PP1 extends this expansive outlook to defence and foreign policy (CFSP), promoting partnerships with third countries to enhance state capabilities to prevent illegal migration. Improving identification document security is prioritised to establish identity and enforce the effects of status and certification, within and outside the EU.

Part 2 (2000-2004) offers evidence of the assertion of hierarchy to enhance state power(s). EUD [7-15] documents in Part 2 include six binding legislative acts: four Regulations and two Directives. Prioritisation of this policy field's development by PP1 required adoption of EU

legislation and regulation of new structures. The Directives (EUD9, EUD12) instruct MSs to introduce control duties and punishment regimes to prevent unauthorised border crossings, and to introduce criminal offences of facilitation in national legislation. The Regulations (EUD7, EUD11, EUD13, EUD15) establish EU structures, procedures, mechanisms and an agency to assert EU governance in this field. Applying the framework in chapter 3, chapter 6 on "government and structures" examines these binding legal instruments. Their implementation lends "materiality" to policy developments. EUD7, EUD11 and EUD13 operationalise the Dublin Convention system to assign responsibility for examining asylum applications to the first MS applicants enter. EUD15 creates an EU agency to fight illegal migration and develop border controls, Frontex. The balance in Part 1 skewed towards Resolutions and Recommendations to coordinate and harmonise national measures to advance common interests and set common standards. This changes in Part 2 due to legislative efforts deployed in 2000-2004.

Two policy documents and an international agreement offer evidence of the immigration policy field's development strategy (EUD8, EUD10, EUD14). Their relevance for "governance and strategic selectivities" is analysed in chapter 5. EUD8 is a partnership agreement for wide-ranging cooperation between the European Community (EC) and the ACP group of African, Caribbean and Pacific states. EUD10 is a Commission Communication to develop a common policy against illegal immigration. EUD14 contains Council conclusions at a crucial stage in the AFSJ's development, near the end of the framework set by PP1 and before adoption of the Hague Programme (PP2) at the start of Part 3 (2005-2009).

EUD9 (2001) and EUD12 (2002) are binding EU Directives, respectively on carrier sanctions and facilitation that upgrade recommendations promoting harmonisation in Part 1 to the rank of EU law instruments. MSs must introduce provisions requiring appropriate checks on people travelling to the EU and financial penalties to be imposed if carriers fail in their control duties "to combat illegal immigration effectively". In terms of hierarchy, EUD9 subordinates international carriers' commercial and other interests to migration control objectives by coercively co-opting them into enforcing state policies against illegal immigration. Companies and employees are affected because they must undertake control functions, failure to do which entails penalties. Therefore, hierarchical power relations intensify between transport company employees and TCNs. Employees should be cautious when they allow people to travel to the EU.

Regarding state power(s), EUD9 imposes duties on persons and legal entities that are not direct targets of immigration policy, because carriers are means for people to irregularly enter the EU due to the nature of services they provide. Harmonisation to impose control duties by defining offences and imposing financial penalties is binding, although introducing measures or obligations beyond those required by EUD9 is allowed. Guidelines on financial penalties detail minimum and maximum amounts to be paid for control failures by international carriers (3,000-5,000 euros per person). A maximum penalty for lump sums to be paid in the case of large-scale arrivals should be no less than 500,000 euros.

In terms of hierarchy and state power(s), EUD12 requires harmonisation of national provisions to punish activities deemed conducive to illegal immigration or instrumental to accomplishing attempts to enter, transit or reside irregularly in a MS. At the EU level, this contributes to efforts to create the AFSJ to achieve a "common interest" to prevent and combat illegal immigration through "effective, proportionate and dissuasive sanctions". The specified definition of criminal offences, their applicability to "instigation, participation and attempt" to breach immigration law, the nature of sanctions to be imposed and the implementation deadline, are all binding. MSs relinquish their power not to adequately sanction these types of conduct. A margin of discretion is allowed not to punish assistance to commit any of these infringements when the purpose is to lend "humanitarian assistance". This exemption applies in cases of assistance to irregular entry or transit (art. 1(a)), but not to assistance to reside in MSs' territories, despite a provision in article 1(b) stating that such assistance must be "for financial gain" and "intentional" to fall within its definition's scope.

EUD7 regulates a EU structure, the Eurodac fingerprint acquisition and comparison database. Hierarchically, the acquisition of fingerprints and application of the Dublin system assigning responsibility for examining asylum applications to the MS through which asylum seekers first enter EU territory prevails over other considerations. In terms of state power(s), EUD7 requires the systematic taking of fingerprints from asylum seekers, illegal entrants and people irregularly in the EU for procedural purposes to deny data subjects capabilities and agency. A relevant limit to state power(s) for this requirement is that under-14s are excluded, making them a hierarchically privileged category. Registration in Eurodac ensures that TCNs who enter irregularly and apply for asylum in a different MS from the one where they entered the EU may be transferred back to the MS responsible for examining their application. Eurodac represents

an upgrade from secure documentation to establish identity, using unique body features to establish "exact identity" and link TCNs durably to the first MS they entered.

Safeguards provided by the ECHR, the UNCRC and the EU Data Protection Directive (Directive 95/46/EC) apply (premise 17). Principles of "subsidiarity" and "proportionality" (premise 12) apply to EU action in this field, meaning that it should intervene when MSs cannot accomplish the objectives of measures on their own, without going beyond what is necessary for such purposes. In this case, "creation within the Commission of a system for the comparison of fingerprint data to assist the implementation of the Community's asylum policy" cannot be accomplished individually by MSs (12). Although the principles of subsidiarity and proportionality are relevant limits of state power(s) at the EU level, they are hard to implement in the context of ambitious and expansive policy goals in governance documents in Parts 1 and 2.

EUD11 is a technical Regulation that sets rules for Eurodac's operation, as required by EUD7's art. 22(1), on collection, transmission and comparison of asylum applicants' fingerprints using a "computerized fingerprint recognition system". EUD13 is a Regulation on asylum responsibility that includes a hierarchy of criteria to assign responsibility. As Regulations, both are binding legal instruments.

The Dublin Convention system's purpose is to effectively enact EU asylum rules, but fingerprints will be taken from all illegal entrants "apprehended" at the border or caught while "illegally present" in EU territory. This general fingerprint acquisition requirement for TCN irregular entrants embodies the conflation between the policy areas of asylum and illegal immigration, because irregular migrants may later apply for asylum. In Part 1, EUD6 treated asylum seekers and refugees as illegal entrants to justify externalising the exercise of state power(s) to prevent mobility. EUD4 dealt with the protected category of UAMs as both illegal entrants and victims of traffickers to justify denying them entry, enacting returns and to deploy liaison officers abroad to stop them travelling. In this case, asylum seekers are subjected to state power(s) to take their fingerprints, but it is plausible that irregular migrants may apply for asylum, so they too will be fingerprinted. The erasure of data envisaged in EUD7 for people recognised as refugees is postponed in EUD11 until statistics become available about asylum applications filed in different MSs by recognised refugees.

EUD13 establishes criteria and mechanisms to assign responsibility to a MS for examining applications filed in MSs by TCNs. Swift assignment of responsibility should guarantee "effective access" to procedures for determining refugee status to process asylum applications quickly. EUD13 asserts the hierarchical prevalence of the "full and inclusive application" of the Geneva Convention, absolute respect for "the principle of non-refoulement" and the assumption that all MSs are "safe countries" for TCNs. Chapter III defines a "hierarchy of criteria" to determine asylum responsibility. Chapter IV allows MSs to activate a "humanitarian clause" to take responsibility for individual cases. The hierarchy of criteria addresses family relations, UAMs, residence documents and visas, and cases in which documents have been issued in multiple MSs. Yet, the main criterion is that responsibility for examining applications lies with the country of arrival in the EU, to be enacted through systematic fingerprinting and information exchange to enable fingerprint comparisons through Eurodac and transfers between MSs. In terms of state power(s), EUD13 entrenches an approach to prevent mobility. When this does not work, countries at the EU's external borders should become containment zones preventing people from travelling to MSs where they may believe their treatment, support networks or conditions would be best.

EUD15 establishes and regulates Frontex. Its full name, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, reveals an intention for EU agencies not to be viewed as encroaching on MS competences. Frontex should promote border management by supporting and coordinating MS border control activities through information collection and analytical work to enhance operational cooperation and coordination. In this role to prevent illegal immigration, it links the national, supranational and intergovernmental levels.

In terms of hierarchy, Frontex coordinates controls by MSs at their external EU borders to prevent illegal entry without other concerns acting as counterweights, to enable MSs to extend and enhance activities to prevent and fight illegal migration. Frontex embodies the risk of subordinating values and principles in pursuit of single policy objectives through practices that may contravene them. EUD15 defines Frontex's activity as working to assert its role and capabilities by developing an integrated control and surveillance system at external borders to gradually perfect, improve or reinforce "external border management", including an effective return system. MSs should not obstruct Frontex's activities. Article 2(2) is unequivocal:

"Member States shall refrain from any activity which could jeopardise the functioning of the Agency or the attainment of its objectives."

Frontex is a structure exclusively created to improve migration management and promote the assertion of state power(s) in this field. EUD15 formally respects fundamental rights and the principles of the ECFR. Regarding state power(s), EUD15 promotes the use of available capabilities and the creation of new ones if they are necessary as a result of governance failures.

Terrorist attacks near the beginning and at the end of Part 2 were carried out in the United States on 11 September 2001 and in Madrid on 11 March 2004, among others. Without underplaying their impact on JHA governance in terms of conflation between the fight against illegal immigration and tackling the terrorist threat, Part 1 shows that the pre-existing institutional outlook was ambitious and JHA-centred. Nonetheless, earlier presentations of unauthorised entrants as victims of traffickers, smugglers or organised crime in PP1 were added to through identification with a threat.

The EC's dominant role in EUD8, the EC/ACP Partnership Agreement signed in Cotonou on 23 June 2000, is evident. Capacity building and cooperation are deemed instrumental to systemic improvements in third countries. ACP states' "ownership" of their own development strategies to be advanced in partnership is affirmed on a basis of "equality". EC/ACP cooperation sets up a "legally binding system" to contribute to social development, enable more "equitable distribution of the fruits of growth" and establish "joint institutions" in compliance with EUD8's "guiding principles". Its "pivotal" aspects require dialogue and "fulfilment of mutual obligations" (including readmission) arising from this agreement, alongside a commitment to "refrain" from adopting measures which might "jeopardise its objectives".

Regarding state power(s), EUD8 foregrounds two issues. First, the EU extends its policy steering methodology beyond its borders using development aid to pressure third states to secure their compliance and involvement in international governance regimes. Second, EUD8 defines benevolent objectives in many aspects of development, outlining means to achieve them. These objectives require enhancing the capabilities of ACP states' law and order and security structures, including migration management to normalise migration flows, prevent illegal migration and enable returns. In some contexts, these may work against competing values and objectives like developing democratic cultures, non-discrimination and respect for

human rights. Aims to develop market economies based on competition and state capabilities including border management are interlocked. Dialogue is presented as an unproblematic way to steer third countries towards implementing international governance frameworks. For immigration policy, the crucial item in EUD8 is article 13(4), a reciprocal commitment to facilitate the return of irregular migrants to their COOs.

EUD10 is a Commission Communication on the EU common policy on illegal migration circulated in November 2001, at a "crucial stage" for implementing the Amsterdam Treaty and PP1. Previous Commission proposals on asylum and legal immigration make it "necessary to cover also illegal immigration as the missing link of a comprehensive immigration and asylum policy". EUD10 identifies six areas for interventions to prevent illegal immigration: 1) visa policy; 2) infrastructure for information exchange, cooperation and coordination; 3) border management; 4) police cooperation; 5) aliens' law and criminal law; 6) return and readmission policy. This Communication appears overambitious, but it was produced after terrorist attacks that influenced JHA policy.

In terms of hierarchy, EUD10 establishes preventing and fighting illegal immigration as key elements of the EU's common policy on immigration and asylum, embedding it into the JHA policy field to fight terrorism and organised crime. Ominously, EUD10 calls for balancing "compliance with international human rights and obligations" with

"*the right to decide whether to accord or refuse admission to the territory to third country nationals and the obligation to protect those genuinely in need of international protection*" (3.2).

This may lead to human rights compliance being subjected to conditions despite its formal hierarchical prevalence.

Regarding state power(s), EUD10 is transformative for all three levels. At the national level, MS authorities should assert state power(s) by expanding their border controls, surveillance functions and activities to fight unauthorised human mobility. The proposed means of intervention include defining criminal offences and sanctions, improved data collection and exchange by setting up databases, upgrading technologies and creating mechanisms to enact policy on the ground in MSs. EUD10 promotes intensified cooperation between MS authorities and civil society involvement to prevent and fight illegal migration. At the supranational level,

PP1 and the Amsterdam Treaty are deemed to authorise establishing a sprawling JHA field, instrumental for developing the AFSJ. Beyond harmonisation to prevent and punish illegal immigration, EUD10 envisages a European Border Guard (EBG) to promote coordination and cooperation between MSs, and enact "high standard border controls" (4.4). Europol should be involved in activities against trafficking and smuggling. At the intergovernmental level, pathways to develop cooperation and joint initiatives for security purposes are detailed. These may involve cooperation between MSs within the Council based on agreement between a few MSs, or just those affected by a specific event or "phenomenon". EUD10 refers to existing modes of technical and operational cooperation to be developed and/or regulated.

EUD14, the 12 December 2003 European Council conclusions on "Freedom, Security and Justice" (points 17-29), focus on "Management of the EU's common borders" (18-20) and "Control of migration flows" (21-24). In terms of hierarchy, EUD14 lists priorities likely to be acted upon due to consensus among MS governments. For border management, priorities include establishing Frontex, measures against illegal immigration by sea, border control efforts and developments resulting from eastward enlargement. For managing migration flows, they include introducing biometric identifiers for visas and passports, development of the VIS database, progress on repatriations, adopting Directives on admissibility and procedures for asylum seekers, and dialogue with third countries of origin and transit.

NLIT2, adopted four years after NLIT1, came into force under a centre-right coalition government that included parties hostile to immigration and migrants, *Alleanza Nazionale* (AN) and the *Lega Nord* (LN). Their leaders, Gianfranco Fini and Umberto Bossi, drafted law no. 189/2002 of 30 July 2002, on "modification of the norms on immigration and asylum". NLIT2 substantially amends NLIT1, although it maintains its framework. NLIT2's scope is far-reaching and it tightens conditions for TCNs by hardening existing measures and eroding exceptions and limits to the exercise of state power(s). NLIT2 transposes measures arising from developments at the EU level into Italian legislation. NLIT2's three chapters concern immigration, asylum and coordination provisions.

In terms of hierarchy, irregular status is prevalent over any other consideration, rules on entry and residence are tightened and the right to live in Italy is bound and subordinated to employment and contracts. A newly-instituted "residence contract" strictly links residence permits to employment contracts. Employers must ensure that suitable accommodation is available and commit to paying for foreign workers' return to their COOs. This would ensure

that although TCNs may be employed, they should not expect to stay indefinitely, making them vulnerable in relation to employers and increasing power differentials. Employers may also be dissuaded from recruiting TCNs due to these additional burdens. These points are further affirmed by a longer period of lawful residence required to obtain a long-term "*carta di soggiorno*", from five to six years. Provisions envisage expanding the use of administrative detention to enact expulsions and the size of the detention centre estate. The possibility of people acting as guarantors to allow TCNs into Italy to seek employment is removed.

NLIT2's provisions envisage establishing databases and authorities at the local and national levels to coordinate interventions enacted nationwide in areas including the prevention of illegal immigration, border controls and asylum procedures, which NLIT2 develops. As detailed in Chapter 6 on "government", NLIT2 intervenes on perceived loopholes by turning the screw on the issues it touches upon. Tax breaks for humanitarian investments abroad are a concession followed by the subordination of reserved places from annual quotas for work permits to enter Italy to third countries' cooperation in this field by enabling returns and signing readmission agreements. Italian employers requesting permission to recruit foreign workers abroad have to previously submit job vacancies to local employment offices for confirmation that no Italians are available before recruitment procedures commence.

NLUK2, the Nationality, Immigration and Asylum Act 2002, concerns the fields in its title, "international projects connected with migration", and introduces offences of "international traffic in prostitution". NLUK2 supposedly introduces a managed migration model to recognise immigration's contribution to the economy and prevent instrumental use of the asylum system by economic migrants to enter the UK. Provisions relevant to hierarchy include introducing citizenship ceremonies, a citizenship pledge and extending pre-existing linguistic requirements (knowledge of English, Welsh or Scottish Gaelic) to applicants for naturalisation as spouses of British or British overseas territory citizens. Applicants would be tested to prove adequate knowledge of life in the UK. A hierarchical feature relevant to British nationality reflects the UK immigration regime's being older than the Italian one, the legacy of Empire and the stratification this entails. There are six different citizenship categories: British citizen, British overseas territories citizen, British overseas citizen, British National (Overseas), British protected person and British subject (section 4). In the same section (point 2), the SoS is granted powers to deprive people of citizenship for doing "anything seriously prejudicial to the vital interests" of the UK or a British overseas territory. Grounds to revoke citizenship include

obtaining nationality by means of fraud, false representation or concealing material facts. A limit applies if depriving someone of citizenship would make them stateless. Appeals may be heard by the Special Immigration Appeals Commission [SIAC], unless the SoS relied on information that "in his opinion" should not be made public for reasons of national security, relations with foreign countries or the public interest.

Detention centres are re-named "removal centres" in measures to reform detention and simplify removals. The power to remove children born in the UK whose parents entered unlawfully is introduced. Detainee custody officers acting as escorts are granted "a limited power to enter private premises to search persons being taken into detention" (explanatory notes, part 4). The SoS's power to detain extends to cases in which "he" has the power to refuse leave to enter or "the power to set removal directions", or to remove people who use "deception" to obtain permission to stay. Limits are introduced restricting the right to appeal in specified cases. Amendments to immigration procedures include requirements to provide physical data like iris or facial images for applications to remain in the UK. A list of safe countries is established to automatically deem applications by their citizens unfounded, allowing swift processing and excluding appeals.

Accommodation centres are instituted on a trial basis for asylum seekers who request it and are eligible for support, expanding powers to detain them. If they are offered places, refusal to take them, voluntarily ceasing to reside there or breaches of conditions of residence exclude them from other forms of support. Reporting and residence requirements become part of the new asylum system, with compliance failures allowing support to be discontinued. Support is not provided to people who previously applied for asylum in another EU MS, or to asylum seekers who did not immediately apply upon entry in the UK. This risked making asylum seekers destitute. Funding would be provided for a voluntary assisted return programme, including international projects for this purpose. A different order of changes removed provisions allowing discrimination in the exercise of nationality function and differential treatment for illegitimate children in comparison with legitimate ones. A procedure is introduced to apply for a certificate of entitlement of the right of abode in the UK.

4.3 Part 3 (2005-2009): a window of opportunity

Documents in Part 1 (1995-1999) defined hierarchies and the scope of efforts to enforce the exercise of state power(s) for purposes of exclusion in the immigration policy field. There were tensions between immigration policy objectives and legally binding human rights and duties to protect groups including minors and asylum seekers. MSs should cooperate pragmatically to neutralise limits to state power(s) and find out "*what works*" (EUD6) to enact expulsions and establish pervasive immigration status controls. Recognised limits to state power(s) included human rights, asylum obligations and inadequate cooperation by third states to readmit their citizens and introduce policies against illegal migration towards the EU. PP1 linked Part 1 and Part 2 (2000-2004), providing a EU framework that united the immigration and asylum policy fields as part of the AFSJ to enhance state capabilities in the guise of security, justice and freedom. A firm link was established between irregular migration and organised crime. Formal attention for protected categories was used to claim compliance with human rights and legitimate the exercise of coercive state power(s) against irregular migrants, whose mobility should be stifled and criminalised. Expansiveness was prominent in terms of geography, affected population groups and law enforcement practices targeting illegal migration. A lack of institutional concern for actual and potential excesses in the exercise of state power(s) to enforce immigration policy in practice by MSs was evident.

Documents in Part 2 (2000-2004) asserted the hierarchical prevalence of JHA aspects of immigration policy, enhancing their scope. Irregular migrants were identified as challenges from a security viewpoint, adding terrorism to concerns over organised crime. Increasing state power(s) and capabilities to restrict unauthorised mobility, detain and deport irregular TCNs were strategic priorities throughout the 1995-2004 period. Efforts to do so had clear coercive implications affecting third states, TCNs and some EU nationals. In legislative terms, Directives (EUD9, EUD12) against illegal migration extended the subjects liable to incur sanctions to carriers, smugglers and people who assist migrants, their stay and mobility. EU Regulations (EUD7, EUD11, EUD13, EUD15) established a centralised fingerprint database to implement asylum policy and a specialist agency to improve border management by coordinating MS actions and strategies against irregular migration. EUD10 framed expansive JHA activities to combat illegal migration (Commission) and EUD14 firmly set migration policy within a JHA framework as a priority (Council). EUD8 had previously established a

partnership framework for EC/ACP cooperation that showed how development aid was used to involve third countries in activity to restrict mobility and accept readmissions.

National legislation from 1995 to 2004 offered evidence that national laws restricting and criminalising unauthorised mobility entailed serial reproductions of hierarchies to enable differential treatment and exclusion practices. NLUK1 and NLUK2 showed that the UK normative framework was more advanced than that developed for MSs to implement at the EU level. Restrictive provisions governing entrance were complemented by measures to exclude people from asylum procedures, to allow coercive power(s) and limit state support to protected categories with scant means of subsistence. Coercive dynamics were also evident in Italy. NLIT1 was attentive to human rights and constitutional guarantees, acknowledging migrants' potential contribution. Nonetheless, its provisions established hierarchies, codified detention and deportation, and imposed strict controls that were required by EU and Schengen Area membership. NLIT2 codified anti-migrant sentiment through pervasive control measures, a proliferation of criteria enabling exclusion, subordination to employers and obstructed integration. Coercion in relations with third states subordinated their citizens' possibility of legally entering Italy for employment to activities against migration and accepting readmissions.

The EUD documents in Part 3 [16-20] build on the structures and strategies created in Part 2. The authority PP1 provided to develop the AFSJ with immigration policy at its core and strategic choices to externalise EU policies against irregular migration to third countries (EUD10, EUD14, EUD15) fuelled the JHA field's external projection. The governance documents in Part 3 (Chapter 5.3) are a Commission Communication on the AFSJ's "external dimension" (2005, EUD16), Council Conclusions on the Global Approach to Migration (GAM) containing priorities for action in Africa and the Mediterranean (2005, EUD17), and a "European Pact on Asylum and Immigration" (2008, EUD19). EUD18 and EUD20 are binding legislative instruments on immigration policy enforcement practices involving returns and border controls (Chapter 6.3). The Schengen Border Code (2006) and the Returns Directive (2008) are milestones towards creating a coherent EU jurisdiction affecting the exercise of state power(s) by MSs. EUD and NL documents in Part 3 followed The Hague Programme (PP2), the second mid-term policy programme to develop the AFSJ, building on progress to implement PP1 (Chapter 5.3). PP2 frames the developments at the EU level in Part 3.

PP2 reaffirms the hierarchical priority attached to developing the AFSJ as a "central concern of the peoples brought together in the Union" (p. 1). Five years later, in the context of large-scale terrorist attacks, the security of the EU and its MSs "has acquired new urgency", as is "rightly" expected by "the citizens of Europe". Coordination and coherence in the security field between internal and external security aspects are aspects to "be vigorously pursued". The goal of "strengthening" the AFSJ consolidated the link between immigration and security policies:

"Freedom, justice, control at the external borders, internal security and the prevention of terrorism should henceforth be considered indivisible within the Union as a whole." (p. 2)

This second phase in the AFSJ's development conflates policy fields within a JHA outlook and does not recognise EU borders as limits to development of EU "internal security" policy. A need for "partnership with third countries" is deemed self-evident because "Asylum and migration are by their very nature international issues" (p. 5). EU funding should be used to enhance third-state capabilities in priority fields for the EU, portrayed as assistance undertaken in "full partnership". Such partnerships to develop "the external dimension of asylum and immigration policies" (point 1.6) should involve "third countries", "countries and regions of origin" and "countries and regions of transit", including "return and re-admission policy". An ideological drive deems EU strategic objectives hierarchically prevalent beyond its borders, including acknowledgement of migration policy-related "human tragedies". These are not viewed as resulting from restrictive immigration policies. Rather, they are blamed on "insufficiently managed migration flows" and intensified cooperation between states is necessary to prevent "further loss of life" in the Mediterranean. Internally, PP2 promotes far-reaching structural, technological and policy developments (1.7) to improve "management of migration flows" through "border checks and the fight against illegal immigration", "biometrics and information systems" and "visa policy".

As a prospective JHA policy development programme, PP2 views enhancing EU security structures to exercise coercive state power(s) as self-evidently positive and extends this to third countries. PP2 works to neutralise limits by using immigration policy to justify promoting state capabilities beyond its borders. An opportunistic streak is evident in PP2's use of terrorism to assert its objectives. This is compounded by references to the Constitutional Treaty serving "as a guideline for the level of ambition" to develop measures it provides for, to be adopted "as soon as it enters into force" (p. 2). PP2 displays an ill-concealed urgency to take advantage of

a legislative gap to advance operational and technical cooperation practices outlined under the heading "strengthening security" (III.2). PP2 seeks to consolidate the AFSJ by building on achievements from the first phase, addressing new challenges and making full use of the scope provided by a Constitutional Treaty that has not come into force yet. PP2 considers a Commission evaluation endorsed by the Council in June 2004 and a EP opinion of October 2004. These proposed an enhanced role for qualified majority voting (QMV) as defined by art. 67(2) TEC for matters within this policy field's scope. The power of individual MSs to veto measures and initiatives would decrease. However, a shift in state power(s) towards increasing its scope would allow measures to be agreed and acted upon on a wide rather than unanimous consensus among MSs.

Two of PP2's "general orientations" (II) could serve as limits to the expansive development of state power(s) or to mitigate this policy field's excesses, "protection of fundamental rights" and "implementation and evaluation". However, the first case does not recognise that human rights compliance requires states not to violate rights in their activities. Rather, compliance requires ECFR's incorporation into the EU Constitutional Treaty and EU accession to the ECHR, entailing formal legal obligations to respect and promote fundamental rights. PP2 recalls the EU's commitment against "racism, antisemitism and xenophobia", proposing to convert the European Monitoring Centre on Racism and Xenophobia into a "Human Rights Agency" (p. 2). Regarding "implementation and evaluation" of AFSJ measures, PP2 suggests that they should not pose "too heavy an administrative burden" for MSs and the Commission. Rather than challenging measures or their rationale, the goal of evaluation

"*should be to address the functioning of the measure and to suggest solutions for problems encountered in its implementation and/or application*" (p. 2).

EUD16 further asserts PP2's outlook by proposing a strategy on the AFSJ's external dimension, justifying a drive to enhance third countries' capabilities to tackle terrorism, organised crime, illegal immigration and institutional failure. The rationale for expanding the reach of EU security governance (with migration management at its core) is linear:

"*The projection of the values underpinning the area of freedom, security and justice is essential in order to safeguard the internal security of the EU. Menaces such as terrorism, organised*

crime and drug trafficking also originate outside the EU. It is thus crucial that the EU develop a strategy to engage with third countries worldwide" (p. 3).

EUD16's significance concerning hierarchy between the EU and third countries to promote the expansive assertion of state power(s) and capabilities for objectives including the rule of law and phenomena that must be combated, is evident. Two consecutive sentences in section III on EUD16's objectives are striking regarding the rationale underlying EU migration policy. The first sentence welcomes global interconnection:

"*The promotion of free movement within the EU, generally more open borders and increased global integration have added a new dimension to international cooperation.*"

The next sentence asserts the importance of border management:

"*Efficient border management is vital to fight threats such as terrorism and organised crime, while also contributing to good relations between neighbouring states.*" (p. 4)

The start of Part 3 marks a shift. The official account of a need for expansive policies to assert state power(s) at the service of immigration policy as self-evidently necessary, ceases to be coherent. EUD16's section VIII specifies the "next steps" that should be taken. It includes references to a common EU external relations policy. The AFSJ's external dimension should contribute to the internal AFSJ "by creating a secure external environment", advancing "the EU's external relations objectives".

EUD17's Council Conclusions set political priorities for the short term and long-term strategic priorities. Its relevant sections are part IV on a "Global Approach to Migration" (GAM) and annex I, a November 2005 Commission document: "Global Approach to Migration: Priority Actions Focusing on Africa and the Mediterranean". EUD17 makes the cooperation envisaged with third countries more concrete. Supporting development and improving conditions in countries of origin and transit to address root causes of migration are a "long-term process" (point 9). Acknowledgement of "public concern" about "recent developments" at the EU and MS levels results in calls for balance between fighting illegal migration and "harnessing the benefits of legal migration". Stronger dialogue and cooperation on migration should include "return management" (8). The means for achieving objectives involve cooperation and action

between MSs, dialogue and cooperation with African countries and the "entire Mediterranean region", funding and implementation (10).

Annex I raises an "urgent" need for "broad-ranging concrete actions" to:

"reduce illegal migration flows and the loss of lives, ensure safe return of illegal migrants, strengthen durable solutions for refugees, and build capacity to better manage migration, including through maximising the benefits to all partners of legal migration, while fully respecting human rights and the individual's right to seek asylum" (p. 1).

Priority work on trafficking, immigration and readmission with Morocco, Algeria and Libya is proposed, and a distinction appears between "North African and sub-Saharan African countries" relevan to migration routes. Concrete actions to be implemented urgently envisage a prominent role for Frontex to "increase operational cooperation" between MSs. The ambitious proposed actions focus on surveillance, cooperation and structural developments to be implemented with deadlines in 2006. The link between deaths at sea, land and sea routes used for illegal migration, trafficking organisations and the criminalisation of human mobility as a root cause is not drawn. The scale of institutional effort required to address problems caused by prohibition of legal travel for large population groups should not affect policy.

Like PP2 and EUD16 ("Illegal immigration is set to continue", p.4) in 2008, EUD19 acknowledges that achieving the EU's migration policy objectives is an ambitious endeavour. EUD19 points to potentially positive effects of migration for the EU and COOs.

"International migration is a reality that will persist as long as there are differentials of wealth and development between the various regions of the world. It can be an opportunity, because it is a factor of human and economic exchange, and also enables people to achieve what they aspire to. It can contribute decisively to the economic growth of the European Union and of those Member States which need migrants because of the state of their labour markets or of their demography. Not least, it provides resources for the migrants and their home countries, and thus contributes to their development. The hypothesis of zero migration is both unrealistic and dangerous." (p. 2)

An apparent justification for a more permissive approach then justifies restrictive immigration policies, due to the EU not having "resources to decently receive all the migrants hoping to have a better life here" and concerns about "social cohesion" (p. 3). EUD19 then "solemnly" asserts the hierarchical prevalence of EU policy in this field. Although criticism of "zero migration" objectives contradicts dogmatic positions in the political sphere, a contrasting concern is expressed by agreement in the Council to

"use only case-by-case regularisation, rather than generalised regularisation, under national law, for humanitarian or economic reasons;" (p. 7).

Notwithstanding EUD19's discursive balance compared to PP2, EUD16 and EUD10 and five commitments, three of which appear benevolent and two of which concern border controls and irregular migration, the latter two nullify this impression (see Chapter 5.3). EUD19 "solemnly reaffirms" a commitment for migration and asylum policies to comply with international law, on "human rights, human dignity and refugees" (p. 3). However, it overlooks these policies' role in causing human rights violations, within and outside the EU, in the context of border controls, detention, deportation and the treatment of asylum seekers. The arguments it proposes on the benefits of migration are more convincing that the pretexts to continue the proliferation of actions to restrict it. Inclusion of concerns over "social cohesion" point to a choice to accommodate political racism rather than tackle it. A claim that necessary "strengthening of European border controls should not prevent access to protection systems" (p. 11) by people entitled to asylum, contradicts strategic choices in EU documents since Part 1 (see Chapter 5.1).

EUD18 and EUD 20 are binding legislative documents on regulatory frameworks for Schengen border management and to enact an "effective removal and repatriation policy" within a "coherent approach" in the immigration and asylum field. Both involve government activity relevant to hierarchy, state power(s) and their exercise, examined in Chapter 6.3. The Schengen Borders Code (EUD18) consolidates and revises existing rules on internal and external borders. Its most obvious feature is a clear distinction between these two types of borders. For internal borders, EUD18 enacts "the absence of any controls on persons crossing internal borders", an objective of the Schengen Area of free movement (1). Creation of this area is flanked by a "common policy on the crossing of external borders" (2) involving stringent border controls for the benefit of MSs at external borders and other MSs "which have abolished internal border

control". Such controls should contribute "to combat illegal migration and trafficking in human beings" and prevent threats to MSs' "internal security, public policy, public health and international relations" (6). The inclusion of public policy among the items to be protected is significant. Another distinction enacted by EUD18 is between TCNs, and EU citizens and members of their families and TCNs and members of their families from third countries who "enjoy rights of freedom of movement equivalent to those of Union citizens" under agreements between the European Union, MSs and "those third countries". Checks on TCNs will be "thorough" at external borders, whereas those for people enjoying free movement right will involve "minimum checks" under EUD18 (5). Refugees' and asylum seekers' rights are protected in art. 3.

EUD20 establishes a regulatory framework for the treatment of TCNs "who do not or who no longer fulfil the conditions for entry, stay or residence" in a MS (5), as an outcome of the co-decision legislative procedure involving the EP, the Council and the Commission. There are tensions between its objectives. Firstly, it enshrines an unequivocal duty to return irregular migrants involving expulsion orders, detention and deportation regimes into EU law and immigration policy. Secondly, the EP required that limited safeguards be adopted due to evidence of abuses, ill-treatment and questionable practices involving detention and deportation. EUD20 provides a EU legal basis for an "effective removal and repatriation policy" within a "coherent approach" for the immigration and asylum field:

"It is recognised that it is legitimate for Member States to return illegally staying third-country nationals, provided that fair and efficient asylum systems are in place which fully respect the principle of non-refoulement." (8)

The above approach requires a common endeavour to create an EU asylum system, develop legal migration policies and policies to fight illegal immigration. This removal and repatriation policy should formally comply with common standards to return people humanely, respecting their human rights and dignity. In substantive terms, EUD20's application to TCNs "illegally staying" in EU territory allows abundant scope for the exercise of coercive state power(s), despite efforts to include provisions to limit arbitrary detention and provide legal safeguards to vulnerable subjects. Refugee protection obligations apply. In terms of hierarchy, other concerns are subordinated to MSs' right and duty to remove TCNs illegally present in their territory. The limits imposed to state power(s) respond to notorious problematic practices by MSs in their

national jurisdictions. EUD20 prioritises voluntary departure over forced returns involving systematic detention and deportation. EUD20 limits the length of detention (six months, renewable twice), limits the use of detention (with wide-ranging exceptions) and adopts guidelines on returns. Accessory sanctions like re-entry bans would be imposed upon returnees. EUD20 asserts the hierarchical prevalence of the EU normative framework over MS powers regarding practices to end illegal stay, rebalancing the security-minded outlook in Part 3's EUD documents by imposing human rights provisions. EUD20 is binding for Italy but not for the UK, which neither participates in its adoption nor is bound by its application. The UK does not limit the length of detention, which contributed to EUD20 setting a lengthy limit.

NLIT3 converts provisions of a law decree (92/2008) to enhance security and the fight against irregular immigration into a law on public security. NLIT3 establishes a criminal offence of illegal entry and presence in the national territory (previously an administrative offence) to circumvent limits to detention imposed by EUD20, whose scope excludes returns under criminal law. NLIT3 increases the maximum length of detention in CIEs [identification and expulsion centres] to 180 days and punishment for facilitating illegal entry. NLIT3 imposes pervasive controls and stringent requirements on several aspects of TCNs' lives and activities (Chapter 6.3). Mayors, *questori* and *prefetti* are assigned enhanced powers against low-level crime in the guise of activities against "widespread criminality", using a new concept of "urban security". Novelties included the treatment of TCNs not registered in the *anagrafe* as potential "threats for security", empowering *questori* to issue expulsion orders on this basis. Measures are introduced to facilitate TCNs' expulsions by *questori* and to allow expulsions of EU nationals for public order or public security reasons [to target Roma people from eastern European MSs]. Non-compliance with orders to leave constitute a further criminal offence leading to incarceration. Custodial sentences (from six months to three years) are envisaged for landlords renting out accommodation to TCNs who do not have valid residence permits when they sign or renew a contract (art. 1.14).

NLUK3, adopted in 2009 by a Labour government, deals with borders, citizenship and immigration. It defines the legal framework for UKBA officers and officials to "exercise revenue and customs functions" in part 1 on "border functions", expanding UKBA officers' functions involving "tax and non-tax matters". UKBA would focus on border-related matters including imports and exports of goods, with HMRC exercising customs and revenue activities "inland". UKBA is responsible for "physical examinations at the frontier", which HMRC may

request. Synergies between executive agencies are enhanced to enable reciprocal assistance in each other's investigations, enable them to exchange information and to conflate customs and immigration powers. On citizenship or "naturalisation as a British citizen" (s.39-49), qualifying criteria for the SoS to grant citizenship are reviewed to create a points-based system. This system considers the length of the qualifying period during which applicants have been in the UK, their employment records, tests of their linguistic and cultural integration and periods of absence. Application of a requirement to be "of good character" is expanded. On immigration, NLUK3 allows measures restricting people's right to study during their "limited leave to enter or remain in the UK", extends powers to take fingerprints to "foreign criminals' subject to automatic deportation provisions" and extends preventive detention powers to designated immigration officers in Scotland (s.50-52).

4.4 Part 4 (2010-2014): unshifting principles and instrumentality

The documents in Part 1 (1995-1999), Part 2 (2000-2004) and Part 3 (2005-2009) show that despite changes in emphasis, the basic principles of JHA aspects of immigration policies are constant over time in EU documents, mid-term policy programmes to develop the AFSJ and national laws. These principles result in continuous production and assertion of hierarchies and do not contemplate the accumulation or enhancement of coercive state power(s) as potential problems. JHA aspects of immigration policy are continuously promoted despite institutional outlooks sometimes acknowledging that migration policy goals cannot be achieved without significantly altering the global context. The proposed solutions focus on strategic selectivities embodied in policy goals, without offering scope for determining that governance and government frameworks may need to adapt to the world as it is. Rather, the context must be transformed to make comprehensive migration management possible. The selected route to achieve this invariably requires regulation, enhanced state power(s) and enforcing the principle that mobility without authorisation must not occur, globally.

EUD documents from Part 1 assert basic principles of harmonisation in pursuit of MSs' common interests, with structural features to govern migration applied outside the EU, by codifying differential treatment for TCNs resulting from nationality (EUD1). In terms of governance, the emphasis lies on enforcing pervasive controls and punishment regimes coherently in all MSs. These practices affect people who are not direct targets of immigration policy: EU nationals, civil servants, landlords and commercial enterprises. Internal expansion of coercive practices linked to immigration management purposes is flanked by efforts to secure cooperation from third countries to enhance EU and MS capability to enforce their strategic objectives. These amount to effectively deporting people without a right to stay in the EU and to stop people who are unauthorised to enter from arriving, regardless of valid protection claims they may have.

EUD documents from Part 2 offer evidence of how EU MSs' common interests develop into common policies that conflate different policy strands and frame them within the AFSJ, under the JHA policy field's hierarchical prevalence. Apart from being the field in which limits to the exercise of state power(s) are inherently restricted by possible claims of existential security threats and the "*raison d'État*" (see chapter 2), it is a field in which the hierarchical prevalence of MSs persists at the EU level. Part 2 offers evidence of a move from setting common

standards for MSs to implement towards binding legislation that MSs must transpose within specified deadlines, creating concrete EU structures to enact and promote policy objectives.

In Part 3, the priority accorded to developing the AFSJ in the context of security crises comes to resemble a parallel "*raison d'État*" to that existing at the national level, an existential objective in its own right with immigration policy at its core. A security crisis marked by terrorist attacks, urgent development of EU security structures within the AFSJ's framework and a context in which MSs defend their home affairs competences, combine in a drive to assert EU JHA and immigration policies beyond its borders. This drive leads to further conflation between policy fields, as JHA policy merges with defence and external relations policies, to bring internal (law enforcement) and external (military) security under a single framework. Frontex, established at the end of Part 2 (by EUD15), uses its data gathering and analytical functions to influence policy, enhance border management and criminalise unauthorised migration. Frontex analyses' expansive outlook and instrumental rationale affect its structurally-inscribed interactions with the national, supranational and intergovernmental levels. These effects appear in EUD documents that are not about Frontex but refer to its activities and capabilities.

Structurally, Part 3 consolidates long-term objectives. The SBC and a Directive that provides a EU legal basis for practices enacted in MSs to enact expulsions are milestones for the AFSJ. EUD18 abolishes internal borders by removing physical barriers to passage, but allows scope for police controls that do not amount to border enforcement. At external borders, the SBC imposes that TCNs be thoroughly checked. EU citizens and other TCNs who enjoy the right to free movement are subjected to minimal checks that occasionally involve database checks on their documentation. A list of requirements should be checked and may result in denying TCNs entry across the Schengen Area's external borders (art. 5, EUD18). EUD20 asserts the principle that people staying irregularly in the EU must be expelled by MSs to wherever it is possible to deport them. A long list of safeguards and guarantees are introduced to limit the use of detention and forced returns, but several exceptions are provided that restrict the limits imposed on state power(s). NLIT3 exemplifies how applicable exceptions may be used by MS governments to circumvent EU rules. Criminalisation of irregular status could systematically rule out safeguards provided by EUD20 for TCNs and expulsion for security reasons (interpreted widely) bring EU nationals into the scope of return policies. EUD18 and EUD20 enact a EU legal framework to improve practices that MSs had authorised themselves to use at

the intergovernmental level. This effort's success is tempered by the scope for MSs to exercise executive power(s) beyond the limits that are formally set through exceptions.

National legislation from the UK and Italy in parts 1, 2 and 3 (1995-2009) shares many characteristics, including the continuous creation of hierarchies based on grounds evoked to penalise specified groups. These concern rights to enter and remain in their national territory, for which increasingly strict conditions are imposed, and a proliferation of grounds for acquired rights to be withdrawn, including citizenship and legal residence. Different authorities are established to monitor, administer and exercise executive powers, often with significant impact on people's lives, entailing administrative burdens that entail costs and time, negatively affecting peoples' lives.

Documentation in Part 4 (2010-2014) includes binding legislation to regulate long-stay visas (EUD21) and establish structures to support MSs' asylum adjudication practices (the European Asylum Support Office, EUD22) and develop an integrated border surveillance system (Eurosur, EUD24). Policy steering documents include a Commission Communication on the Global Approach to Migration and Mobility (GAMM, EUD23), two documents on the EU's return policy (EUD25, EUD26), and the third and final five-year plan to develop the AFSJ, the Stockholm Programme: An Open and Secure Europe Serving and Protecting its Citizens (PP3). At the national level, NLIT4 transposes EU norms deriving from Schengen Area membership in two Directives, on freedom of movement for EU nationals and on returns (EUD20). Law 129/2011's purpose is to correct irregularities in the enactment of these directives in national legislation, which were certified by the ECJ. NLUK4, the Immigration Act 2014, explicitly aims to limit access to services and capabilities on the basis of immigration status, introducing pervasive status checks in several fields. NLUK4 makes provisions on marriage and civil partnerships involving foreign nationals and expands the grounds for withdrawing citizenship from people "whose conduct is seriously prejudicial to the United Kingdom's vital interests" (introductory text).

PP3 is a five-year programme to develop the AFSJ in this third phase, the last one of its kind. Despite softening the tone in comparison with PP2, PP3 continues to promote the expansive exercise of state power(s) against several phenomena brought together under wide-ranging concepts of security and protection of EU citizens. Its priorities require enhancing mutual trust between MSs in migration management, externalising operational practices and enhancing the

scope for operational action through COSI. The breadth and nature of the proposed actions and interventions reduce the credibility of PP3's parallel emphasis on rights and legality (see Chapter 5.4). PP3's crucial elements for JHA aspects of immigration policy are part 4 on "A Europe that Protects", part 5 on "Access to Europe in a Globalised World" and Part 6 on "A Europe of Responsibility Solidarity and Partnership in Migration and Asylum Matters". The "Internal Security Strategy" (4.1, ISS) subordinates checks and normative safeguards to effectiveness in law enforcement coordination and interventions. Smuggling and trafficking are treated as synonymous to organised crime. Part 7 on "the external dimension of freedom, security and justice" plans to export a security-dominated worldview to third countries, without considering its emphasis on coercion and unbounded state power(s) as problematic, inside or outside the EU. Several headlines and measures point towards openness and rights promotion, including protection for refugees and vulnerable categories, but they are subordinated to border management, and Frontex is assigned an enhanced role. As shown in Part 2 (2000-2004, EUD15) and Part 3 (2005-2009, PP2, EUD17, EUD19), Frontex operates to ensure nobody enters the EU irregularly and promotes control practices to systematically enhance state capabilities to subject migrants to controls, coercion and procedures. Promoting discrimination of sub-Saharans in north Africa is the technical application of scientific analysis focusing on migration routes to enhance migration management. Frontex's route by route analyses intensify the serial production of hierarchies that is evident throughout Chapter 4 (1995-2014) at the EU and national levels. Any data or information available to this agency is used for "differentiation" purposes, portrayed as a tailor-made solutions to benefit different parties (from MSs to countries of transit and COOs).

EUD24, a Regulation from 2013, establishes Eurosur (the European Border Surveillance System) to "strengthen the exchange of information and the operational cooperation" between MSs' national authorities in coordination with Frontex. EUD24 applies Frontex's approach by promoting structural developments on every segment of every external EU border to improve MSs' and Frontex's "situational awareness and reaction capability". The purpose of such activities to provide coverage for 24 hours a day, 7 days a week, are defined as:

"*detecting, preventing and combating illegal migration and cross-border crime and contributing to ensuring the protection and saving the lives of migrants*" (premise 1).

Eurosur's mode of operation (see Chapter 6.3) requires large-scale deployment of technologies, human and material resources to develop a border surveillance system. Like EUD2 promoted the spread of migration controls across MS's territories from border areas in 1996, EUD24 promotes extends border surveillance to "pre-frontier areas" using surveillance technologies. Article 4 outlines the system's framework as comprising several components: "national coordination centres"; "national situational pictures"; "a communication network"; "a European situational picture"; "a common pre-frontier intelligence picture"; and "a common application of surveillance tools" (points a-f).

Binding legislative EUD instruments regulate MS practices regarding the movement of long-stay visa holders (EUD21), amending EUD18 and the Schengen Convention, and establish the European Asylum Support Office (EASO, EUD22), a structure to promote establishment of a coherent CEAS. EUD21 provides that MSs may issue visas lasting longer than three months, not just under national law, but also under EU law according to conditions laid out in Annex VII of the SBC (significant for cross-border workers and minors). EUD21's art. 1 sets a one-year limit for such visas that allow transit through other MSs to reach the MS for which they have a visa. If an MS authorises "*aliens*" to stay for longer than a year, a residence permit should replace their visa before its period of validity expires. Freedom of movement for residence permit holders extends to stays of up to three months in any six-month period in other MSs, provided they fulfil the conditions set in art. 5(1)(a)(c) and (e) in the SBC (see Chapter 6.3). This right extends to holders of a long-term visa issued by a MS in new art. 21(2)(a). EUD21 may be viewed as a measure widening access to the EU Community right of freedom of movement which restrictive national provisions on access to residence permits limited. However, this is subordinated to checks and limitations involving consultation with other MSs and grounds (humanitarian grounds and international commitments) for issuing residence permits in the presence of alerts registered in the SIS (art. 1(3)).

EUD22 seeks to build on common minimum standards to develop a coherent CEAS, reducing continuing disparities among MSs in the granting of protection and "the forms that such international protection takes" (premise 2). Greater harmonisation should be achieved by "strengthening support for practical cooperation" and improving "coordination of operational cooperation" between MSs to promote implementation of common rules by creating EASO (3). EASO should contribute by developing cooperation measures to promote and support solidarity between MSs to benefit MSs whose "geographical or demographic situation" leads

to them facing "disproportionate pressures on their asylum and reception systems" (7). EASO must be independent (8), requires its own "legal personality" and is tasked to cooperate with MSs' asylum services, as well as the Commission. UNHCR, Frontex and the European Migration Network should be involved in cooperation, through information exchange and the pooling of asylum knowledge, including "close dialogue with civil society" (9-12). EASO has three duties in its mandate: contributing to the CEAS' implementation, supporting MSs' asylum cooperation and supporting MSs experiencing "particular pressure" (13). Provisions on technical and scientific independence to enhance the quality of its assistance, including deployment of asylum teams, are mitigated by its managing board's (MB) composition (17), comprising "operational heads" of MS asylum authorities, an Executive Director and the presence of UNHCR as a "non-voting member". The EP must approve the Executive Director's appointment and UNHCR should be involved, but MSs' hierarchical prevalence is structurally-inscribed. So is a duty to cooperate with Frontex (a problematic aspect, considering this agency's structural selectivities). The inclusion of cooperation with international organisations competent in the field of asylum and with authorities in third countries envisaged in EUD22 follows the externalisation route that is prominent in activities to enhance border management and prevent illegal migration (20). The UK participates in adoption and implementation of the EASO Regulation (21).

EUD23 updates the 2005 GAM, one of whose documents outlined priority actions Africa and the Mediterranean region (EUD17). The GAMM frames global governance for migration and mobility around EU policy priorities. State control of mobility is deemed crucial and qualities deemed propitious are that immigration policy should be "integrated", "comprehensive" and "coherent". This outlook is asserted by GAMM's nature as a "**general approach** and **method**" (p. 7, emphasis in the original) which "should not be restricted geographically" (ibid). Enforcing borders for people is a prime concern to restrict TCNs' mobility towards the EU, affecting international movement within Africa, but borders should not limit the externalisation of EU migration policies. Tailored solutions should be sought for different countries and regions to implement the "**principle of differentiation**" (p. 7, emphasis in the original). EUD23 provides a convincing account of potential benefits of migration and of the EU's need for migrants, despite "the current economic crisis and high unemployment rates" (p. 2). The reasons given include job vacancies, an ageing population and skills shortages, as well as potentially "vast **development benefits**" (emphasis in the original, p. 6). Despite emphasizing dialogue and cooperation to find solutions benefiting all parties, an uncompromising hierarchy

of objectives is affirmed in EUD23's "thematic priorities": migration and mobility require "orderly movements", authorised by states.

*"Without well-functioning border controls, lower levels of **irregular migration** and an effective return policy, it will not be possible for the EU to offer more opportunities for legal migration and mobility. The legitimacy of any policy framework relies on this. The well-being of migrants and successful integration largely depend on it. The EU will step up its efforts to prevent and reduce trafficking in human beings. It will continue to improve the efficiency of its external borders on the basis of common responsibility, solidarity and greater practical cooperation. It will also reinforce its operational cooperation geared towards capacity-building with its partner countries"* (p.5, emphasis in the original).

EUD23's balanced self-presentation is undone by these few sentences that outline its purpose, marked by continuity and an expansion of coercive state capabilities and structures to prevent irregular migration, also for migrants' benefit and to combat trafficking.

EUD25, a Greek Council presidency "food for thought paper" to prepare the JHA Council's discussion of EU return policy, defines a problem for which a solution is needed:

"Each year, authorities in the EU Member States apprehend more than 500,000 illegal migrants. About 40% of them are sent back to their country of origin or transit" (p. 1).

EUD25 appears to blame EUD20, which came into force in 2010, for ineffectiveness in enacting returns by MSs. EUD20 is described as fulfilling a dual function. It established

"clear, transparent and fair set of common rules for the return and removal of third-country nationals who do not, or no longer, fulfil the conditions for entry, stay or residence in a Member State, and for the use of coercive measures, detention and re-entry ban" (p. 2).

EUD20 established rules for such practices to be undertaken "while fully respecting human rights and fundamental freedoms of the persons concerned". Compliance with formal obligations is the problem EUD25 seeks to resolve, because

"*it extends the right to non-refoulement to any illegally staying person, where this right was only guaranteed previously for asylum seekers*".

Strategically, what follows is important because human rights compliance is a problem for the strategic objective of removing people from the EU (see Chapter 5.3).

EUD26 is a Council Conclusions press statement on EU return policy from a JHA Council meeting on 5/6 June 2014. Council Conclusions set priorities for action by EU and MS authorities, making them relevant to notions of hierarchy. Combating illegal immigration is deemed a "major migration policy goal". The EU's "comprehensive EU migration policy" includes a "coherent, credible and effective policy with regard to the return of illegally staying third-country nationals". However, this policy requires full compliance with "human rights and the dignity of the persons concerned, as well as the principle of non-refoulement". The link between return and readmission policy is highlighted, recalling their incorporation into the overarching GAMM framework (EUD23) for external aspects of EU asylum and migration policy. A lack of cooperation by returnees, problems in establishing their identity and in obtaining documents from third-country governments are the "main reasons for non-return" (2).

Apart from the human rights standards set by EUD20, EUD26 raises issues of hierarchy regarding efforts to secure compliance by third countries. Readmission agreements, capacity building for returns and readmission in third countries, and increased operational cooperation in joint returns operations by MSs coordinated by Frontex, are considered priorities. EUD26's main feature is coercion and recognition that effectiveness trumps mutual interests, as the word "preferably" in point 4.1 shows:

"*The Council considers that cooperation on return between the EU and third-countries can take place in bilateral, regional and multilateral frameworks and should preferably be built upon shared interests*."

This contradicts the outlooks in EUD8 and EUD23 through explicit reference to cooperation advancing for one-sided motives. The many available frameworks for achieving progress on returns show that, rather than coherence, any means that may succeed will be used. Point 5 of EUD26 proposes that migration and return should be embedded and fully integrated "as a

strategic priority" into EU foreign policy to increase leverage. A pilot project involving "selected third-countries of origin" is proposed to mobilise means in application of the "more for more principle". This involves stimulating selected countries "to comply with their international obligations" (readmission clauses in EUD8), improve return rates and accept the readmission of their citizens who are not, or are no longer, legally in the EU.

NLIT4, law no. 129/2011, is relevant to hierarchy and state power(s) because it is a corrective measure to address irregularities in the way Italy transposed two EU Directives: the Directive on freedom of movement for EU nationals (2004/38/EC) and the Returns Directive (2008/115/EC, EUD20). The remedies include setting limits to the means through which NLIT3 sought to instrumentally neutralise the effects of EUD20. An expansive concept of people to be expelled for reasons of "security of the State" (extended to EU nationals) is limited and more clearly specified in NLIT4, and the doubling of the standard duration of detention in CIEs from thirty to sixty days is reduced to 30 days. Despite these remedial measures that affirm the prevalence of EU standards over national laws, NLIT4 certifies a slippage of standards towards an expansive use of coercive state power(s) and includes examples of insubordination (the maximum length of detention after renewals of the initial period was raised).

NLUK4's contents offer evidence of the tenor of a law adopted under a Conservative-Liberal Democrat coalition government to create a "hostile environment" for illegal migrants, as stated by Theresa May, the then Home Secretary. NLUK4 shows the lengths MSs may go to in activities to enforce restrictive migration policies. The protection of the UK public and society is prominent, despite evidence that UK citizens will be affected by some measures, particularly if they have dealings or personal relations with TCNs or are deemed to look foreign (see chapter 6.4).

Provisions affecting the right to family life (art. 8 ECHR) make the hierarchical prevalence of human rights, a formal limit to state power(s), conditional by introducing "public interest considerations" as counterweights (s. 19). Maintaining "effective immigration controls" is an important public interest. Therefore, people seeking leave to enter or remain speak English should be "financially independent", because such conditions make them "less of a burden on taxpayers" and "better able to integrate into society". Regarding possible impediments to removal, remarkable instructions require that "little weight should be given" to certain factors.

Such factors include "a private life" and "a relationship formed with a qualifying partner" when the person in question's immigration status was unlawful, and "a private life established by a person at a time when the person's immigration status is precarious". The implications are staggering, amid clear evidence that negative repercussions for qualifying partners (UK or EU citizens and TCNs with residence rights) are contemplated and accepted as being in the public interest. Exceptions apply when "the person has a genuine and subsisting parental relationship with a qualifying child" and it would be "unreasonable to expect the child to leave" the UK. Further provisions are made for cases involving criminal offending (Chapter 6.4).

CHAPTER 5: GOVERNANCE AND STRATEGIC SELECTIVITIES

Governance from an SRA outlook "refers to mechanisms and strategies of coordination in the face of complex reciprocal interdependence among operationally autonomous actors, organizations, and functional systems" (Jessop, 2016:166). Governance includes the expansive development of supranational regimes, partnerships and "more localized networks of power and decision making". It works to reduce complexity "through selective sense and meaning making" to make governance tasks achievable by "isolating certain relations for attention". Governance is based on the notion that state power is not only exercised "through coercion, command, planning and bureaucracy, but also through networks, partnerships, appeals to solidarity, and so on" (Jessop, 2016:167). Analysis in this area is guided by Gramsci's concern with evolutionary principles of variation, selection and retention of specific modes of intervention (see chapter 2).

Chapter 5 examines three mid-term plans to develop the AFSJ, Recommendations, Resolutions, Conclusions, Communications, the EU/ACP Partnership Agreement and a Council Presidency note. The focus is on their contents, the strategic choices they promote and the developments they reflect. These concern the modes of articulation (formal) the documents propose, their relation to a state project (substantive) and their objectives, to gauge whether their strategic selectivities amount to a power grab. A state project supposedly secures a state's operational unity and capacity to act, which is significant for the SRA because it helps to overcome the improbability of a unified state system by orienting state agencies.

Identifying strategic selectivities enacted through governance in this field means isolating pathways for action that are created and directions in which margins for agency are blocked. The strategic steering role of EU policy making makes these documents entry points to capture the essence of the EU state project in terms of the possibilities provided to exercise state power(s).

The breakdown of the documentation into five-year periods (as detailed in chapter 3) is shown in Tables 5-8 below.

Table 5. Empirical documents, part 1 (1995-1999)

EUD2	Council Recommendation of 22 December 1995 (combating illegal migration)	10 January 1996
EUD3	Council Recommendation of 22 December 1995 (expulsions)	10 January 1996
EUD4	Council Resolution of 26 June 1997 (unaccompanied minors)	19 July 1997
EUD5	Council Resolution of 4 December 1997 (marriages of convenience)	16 December 1997
EUD6	Presidency Conclusions - JHA - Cardiff	15/16 June 1998
PP1	Tampere European Council Presidency Conclusions	15/16 October 1999

Table 6. Empirical documents, part 2 (2000-2004)

EUD8	EU/ACP Partnership Agreement, Cotonou, 23 June 2000	15 December 2000
EUD10	Communication from the Commission to the Council and the European Parliament on a common policy on illegal migration	15 November 2001
EUD14	Presidency conclusions, Brussels 12-13 December 2003, "III. Freedom, Security and Justice"	12/13 December 2003

Table 7. Empirical documents, part 3 (2005-2009)

PP2	The Hague Programme: Strengthening Freedom, Security and Justice in the European Union	3 March 2005
EUD16	Communications from the Commission. A Strategy on the External Dimension of the Area of Freedom, Security and Justice.	12 October 2005
EUD17	Council Presidency Conclusions, Part IV and Annex I: Global Approach to Migration: Priority Actions Focusing on Africa and the Mediterranean	15/16 December 2005
EUD19	2008 Council Conclusions annex - European Pact on Immigration and Asylum.	24 September 2008

Table 8. Empirical materials, part 4 (2010-2014)

PP3	The Stockholm Programme: An Open and Secure Europe Serving and Protecting Citizens	4 May 2010
EUD23	Communication from the Commission, The Global Approach to Migration and Mobility	18 November 2011
EUD25	Council Presidency Note to delegations on an effective EU returns policy	26 February 2014
EUD26	Council conclusions on EU Return Policy, Justice and Home Affairs Council meeting, Luxembourg, 5 and 6 June 2014	6 June 2014

5.1 Part 1 (1995-1999): expansiveness, ideology and circumventing limits

Chapter 4.1 shows that documents from Part 1 offer evidence about the relationship between hierarchy and state power(s) as an inherent feature of immigration policies. This policy field's priority to develop harmonised practices and measures entails expansive enforcement of the effects of hierarchy, geographically and in terms of the people affected by grounds to justify discriminatory institutional practices. MSs should coherently adopt measures to implement common policies in pursuit of common interests. PP1 expresses an intergovernmental consensus for MSs to enhance their capabilities and power(s) by developing the AFSJ, a project whose regulation they are entrusted and will be legally bound to comply with. Limits to state power(s) deriving from human rights are hierarchically prevalent, but limits to what states may do to people are considered problems to be solved.

In terms of governance and strategic selectivities, Part 1 (1995-1999, EUD docs. 2-6, PP1) provides empirical evidence of interventions by MS authorities that are deemed necessary. These take the form of Recommendations (EUD2-3), Resolutions (EUD4-5) and Council conclusions (EUD6 and PP1). EUD3-6 deal with specific issues, whereas other documents offer insights into this policy field's general outlook. EUD2's recommendations for MSs to harmonise "means of combating illegal migration and illegal employment and improving the relevant means of control" and PP1's programme to develop the AFSJ are examples of the latter case. The remaining documents deal with cooperation between MSs to enact expulsions (EUD3), the situation of UAMs (EUD4), preventing marriages of convenience (EUD5) and limiting the "influx of migrants from Iraq and the neighbouring region" (EUD6).

EUD2's ideological dimension is explicit. It calls for central and local authorities responsible for social service provision to be informed "of the importance of combating illegal immigration" (point 4). Proactive reporting of breaches detected "in the course of their work" by employees is encouraged. The targets of immigration policy enforcement expand to include people who engage with TCNs. EUD2 requires drawing "attention of the authorities responsible for issuing residence permits… to the risk of marriages of convenience" (premise 4). Employers must be drawn into activities to control foreigners by checking residence documents and, if necessary, contacting authorities (5). Employers of TCNs residing illegally should be subjected to "appropriate penalties" (6), meaning that fines and/or criminal charges

may apply to people who are not direct targets of immigration policy for not complying with control duties or profiteering from people's irregular status.

PP1 has an ideological dimension that Jessop identifies as an entry point to understand the exercise and nature of state power(s) using the concepts of "state project" and "hegemonic vision" pertaining to the substantive dimension of the state. PP1 plans the creation of a coherent EU-wide jurisdiction. Efforts towards alignment do not appear geared to improving police and judicial practices in MSs, but rather, to ensuring mutual recognition and cooperation by presuming compliance with relevant standards. PP1 promotes "a common EU migration and asylum policy", "creation of a genuine area of justice", the "Unionwide fight against crime" and "stronger external action".

Contrary to references to the Vienna Action Plan and the Tampere Conclusions as synonymous in later documents (Part 2), the former's statement that asylum and immigration were separate fields

"*33. The measures to be drawn up must take due account of the fact that the areas of asylum and immigration are separate and require separate approaches and solutions.*",

was followed by PP1's effort to conflate them

"*10. The separate but closely related issues of asylum and migration call for the development of a common EU policy to include the following elements.*"

The immigration policy field's expansiveness is prominent in Part 1. Expansiveness affects immigration policy's scope, targets and the definition of duties, criminal offences and penalties people may incur for non-compliance upon EU nationals. Co-opting groups by assigning state and non-state actors immigration control functions to make checks pervasive beyond border areas is noteworthy in geographical terms because controls spread beyond border points and international transport hubs. Another geographical aspect is the external projection of EU policy through cooperation with third countries to enact returns, prevent unauthorised departures and enhance third states' reception and migration management capabilities. PP1 consolidates piecemeal developments in the asylum and immigration fields into a coherent immigration and asylum policy, setting both these fields squarely within JHA policy.

EUD2's ten recommendations outline MSs' responsibility to establish checks to find and expel TCNs who live or work in the EU without authorisation as a matter of common interest involving cooperation between MSs. Although some MSs experiencing an "increase in illegal immigration" have adopted measures to control flows and avoid people's "continued unlawful presence in their territories", effective action requires coordinated and consistent measures. Noting the existence of "guiding principles for practice" regarding expulsion, EUD2 calls for their reinforcement through "alignment" and "principles designed to ensure a better check on the situation of foreign nationals present within" MSs. Regarding strategic selectivities, it is considered detrimental for MSs' common interests if any MS fails to introduce the recommended measures. EUD2 does not set clear limits on how far MSs may go to achieve immigration policy objectives beyond general human rights compliance premises.

EUD2's guidelines outline how MSs should enact comprehensive control systems in practice, through government, within a harmonisation process to enforce rules on "entry, residence and employment". EUD2 recommends the routine use of identity and immigration checks beyond their obvious field of application by border authorities to control people entering and leaving EU territory (1). Access to employment, health and social services should be subordinated to TCNs' regular status. EUD2 systematically prioritises fighting illegal immigration over other concerns. Scope is provided to target people engaging with TCNs (irregular or not) by employing them, who must enforce immigration controls by checking residence statuses and become liable to incur penalties for non-compliance. Prescribed means of intervention include identity checks, centralised collection of information by promoting automation and collection of relevant records, alongside implementation of norms on detention and expulsion. These measures increase the effects on people's lives and pervasiveness in society of identification and permits in different contexts, situations and geographical spaces.

PP1's ambition is unsurprising for a project to develop and sediment goals to create a harmonised EU jurisdiction based common police, judicial, border control, foreign policy and security structures. PP1 contains elements that clash or could evolve in conflicting directions. One side concerns integration, respect for legal migrants' rights in the EU and commitment to providing asylum to refugees, while another aspect focuses on border controls and the fight against illegal immigration. Point 7 of PP1 claims that the AFSJ "should be based on the principles of transparency and democratic control" involving dialogue with civil society on

AFSJ aims and principles. However, rather than incorporating civil society input in policy making, this dialogue is meant "to strengthen citizens' acceptance and support".

PP1 consolidates developments in JHA cooperation, coordination and harmonisation into a mid-term programme. Developments promoted through informal cooperation involving law enforcement authorities and interior ministries later coalesced through JHA cooperation within the Council into the AFSJ, as a prospective, coherent, structural and systemic whole. PP1 reflects a transformation whereby "nexuses" established between different policy areas are used to neutralise limits to state power(s), based on "security" being a prerequisite for "freedom". "Justice" is represented as the expansion of law enforcement and judicial powers within and across borders to counter any conceivable threat, including those arising from cross-border activities. In PP1, justice entails progress in judicial cooperation, mutual recognition of judicial decisions, adoption of EU legal instruments and establishing Eurojust as the EU's public prosecution service.

The common EU asylum and migration policy promotes partnerships with COOs to tackle root causes of migration including poverty and human rights compliance by promoting "co-development". The CEAS should guarantee "full and inclusive application of the Geneva Convention", including minimum reception standards, procedural conditions and a subsidiary protection system. The Eurodac fingerprint comparison system will swiftly assign MSs responsibility for examining asylum claims. This pillar concerns fair treatment of TCNs residing legally in the EU through integration policies, and by granting long-term residents comparable rights to EU citizens and forbidding discrimination. National legislation regulating TCNs' admission and legal residence should consider economic and demographic data to plan rational admission policies based on labour needs. Conditions in COOs should be examined, considering "not only the reception capacity of each Member State, but also their historical and cultural links with the countries of origin (point 20)".

External action required to manage "migration flows" includes information programmes on legal avenues for migration, cooperation with countries of origin and transit, a "common active policy on visas and false documents" involving consulates and the prospect of "common EU visa issuing offices" (22). EU legislation against illegal migration, trafficking and exploitation should introduce "severe sanctions against this serious crime". MSs should coordinate law enforcement actions through Europol to detect and dismantle criminal networks (23).

Cooperation, closer mutual technical assistance, exchange visits and technology transfer between MS border authorities are advocated, especially for sea borders (24). Assistance to third countries should promote voluntary returns, "strengthen their ability to combat effectively trafficking in human beings" and support their "readmission obligations" (26). The Amsterdam Treaty empowered the European Community to "conclude readmission agreements or to include standard clauses in other agreements between the European Community and relevant third countries or groups of countries" (27, see EUD8).

PP1 portrays unauthorised migrants as victims of smuggling and trafficking networks that exploit them. It heralds expansive border controls and activities against trafficking and smuggling, viewed as means for unauthorised migrants to enter EU territory. Here, it becomes important to verify whether this fight is against "traffickers" and "smugglers", or against unauthorised migration or mobility as such. Linking effective border controls and readmission agreements to development aid resembles coercion to impose EU policies on third countries. Although PP1's general outlook subordinates entry to the EU's labour needs and reception capacity, no evidence is offered to suggest that migration outstripped either of these to constitute a problem in 1999.

EUD3's functions are rationalisation, removing practical and logistical obstacles to returns, and resolving issues of identification and travel documents to enact returns. A Recommendation by MS ministers responsible for immigration allows transit for expulsion purposes. To "secure better control of migratory flows" and prevent illegal entry and residence, better coordination of measures adopted by MSs should contribute to "the effective carrying-out of expulsion measures". To expel people who do not have travel or identity documents, EUD3 sets principles with a view "to cooperation in the procurement of the necessary documentation" (points 1-4), "to cooperation in carrying out transit for expulsion purposes" (5) and "to concerted action in carrying out expulsions" (6).

EUD3's strategic objective is to remove people residing illegally in MSs. Governments should implement mechanisms to "improve the procurement of the necessary documentation", involving consular authorities of third countries to which TCNs "are to be expelled" (1). Consular authorities of third states with which MSs "experience repeated difficulties" in "procuring documentation" should be prompted to identify "persons to be expelled" (2a). This may require "issuing repeated invitations" to visit and identify TCNs in detention centres for

documentation purposes (2b) and "urging" them to issue valid travel documents to enact expulsions (2c). "Presumption" of nationality should be used "in the first instance" (3). When travel documents cannot be obtained using these means, MS governments should issue a "standard travel document" adopted in November 1994 by the Council (4). This is an invitation to devise bilateral or unilateral solutions for expediency and foregrounds non-cooperation by third states and migrants as problems. The idea that MSs must be able to deport people even if they are undocumented or if third countries do not cooperate points towards coercion. Using "*presumption*" of nationality as a basis for action contrasts with the need for proof, checks and secure identification applied to TCNs.

EUD3 recommends enhancing cooperation between MSs to allow "transit for expulsion purposes" (5). Provisions concern escorts if expelling MSs deem them "essential" (b-c). Expelling MSs may request that MSs which authorise transit take "the necessary measures… to ensure departure to the place of destination" (d). If an expellee refuses to embark, the MSs involved are invited "in accordance with their laws and lest expulsion prove impossible to carry out" to consider "availing themselves of, or seeking to establish, the appropriate legal machinery for enforcing expulsion" (e). If "the expulsion measure cannot be carried out", the MS that allowed transit may return a TCN to the expelling MS (f).

EUD4's scope are UAMs who are TCNs. Guidelines for UAMs include conditions on their reception, stay, return and child-sensitive procedures for asylum seekers, "without prejudice to more favourable provisions in national law". Despite protection of minors' rights and the prevalence of their best interest, EUD4 develops strategies to allow MSs to return them to their families, to family members who can take care of them, to their COOs or even to other third states. Detailed measures include safeguards UAMs enjoy as minors, including for asylum procedures. An annex on trafficking in minors includes actions that may be taken to prevent them departing. MSs should refuse admission to UAMs who do not have the documents and authorisation needed for legal entry, although a Resolution on Minimum Guarantees for Asylum Seekers applies to asylum applicants. EUD4 reiterates that MSs must adopt measures to prevent unauthorised entry, illegal entry and illegal residence.

Art. 3 sets minimum guarantees for UAMs, including swift identification of their status through means including age-sensitive interviews. Early information enhances "the prospects of reunification of the minor with his family in the country of origin or a third country". UAMs

are entitled to protection and social care, and MSs should try to find their family members or identify their place of residence for reunification purposes. EUD4 requires that UAMs be represented by a legal guardian, an organisation responsible for their well-being or other forms of representation which must ensure their legal, social, medical or psychological needs are met. UAMs should have access to education if they are likely to spend "a prolonged period" in a MS, and receive "appropriate medical treatment" for their "immediate needs". Special assistance, medical or otherwise, should be provided if UAMs have suffered or experienced forms of neglect, exploitation, abuse, torture, cruel, inhuman or degrading treatment or punishment, and armed conflicts.

In asylum procedures (art. 4), UAMs' needs and "vulnerable situation" require that their applications be dealt with urgently. Unaccompanied asylum seekers claiming to be minors "must produce evidence" of their age. Otherwise, MSs may entrust "qualified medical personnel" to undertake objective age assessments, subject to consent. During procedures, UAMs should be placed with "adult relatives", "a foster-family", "in reception centres with special provisions for minors" or in other accommodation for minors where they may "live independently but with appropriate support". Over-16s may be placed in "reception centres for adult asylum seekers". At asylum interviews, UAMs "may be accompanied" and interviewers must be qualified and experienced to deal with them. In asylum assessments, allowance should be made for UAM's "age, maturity and mental development", considering that they "may have limited knowledge of conditions" in their COOs. "Long-term arrangements for accommodation" should follow the granting of refugee status or other forms of "permanent right of residence".

Options to return UAMs (art. 5) to their "country of origin or a third country prepared to accept him" are envisaged if adequate reception and care are available upon arrival, provided by their parents, adults who will take care of them, "or by governmental and non-governmental bodies". If such conditions cannot be met, "Member States should in principle make it possible for the minor to remain in their territory". EUD4 seeks to open pathways to enable returns of UAMs, some of which are troubling. These possibilities include "re-uniting unaccompanied minors with their families" in their COO or where their families are staying, or cooperation with authorities in their COO or those "of another country" to find "appropriate durable" solutions. UNHCR, UNICEF and NGOs are agents who could certify compliance with guidelines on UAMs or "ascertain the availability of reception and care facilities" in destination countries to

enact returns. The implications are chilling, although returning minors is subordinated to compliance with human rights. The possibility that having left their families and COOs may mean that return to either of them may not be in their best interest is not contemplated.

EUD4's annex addresses the need to 1) combat trafficking in minors and 2) prevent illegal entry. In the first case, "the particular vulnerability of minors" requires cooperation between MSs to "take all measures to prevent and combat the trafficking and exploitation of minors". In the second case, to prevent UAMs arriving without authorisation, MSs may take measures to "collaborate with competent authorities and bodies" in departure countries, with airlines, and deploy "liaison officers". "Observation at airports" of flights "from sensitive countries" is recommended, and "international obligations including carriers' liability legislation" should be applied when TCN UAMs without authorisation to enter the EU arrive. The vulnerability of UAMs and hierarchically prevalent obligations towards them are used to expand and lend urgency to efforts to stop them arriving, supposedly for their protection. Control measures to prevent UAMs leaving for the EU share features with strategic aspects of EUD6 to prevent refugees leaving their region of origin to neutralise MSs' obligations towards them.

EUD5 requires that marriages involving a TCN who would acquire rights through marriage to a EU national or a legally resident TCN be subjected to controls, because marriages of convenience may be used instrumentally to circumvent "rules on entry and residence for third-country nationals". MSs should "adopt or continue to adopt equivalent measures to combat the phenomenon". EUD5 imposes checks on marriages in cases involving "well-founded suspicions". MSs may check if suspicions are confirmed before a marriage or before granting related residence permits.

Factors leading to suspicion (point 2) include a couple not cohabiting, a spouse not contributing appropriately to responsibilities resulting from marriage, spouses not having met, spouses providing inconsistent answers about each other's personal details, circumstances of their meeting or important personal information, and them not sharing a common language. Information may be obtained from statements by the spouses or third parties, written documents or inquiries. In cases involving suspicion, issuing residence permits is subordinated to checks (including separate interviews). If a permit has been issued, authorities may withdraw, revoke or not renew it, if they believe a marriage to be of convenience.

EUD6's annex conflates the immigration, asylum and JHA policy fields by conceptualising unauthorised migration as organised crime (smuggling or trafficking in human beings). It applies to people fleeing conflict and/or persecution in Iraq and the neighbouring region. The Action Plan's points A-D focus on keeping people at a distance, where possible, and improving reception conditions if they are already in the EU. Concerted efforts are necessary to exchange information on decisions, criteria and best practices to regulate responsibility assigned to MSs for asylum adjudication. Concerted efforts are needed to elude restrictions applying to returns under the *non-refoulement* principle and limit the concession of temporary and subsidiary protection to people not granted refugee status. Human rights obligations are thus considered a problem from a migration policy perspective. Points E-G focus on combating illegal immigration to protect the asylum system from misuse and fight organised crime.

The AP's central feature is the tension between EU border policy to prevent illegal entry and binding commitments to refugees and their right to flee, seek asylum and be protected. The duty to protect refugees and protected categories should be enacted in their region of origin, although EUD6 commits to establishing a compliant system for refugees who are in EU territory. This outlook externalises EU border policy. The aim to enhance MS capabilities extends to supporting development of state capabilities and reception capacity in regions identified as problems for migration management. The proposed solution to people fleeing and sometimes managing to reach the EU [the problem] is to engage with the Turkish government and UNHCR to enhance "cooperation", improve information on the humanitarian situation and develop "regional solutions". A detailed, if unrealistic, plan is drawn up to justify preventing mobility towards the EU. The plan involves improving the impact of humanitarian aid, supporting reception capabilities and identifying safe areas in the region, to expand options for "internal flight". Existing disproportionate burdens in refugee reception experienced by neighbouring states are not a concern in EUD6.

5.2 Part 2 (2000-2004): externalisation and the migrant threat

Chapter 5.1 examined the strategic selectivities asserted in governance documents in Part 1 (1995-1999, EUD2-6, PP1). Expansiveness (in scope, targets and agents), an ideological drive to stress this policy field's importance, and strategic work around limits to state power(s) to neutralise human rights obligations and enhance state capabilities stood out. Activities to combat illegal migration, residence and work would involve state and non-state agents. Central and local authorities, public service providers, registrars and authorities responsible for issuing residence permits should be alerted to the importance of immigration policy enforcement. Strategic selectivities focused substantively on achieving instrumental goals including expulsion and preventing protected categories (UAMs, and refugees from Iraq) reaching EU territory. Compliance with human rights and legality by MSs in the context of proposed practices was often presumed. Omissions in the documents were often important as inclusions to gauge strategic selectivities. Possible reasons for resistance or non-cooperation by third states were omitted in the context of efforts to secure their compliance with the EU's own governance objectives. The same was true of possible detrimental human rights implications for minors (EUD4), refugees (EUD6), EU citizens (EUD5) and TCNs (EUD3) resulting from the scope to exercise enhanced state power(s) that was sought.

Chapter 4.2 examined the documents in Part 2 (2000-2004, EUD7-15, NLIT2, NLUK2) providing evidence of legislative activity at the supranational level to create structures to achieve strategic objectives. The emphasis on secure documentation to establish identity and nationality to enable the exercise of state power(s) in Part 1, upgraded to systematically taking fingerprints from unauthorised entrants. The Eurodac database would limit mobility within the EU for asylum seekers and allow MSs to transfer them in application of the Dublin system to assign responsibility for examining asylum applications (EUD7, EUD11, EUD13). A duty to provide facial and iris images for residence applications in the UK was evidence of further technological upgrades (NLUK2). Proposals for a European Border Guard (EBG) in 2001 (EUD10) materialised as Frontex in 2004 (EUD15), to promote technical and operative coordination between MSs and between the national, supranational and intergovernmental levels. This agency's purpose was the immigration policy field's expansive development (see Chapter 6.2). Two Directives (EUD9, EUD12) established punitive regimes applicable to carriers to coerce them into implementing controls and to prevent facilitation of illegal entry and stay, conceptualised as organised crime.

Three governance documents are examined in this section (5.2): the 2000 EU/ACP Partnership Agreement (EUD8), the 2001 Commission Communication on a common policy on illegal migration (EUD10) and the 2003 Council conclusions on freedom, security and justice (EUD14). EUD10 frames this policy field's outlook as enacting PP1's strategic selectivities and exploits the political priority accorded to security, setting immigration and asylum policy within JHA policy.

EUD8, the 2000 EC/ACP Partnership Agreement signed in Cotonou (Benin), formally affirms both parties' commitment to objectives including "poverty eradication, sustainable development and the gradual integration of ACP countries into the world economy". The EC is tasked with promoting international governance regimes and sustainable development in economic and societal terms, including democratisation, human rights and the rule of law, to benefit ACP countries, globalisation and the world economic system. This implies recognition of the EC's responsibility to assist third countries to achieve sustainable and systemic improvement, towards accomplishing UN development goals. Regarding the immigration policy field's goals, supporting third countries' development in employment, economy, democratic standards, stability, human rights and the rule of law while strengthening civil society should reduce push factors leading to migration.

Apart from references in EUD8 to fighting organised crime and trafficking in human beings, applicable to migration once it is labelled "illegal", immigration provisions are in art. 13. It guarantees legal residents' human rights under international commitments and the principle of non-discrimination, alongside integration policies promoting reciprocal non-discriminatory conditions for migrant workers residing legally, and advocates "in-depth dialogue". Point 4 addresses management of migration flows to normalise them and presents societal and economic improvement as crucial to achieve this, especially employment opportunities and access to education.

Third states should consider introducing their own migration policies to prevent illegal migration and enact returns of illegal migrants to COOs (5). Item (a) states that: "In the framework of political dialogue, the Council of Ministers" [the institution established for political dialogue] is responsible for examining illegal immigration-related issues "with a view to establishing, where appropriate, the means for a prevention policy". Returns to COOs while respecting returnees' rights and dignity (an assumption) are required. The "provision of

administrative facilities" by the "authorities concerned" indicates that returns are primarily envisaged from states on the EC side of the partnership. Notwithstanding claims that ACP states would have "ownership" of policies deployed within this partnership's framework, their need for migration prevention policies may be felt more strongly by the EC.

Item (c) is the crux of this article, a reciprocal commitment by parties on both sides "to accept the return of and readmission of any of its nationals who are illegally present" on each other's territory, "at that State's request and without further formalities". They will assist requesting states to obtain "appropriate identification documents for this purpose". This is an "obligation" and parties are authorised to conclude bilateral agreements for their nationals' readmission and return.

Readmission agreements may extend to TCNs in general and to stateless persons as well, where necessary. The EC side's commitment to provide "adequate assistance to implement" specified modalities of return and readmission is further indication of whose interests this article promotes. Within a development framework, it is considered assistance to help develop ACP states' "capabilities". This focus on effective readmission agreements in the framework of "cooperation" with third countries would become a feature of EU documents on JHA aspects of immigration policy involving externalisation in Parts 3 and 4. EUD8 initiates EU efforts to use development aid to third countries to promote cooperation in this field. Strengthening state capabilities to stop people leaving ACP countries formally became an objective akin to assisting their development, but it was substantively liable to enhance coercive practices.

EUD10 outlines priorities to fight illegal migration by setting guidelines, targets and requirements. It outlines an action plan of measures to adopt and actions to undertake, viewing border controls as contributing to fight criminal networks, act against terrorist risks and promote mutual trust between MSs by developing the AFSJ. EUD10 was circulated two months after the 11 September 2001 terrorist attacks in the United States.

EUD10 considers preventing and fighting illegal migration essential components of a EU "common and comprehensive asylum and immigration policy", promoting "new and innovative concepts to tackle illegal immigration". A EU return policy on internal coordination to create common standards and initiate common measures should follow. A "Communication on European Border Management" would outline steps required to create the EBG. EUD10 proposes a "feasibility study on the creation of a European Visa Identification System" (VIS)

for MSs to exchange information on visas they issue. Harmonising and upgrading "adequate and comparable sanctions against promoters of illegal immigration" is necessary, involving "severe punishment of criminal activities". Seizing financial proceeds of illegal activities is "a key factor". Action should tackle undeclared employment of illegal residents to reduce its "attractiveness for employers" and its role as a "pull factor for potential irregular migrants". Europol should have an "advanced role" to strengthen police cooperation, and a EU readmission policy should be developed in negotiations with third countries.

"*The prevention and the fight against illegal immigration are essential parts of the common and comprehensive asylum and immigration policy of the EU*".

This opening statement is justified by the Treaty of Amsterdam's entry into force, creation of new competences and the inclusion of Title IV in the TEC, whose art. 62 provides a legal basis for regulations on border control and visa policy. Art. 63(3) authorises adopting "measures on illegal immigration and illegal residence" including repatriation. Despite acknowledgement that illegal entrants sometimes cross borders "on an independent and individual basis" (part II), irregular migration is equated with international organised crime,

"*since facilitation of illegal migration involves, in most cases, organised criminal networks operating at an international level*".

This notion brings into play provisions on judicial and police cooperation in Title VI of the TEU (arts. 29-31). The 1998 Vienna Action Plan called for swift progress on practical proposals against illegal migration "in line with priority to be given to controlling migration flows". PP1 promoted externalisation to develop "more efficient management of migration flows at all stages and to tackle illegal immigration at its source". Closer cooperation between MSs is envisaged alongside confirmation that new MSs must "accept in full the relevant acquis" and standards in the Schengen cooperation framework. Reference is made to adoption of the Facilitation Directive (EUD12), the Framework Decision (2002/946/JHA) to "strengthen the penal framework" to prevent facilitation, and a Directive to harmonise penalties for carriers (EUD9).

A Commission "Scoreboard" should review progress towards creating the AFSJ, consolidating objectives to fight illegal migration. These strategic objectives include improved exchange of

information and statistics, an enhanced fight against trafficking and exploitation of human beings, cooperation with COOs and coherent common policies on readmission and return. Reference to a Common Immigration Policy urges consideration of the EU's demographic and economic needs. This policy should include

"*a clear legal procedural framework in order to manage migratory flows effectively and to avoid any competitive distortion: **Illegal entry or residence should not lead to the desired stable form of residence.***" [emphasis in the original]

This highlighted sentence does not to allow margins for people who entered illegally and managed to find an [necessarily illegal] occupation to regularise their position. It seeks to dissuade MSs from adopting pragmatic initiatives to regularise situations that pose "government" problems in practice because they would contravene this policy field's objectives, undermining "common interests". EUD10 appears to blame the existence of a "black market" for employment or a "submerged or underground economy" on irregular migration. EUD10 acknowledges a need in the legal labour market for high and low skilled workers, but "illegal residents" cannot be a labour pool to meet shortages. Possible "access to undeclared work" may be the "most important 'pull factor' for potential migrants" and "re-opening legal channels for migration cannot be seen as a panacea against illegal migration". This assertion seeks to convince readers that more permissive approaches should not be deemed a solution, even when labour demand is high.

A "Community Immigration Policy" should complement "the legislative framework" to define EU guidelines for MSs to implement. Six guidelines are proposed in areas identified in PP1, the third of which addresses "managing migration flows" and reinforcing "the fight against illegal immigration, smuggling and trafficking". A comprehensive approach against illegal immigration should make the best possible use of the scope EU institutions are allowed, although the distinction between smuggling and trafficking must be clarified.

The need for "detailed definition of what the fight against illegal immigration should comprise" is highlighted, because many areas can be linked to irregular movement towards and residence within the EU. EUD10 seeks to provide "a coherent framework" by identifying its key elements (part II), measures and forms of cooperation for "the proper development of an effective common fight against illegal migration" (part III).

Highlighted boxes contain "guidelines, targets and requirements" (part III) to be implemented, alongside an "action plan" (part IV) of proposals on policy, modes of structural and legislative reform, and operative and technical interventions. Their core touches upon ideological aspects relevant to "state projects" and "hegemonic visions". References to civil society require that it be "intensely involved in efforts to prevent and fight illegal immigration [conclusions, 5]. The European public is mentioned to claim that to secure "public acceptance of admission for humanitarian grounds" [a functioning asylum system], it is "essential" to enact "effective action against illegal immigration" to prevent "misuse of the asylum system". This claim in part 3.2 on "compliance with international obligations and human rights" treats the formal hierarchy of sources of law as conditional in relation to policy objectives.

EUD10 promotes synergies between national efforts to fight illegal migration. The AFSJ requires common rules and their coherent implementation because the EU's "security system is only as strong as its weakest point" (3.5). Externalisation through the "Actors-in-the-Chain Approach" (3.3) requires action addressing "irregular migration flows… as close as possible to the irregular migrants concerned". The EU should support action by countries of origin and transit, taking into account its own human right policy. Such action should include "intensive information exchange, knowledge transfer and financial support for justified control efforts". "A certain reluctance to deal with migration flows properly" by transit countries must be resolved through dialogue and support. EU monitoring efforts should improve in recognition of the importance of enforcing common rules on common standards for issuing visas and for border controls. Intensified administrative cooperation should promote development of the EU ILOs network and a joint teams concept for border controls. Enhancing cooperation and coordination between MSs' law enforcement agencies requires

"a permanent support facility… to assist in information gathering, analysis and dissemination, to co-ordinate administrative co-operation and to manage common databases for migration management".

Beyond externalisation and actions to minimise push factors by improving conditions in COOs, supporting and financing efforts to control, prevent or regulate migration, information exchange and cooperation between state authorities are deemed inherently positive. Full use of possibilities offered by "modern technology and communications" should improve operative cooperation, including an "Early Warning System on irregular migratory flows". Improving

statistics or a European Migration Observatory would enhance information exchange of statistics and analyses.

EUD10 documents efforts to link illegal entry with criminal phenomena (organised crime, trafficking in human beings and people smuggling) which may be cross-border activities. This justifies devising preferential routes for technical and operative coordination and cooperation involving law enforcement agencies, including joint operations, pilot schemes and multilateral initiatives involving MS authorities, Europol and a future EBG. Reference to the Police Chiefs Operational Task Force [PCOTF] and its coordination role for operations, investigations and strategic direction exemplifies the use of technical and operative structures to develop JHA policy. This points to the operative level advancing prior to its regulation.

EU agencies' working methods should involve collection and exchange of information, drawing up statistics to analyse trends and risk analyses to address problems that **may** arise from free movement and the abolition of internal borders between most MSs [not including the UK]. The EBG would focus on problems and prospective risks deriving from the unauthorised entry of TCNs in the EU. Agencies' activities would not prejudice MSs' sovereignty and would be undertaken at their service as forms of assistance, although seedlings to allow them future powers of initiative are sown through proposals for joint operations and joint returns. For the EBG, such shifts would draw on precedents set by Europol and Eurojust, for which transition towards initiating their own actions is mentioned in EUD10. The blanket adoption of measures to fight illegal immigration, residence and work by MSs is central in the AFSJ's outlook. In a similar vein, mutual trust should promote mutual recognition at a judicial level and enhanced cooperation and information exchange in law enforcement. Trust should be granted based on EU membership and the democratic character of MSs' institutions, regardless of whether it is deserved in practice. Externalisation points to a shift towards also assuming trustworthiness about governments, judicial and law enforcement authorities in third countries.

A crucial point is whether this system aims to fight irregular migration, or whether it is about enhancing state capabilities and deploying technologies using this objective as a pretext to develop EU security structures. Agreement at the EU level imposes the adoption of national measures to expand coercive and punitive state capabilities, without limiting their extent. The impossibility for MSs to single-handedly manage external borders requires development of EU structures in a spirit of subsidiarity and solidarity. Proportionality, the third of these principles, is repeatedly mentioned although complying with it does not seem a priority because "control"

and "surveillance" are viewed as progress, *per se*, due to "illegal" connotation assigned to human mobility. This outlook asserts the importance of borders for irregular migrants, but not for the external projection of the EU's AFSJ.

EUD14, Council Conclusions from 2003, has sections on managing the EU's common borders (points 18-20) and controlling migration flows (21-24). It notes political agreement to establish a European agency to manage operative coordination at the EU's common borders. EUD14 sets a deadline for this agency to become operative by 1 January 2005. A programme of measures against illegal migration across the EU's sea borders has been adopted, to be implemented by MSs in "strict cooperation" with other MSs and the Commission. Regarding enlargement, the Council welcomes the adoption of procedures to simplify border controls between MSs and states that are joining the EU, which will be assisted to implement the *acquis* insofar as their external borders are concerned.

On "control of migration flows", the Council welcomes two Commission proposals for Regulations on the use of biometric identifiers in visas and residence permits, inviting it to submit a proposal on biometric identifiers in passports. The VIS database should be established as swiftly as possible. Swift progress should be made on repatriations, as requested in the Thessaloniki European Council in June 2003. The Commission should submit a proposal in early 2004 to create a financial instrument to support a joint approach on repatriations. Regarding progress towards adopting two Directives on asylum admissibility and asylum procedures, EUD14 notes that "political obstacles" delayed negotiations between MSs. The JHA Council should complete its work to enable the first phase of a European asylum regime to be fully implemented. EUD14 highlights the importance of dialogue with third countries of origin and transit, including support for their efforts to stem migration flows. The Conclusions welcome an interinstitutional agreement between the EP and the Commission on a new financial instrument to support cooperation with third countries on asylum and immigration.

5.3 Part 3 (2005-2009): EU governance: internal and external state-building

Chapter 4.3 shows the assertion of the hierarchical prevalence of goals to develop and improve the effectiveness of EU security structures to establish a coherent AFSJ jurisdiction. Border security and preventing illegal migration are set within a security-minded outlook due to an urgent need to fight terrorism. The governance documents (PP2, EUD16, EUD17, EUD19) treat internal security and immigration policy as inseparable. Both require the external projection of EU governance, subordinating third states' sovereignty to a drive to impose EU policy objectives beyond its borders. A one-sided discourse prioritises enhancing state capabilities as unproblematic at the start of Part 3, before an apparently more balanced set of objectives and discursive strategy emerges in EUD19. Evidence of Frontex's activity emerges from proposed targeted actions in the immigration policy field. Regarding government and structure (Chapter 6.3, EUD18, EUD20, NLIT3, NLUK3), EU legislative instruments codify Schengen Area regimes for border management and an "effective removal and repatriation policy" for TCNs staying irregularly in EU territory. National legislation in Part 3 links immigration and security, criminalising irregular status to release national practices from binds imposed by the EUD20 (NLIT3). NLUK2 continues the serial production of restrictive criteria for exclusion purposes, including that of "good character" in naturalisation practices. Structural aspects include an expansion and consolidation of powers entrusted to the UKBA.

Chapter 5.2 examines documents relevant to immigration policy during the AFSJ's first phase (2000-2004), identifies their strategic selectivities and proposed means to achieve them. An external dimension is evident in EUD8. Migration management goals are incorporated in a model to improve societal conditions in third countries. EUD8 reflects a hierarchical aspect assigning the EC responsibility to assist ACP countries' development to benefit the world economic system. Its development goals include values like non-discrimination and human rights compliance. Dialogue between the EU and third countries should encourage the latter to adopt migration management policies. EUD8 includes a binding reciprocal commitment to readmission, although implementation assistance the EC should provide to third countries belies this supposed reciprocity. EUD10 frames development of an ambitious common policy against illegal migration. Strategic priorities in EUD14 promote state capabilities for law enforcement, migration management and externalised refugee reception, framed as efforts to enhance "freedom, justice and security". Immigration policy and border controls are core elements to promote law enforcement and cooperation activities between national authorities,

establish the EBG and improve technical cooperation through operational JHA structures including the SIS. Information exchange and risk analysis promote this policy field's expansive development, whereby EU structures should collect information from MSs to produce strategic plans for the latter to enact. From EUD10 (2001) to EUD14 (2003), plans to set up the EBG veered towards creating a structure to assist and coordinate efforts by MSs, Frontex. This shift may have resulted from MSs defending their border control competences.

Governance documents for Part 3 (2005-2009) begin with the second mid-term programme to develop the AFSJ (PP2). The Hague Programme is followed by a strategy to externalise the EU's internal security strategy (EUD16) and a plan for targeted external interventions that provides evidence of Frontex's analytical work (EUD17). Three years later, the European Pact on Asylum and Immigration (EUD19) reasserts the EU common policy's strategy as a political priority, urging compliance with its basic principles. A sense of urgency emerges from PP2, for two reasons: prioritisation of security for antiterrorist purposes and the prospect of the MS-dominated third pillar structure ending under the Constitutional Treaty's framework (the Lisbon Treaty came into force in December 2009).

Regarding governance and strategic selectivities, PP2's scope is ambitious, wide-ranging and emphasises strength. PP2 comprises an introduction, general orientations and sections on "strengthening freedom", "strengthening security" and "strengthening justice". PP2 seeks to build on achievements from the AFSJ's first phase, address new challenges and make full use of the ambitious scope for action provided by the Constitutional Treaty.

PP2's objectives include overlapping strands and conflicting features. Improving state capabilities to "regulate migration flows and to control the external borders of the Union" and "fight organised cross-border crime and repress the threat of terrorism" are deemed coherent with improving capabilities "to guarantee fundamental rights" and refugee protection. The link between human rights violations and law enforcement, migration management and border control activities by state actors is not drawn.

The AFSJ's first phase laid "the foundations for a common asylum and immigration policy", prepared "the harmonisation of border controls", improved "police cooperation" and made progress on "judicial cooperation". PP2 goes a step further, conflating the fields of border controls, internal security and prevention of terrorism as "indivisible". Achieving an "optimal

level of protection" entails "multi-disciplinary and concerted action" between law enforcement authorities at the national and EU levels, particularly "police, customs and border guards".

PP2's "specific orientations" (III) include JHA migration policy under the heading "Strengthening freedom" (1). Plans to promote EU citizenship, legal migration and integration of legal residents are used as a counterpoint to legitimate strategies to enhance cooperation, common approaches in "asylum, migration and border policy", fight illegal employment and develop an "external dimension of asylum and migration". PP2 urges progress towards a second phase of the CEAS involving common asylum procedures and uniform status for people granted asylum or subsidiary protection, noting slow progress. Second-phase legislative instruments should be ready to approve in 2010, and future developments could include joint asylum application processing. Legal migration should be organised based on labour needs, and admission procedures should be reactive to fluctuating labour needs. Illegal employment is a "pull factor for illegal migration" that may result in exploitation.

On "return and re-admission policy" (1.6.4), TCNs who are not authorised to stay in the EU or no longer have that right should return to their COOs, voluntarily or by force, in a humane way that respects their dignity. Minimum standards should apply, national efforts should be supported, and external relations should play a part when identification or documentation problems persist. Cooperation, mutual technical assistance and EU funding should play a role in striking readmission agreements.

For "border checks and the fight against irregular migration" (1.7.1), an integrated external border management system to strengthen controls and surveillance should involve solidarity, shared responsibility and costs. Progress includes the SIS II database, which should be operational in 2007, and establishment of Frontex in May 2005. The question of extending Frontex's competences to include cooperation with "customs services" and "goods-related security matters" is raised. National authorities are responsible for border controls, but proposals are made to support them to control and conduct surveillance at "long or difficult stretches of external borders". These proposals include Frontex risk analyses to prepare deployment of EU-funded teams of national experts to provide "rapid assistance", "unannounced inspections" to ensure MSs implement measures, and the idea of creating a "European system of border guards". An expansive strategy for this new agency is evident. MSs should improve joint analyses of migration routes, smuggling and trafficking networks

and criminal organisations in coordination with Frontex, Europol and Eurojust. ILO networks should be deployed in third countries and cooperation at sea is welcomed, "notably for sea rescue operations", an admission of problems in this field.

A "continuum of security measures" in migration management should link "visa application procedures and entry and exit procedures" at external borders, also to prevent crime. Using "biometrics and information systems" (1.7.2) in connection with several types of documents, upgrading standards for national identity cards and applying principles of "interoperability" between information systems (SIS II, VIS and Eurodac) are deemed useful prospects. A "common visa policy" (1.7.3) should harmonise rules and consular practices, including the possibility of "common visa offices" in view of development of a EU body for external relations, the European External Action Service. Swift implementation of the VIS is urged, to include biometrics by the end of 2007, and the idea of exchanging "the issuance of short-term visas" with cooperation on migration matters including readmission with third countries is raised.

PP2's asylum and immigration policy strategy promotes an "external dimension" (1.6) involving partnerships with "third countries", "countries and regions of origin" and "countries and regions of transit". These strategic distinctions provide an insight into the nature of Frontex's analytical work. The EU should assist third countries to improve their migration management and refugee protection capabilities in fields including document security and returns. This should be a "partnership" and EU funding is portrayed as assistance, but assistance refers to externalising EU policies third countries may or may not agree with. A justification is provided concerning "humanitarian disasters" and "human tragedies" in the Mediterranean resulting from attempts to enter the EU illegally. Therefore, "all States" should cooperate to "prevent further loss of life". Thus, expansive development and encroachment in other states' internal affairs is legitimated by problems arising from EU policy, blamed on other state parties' governance failures.

Externalisation of asylum and refugee protection is prominent in PP2. The idea of Regional Protection Programmes proposes building capacity in countries and regions of origin [despite them hosting most refugees from their neighbouring regions] to stop them reaching the EU. Linking migration, development and humanitarian assistance policies should help to address "root causes, push factors and poverty alleviation" to stop people migrating. For transit

countries and regions at the EU's southern and eastern borders, "intensified cooperation and capacity building" should improve their migration management and refugee protection. Supporting development of their national asylum systems, alongside cooperation and dialogue, should lead them to commit to fulfil "their obligations under the Geneva Convention" [which several countries had not and did not intend to sign].

The "external dimension" amounted to imposing the EU's immigration policies on third countries, sometimes in situations in which they may have worked against their interests. This outlook applies to the AFSJ, as PP2's "external relations" section states:

"*The European Council considers the development of a coherent external dimension of the Union policy of freedom, security and justice as a growing priority*".

EUD16 and EUD17 lend substance to this drive to externalise the AFSJ's strategic selectivities for migration and JHA policies.

The "priority actions" envisaged in Africa and the Mediterranean (EUD17) develop the concept outlined in the AFSJ's external dimension strategy (EUD16). EUD16's rationale is explicit:

"*Promoting the rule of law outside the EU is essential to underpin domestic and international security, stability and development. The external dimension of the area of justice, freedom and security cannot be seen as an independent policy area but must be part of <u>the EU's external policy activities</u>*" [emphasis in the original] (p.11).

A similar argument to that used to impose expansive development of harmonised measures within the EU is projected beyond its borders on countries which may disagree and do not share the benefits of EU membership. EUD16 affirms that

"*The projection of the values underpinning the area of freedom, security and justice is essential in order to safeguard the internal security of the EU*",

from threats including "terrorism, organised crime and trafficking" (p. 1). This strategy should identify the EU external action's objectives, issues to address "worldwide", available instruments and forms of intervention, and ways to apply this strategy "by geographical area".

Chapter 4.3 identified a questionable rationale whereby the benefits of abolishing internal border controls and related advantages in the EU meant that third countries should enforce their own border controls. EUD16 justifies this in terms of fighting terrorism, addressing an "ever-growing sophistication in organised crime", the fact that "illegal immigration is set to continue" [a significant admission], institutional failure and a "need for legal certainty and predictability" in "cross-border transactions". This would supposedly improve the situation for EU citizens and businesses, enhancing child protection worldwide "in an increasingly global economy".

Beneficial aspects of EU policy's external projection should promote "independent and efficient judiciaries", "fully-functioning asylum systems" [to prevent refugees seeking asylum in the EU], tackle crime including terrorism, foster "the rule of law" and address "cross-border challenges". Even at this level of documentation, parts 1 and 2 (1995-2004) show that JHA aspects of immigration policy undermine its proclaimed principles. A drive to enhance state power(s) by subordinating rights and basic rule of law principles to enable discriminatory practices is prominent at the national level. These EU documents disregard evidence of human rights abuses in MSs that were known when PP2, EUD16 and EUD17 were produced. They acknowledge one harmful effect of EU immigration policy, the deaths of migrants attempting to reach the EU without authorisation. This concern is used to promote these policies' expansive development to states that cannot be presumed to implement them with high human rights compliance standards. An expansive JHA strategy was portrayed in benevolent terms as promoting systemic improvement. Externalisation provided scope for agencies like Frontex to intervene in third countries, when MSs were reluctant to let it encroach on their own competences. Moreover, regardless of lexical concealment, EU immigration policy inherently promotes discrimination, working against positive goals it used as legitimation.

Tangible and targeted actions envisaged in migration policy's externalisation framework for the African and Mediterranean regions are outlined by EUD17. Concrete actions should "benefit all countries concerned". Their objectives aim "to reduce illegal migration flows and the loss of lives, ensure safe return of illegal migrants, strengthen durable solutions for refugees", build migration management capabilities, maximise benefits from legal migration, respect human rights and the right to seek asylum (p. 9). Initiatives are needed on migration routes and "safety at sea". There is no recognition that safety at sea is a problem because people are not allowed to travel due to their nationality and other factors. Frontex can play a prominent role through "border management measures", "joint operations and pilot projects", a "Risk

analysis report on Africa" and a study on monitoring and surveillance of the EU's southern border, which may involve a "Mediterranean Coastal Patrol Network" by MSs and "North African countries" (p. 10).

A continuing effort to develop structures, actions and modes of intervention to assert EU JHA policy within and beyond the EU's borders is accompanied by a drive to enact returns and strike readmission agreements, as constant features of this policy field since Part 1. These strategic selectivities are unshifting, regardless of continued attempts and partial success in imposing them upon some countries.

A surveillance system covering the entire Mediterranean and the EU's southern border could "use modern technology" to save lives at sea and tackle illegal immigration (p. 10). An initiative to use "operational cooperation" is framed, to focus on "migration routes" between countries "of origin, transit and destination", which means disrupting mobility further afield. Frontex's analytical model promotes its activities by differentiating country typologies. Another distinction identifies "sub-Saharan countries" as priorities for dialogue conducive to "effective implementation of readmission obligations" (EUD8), "institution and capacity building" and effective integration of returnees, for mutual benefit (p. 13). Apart from obvious skin colour connotations, technical analysis on the Mediterranean region identifies "sub-Saharans" as a problem. Potential consequences of implementing migration management in north Africa on this basis are easily imaginable. Priority actions in EUD17 include "projects to combat trafficking" and strike a readmission agreement with Morocco (as well as Algeria), and agreeing a migration action plan with Libya within wider dialogue and cooperation. A compensatory measure envisages making use of remittance services easier and cheaper (p. 12).

Plans to strengthen security (2) propose joining up practices to exchange information, fight terrorism, enhance police cooperation, crisis management, "operational cooperation", "crime prevention" and criminal phenomena involving organised crime, corruption and drugs. Frontex should be involved in counterterrorism and Europol's analyses should switch from law enforcement and "crime situation reports" to intelligence and "threat assessments". The "principle of availability" should govern information exchange, undermining data protection principles about information only being used for the scope for which it was collected. Law enforcement officers in any MS should have access to information held by another MS's law enforcement authorities to fulfil their tasks for a specified purpose.

Section 2.5 on operational cooperation proposes coordination of AFSJ law enforcement activities directed by Council-set strategic priorities. This involves establishing a Committee on Internal Security and organising meetings involving the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA), the Article 36 Committee, representatives of the Commission, Europol, Eurojust, Frontex, the PCTF and SitCen, a military Situation Centre. This creates a preferential pathway for operations targeting criminal activity [including illegal immigration], bridges the distinction between law enforcement and defence, and prepares COSI before the Constitutional Treaty authorising it comes into force. Issues of accountability are raised by the PCTF and SitCen lacking a legal status and not being subject to parliamentary scrutiny.

Fundamental rights would be formally guaranteed by the ECFR and other instruments. A qualification hints that breaches may result from tension between fundamental rights and citizens' interests.

"At the same time, the programme aims at real and substantial progress towards enhancing mutual confidence and promoting policies to the benefit of all our citizens."

A "comprehensive approach" should encompass "all stages of migration", from root causes to entry and admission, integration and returns policies, because "International migration will continue" (III, 1.2). "Working relations" between MS authorities responsible for immigration and asylum, and other relevant policy fields, should be "coordinated, strong and effective", involving "common analysis of migratory phenomena" through "collection, provision exchange and efficient use of up-to-date information and data". These are obvious references to activities entrusted to Frontex, with which cooperation should be "reinforced". A second phase of developments should be "based on solidarity", burden-sharing (including financial costs), cooperation in areas outlined in EUD15 and further legislative harmonisation.

EUD19 is a "solemn" pact asserting priorities for asylum and migration management. Its language is balanced compared to earlier governance documents, which betrayed their ambition and urgency. Nonetheless, its strategic selectivities and non-negotiable aspects point to consistency rather than change. EUD19 praises the AFSJ as a "political and civilisational project" and a "major factor for growth and prosperity" benefiting people who enjoy freedom

of movement. It acknowledges international migration as lasting and beneficial, convincingly explaining its persistence based on global wealth inequalities. MSs should regulate it without adopting "unrealistic and dangerous" hypotheses like "zero immigration", to serve their own labour market and demographic needs. Migration contributes to third country's development. The GAM is deemed relevant because it incorporates migration in EU external relations to promote "harmonious and effective" migration management in partnership with countries "of origin, transit and destination" (p. 1).

A less convincing defence of restrictive migration policy points to limited resources for reception in the EU and concerns over social cohesion (a reference to political and social opposition). Criteria like "labour market, housing and health, education, social services" could be used to regulate entry. [The resources deployed to fight migration through the measures described in this thesis undermine the limited resources argument.] Effective policies against illegal migration would protect migrants from exploitation. The need for common policies is asserted alongside a commitment to human rights and refugee protection. EUD19's five basic commitments resemble the strategic selectivities in documents from parts 1 to 3 (1995-2009). They are: organised legal migration based on MS definition of needs and capacity, promoting integration; controlling illegal immigration, including returns to COOs or transit countries; effective border controls; a Europe of asylum; partnership with countries of origin and transit and synergy between migration and development policies.

EUD19 asserts the same priorities as earlier phases, but urges MSs to adopt labour migration policies, prioritise high-skilled workers, students and researchers, encourage "circular migration" to prevent "brain drain", and focus on integration measures (I). Controlling immigration requires MSs to return people staying irregularly to their home countries or countries of transit (II). Preference should be given to voluntary returns, respecting legality and dignity. However, there are veiled references to returns of MS nationals from other MSs, a noteworthy development: "all States are required to readmit their own nationals who are staying illegally on the territory of another State".

Large-scale regularisations beyond those enacted on an individual basis should not take place, and readmission agreements should be struck at the EU or bilateral level. This shows that despite claims of common policies and coherence, for expulsions, whatever works will do. This exemplifies instrumentality to achieve an unshifting EU immigration policy goal. MSs may

cooperate to enact expulsions, including through joint return flights. The GAM should promote cooperation with third states to prevent illegal immigration, fight trafficking and organised crime. Information campaigns should discourage migration to save lives at sea. Three years after the documents examined above, deaths at sea continue to feature as a legitimating factor that is conveniently detached from EU policy choices. MSs should "severely" punish people who exploit migrants (including employers), for their protection. The SIS will enable all MSs to cooperate in executing expulsion orders, preventing the people concerned from crossing borders.

Effective border controls require responsibility, visa rules, solidarity if a border is difficult to control and the deployment of necessary resources by MSs and the Commission at "external land, sea and air borders". Biometric visas should be the norm from 2012, as the VIS database requires this. Frontex should receive the necessary resources for its task; its functions and resources should expand, including the possibility of establishing specialised offices. Frontex should carry out temporary or permanent operations on request from MSs, and the possibility of a European border guard system is raised. In just three years, Frontex's development and capabilities have expanded, and there is pressure to enhance its role and increase its funding. Technological and interoperable means should be deployed for integrated border control purposes, including systematic recording of entry and exit. Cooperation with third countries should intensify, including training for their migration management personnel.

The same cannot be said of the "Europe of asylum", about which solemn declarations are made. The adoption of "common minimum standards" is noted as progress towards harmonised policies despite discrepancies in MSs' asylum adjudication. Without challenging MS competencies in this field, "a higher degree of protection" is deemed necessary. Progress in JHA aspects of immigration policy does not appear to be matched by compliance with humanitarian obligations. Asylum proposals in EUD 19 include creating a European support office to promote harmonisation of national policies, develop a single asylum procedure, and procedures to deploy personnel from other MSs in cases involving massive influxes, to show solidarity.

Partnership with third countries and synergy between development and migration policies within the GAM framework should advance dialogue and arrangements on legal migration. Its goals are to sign EU or bilateral agreements on legal migration, readmission, control of illegal

migration and development; offer partner countries reserved quotas and encourage circular migration circuits; capacity-building and other supposedly benevolent initiatives. EUD19 initially raises convincing arguments that apparently oppose the EU's restrictive migration policy outlook. It then proposes concrete actions to intensify activities to stifle mobility, with problematic emphases on returns of TCNs and opposition to regularisations.

5.4 Part 4 (2010-2014): full circle. Human rights and legality are problems.

Chapter 4.4 shows that the relationship of EU immigration policy to hierarchy and state power(s) involves an incremental pursuit of strategic objectives whose validity is assumed despite the effort and resources that are deployed to achieve them. Despite veiled acknowledgement that these objectives may be overambitious and of potentially beneficial aspects of migration, little scope is provided to challenge this policy field's expansive premises. Binding legal EU documents in Part 4 (2010-2014) examined in Chapter 6.4 (EUD21, EUD22, EUD24) include cases that may indicate a softening of this field's restrictive outlook, but they appear unable to limit MSs' scope to exercise increasingly discretional power(s) to undermine TCNs' position. EUD21 widens the scope for issuing residence permits to TCNs, although a prevalence of practices entailing controls and possible exclusion persists. EUD22 promotes development of a functioning asylum system under the CEAS framework, but a steering role within the EASO is assigned to MSs and Frontex. These two cases offer limited scope for openness in authorising entry and residence, but EUD24 outlines a comprehensive system for seamless border surveillance to prevent the possibility of breaches at external EU borders. National legislation includes contrasting developments: NLUK4 is a law whose purpose is to penalise migrants; NLIT4 should enforce EU law to restrain excesses by national authorities that contradict applicable formal guarantees in the Schengen AFSJ. Both cases nonetheless offer evidence of slipping standards. The governance documents examined below are the third policy plan to develop the AFSJ (PP3), an updated version of GAM, the Global Approach on Migration and Mobility's cooperation framework (GAMM, EUD23), and two documents pursuing effectiveness in a longstanding drive to execute expulsions (EUD25, EUD26).

Chapter 5.3 identifies a passage whereby the external projection of the AFSJ and EU policy against illegal migration is incorporated into the EU's AFSJ. Externalisation subordinates the impact of borders and third state's sovereignty and interests as limits, presenting the projection of EU policies as inherently beneficial for all parties. Enhancing operational cooperation between MS law enforcement authorities in fields including combating illegal migration and improving border management is not deemed problematic. At the same time, overlooking possible abuses by state actors, respect for human rights is deemed to entail strengthening judicial cooperation, state capabilities and formal adhesion to human rights instruments. Three documents (PP2, EUD16, EUD17) concern structural developments and targeted interventions to be promoted within and beyond the EU's borders. Three years later, in 2008, EUD 19

provides a more balanced discourse on migration but maintains its strategic priorities to manage borders and prevent and punish illegal migration. The forms of cooperation envisaged in Part 3 affect principles that may restrain the exercise of state power(s). They create unaccountable avenues for operative cooperation (COSI) and introduce principles ("availability") that undermine data protection for information exchange. Assumptions on mutual trust between MSs (concerning human rights compliance and functioning asylum systems) are extended to third countries to promote strategic objectives in the guise of cooperation. The notion that enhancing states' coercive capabilities may negatively affect competing values like the rule of law, promotion of civil society and non-discrimination is ignored as a potential problem. An opportunistic streak is evident, because an antiterrorist emergency is used to promote a self-affirming JHA discourse that connects antiterrorism with foreign and external security policy, with preventing illegal migration at its core. The scope provided by the Constitutional Treaty for expansive development in the JHA field is used to urgently promote structural developments, to be settled before limits that its entry into force may entail become applicable. A growing role is envisaged for EU agencies like Frontex, details of whose proposed mode of operation feature in the examined documents. Immigration policy and the fight against terrorism are united in this outlook.

PP3 is the mid-term governance programme that frames developments in Part 4 (2010-2014), linking responsibility to guarantee citizens' security with "integrated border management". Implementing legal instruments and making full use of available EU agencies and offices in the JHA and immigration management field are political priorities. The "credibility and sustainability" of the EU's immigration and asylum systems should reflect the basis provided by EUD19, entailing efforts to "prevent, control and combat illegal migration", especially at its southern borders. Developing the EU's Internal Security Strategy (ISS) should protect citizens' lives and security from threats including organised crime and terrorism through means including stronger "cooperation in law enforcement" and "border management". The importance of the external dimension of the EU's AFSJ means these policies should be integrated in general EU policies, particularly foreign policy (p. 5).

An emphasis on "citizens' rights" includes proposals for EU adhesion to the ECHR and using the EU Agency for Fundamental Rights when developing policies and legislation. EU citizens' free movement rights should be promoted to allow them to "move and reside freely" in EU MSs, enjoying equal treatment to nationals (p. 8). Freedom of movement involves obligations,

and MSs should cooperate to prevent abuses and fraud, working together to "combat actions of criminal nature". Information exchange between national authorities should be promoted to "tackle possible abuses and fraud of the right to free movement of persons" (p. 9).

PP3's relevant sections for JHA aspects of migration policy begin in chapter 4, about security, starting from the ISS. COSI should coordinate this field's development as a priority, enacting principles including a division between EU and MS responsibilities, respect for human rights, solidarity between MSs and making citizens aware of the importance of this work. PP3 promotes a "pro-active and intelligence-led approach" involving strict cooperation between EU agencies. This approach relies on information exchange, correct implementation, streamlining and preventive action, regional initiatives and cooperation, linking internal security with external threats. The claim that "In a global world, crime knows no borders" (p. 18) encapsulates the portrayal of illegalised migrants as threats and expansive development of coercive capabilities as a solution.

An Internal Security Fund to implement the ISS should make it "an operational reality". Available "tools for the job" must be upgraded to promote a common culture, pool information and create a technological support infrastructure. The principle of availability is added to by a principle of interoperability between IT systems. A strong data protection regime is envisaged for EU internal security information management, although it should be coherent with AFSJ and ISS goals. Industry interests seem to be a relevant factor, because developments should support "the business vision for law enforcement, judicial cooperation, border management and public protection", a possible reason for planned open-ended development of coercive and control functions in the AFSJ. A Passenger Names Record system should monitor travel to prevent, detect and investigate terrorism and serious crime.

Section 4.4.2 on "trafficking in human beings" squarely conflates the offences of smuggling and trafficking, urges stakeholder and civil society involvement, and engaging third countries using available "leverage". Preventing and combating these phenomena requires action in fields beyond the AFSJ's scope, ranging from external relations, development, social affairs, employment, education and health to gender equality and non-discrimination. Steering functions should be assigned to COSI and a EU Anti-Trafficking Coordinator:

"The fight against human trafficking must mobilise all means of action, bringing together prevention, law enforcement, and victim protection, and be tailored to combating trafficking into, within, and out of the Union" (p 21).

Adoption of new legislation should help to combat trafficking and protect victims. Ad hoc cooperation with priority third countries should involve financing, information exchange, judicial cooperation and "migration tools". Europol and Eurojust involvement is envisaged.

Section 5.1 focuses on "Integrated management of the external borders". Measures are deemed necessary to "counteract illegal migration and cross-border crime", maintain a "high level of security", and access to protection for refugees and vulnerable groups should be guaranteed. Frontex and EASO activities should be coordinated. Frontex's role should be reinforced to "increase its capacity to respond more effectively to changing migration flows". Five years after its establishment, the Commission should submit proposals to clarify Frontex's mandate and enhance its role, including:

- operational procedures and rules of engagement for joint operations at sea;
- operational cooperation between Frontex and COOs and countries of transit to organise regular chartering for returns;
- a mechanism to report and record incidents to be followed up by the relevant authorities;
- establishing regional and specialised offices for different situations, including eastern land borders and southern sea borders;
- initiate debate on long-term developments including a European system of border guards;
- EASO should be able to better identify people in need from mixed flows;
- Frontex's role should be strengthened to participate in Schengen area evaluation;
- supporting capability building in third countries to help them to control their borders.

Developing the Eurosur border surveillance system (Chapter 6.4) should enable establishment of "a system using modern technologies". Eurosur should support MSs, promote "interoperability and uniform border surveillance standards" and ensure MS-Frontex cooperation to share surveillance data without delay. Technology is afforded a key role, SIS II will come into operation, the VIS system's implementation is prioritised and a central system to administer large-scale IT systems is envisaged. An electronic system should record people's entry and exit, complementing existing systems, and its application at land borders could be

explored. This system should guarantee data protection and non-discriminatory practices. Proposals may follow for distinction between authorised travellers (a registered traveller programme), a European travel authorisation system could be developed [heralding lower-grade mobility rights for non-participants] and automated controls (border gates) may make border management more efficient.

Proposals on visas include possible visa facilitation regimes with third countries, keeping the visa list under review based on "appropriate criteria relating… to illegal immigration, public policy and security, which take account of the Union's internal and foreign policy objectives" (p. 27). Visa reciprocity should ensure that third countries do not reintroduce visa requirements upon any MSs [no consideration is given to EU citizens as potential participants in criminal activities abroad in PP3's one-sided account].

Part 6 notes that well-managed migration can be beneficial to all stakeholders. Flexibility in migration policy to address demographic issues, labour market shortages and other factors could result in migration improving EU economic development and performance. The date for establishing a functioning CEAS slips to 2012. The general argument is similar to that in EUD19 (and EUD23, below), whereby prospects of rational and beneficial legal migration are subordinated to preventing illegal migration and developing third country's capabilities against unauthorised travel to the EU. This long-term process should maximise the positive effects and minimise the negative effects of migration (6.1.2). The relationship between negative effects, criminalisation of migration and enhanced coercive state powers is disregarded. Sections on migration and development, rational organisation of flows to meet labour market needs (6.1.3), "proactive policies for migrants and their rights" (6.1.4) and "integration" (6.1.5) are followed by "effective policies to combat illegal migration" (6.1.6) that undermine them. These policies aim to prevent "human tragedies which result from the activities of traffickers" (p. 30), not from the EU's restrictive immigration policies.

References to strategic objectives resemble those in part 1, 2 and 3, including:

- effective returns (respecting human rights and non-refoulement) with voluntary returns the preferred option;
- cooperation with countries of origin and transit;

- mutual recognition of return decisions between MSs (through the SIS and recording re-entry bans);

- improved information exchange;

-interaction between the Commission, Frontex and MSs, particularly to assist MSs facing disproportionate burdens;

-cooperation;

-surveillance;

-capacity building in third states;

-readmission agreements;

-practical cooperation, including joint return flights coordinated through Frontex;

-training and equipment support;

-ILOs deployment abroad.

Special actions should be enacted to protect vulnerable groups like UAMs (6.1.7) and guarantee refugees' right to protection (6.2).

PP3 develops the AFSJ's state capabilities for security and law enforcement to promote coherent EU policies and systems. However, the dominant roles played by the Council and MSs makes it difficult to argue that it is coherent. This incoherence results from development of EU policies and structures consistently providing avenues for MSs to maintain their power(s) and competencies, within limits that are hard to enforce. The entry into force of the Lisbon Treaty elevated the ECFR to treaty level, enhanced the scope of ECJ jurisdiction and enhanced the Commission and EP's legislative function. However, PP3 shows how COSI and the ISS should promote internal security policies through preferential routes enabling technical and operative cooperation and joint actions coordinated by EU agencies. For immigration policy, beyond development of the ISS to combat crime, Frontex is tasked with promoting expansive development to upgrade and perfect migration management and border controls. Two sources PP3 refers to as coherent approaches informing its proposed interventions, are EUD19 and the GAM, updated in EUD23 (GAMM). Chapter 4.4 highlights EUD23's balanced approach that acknowledges beneficial aspects migration alongside a need to prevent and punish illegal migration as organised crime. Opportunities for legal migration and mobility opportunities are subordinated to border control, lower irregular migration and returns.

EUD23 outlines the GAMM's "key objectives", "thematic priorities", "geographic priorities", "implementation mechanisms", "operational priorities", "funding and monitoring" and "conclusions". A linguistic development from the GAM is the addition of "mobility" in this approach, to normalise an activity treated as a criminal phenomenon akin to organised crime, because people move due to their needs, choices and agency. EUD23 stresses potential positive effects of migration for the EU and third countries, including economic aspects like filling EU labour market shortages caused by factors including "long-term population ageing" and from a developmental perspective. The argument on European labour market needs hints at the limits of policies of exclusion:

"... despite the current economic crisis and unemployment rates, European countries are facing labour market shortages and vacancies that cannot be filled by the domestic workforce in specific sectors, e.g. in health, science and technology. Long-term population ageing in Europe is expected to halve the ratio between persons of working age (20-64) and persons aged 65 and above in the next fifty years. Migration is already of key importance in the EU, with net migration contributing 0.9 million people or 62% of total population growth in 2010. All indicators show that some of the additional and specific skills needed in the future could be found only outside the EU" (EUD23, pp.2-3).

Recognising a positive economic impact of remittances for migrant's households in COOs and possible initiatives with diasporas in the EU to contribute to development is not allowed to influence the JHA aspects of the EU's immigration policy. Potentially "vast **development benefits**" [emphasis in the original, p. 6] are off-set by risks including "brain drain and brain waste", a view that justifies promoting "brain circulation". Improving mobility for positive purposes is deemed "of strategic importance" (p. 3) and should include visa facilitation and dialogue to establish mobility partnerships. Such schemes should prioritise "**long-term residents, family reunification, students, researchers and highly qualified people**", creating new distinctions between population groups.

Migration and mobility's positive effects are viewed as achievable through "good governance of migration" (p. 6). This tempers a more open approach and is embodied by two developments. The first one is a four-pillar approach:

*"1) organizing and facilitating **legal migration and mobility**; 2) preventing and reducing **irregular migration** and **trafficking in human beings**; 3) promoting **international protection** and enhancing the external dimension of **asylum policy**; 4) maximizing the **development impact** of migration and mobility"* (p. 7, emphasis in the original).

The second idea is that the "**GAMM should also be migrant-centred**" (p.6, emphasis in the original), an explicit criticism of prevalent approaches which avoids assigning blame. EUD23's "**four equally important pillars**" should express balance and a renewed focus on migrants: "In essence, migration governance is not about 'flows', 'stocks' and 'routes', it is about people" (6). The contrast with dehumanising and number-centred migration management and risk analysis models developed and acted upon by Frontex is stark. An emphasis on migrant's "cross-cutting" human rights appears a concession to the need for balance.

As noted in Chapter 4.4, the prioritisation of management, legality and returns over legal mobility undoes EUD23's balancing work in uncompromising fashion: fighting irregular migration is a precondition for migration not to be a problem. Externalisation of JHA policies and a global governance framework promoted by GAMM aim to draw third countries into this fight, through coercion if necessary.

Assertion of EU concerns' prevalence over those of third countries stretches to EU efforts to promote "global responsibility-sharing" (p. 5) for refugee protection. Compliance with the Geneva Convention and cooperation with UNHCR are deemed necessary. The EU should support "**international protection**", with a more prominent "**external dimension of asylum**" (p. 5, emphasis in the original). Council Conclusions foreground this commitment and the importance of "Regional Protection Programmes (RPPs)" (p. 6) are cited. Hence, the EU will contribute to international protection regimes to prevent even genuine refugees from reaching its territory. This builds on PP3's emphasis on the external dimension of EU asylum policy to enable it "to contribute more effectively to solving protracted refugee situations". A RPP is planned for north Africa to encompass "Egypt, Tunisia and Libya" (p. 17). In exchange, "enhanced resettlement component should be added to each RPP as a sign of international solidarity and a key instrument for pursuing orderly access to durable solutions in the EU" (p. 18). Again, and even for subjects towards whom obligations are due, unauthorised mobility cannot be allowed.

EU cooperation with third countries "to **strengthen** their **asylum systems and national asylum legislation**" (p. 17, emphasis in the original), ensuring international standards are met, will be followed by EU contribution through resettlement. Sequencing is a key issue, and involvement of EASO (EUD22) to assist in developing "asylum capacity in non-EU countries, including support for resettlement activities" (p. 17), should occur "gradually". Resettlement is "the only viable durable solution", for which a "Joint EU Resettlement Programme" was prepared to increase its numbers and use it strategically. Key concerns include restricting its scope to "the most vulnerable refugees" and to specify that resettlement cases "be processed in the countries of first asylum". Returning to a common thread in the external projection of EU immigration, asylum and AFSJ policies, the path for doing so involves enhancing third states' capabilities through "increased funding, identification of procedures and improved logistical and technical capacity" (18). The usual omissions persist in plans for external cooperation, regarding the regimes and governments with which cooperation is envisaged, possible disagreements third states may have with this outlook and disproportionate burdens several third countries already experience.

EUD23's strategic objectives and its sequencing of priorities make it clear that its four pillars are not equally important, despite claims to the contrary. This emerges clearly in the second pillar's definition of "preventing and reducing irregular migration and trafficking in human beings" in the "operative priorities" section (see Chapter 4.4). The strategy in this field involves assisting development of state capabilities, cooperation on returns (offering visa facilitation in exchange), Frontex involvement, integrated border management, cooperation on document security and deployment of ILOs.

EUD25 and EUD26 concern the EU's return policy, viewed from the Council intergovernmental level. They foreground troubling developments and it should be noted that returns have constantly been among EU immigration policy priorities, as an unshifting strategic selectivity, since Part 1 (1995-1999). EUD3 complained about non-cooperation by third states; EUD4 sought to frame conditions that would enable the deportation of UAMs; EUD6 invited MSs to cooperate and share information about "what works" to deport people who were hard to expel due to the non-refoulement principle. In Part 2 (2000-2004), a binding readmission commitment featured in EUD8 (EC/ACP partnership agreement) and development aid was used as leverage to secure cooperation; EUD10 placed return and readmission at the core of EU policy on illegal immigration. Throughout Part 3 (2005-2009), and in the PP documents on

the AFSJ, readmission agreements and an effective returns policy were deemed crucial. EUD20 tried to mitigate the likelihood of abuses connected to detention and deportation in exchange for providing a legal basis at the supranational level for the returns regime.

Despite the language used (return, readmission, enhancing capabilities and cooperation, Frontex coordination of joint return operations), these practices are concrete expressions of coercion and violence. The safeguards provided in that EUD20 are evidence that the human rights violations they entail were notorious within EU institutions (see Chapter 5.3). If pressure including forms of economic blackmail have been deployed to secure compliance by third states, including a binding readmission clause in EUD8, this may mean that some third countries do not deem effective readmission to be positive. This is an aspect of coercion inherent over time in the external dimension of the EU's migration policy. The premise to EUD25 (see Chapter 4.4) complains that only 40% of "over 500,000" illegal migrants are returned successfully, outlining the problem to be solved. That means that over 100,000 people are returned annually to their COOs or even to transit countries, at great expense and without it being clear that anyone other than the EU immigration policy's "credibility" benefits from such efforts. EUD23 mentions a need to consider people when discussing immigration, rather than bulk numbers or stocks, yet this is the methodology that Frontex's analytical work promotes and its instrumental influence is clear in EUD25 and EUD26.

EUD25 links return policy to progress made to develop a "comprehensive approach on migration and asylum" since 1999 (PP1), particularly since the Lisbon Treaty came into force. The credibility of this "comprehensive approach" must include "an effective and humane return policy" as an essential feature, a notion reinforced by a caveat and a warning. The caveat is a prerequisite. Unlike many prerequisites applicable to TCNs in EUD documents, compliance by the EU and MSs is presumed to argue for the legitimacy of return efforts:

"- *provided that fair and efficient asylum systems are in place that fully respect the principle of non-refoulement, it is indeed legitimate for a state to return illegally staying third-country nationals, in full respect for the fundamental rights and dignity of the persons concerned and in line with the EU Charter of Fundamental Rights, the European Convention on Human Rights and all other relevant international human rights conventions*".

The warning mobilises European citizens and psychology to justify a drive towards a more effective return policy:

"*the lack of effective return systems and procedures for those illegally residing and possibly working in the Union may erode the support that exists in society for welcoming refugees and all those in real need of protection.*"

Even acknowledgement of solidarity towards refugees is harnessed to promote the expulsion of illegal migrants. EUD25/EUD26 blame the Returns Directive for ineffective implementation of this "legitimate" policy, alongside "the somewhat low-level of cooperation of some third countries in the implementation of readmission and return procedures" (p.3, EUD25). Problems encountered include the prioritisation of voluntary returns and the non-refoulement principle applying to any returnees (not just refugees). These are direct expressions of an intent to violate principles and rights that appeared to be the only limits to their power(s) that states recognised as hierarchically prevalent. From irregular employment to ineffective returns, limits in this policy's effectiveness are represented by using the insidious notion of them being a "pull factor for immigration".

EUD26 proposes debate about return procedures' "overall efficiency", the possibility that incentives for voluntary returns may be "potential pull factors for illegal immigration" and whether entry bans have an impact on "more efficient return policies" (4.4). Point 4.5 advocates Frontex's involvement by "increasing its operational activities", promoting use of Joint Return Operations (JROs) at MSs' service, offering "training on return issues" and cooperating with third states to obtain "travel documents for returnees". EUD26's final sentence peremptorily calls on the Commission "to avoid any message which can be understood as encouraging illegal immigration or stay".

Together, EUD25 and EUD26 appear to attempt to clear any legal impediments to promoting a shift towards enacting mass deportations. People's mobility is stifled, but states must enjoy the power(s) to move people to wherever they find it most convenient, including "returns" to countries people have never been to, but which will take them. At this point in 2014, human rights are "the problem". JHA aspects of immigration policies continue not be a problem.

CHAPTER 6: GOVERNMENT AND STRUCTURES

Government from an SRA outlook refers to the exercise of sovereign functions of government that apply to statehood and the sovereign state or polity. Government requires the "core juridico-political or otherwise relatively fixed institutional reference point" provided by the presupposition of a "state apparatus, a territory, and a population" (Jessop, 2016:166). The SRA draws on Foucault's lectures on governmentality and territory (1997) because it "provides an alternative account of the modalities of state power" and of the state's role in codifying power relations strategically (Jessop, 2016:175). The state enables "collective learning about functional linkages and material interdependencies among different sites and spheres of action", and politicians contribute to develop shared visions linking "complementary forms of governance to maximise their effectiveness". This contributes to state functions and has implications for both "political class domination and social cohesion" (Jessop, 2016:175-176).

Chapter 6 examines official documents treated as instances of government and actual interventions involving the creation of structures and normative frameworks, like national laws and EU Directives and Regulations. From a "government" outlook, it examines the modes of intervention (formal) that are adopted, linking them to a hegemonic vision (substantive) without which they may not be viable. The emphasis is on their implementation through pre-existing and/or newly constituted structures, and their relationship to normative limits and rules that may need to be circumvented or overwhelmed, as conceptualised through the image of a wrecking ball. Modes of intervention are concrete ways to deal with what policy perceives as problems, within the state and beyond it. They are significant for the SRA due to existing and newly created sites and mechanisms of intervention that exist. A hegemonic vision defines the nature and purposes of the state for the wider social formation. Analysis in this chapter is guided by Poulantzas' description of the developmental tendencies of "authoritarian statism". The breakdown of the documentation into five-year periods (as detailed in chapter 3) is shown in Tables 9-12 below.

Table 9. Empirical documents, part 1 (1995-1999)

EUD1	Council Regulation no. 2317/95 of 25 September 1995 (visa list)	3 October 1995
NLIT1	Turco-Napolitano law, Legge 6 marzo 1998, no. 40	12 March 1998
NLUK1	Immigration and Asylum Act 1999	11 November 1999

Table 10. Empirical documents, part 2 (2000-2004)

EUD7	Council Regulation (EC) no. 2725/2000 of 11 December 2000 (Eurodac)	15 December 2000
EUD9	Council Directive 2001/51/EC of 28 June 2001 (carrier sanctions)	10 July 2001
NLIT2	Bossi-Fini law, Legge 30 luglio 2002, no. 189	26 August 2002
NLUK2	Nationality, Immigration and Asylum Act 2002	7 November 2002
EUD11	Council Regulation (EC) no. 407/2002 of 28 February 2002 (Eurodac rules)	5 March 2002
EUD12	Council Directive 2002/90/EC of 28 November 2002 (facilitation)	5 December 2002
EUD13	Council Regulation (EC) no. 343/2003 of 18 February 2003 (asylum responsibility)	25 February 2003
EUD15	Council Regulation (EC) no. 2007/2004 of 26 October 2004 (Frontex)	25 November 2004

Table 11. Empirical documents, part 3 (2005-2009)

EUD18	Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 (Schengen Borders Code)	13 April 2006
EUD20	Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 (Returns Directive)	24 December 2008
NLUK3	Borders, Citizenship and Immigration Act 2009, 21 July 2009	21 July 2009
NLIT3	Legge 15 luglio 2009, no. 94 (security package)	24 July 2009

Table 12. Empirical materials, part 4 (2010-2014)

EUD21	Regulation (EU) No. 265/2010 of the European Parliament and of the Council of 25 March 2010 (long stay visas)	31 March 2010
EUD22	Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 (EASO)	29 May 2010
NLIT4	Legge 2 Agosto 2011, no. 129 (reception of European norms)	5 August 2011
EUD24	Regulation (EU) No. 1052/2013 of the European Parliament and of the Council of 22 October 2013, (Eurosur)	6 November 2013
NLUK4	Immigration Act 2014.	14 May 2014

List 1. Countries in the common visa list

Council Regulation (EC) No. 2317/95 of 25 September 1995 (EUD1)

Art. 1(1). "Nationals of third countries on the common list in the Annex shall be required to be in possession of visas when crossing the external borders of the Member States".

Afghanistan, Albania, Algeria, Angola, Armenia, Azerbaijan,

Bahrain, Bangladesh, Belarus, Benin, Bhutan, Bulgaria, Burkina Faso, Burundi,

Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, China, Comoros, Congo, Congo D.R., Côte d'Ivoire, Cuba,

Djibouti, Dominican Republic,

Egypt, Equatorial Guinea, Eritrea, Ethiopia,

Fiji,

Gabon, Gambia, Georgia, Ghana, Guinea, Guinea Bissau, Guyana,

Haiti,

India, Indonesia, Iran, Iraq,

Jordan,

Kazakhstan, Kyrgyzstan, Kuwait,

Laos, Lebanon, Liberia, Libya,

Madagascar, Maldives, Mali, Mauritania, Mauritius, Moldova, Mongolia, Morocco, Mozambique, Myanmar,

Nepal, Niger, Nigeria, North Korea,

Oman,

Pakistan, Papua New Guinea, Peru, Philippines,

Qatar,

Romania, Russia, Rwanda,

Sao Tomé and Principe, Saudi Arabia, Senegal, Sierra Leone, Somalia, Sri Lanka, Sudan, Suriname, Syria,

Tajikistan, Tanzania, Thailand, Togo, Tunisia, Turkey, Turkmenistan,

Uganda, Ukraine, United Arab Emirates, Uzbekistan,

Vietnam,

Yemen,

Zaire, Zambia.

In addition, there were entities and authorities not recognised as states by all member states, namely Taiwan, the Former Yugoslav Republic of Macedonia and the Federal Republic of Yugoslavia (Serbia and Montenegro).

6.1 Part 1 (1995-1999): codifying policy and strategic goals

Chapter 4 documents the production of hierarchies to manage migration by imposing differential mobility regimes on defined population groups. Enforcing a restrictive EU migration policy relied on the expansive exercise of state power(s), geographically and in terms of the people affected, targeted or entrusted control functions. The immigration policy field is inherently based on discrimination between EU citizens who must enjoy freedom of movement in the AFSJ and TCNs whose mobility and residence must be regulated. This distinction was shown to lead to a serial production of hierarchical relations for different reasons, involving mechanisms and procedures to implement differential treatment regimes. This extended the scope of state controls and power(s) involving controls, coercion and punishment beyond the category of TCNs. Clearly established hierarchies and identity enable the exercise of state power(s) in this field, but they may also limit them in cases involving people protected by human rights instruments that are hierarchically prevalent over EU and national policies. Hierarchy also concerned relations between the EU and MSs, and between both the EU and MSs and third states, and state power(s) to compel people to participate in the state's exercise of its power(s). Limits to state power(s), including those acknowledged to be prevalent like human rights, are deemed problems MSs should cooperate to neutralise.

Chapter 5 examines the governance model and strategic selectivities in EU immigration policy documents to counter unauthorised immigration from its early development to incorporation into JHA policy by the AFSJ in PP1. The lack of consideration for the effects of EU and MS efforts in this field on the affected people and countries is striking. For migrants, this is because they committed a fault by migrating or trying to migrate to the EU without necessary authorisation. Members of professions and population groups that were either co-opted into policy enforcement (social service providers, etc.) or targeted as potential accomplices (carriers, spouses), had to understand the importance of this policy. Official documents treat them as tools to be used or as people to be investigated for migration management purposes. Thus, attention spread from borders and entry to rooting out people staying irregularly from the general population. From an SRA outlook, Part 1 provides evidence of the distance between the formal and substantive aspects of the state. Formal acknowledgement duties to respect the rights of groups like asylum seekers and children resulted in controls on such statuses and became a reason to focus specifically on preventing the arrival of people towards which the EU and MSs had obligations.

Chapter 6 analyses the binding normative measures in Part 1 that were omitted from Chapter 5: EUD1, NLIT1 and NLUK1, focusing on government and structures. A difference from the documents in Chapter 5 is that law is directly linked to the consequences of its enforcement by structures and systems with their own normative references.

Council Regulation no. 2317/95 (EUD1), establishes a visa list of countries whose citizens need authorisation to enter the territory of EU MSs, subject to approval of an application dependent on compliance with criteria for issuing visas. On proposal by the Commission after the EP issued an opinion, the Council directs MSs to agree an instrument to define a category whose mobility to the EU should be regulated restrictively. EUD1 is a binding instrument whose legislative basis is art. 100c of the Treaty establishing the European Community [TEC], requiring the Council to determine the countries whose nationals require visas. Title VI of TEC governs other aspects of visa policy harmonisation, including conditions for issuing visas. EUD1's relevance to hierarchy and the exercise of state power(s) was examined in Chapter 4, as enabling citizens of certain countries to be denied entry at borders and to be identified as staying irregularly unless they have a visa.

MSs are free to determine visa requirements for countries that are not on the list (art. 2.1). Exemptions and special conditions apply to nationals of third countries not on the list and to special categories; to stateless people and refugees; and to persons from territorial entities not recognised as states by all MSs and/or those not on the list. Exempted categories include civilian air and sea crew members, flight crew and attendants on emergency or rescue flights and other helpers in the event of disaster or accident and holders of diplomatic passports, official duty passports and other official passports (art. 4). Visas are authorisations for entry in a MS's territory for stays of no longer than three months in one or several MSs, or for transit through MSs' territories, "except for transit through the international zones of airports and transfers between airports in a member state".

EUD1 includes 98 countries and three entities/territories not recognised as states by all MSs in the visa list (see list), determining classification of their citizens' entry in EU territory as an immigration and/or security risk, the main criteria for inclusion. Without questioning such assessments, it should be noted that they include 46 of the 50 lowest ranking states (and 75 of the bottom 100) in the UN's 1992 Human Development Index ranking for developing countries

(UN, 1995:20). The four exceptions are Malawi, Kenya, Lesotho and the Solomon Islands. Plausibly, poverty, armed conflict and violence justify enforcing restrictive mobility regimes, because people may want to leave their country to settle elsewhere.

The two national laws in Part 1 (1995-1999) from Italy and the UK are very different. Both offer evidence of how hierarchies established for migration policy enforcement purposes requiring the exercise of state power(s) are codified in practice. NLIT1 and NLUK1 shed light on how governance and the strategic selectivities translate into government practices and procedures, with structural implications. NLIT1 codifies a migration government framework for which EU immigration policy is a source and reference. NLUK1 is at a later developmental stage, and the UK's legislative framework was a precursor of EU policy in this field, a possible source and reference.

The Turco-Napolitano law (NLIT1) replaces law 30/1990 to set up a comprehensive regime for immigration management in Italy, and implements obligations deriving from EU membership. The law's 49 articles are in seven chapters: its general principles (I, arts. 1-3); "provisions on the entry, stay and removal" in and from Italian territory (II, arts. 4-18); the relation between employment and the regulation of immigration (III, arts. 19-25); "the right to family unity and the protection of minors" (IV, arts. 26-31), health, education, housing, participation in public life and social integration (V, arts. 32-44), citizens of EU MSs (VI, art. 45); and final provisions (VII, arts. 46-49).

Initial residence permits may last for up to a year (less for tourism, visits or seasonal employment). They may be renewed for no longer than twice that length (two years) and a long-term residence card can be issued after five consecutive years of legal residence. The possibility to obtain entry visas to enter the labour market is provided, with different agents allowed to act as guarantors. Italian employers may recruit people from abroad, named or for a number of workers which must fall within quotas established for this purpose. Provisions are made for COOs to have places reserved for their nationals in exchange for cooperation agreements and programmes to manage migration flows. Regulation of foreigners' rights and duties results in administrative procedures gaining importance and a need to certify legal status in different situations, particularly when dealing with public administrations. Fines are introduced and sanctions envisaged for failing to notify they have taken up residence in a city or town, within eight working days, with fines applicable for failing to do so (from 200,000 to

600,000 Lire; 2,997.16 Lit. = £1 on 28 March 1998). Failure to notify their residence within two months can result in an administrative expulsion order being issued. When foreign nationals are asked to identify themselves by public security officers, they may face imprisonment for up to six months and a maximum fine of 800,000 Lire for failing to do so if they do not have a valid residence permit.

The border police must refuse entry or reject citizens of countries for which it is required who do not possess valid entry visas, impose sanctions on carriers and hold them responsible for returning people refused entry to where they came from. Strengthening and coordinating border controls entails the development of IT systems, which must be compatible with those required at the EU level. Databases and lists should be established for residence permits, applicants from abroad, the setting of quotas and minors, among several other cases. This shows the interaction between the national and EU levels, as NLIT1 is a legislative text in a field which was scarcely regulated in Italy but was among the EU MSs' "matters of common interest".

NLIT1 introduces criminal sanctions for facilitation and trafficking in human beings. Possible aggravating circumstances include exploitation (for prostitution) and the possible use of protective measures for its victims. Residence permits are instituted for people requiring protective measures or if it is recognised that victims may contribute to judicial proceedings. Control measures and possible sanctions are introduced for abuses involving employers. NLIT1 institutes CPTs to enact expulsions, where detainees should be kept for the minimum time necessary to enact expulsions which cannot be executed promptly, initially for 20 days (renewable by 10 days). The general principle is the same as in the EU documents from Part 1. Foreigners residing or living unlawfully in Italy will be returned to where they came from, barring exceptions. Irregular status may result from them overstaying, never having had permission to enter, and expulsions may substitute brief prison sentences or be ordered for security and public order reasons. In most cases, foreigners will be asked to leave within fifteen days in writing, but if they are caught subsequently or if circumstances point to them possibly absconding, detention and forced expulsion ensue. The wellbeing and rights of expellees are guaranteed in the CPT. Attempts will be made to obtain documents and remove any obstacles to expulsion.

NLIT1 pays attention to formal rights, including human rights, asylum, the rights of children, urgent or essential medical care, education and not to be discriminated for reasons of race,

ethnicity, language, religion and nationality or citizenship. Exceptions to punishment in cases involving facilitation of illegal entry and residence include having acted for humanitarian reasons and without profiting economically. People cannot be expelled to places where they may suffer persecution, and children can only be expelled if their parent or guardian is expelled with them. Residence card holders cannot be expelled unless they have been convicted for serious criminal offences, relatives of Italians who live with them cannot be expelled, and nor can pregnant women or those whose child is under six months old.

NLIT1 provides for structural planning adjustments to facilitate integration by providing language courses, social and legal assistance, emergency reception accommodation and medical care for people unable to provide for themselves. The regulation of migration flows is deemed instrumental to fulfil the Italian economy's labour needs. Planning for public sectors should consider the impact of annual quotas for the entry of foreign workers to organise their sectors. Frequent references state that discrimination is not allowed, in employment like in administrative procedures. NLIT1 explicitly recognises its subordination to human rights obligations, including the UNCRC and the 1951 Geneva Convention on Refugees.

The UK has considerable autonomy as a non-member of the Schengen area. Unlike NLIT1, the 1999 Immigration and Asylum Act (NLUK1) incorporates measures to a pre-existing legislative framework, including the 1971 Immigration Act and 1981 British Nationality Act. The UK system is a precursor of the EU system to be incorporated into the AFSJ, and the UK may be viewed as a driver of this field's development, despite not being part of the AFSJ. The EU's asylum policy model seeks to block refugees and asylum seekers in the first EU country they enter through the Dublin Regulation system (discussed in Part 2). Italy's position is different due to membership of the AFSJ, the lack of an established immigration policy regime and its position at the EU's eastern and southern borders. The UK system was more advanced than the EU and Italian ones, but tough sanctions and restrictions continue being introduced, as shown by a pilot test to require financial deposits from entrants and measures to confiscate vehicles.

NLUK1 reforms the immigration and asylum appeal system restrictively to address delays caused by "the multiplicity of appeal rights under the current system", including "successive avenues for appeal". A "one-stop right of appeal" will replace them, limited to people who are legally present or have "valid entry clearance", if they are seeking leave to enter. In cases

involving rejected asylum or human rights claims when applicants are required to leave, appeals will be allowed if they are not legally present. They must "raise all relevant issues at the time of application".

The deportation of asylum seekers before they exhaust their legal avenues for appeal is liable to violate the non-refoulement principle that is formally recognised, especially if consular authorities cooperate in deportation practices, as some EUD documents proposed.

Rights of appeal are restricted to people who will be removed and no longer apply to people with leave to remain or who received less favourable leave than what they requested. This would streamline the system, because people who are lawfully present when they seek leave to remain or have a "valid entry clearance or work permit" when requesting entry will have everything dealt with in the "comprehensive one-stop appeal". Special matters previously treated as non-statutory concessions will be incorporated into the Immigration Rules. People who are unlawfully in the UK will not, "in most cases", be allowed the right to appeal and will be subject to "administrative removal" rather than deportation. Overstayers may apply for leave to remain for "a prescribed period of at least three months" before administrative removal provisions come into force, to preserve "the current deportation process" and ensuing appeal rights, after the administrative removal process under section 10 comes into force.

NLUK1 limits provision for asylum seekers and withdraws subjects of immigration controls and asylum seekers from "the main benefits system", except for UAMs seeking asylum. The new system should provide a "safety net", but only for "asylum seekers in genuine need". A system is established to determine genuine need through a scheme to be "administered nationally by the Home Office" (HO), to relieve local authorities from a burden. Asylum seekers will have no choice about location in relation to their accommodation. Support will no longer be provided in cash, but either "in kind" or through vouchers. A system to review "decisions to refuse or withdraw support" will be created involving a new authority, the Asylum Support Adjudicators (section 102).

People lawfully in the UK will be charged by the HO for travel documents and for processing applications "for extension of stay, changes in conditions of stay, leave to remain and the entry of duplicate stamps in new passports". Measures will clarify which members of diplomatic representations are exempt from immigration control and leave to remain will be required for

"people who cease to be exempt". NLUK1 includes evidence of the continuing expansiveness of migration policy enforcement, imposes administrative fees on migrants and creates expansive systems to determine exclusion.

A code of practice for employers will detail "measures to avoid unlawful discrimination" when enacting checks to ensure applicants are "entitled to work" in the UK. Asylum seekers will have a statutory defence arising from art. 31(1) of the Geneva Convention in relation to "certain fraud related offences" connected to illegal entry or presence in the UK. Rules introduced for immigration advisers (see below) include establishing a new authority: the Immigration Services Commissioner will administer the system, and an Immigration Services Tribunal for people aggrieved by the Commissioner's acts. A new offence against "giving immigration advice or providing immigration services when not permitted to do so" is introduced.

Registrar's powers to improve the effectiveness of measures to prevent the immigration system being abused to obtain settled status through marriage will be increased. Registrars may request evidence of personal details and nationality from couples. They may refuse authorisation if they are "not satisfied that a person is free, legally, to contract the marriage". The procedure for "superintendent registrars" to authorise marriages is altered to abolish authorisations "by a certificate with a license". The notice period for them to issue certificates without a license decreases from 21 to 15 days, with both parties required to give notice to the superintendent registrar in their regional district. Notices "will have to state their nationality" and registrars must inform the HO if they suspect a marriage was arranged to evade immigration controls.

Provisions to "strengthen powers of enforcement in immigration law" include allowing immigration officers "to undertake more operations without the presence of police officers". The scope of criminal offences under the 1971 Immigration Act of "deception, facilitation and the making of false statements" is expanded. Extensions of powers apply to placing "residence conditions on temporary admission" and fingerprinting, to include people removed, deported, inadequately documented passengers or people arrested in connection with controls on entry. These new powers provide a statutory basis to exclude people issued EU or UN travel bans. Regarding detention, a system of bail hearings is set up, including a presumption in favour of bail for people detained for immigration policy enforcement, and involvement of magistrates for specified cases. Statutory bases are introduced regarding the "management and operation of immigration detention centres", including the powers of "detainee custody officers".

6.2 Part 2 (2000-2004): strategy becomes structure

Chapter 4.2 shows how, over a short period, the drive to assert identity and hierarchies to enable the exercise of state power(s) and subject TCNs to procedures upgraded from reliable documentation to the use of unique body features. Fingerprinting and a centralised EU database to carry out checks through automated comparisons would enable MSs to transfer asylum seekers to the country where they first entered the EU. The documents in Part 2 (2000-2004) show how the EU level's role passed from recommending that MSs harmonise measures in areas of common interest to assuming state functions. Adoption of binding legislation and creation of structures lend materiality to the common immigration and asylum policy. The EUD governance documents in Chapter 5.2 (EUD8, EUD10, EUD14) develop an expansive outlook that was present in Part 1. Internally, authorisation to develop a common policy on illegal migration, prioritisation of the AFSJ's development and priority accorded to fighting terrorism and organised crime provided justification for ambitious JHA policy initiatives. Previous conceptualisation of initiatives to prevent or combat illegal immigration as amounting to fighting smuggling and trafficking organisations, were added to, because migrants may engage in terrorism. This policy field was embedded in JHA policy more firmly than before. Externally, a wide-ranging cooperation programme (EUD8) that viewed development as a way to reduce push factors, was used to steer third countries towards adopting restrictive immigration and border control policies.

Chapter 6.1 provides evidence that measures in national jurisdictions sometimes preceded and went beyond those adopted at the EU level (NLUK1). In both case studies, government of migration with illegal migration and criminalisation at its core, entailed the expansive development of structures and the adoption of coercive power(s) to be exercised. Evidence of expansiveness included new offences like giving legal advice without authorisation, by judicial authorities like the SIAC to establish differential appeals procedures or by authorities to assess asylum seekers' degrees of hardship to exclude them from support. Each of these developments shows that restrictive immigration policies were causing problems that enhanced power differentials. These were blamed on immigration rather than policy. The offence of providing legal advice showed that people were taking advantage of migrants or 'unduly' trying to help them. Special immigration appeal procedures meant that migrants in certain cases should not enjoy the safeguards provided by the ordinary justice system. Asylum seekers enjoying state support should be a hierarchically privileged group within an underprivileged and often

traumatised constituency, due to certifiable destitution. EUD1 established that citizens from many of the poorest or "less developed" countries in the world could systematically be denied entry into the EU unless they had authorisation in the form of time-limited entry visas. Many TCNs from countries on the visa list could not obtain visas lawfully because they could not fulfil the necessary requirements.

Collectively, EUD7, EUD11 and EUD13 subject asylum seekers who entered the EU irregularly to compulsory procedures under state authorities' control in the first MS they enter, to limit their capabilities and choice regarding their destination. The Dublin system stops them obtaining asylum in a MS of choice, where they may have support networks and/or useful contacts they may reach through secondary movements. In terms of government, this amounts to isolating people to deny them agency and capabilities, enabling states to make decisions affecting their lives, effectively holding TCNs in their power. In terms of EU/MS relations, this government framework concentrates a phenomenon deemed to be a problem in MSs at the EU's external borders. The task assigned to countries at the EU's external borders affects their relations with other MSs, which may blame them for management failures. This management model risks overwhelming their capabilities, encouraging development of restrictive asylum adjudication practices.

The structure created for this purpose is the Eurodac database, to be hosted and managed by the Commission. It comprises a Central Unit (CU, premise 4) to "operate a computerised central database of fingerprint data" and "electronic means of transmission between the Member States and the central database". EUD7 defines three categories of data subjects: "applicants for asylum"; "aliens apprehended in connection with the irregular crossing of an external border"; and "aliens found illegally present in a Member State". Chapter 4.2 explained that illegal entrants (except for under-14s) are systematically fingerprinted, although this measure implements asylum procedures because it is plausible that they may later apply for asylum. The fingerprint data conservation period is ten years, set on the basis that "aliens" who applied for asylum in one MS "may" apply for asylum in another MS "for many years to come". This assertion justifies the maximum conservation period being "of considerable length". A ten-year limit is deemed reasonable because if "aliens" have spent several years in the EU they are likely to have obtained "settled status or even citizenship" of a MS within that period. The UK participates in this Regulation's adoption and application (20) despite being allowed to opt out. This indicates UK support for Eurodac, because people may seek asylum in the UK despite

having entered the EU elsewhere. Italy's membership of the Schengen Area compels it to participate. Its geographical position at the EU's external borders made it likely for it to be a country people would be transferred to from other MSs as the MS responsible for examining asylum applications.

The conservation period before erasure for fingerprint data taken from illegal entrants would be two years. Rules applying to "recognised refugees" include the "blocking of data" prior to erasure. However, art. 12(2) of EUD11, a technical Regulation that develops Eurodac's rules, provides that a decision on "erasure" of recognised refugee's data would be made on the basis of statistical analysis. Erasure was thus postponed by five years, until statistics are available about multiple asylum applications in different MSs after refugee status was granted, provided that statistics do not show this phenomenon to be a problem. A significant feature of EUD11's technical rules is the fingerprint form. It upgraded the practice of taking plain impressions of one fingerprint for identification purposes in some MSs' identification documents or criminal files, to include two versions (plain and rolled) of all ten digits.

EUD13 concerns criteria to assign "asylum responsibility" to promote development of the CEAS, which should lead to a valid EU-wide common procedure and uniform status for people granted asylum "in the longer term". EUD13 implements the Dublin Convention's asylum responsibility determination principles, a process which had "stimulated the process of harmonizing asylum policies". EUD13 recognises that the system may be improved on the basis of experience (point 5), acknowledges that preserving family units is a valid objective (6) if this is compatible with other objectives. Asylum applications by members of a single family should be processed jointly, and MSs may "derogate from responsibility criteria" on humanitarian grounds to enable family reunification (7).

EUD9 supplements provisions in the 1985 Schengen Agreement implementing Convention on obligations imposed on carriers transporting TCNs who are not authorised to enter EU territory. Authority for adopting EUD9, a binding Directive that MSs must implement in national legislation by 11 February 2003, derives from arts. 61(a) and 63(3)(b) TEC, a French initiative, and a EP opinion of March 2001. Its premises deem it "essential" for carriers transporting TCNs into the EU to have obligations to "combat illegal immigration effectively" (1). Achieving this goal requires harmonising financial penalties for carriers' failure to implement their control obligations, as far as possible and subject to their own legal systems and practices

(1), as a measure "among the general provisions aimed at curbing migratory flows and combating illegal immigration" (2). Geneva Convention obligations apply (3), as does the "freedom of member states to retain or introduce additional measures or penalties" to those in the Directive (4). In proceedings against carriers entailing penalties, carriers must be able to exercise their right of defence (5). This Directive builds on the Schengen *acquis* integrated into the EU framework in application of "the definition of the Schengen acquis for the purpose of determining" (in conformity with TEC and TEU provisions), "the legal basis for each of the provisions or decisions which constitute the acquis". Regarding opt-outs, the UK notified its participation in EUD9's adoption and application on 25 October 2000.

Art. 4(2) states that imposing penalties on carriers is "without prejudice to" MSs' obligations when a TCN "seeks international protection". It is unclear how compliance with the Geneva Convention and a duty to provide refuge might be ensured if carriers are compelled not to allow people fleeing persecution to board means of transport travelling to the EU. MSs must apply "dissuasive, effective and proportionate" financial penalties for failures in control duties, and minimum and maximum penalties are set (see Chapter 4.2). Arts. 2 and 3 of EUD9 instruct MSs to introduce measures to "oblige" carriers to return people refused entry at EU borders to where they came from or to arrange for "onward travel immediately and to bear the cost thereof". If this is not possible, they should bear the costs incurred for the stay and return of people they carried to the EU without them possessing the required authorisation.

EUD12 requires MSs to adopt measures to "combat the aiding of illegal immigration" by targeting facilitators of unauthorised border crossings and networks that exploit human beings. Approximating legal measures is "essential", involves clear definition of "infringements" and minimum rules on penalties, liability and jurisdiction. Measures must comply with Council Framework Decision 2002/946/JHA to strengthen the "penal framework to prevent the facilitation of unauthorised entry, transit and residence". EUD12 envisages criminal charges for assisting irregular border crossings by unauthorised TCNs to enter or transit through MSs in breach of immigration laws, especially if financial gain is involved. Exemptions may be allowed "in national law and practice" when such conduct is enacted to "provide humanitarian assistance to the persons concerned". MSs must ensure that "effective, proportionate and dissuasive sanctions" are applicable to "instigators", "accomplices" and people who attempt to commit specified infringements by 5 December 2004.

The inclusion of assisting residence and transit among punishable offences, provided they are intentional and for financial gain, is coherent with ideological aspects of EUD10 (Chapter 5.2). These aspects called for civil society involvement to prevent and fight illegal migration. In Part 1, NLUK1 provided evidence that not only had the UK already introduced carrier sanctions, it was devising innovative civil penalties permitting the detention of vehicles, ships or aircraft used for illegal entry to enforce the collection of penalties. NLIT1 included punishment for facilitation (up to three years imprisonment and fines) and carrier sanctions which could include temporary suspension or withdrawal of licenses for serious cases (art. 10). After adoption of EUD9 and EUD12, any MSs participating in the AFSJ which had not introduced carrier sanctions and/or measures to punish facilitation, were obliged to do so.

Analysis of national legislation for Part 2 is followed by scrutiny of Council Regulation (EC) no. 2007/2004 which establishes Frontex, a stand-alone structure promoting EU border controls and policy against illegal migration (EUD 15).

As noted in Chapter 4.2, NLIT2 (2002) is a restrictive immigration law that amends NLIT1 to tighten conditions applicable to TCNs regarding entry requirements, residence permit lengths and renewals, and the link between employment and residence. It applies strategic selectivities detailed in EUD10 concerning pervasive controls and civil society involvement in migration enforcement. NLIT2 reinforces the link between illegal migration and organised crime, subordinating development aid to third countries' cooperation against illegal migration. Two measures run contrary to this approach. NLIT2's first article includes tax breaks to promote investment and contributions for development and humanitarian purposes abroad, and art. 33 allows employers to regularise the position of TCNs employed for domestic and family assistance purposes.

International cooperation and aid programmes may be reviewed to consider third states' governments' "collaboration" in the "prevention of illegal immigration flows" and against criminal organisations involved in illegal immigration, human, arms and drugs trafficking, and exploiting prostitution. Cooperation may be reviewed if third countries do not adopt

"*appropriate prevention and surveillance measures to prevent the illegal re-entry in Italian territory of citizens who have been expelled*" (art. 1).

In setting entry quotas for workers from third states, "preferential quotas" will be reserved to countries which cooperate, whereas "numerical restrictions" will apply for inadequate collaboration to counter illegal immigration or to readmit their nationals (art. 17).

A committee chaired by the PM is set up to coordinate and monitor implementation of NLIT2's measures (2). Visa rejections are simplified by not needing to be justified on grounds including "security and public order reasons". Submission of false or counterfeit documents result in visa applications' inadmissibility, and past convictions may justify refusals of entry (4). Applicants for residence permits will be photographed and fingerprinted (EUD7). A "residence contract" signed with employers will be a prerequisite for permits issued for employment. Conditions applying to residence permits and visas are made stricter, the institute for social security (INPS) will set up a "register of non-EU workers" and a maximum length (two years) is introduced for family reunification visas.

NLIT2 introduces preconditions and administrative burdens on migrants and people engaging with them, subordinating employment to the certified absence of Italians to fill vacancies. The grounds are widened to allow both detention (whose length is increased to 30 days renewable by a further 30 days) and forced expulsions. Legal safeguards are neutralised, allowing appeals to be filed from abroad after deportation. Grounds allowing family reunification are restricted in cases including dependent parents. Proof that they do not have other family members who can take of them is required.

Renewed residence permits will last for the same period as the original one (down from twice as long) and applications have to be submitted 90 days prior to expiry (up from 30 days), increasing administrative procedures' impact on TCNs' lives (5). Fines are introduced for failures in reporting duties by people hosting or employing TCNs (8), and six years' continued legal residence are required for long-term residence cards (up from five). The interior minister may coordinate border controls at land and sea borders, taking advice from the committee on public order and security, and should coordinate with EU authorities on border controls. Fines for facilitation are substantially unchanged (but are in euros), although assisting transit to enable foreigners to enter other states is punished (10-11). Aggravating circumstances are introduced if facilitation involves three or more people. The requirement of financial gain for such actions to be punished may apply to "indirect" profit. Penalties increase for the entry of five or more people and cases involving trafficking, exploitation, abusive conditions and

minors. Measures conceived for organised crime syndicates on detention conditions are extended to illegal immigration. Provisions are made to confiscate the proceeds of illegal immigration activities. Navy ships and vessels conducting police activities may stop and inspect vessels in Italian waters and adjacent international waters if they are suspected of transporting irregular migrants (12).

Grounds for TCNs residing and working legally to lose their right to stay or enable expulsions are introduced, including criminal offences and delays in renewing residence permits. NLIT2 also concerns asylum, primarily through exclusion from procedures for manifestly unfounded cases and allowing detention regimes (in identification or detention centres), with many rules whose breach results in asylum examination procedures being discontinued. Nonetheless, art. 19 continues to apply the non-refoulement principle, forbidding deportation to countries where people may be persecuted.

NLUK2 is divided as follows: 1) nationality (s. 1-10); 2) accommodation centres (16-42); 3) other support and assistance (43-61); 4) detention and removal (62-80); 5) immigration and asylum appeals (81-117); 6) immigration procedure (118-142); 7) offences (143-156); and 8) general (157-164). The first offence listed in section 143 replaces "assisting illegal entry" with "assisting illegal entry to member State", providing evidence of the effects of EU membership. One condition enabling punishment points to the inherently discriminatory aspects promoted by restrictive immigration policies. Point 1(c) of new section 25 of the 1971 Immigration Act: "1. A person commits an offence if he… knows or has reasonable cause to believe that the individual is not a citizen of the European Union".

NLUK2 offers evidence of expansive exclusion measures affecting not just migrants or illegal entrants, but also people who have acquired rights or are protected categories. These include "deprivation of citizenship", allowing withdrawal of British citizenship status for anything the SoS considers seriously prejudicial to "vital" British interests (1(4)). A "white list" of countries enables swift asylum adjudication procedures to exclude manifestly unfounded cases. Several EU accession states featured, despite the presence of discriminated minorities like Roma people in some eastern European countries. The countries in section 115(7) were Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, Albania, Bulgaria, Serbia and Montenegro, Jamaica, Macedonia, Moldova and Romania. In-country appeal rights were removed for claimants whose applications the SoS deemed "clearly

unfounded" (115(1)). Regarding provision of support (55), if asylum seekers who are adults are believed not to have applied for asylum "as soon as reasonably practicable", they are left without support unless they have children who are minors. An example of the withdrawal of safeguards are automatic bail hearings for asylum seekers introduced by NLUK1 which are repealed in NLUK2.

Carrier sanctions are added to by an "authority to carry" scheme (124) requiring carriers to request advance authorisation before allowing passengers to board aircraft. Carriers may be required to provide passengers' details in advance for authorisation of entry to be granted by the Immigration Department, without which they should be prevented from boarding.

EUD15 establishes the Frontex agency with a governance function for cooperation in the management of migration flows to prevent illegal entry and residence in EU MSs by TCNs. The EU external border management policy aims to develop "integrated management ensuring a uniform and high level of control and surveillance", as a "necessary corollary of the free movement of persons" in the EU and as a "fundamental component" of the AFSJ. This involves setting "common rules on standards and procedures for the control of external borders". Efficient implementation requires increased operational cooperation between MSs to be coordinated by Frontex, defined as

"*a specialised expert body tasked with improving the coordination of operational cooperation between Member States in the field of external border management*" (premise 3).

Nonetheless, "responsibility for the control and surveillance of external borders lies" with MSs. Frontex acts to "facilitate the application of existing and future" measures by coordinating implementation by MSs (4).

Effective control and surveillance are of "the utmost importance" regardless of geographic location [several MSs do not have external EU borders] and Frontex should promote a spirit of "solidarity between Member States". EUD15 tasks Frontex with "implementing the operational aspects of external border management", including returns to third countries. Its risk analyses based "on a common integrated risk analysis model" will provide "adequate information" to MSs. This will help MSs to adopt "appropriate measures" and "tackle identified threats and risks" to improve "the integrated management of external borders". Frontex should provide EU training for national border guard instructors, on border control and surveillance and on

removals for national services. The agency should monitor relevant scientific research, disseminate information to MSs and manage "lists of technical equipment provided" by MSs to "pool" their resources.

In "circumstances requiring increased technical and operative assistance at external borders", Frontex will support MSs. National authorities responsible for external border controls are competent for operational aspects of returns. The "clear added value" of the EU performing such tasks means that Frontex should assist MSs to organise "joint return operations" and identify best practices concerning document acquisition and effectively carrying out returns. To fulfil its "mission", insofar as this can contribute to accomplishing its task, Frontex may cooperate with Europol, competent authorities in third countries and international organisations competent in this field. Cooperation may be undertaken in the framework of "working arrangements" and in compliance with the TEC. Under the EU's external relations policy, Frontex should facilitate operational cooperation between MSs and third countries. Developing work by the External Border Practitioners Common Unit and that of specialised training centres set up by MSs specialised in "control and surveillance of land, air and maritime borders", Frontex may create "specialised branches" for each border typology.

EUD15 highlights the agency's need for independence on technical matters and for autonomy in legal, administrative and financial terms, subject to control by the Court of Auditors and the OLAF anti-fraud office. Regulation 1049/2001 on access to documents and 45/2001 on the protection of personal data apply to Frontex. This requires Frontex to be a EU body with a legal personality exercising implementing powers granted to it in EUD15. Effective control requires that the Commission and MSs be represented on its Management Board (MB), comprising "operational heads of the national services responsible for border guard management or their representatives".

The premises underline that:

"*The development of the policy and legislation on external border control and surveillance remains a responsibility of the EU institutions, in particular the Council. Close coordination between the Agency and these institutions should be guaranteed*. (20)"

This interaction is an expression of the principle of subsidiarity. EUD15's objective is not the mere creation of a system but extends to promoting its necessity,

"the need for creating an integrated management of operational cooperation at the external borders of the Member States of the European Union" (premise 21).

This points to a substantive issue. Frontex is a "technical" and "operative" body responsible for information gathering, analysis, coordination and support at the service of MSs, but it also has an ideological dimension. The principle of proportionality applies. However, EUD15's strategic objective is wide-ranging, open-ended, bridges three different institutional levels, and includes activities to be undertaken beyond the EU's borders within the EU external policy framework. Frontex straddles the gap between theory and practice that this thesis examines by drawing on Jessop's account of the state's "formal" and "substantive" dimensions. Frontex has a duty to "evaluate, approve and coordinate" MS proposals for "joint operations and pilot projects", which it may also "launch" in cooperation with the "concerned" MSs. Frontex's outlook conflates interests in combating crime, combating illegal immigration and trafficking in human beings. It should coordinate intergovernmental activities including joint operations with interior ministries and law enforcement agencies through the Council. EUD15 provides for Frontex cooperation with Europol.

EUD15 develops Schengen *acquis* provisions the UK does not take part in, it did not participate in its adoption and is not bound by it. Nonetheless, to "facilitate the organisation of operational actions" by MSs involving use of "expertise and facilities" it "may be willing to offer" on a case-by-case basis, its representatives should be invited to MB meetings.

EUD15's regulation of Frontex is a case of "depoliticalisation", the removal of policy goals from political debate, to develop technical and operative capabilities and modes of intervention. EUD15's regulation of an agency whose autonomy it champions may promote a transition from "government" by national authorities towards an EU agency enacting a supranational "governance" regime, in coordination with the Council and MSs represented in its MB.

6.3 Part 3 (2005-2009): JHA aspects of immigration policy come of age

The governance documents in Chapter 4.3 affirm the importance of the AFSJ's development and its external dimension for the EU's internal security objectives (PP2, EUD16, EUD17, EUD19). Policies against illegal migration are at the core of efforts to tackle a wide array of cross-border phenomena, including trafficking and smuggling of human beings, organised crime and terrorism, that should henceforth be treated as "indivisible". Links between JHA policy and external relations are reaffirmed by conceptualising the AFSJ's external dimension. Links are established between internal and external security that increase the scope for unaccountable practices in the guise of technical and operative cooperation. Italian legislation uses criminal law and an expansive concept of security to target illegal residents and low-level crime. This allows detention, expulsion and the exercise of power(s) by authorities at the national and local levels, including provisions to expel EU nationals and expansive notion of security threat applicable to people (NLIT3). This is partly a response to consolidation of the EU's common policy on returns that regulates detention and expulsions, providing a legal basis for such practices in exchange for limited guarantees on rights and safeguards (EUD20). A fully-fledged EU border management regime is introduced by the Schengen Borders Code (SBC, EUD18). Its main characteristic is to assert distinctions between internal and external borders and between EU citizens and TCNs who do not enjoy the right of free movement, regulating differential border control practices. UK legislation expands the powers of the UKBA in its border control activities to include customs functions and creates a points-based system for citizenship applications which includes a requirement for applicants to be "of good character" (NLUK3).

Chapter 6.2 shows how EU policy steering in Part 1 advances towards development and regulation of structures to implement strategic selectivities pursued by EU immigration and asylum policy. Eurodac deploys technological means to exercise state power(s) involving fingerprint acquisition to subject TCNs who enter irregularly to procedures denying asylum seekers capabilities and choice regarding their destination (EUD7, EUD11, EUD13). The Eurodac model involves centralised data storage by a EU structure at the service of MSs, as a concrete expression of EU policy to assign MSs asylum adjudication responsibility. The Frontex agency is framed in a way that uses data to assert an expansive institutional outlook requiring coordination and improvement of external border control activities to prevent illegal migration. Its analytical work has an ideological component linked to notions of risk and crime

(EUD15). The Frontex model involves information collection from MSs and beyond by a EU structure to be processed and used to provide strategic guidelines for action for MSs, the Commission and Council. At the EU legislative level, one Directive imposes sanctions on international carriers responsible for failing to prevent irregular migration by TCNs (EUD9). Another Directive criminalises and sets parameters for punishing "*facilitation*" of entry, stay and residence (EUD12). NLIT2 shows how pervasive controls, subordination to requirements and means to discourage integration can be applied to a population group, codifying restrictive immigration policy. NLUK2 provides evidence of technological upgrades (iris imprints), expansive scope (citizenship deprivation) and fast-track mechanisms of exclusion from procedures (asylum white list).

The EUD documents in Part 3 (2005-2009) relevant to "government and structures" may be viewed as amounting to common immigration policy consolidating into state-like regulatory functions, for MSs to implement a EU system in practice. The creation of structures in Part 2 (2000-2004) was for instrumental purposes, preventing asylum seekers from choosing their place of refuge beyond the first MS they entered and promoting expansive development of border controls and activities against irregular migration. The SBC Regulation (EUD18) and the Returns Directive (EUD20) are binding legislative instruments regulating practices to be enacted in specific locations in pursuit of objectives that feature consistently in immigration policy documents from 1995 to 2009. They are material expressions of strategic selectivities asserted repeatedly about necessary harmonised border controls and an EU policy on returns. Implementing EUD18 and EUD20 requires compliance with national normative frameworks and competing values like human rights and proportionality, beyond their instrumental functions to secure borders and expel TCNs unlawfully present in EU territory.

EUD18's art. 3 states that it applies to people crossing the internal or external borders of MSs, without prejudicing the rights "of persons enjoying the Community right of free movement" (a) and "refugees and persons requesting international protection, in particular as regards non-refoulement" (b). EUD20 does not apply to the categories that EUD18's art. 2(5) defines as "enjoying the Community right to free movement" (art. 2.3). The scope of EUD20 are TCNs staying irregularly in a MS's territory. MSs may choose not to apply EUD20 to TCNs refused entry under art. 13 of EUD18, "apprehended or intercepted" during irregular external border crossings without subsequently obtaining authorisation to stay, or who are subject to return as a sanction under criminal law (art. 2).

Both EU measures continue the expansive assertion of the exercise of state power(s) to enforce differential treatment and develop structures for migration management purposes. As noted in Chapter 4.3, EUD18 regulates the enforcement of distinctions between internal and external borders, and between people who enjoy the right to free movement and TCNs to be subjected to "thorough" controls at external borders. Abolishing controls at internal borders means that:

"Internal borders may be crossed at any point without a border check on persons, irrespective of their nationality, being carried out" (art. 20).

Conditions enabling police checks follow, "insofar as the exercise of those powers does not have an effect equivalent to border checks" (art. 21a), none of which are verifiable. Conditions are provided to enable MSs to temporarily reintroduce border controls for no longer than 30 days in the presence of serious threats "to public policy or internal security". These may be prolonged if such a threat persists (Title III, chapter 2).

At external borders, people enjoying the right to free movement shall be subjected to minimum checks to establish identity through "rapid and straightforward verification" of travel documents (art. 7.2) which may involve checks on relevant document databases. "Thorough" checks apply for TCNs to verify entry conditions for stays of no longer than "three months per six-month period", including (art. 5):

-valid travel documents or authorisation to cross the border (a);
-valid visas, depending on their nationality, unless they have a residence permit (b);
-justification of their purpose and conditions of stay, having means for subsistence for their stay and return (c);
-not having had an alert issued to refuse them entry in the SIS (d);
-not being considered a "threat to public policy, internal security, public health", to any MS's international relations, and not having alerts issued against them in any MS's national database (e).

The wide scope provided for border officers to refuse entry is evident and supporting documents to certify the reasons for their stay may be requested.

EUD18 is relevant to structures, including the SIS as a means for border authorities to check alerts requiring refusal of entry to TCNs. Lane separation and relevant signs at external border crossing points are provided for (art. 9 and annex III), particularly for air borders. Title II (arts. 6-13) regulates management of external border crossings, sets conditions for TCNs' entry, provides for exceptions and imposes use of "effective, dissuasive and proportionate" penalties for irregular border crossings. TCN's travel documents shall "systematically" be stamped upon entry and exit (art.10), with the absence of stamps allowing "presumption" by national authorities that conditions of stay are not fulfilled (art. 11). Provisions are made for border surveillance "to prevent unauthorised border crossings, to counter cross-border criminality" and take measures against illegal entrants, which may involve use of "stationary or mobile units" (art. 12). Norms on refusal of entry require that a "substantiated decision stating the precise reason" for refusal be issued, on a standard form, to have immediate effect. Appeals may be filed, but do not have a suspensive effect. Border guards are required not to allow TCNs refused entry into the MS's territory, although they must respect people's dignity during checks, human rights apply and humanitarian grounds for allowing entry are provided.

Intensified border control activities are required involving database checks and technical means, not just for TCNs, as scope is provided for *"non-systematic"* database checks on the documentation of people enjoying a right to free movement. MSs must deploy staff and resources to ensure "an efficient, high and uniform level of control" at external borders (chapter III, arts. 14-17). Border controls are subject to national laws and border guards shall be "specialised and properly trained professionals". Cooperation with other MSs, directly and/or under coordination by Frontex, is provided for and may include exchange of immigration liaison officers, but "Member States shall refrain from any activity which could jeopardise the functioning of the Agency or attainment of its objectives" (art. 16.3).

EUD20 has five chapters: "general provisions" (arts. 1-5); "termination of illegal stay" (6-11); "procedural safeguards" (12-14); "detention for the purpose of removal" (15-18) and "final provisions" (19-23). Its legislative function and the binding nature of its provisions make it relevant to government. Art. 63(3)(b) TEC requires adoption of measures on "illegal immigration and illegal residence, including repatriation of illegal residents". A proposal from the Commission was acted upon in accordance with the procedure in art. 251 TEC, a process of "co-decision" between the three EU institutions.

Returns are defined as TCNs "going back", voluntarily or by force, to their COOs, to transit countries in application of readmission agreements (EU or bilateral) or to another third country "in which he or she will be accepted" (art. 3.3). The scope for MSs to have several options available to them to enforce removals is evident. EUD20 should not prejudice more favourable conditions for TCNs in Community acquis on immigration and asylum or in national legislation, as long as such provisions are compatible with the Returns Directive. People excluded from EUD20's application shall not be subjected to treatment and protection levels "that are less favourable" to those established in EUD20. These concern "limits to the use of coercive measures" as a last resort and as subject to guidelines on removal by air (art. 8), "postponement of removal" when it may amount to refoulement, for health conditions, and other cases including legal remedies being underway. UAMs should not be removed without consulting appropriate bodies, considering a child's best interest and ensuring they are returned to a family member, a nominated guardian or "adequate reception facilities" (art. 10).

EUD20 requires that MSs issue return decisions to TCNs staying irregularly in their territory (6.1), barring exceptions that include a child's best interest, family life, health conditions and non-refoulement. An "appropriate period of between seven and thirty days" should be allowed for voluntary departure (art. 7.1). Accessory measures may be imposed to prevent the risk of absconding involving financial deposits, reporting duties or compulsory places of residence. Forced removal may follow non-compliance with an order to leave voluntarily within the required period or if such a period has not been conceded, using "all necessary measures". Coercive measures should be a last resort, proportionate and without exceeding "reasonable force", and MSs should effectively monitor forced returns. The conditions imposed show awareness of potential risks (fundamental rights and dignity are also mentioned) return practices entail.

Art. 11 provides for an accessory measure to issue entry bans alongside return decisions which should "not exceed five years" unless returnees represent a "serious threat for public policy, public security or national security". MSs may provide for such bans to be withdrawn or suspended if TCNs show that they have complied with an order to leave. Decisions on return, entry bans and removal must be in writing, including information on applicable legal remedies, although exceptions are provided on grounds including public security. Remedies to appeal before judicial or administrative authorities must be effective, may lead to review and may temporarily suspend returns. Legal advice should be available for TCNs, if necessary by

providing legal aid (art. 13). Safeguards apply while return is pending connected to family unity, health conditions, educational access for children and vulnerability.

Detention should be limited to cases involving the risk of absconding or obstruction of removal preparations, "for as short a period as possible" and only "as long as removal arrangements are in progress and executed with due diligence" (art. 15.1). Detention may be ordered by judicial or administrative authorities, should be subject to judicial review, should cease if the "prospect of removal no longer exists". MSs should limit its length. The maximum detention period should not be longer than six months, exceptionally extendable for no longer than twelve further months due to lack of cooperation by the returnee or difficulty in obtaining documents. Detention conditions are set for "specialised detention facilities", allowing contact with legal representatives, family and consular authorities. Provisions are made to detain minors and families "as a last resort and for the shortest appropriate period", with family- and child-sensitive conditions specified (art. 17).

Despite efforts to make EUD20's provisions compliant with formal human rights obligations, their coercive nature is obvious. Guarantees that are provided tend to be accompanied by grounds allowing exceptions, whose impact depends on national implementation. Nonetheless, the nature of the measures indicate that EU added value in terms of improving national practices may concede a lot of scope for excesses by MS governments.

As shown from Part 1 to Part 3, the idea of migration policy as control of borders and entry is belied by the spread of migration enforcement into areas like employment, social service provision, controls on marriages and assisting residence. Evidence from the national level documents a proliferation of criteria and procedures allowing loss of acquired status, up to deprivation of citizenship. Unlike in EUD governance documents in parts 1-3 (except for deaths at sea) and legal instruments examined in parts 1-3 (although EUD18 contains formal human rights safeguards), the safeguards provided in EUD20 display concrete awareness of abuses committed in the context of detention and return practices. This can be appreciated from provisions to make detention and forced removal exceptions rather than the norm, monitoring and judicial review requirements, and provisions that detention should cease if returns are unlikely to be executed. Despite attempts to limit MS power(s) to act discretionally, several exceptions provide scope for national authorities to circumvent limits, in what proved a formidable tug of war between the three levels that this thesis focuses on. Significantly, art. 4

provides that EUD20 should be "without prejudice" to MSs' rights to maintain more favourable provisions for TCNs under national law. People excluded from EUD20's application (refusal of entry under EUD18, apprehension during border crossing attempts or return orders issued as a result of criminal law provisions) should not experience worse treatment and protection levels than those established regarding: detention conditions; emergency health care and the needs of vulnerable persons; postponement of removal; limits to the use of coercive measures. Respect for the non-refoulement principle should also be guaranteed. Awareness of abuses the practices EUD20 regulates may entail is most explicit in its premises. These include compliance with "guidelines on forced return" issued by the Council of Europe's Committee of Ministers in 2005 (3), a non-EU body. Reference to Council Directive 2005/85/EC of 1 December 2005 on minimum standards for asylum procedures clarifies that asylum applicants should not be treated as staying illegally until their application is rejected or until a decision ends their right to stay as an asylum seeker (9). Under its Protocol, the UK is neither taking part in the adoption, and nor is it bound, by EUD20 (26).

NLIT3 uses criminal law and an extensive definition of a security risk to circumvent limits imposed by EUD20 on detention and on the immediate execution of forced expulsions. Art. 1(4) provides that forced expulsions with accompaniment to the border may be enacted by the local police chief as a security measure for TCNs in cases involving a criminal offence. This measure may be applied widely, considering that art. 1(15a) criminalises illegal entry or presence in the national territory, including a sanction of 5,000 to 10,000 euros that is not applied if they are expelled. Expulsion as a security measure is also introduced for EU nationals for criminal offending. NLIT3 enhances controls on activities migrants engage in. For example, money transfer agencies are required to collect TCN users' personal data and photocopies of their residence permits and to store them for ten years, with a duty to report TCNs if they fail to produce a residence permit (art. 1.20).

These measures are distributed in 32 provisions comprising article 1 of NLIT3, a law which also deals with organised crime, "widespread criminality", "road security" and "urban decorum". These areas seem detached from the matter at hand, but NLIT3 brings facilitating illegal entrance within the remit of organised crime, to which measures provided to fight Mafia-like syndicates apply. NLIT3 introduces measures to target begging (with aggravating circumstances involving aggressive attitude and the use of minors or dogs) and street sellers of counterfeit products.

Conditions to obtain citizenship are tightened by requiring two years' residence after marriage to an Italian citizen and a payment of 200 euros for any connected procedure (for choice, acquisition, reacquisition, relinquishing or concession of citizenship). An Integration Contract must be signed in order to apply for a residence permit and applying for it to be issued or renewed entails costs of between 80 and 200 euros. An Italian language test is required for long-term EU residence permits. Foreigners living in Italy must certify their lawful residence status if they intend to marry. To incentivise qualified employment, the conversion of student residence permits into permits enabling employment is envisaged, as are simplified procedures to enter Italy "for certain categories of particularly qualified workers". Offices to register in the municipal residents' register (*anagrafe*), necessary to have access to public services, or to notify a change of residence or apply for family reunification, may request a prior inspection of the hygienic and sanitary conditions of their place of residence to allow registration. Not being registered in the *anagrafe* may be used as an element pointing to a TCN being a security risk.

NLUK3 assigns UKBA customs controls functions at the border referred to in Chapter 4.3. NLUK3 amends provisions to share information (s. 14-21) in the 2006 Immigration, Asylum and Nationality Act (IANA), applying provisions of the Police and Criminal Evidence Act 1984 (and 1989 PACE applying to Northern Ireland) to criminal investigations, customs-related matters and persons detained by customs officials. The SoS may order that these provisions be extended to people detained and to investigations carried out by immigration officers or designated customs officials. The definition of short-term holding facilities is altered (s.25), HMRC and UKBA may share facilities or services in exercising their functions (s.26-27) and a framework for inspections is envisaged, including a temporary provision on the welfare of children (s.34).

For naturalisation, conditionality on a series of criteria and grounds for exclusion proliferate, at the same time as guarantees are provided for the children of armed forces personnel (s.42) and the period for obtaining nationality through registration for children increases from 12 months to any time before they are 18 years old (s.43). Applicability of registration for people to certify being "of good character" extends from limited grounds for which it was introduced by the 2006 IANA "into each of the Acts which contain the relevant registration routes" (s.47). The definition of being "in breach of the immigration laws" is moved from NIAA 2002

[immigration and asylum] to BNA1981 [nationality], with references added to "being a qualified person under European Community law" (s.48).

The miscellaneous provisions that end this act (s.53-59) redirect judicial reviews on asylum, immigration and nationality "to the Upper Tribunal", widen the definition of (non-sexual) exploitation for cases of human trafficking to capture the use of a category of persons by another in that offence. The SoS is duty-bound to carry out functions to "safeguard and promote the welfare of children who are in the UK".

6.4 Part 4 (2010-2014): glass ceilings, unbounded power(s) and societal damage

Chapter 4.4 examines the documentation in Part 4 (2010-2014) from the perspective of hierarchy and state power(s). What emerges is that the pursuit of inadequately justified strategic priorities is continuously asserted as requiring large-scale developments to neutralise existing, perceived or hypothesised limit(s) to state power(s). Such limits are portrayed as problems, without acknowledging inherent harmful effects resulting from the pretext used for structural developments, namely, illegal migration which is "illegal" because it has been defined as such. The means for neutralising limits to what state authorities may do to people is the serial definition of hierarchies among population groups and differentiation between countries and regions, with a dominant role envisaged for the EU. Despite resistance and tensions concerning power relations between MSs and the supranational level, these do not appear to be an issue beyond the EU's borders with regards to interaction with third states.

Chapter 5.4 unpicks the strategic selectivities that are priorities from a governance viewpoint. The fourth part of a twenty-year period of study offers evidence of such priorities' unshifting nature, at the same time as means for imposing them have developed considerably. These unshifting selectivities concern state powers to detain, expel, coerce, manage borders and combat or prevent illegal migration using any pretext that becomes available at any time. Externalisation of EU policies by putting pressure on third countries is matched by efforts to expansively develop EU security structures. Developing the AFSJ is a powerful motive comparable to the "*Raison d'État*" that is prominent in the JHA field at the national level. Asserting immigration policy's strategic priorities means overwhelming existing limits by subordinating or postponing possible changes of course to prerequisites set so ambitiously that they are not achievable. As noted above, unshifting strategic priorities are accompanied by the proliferation and intensification of operational capabilities and means to enforce policy options for immigration policy purposes. This results from the development of structures, practices and procedures that are codified in legally binding acts that are the focus of Chapter 6. Chapter 6.4 focuses on government and structures, drawing on binding legislative documents from the EU and national levels (EUD21, EUD22, EUD24, NLIT4, NLUK4).

Chapter 6.3 examines legislative instruments regulating the exercise of state power(s) at borders and in the context of returns of TCNs within the AFSJ as a coherent jurisdiction, to be implemented by MSs in their territories. Despite improving formal guarantees for refugees,

vulnerable subjects and on human rights compliance, EUD18 and EUD20 normalise and provide EU legal bases to exercise state power(s) relevant to border controls, detention and deportation. Technological developments like the SIS database extend the scope of national decisions to enable mutual recognition across the EU through systematic checks on TCNs' rights of entry and residence. Limited checks on EU nationals' documentation using databases is also allowed. MSs preserve degrees of autonomy and margins for action through exceptions introduced in legal norms that nonetheless compel them to exercise their power(s) in expansive fashion to implement EU border controls and return policies. Defence of national authority and practices takes place collectively through the Council, and by preserving national sovereignty for JHA matters. At the national level, NLUK3 and NLIT3 continue to provide evidence of expansive enforcement of immigration policy. The Italian case (NLIT3) creates tight control and exclusion regimes to enable extensive use of the exceptions provided in EUD20 to allow forced expulsions motivated by criminal law measures and expansive interpretations of security threats. Both national laws provide for expulsions of EU nationals.

Five documents in Part 4 concern government and structures. The first two concern long stay visas (EUD21) and establishment of EASO, a EU agency to support asylum adjudication in MSs (EUD22). The third one establishes Eurosur, an integrated border surveillance system at external borders to provide comprehensive, seamless, control over border segments including pre-frontier surveillance (EUD24). The national legislation includes an extreme law (NLUK4) to subordinate migrants through practices to target and exclude TCNs staying illegally, and a law to correct faulty implementation of EU legal instruments (NLIT4).

EUD21' s relevance in the context of this work is that it promotes the issuing of residence permits to TCNs by MSs to enhance their freedom of movement if authorisation has been provided through consecutive time-limited visas for any period that exceeds a year. The need for such a measure arises from the fact that "Member States increasingly do not replace long-stay visas by residence permits or do so only after considerable delay" (premise 2), which negatively affects freedom of movements for TCNs staying legally in EU territory. Establishing a "principle of equivalence" between long-stay visas and residence permits should enable travel to different MSs from the one which issued authorisation, provided that their presence in such a MS is no longer than "three months in a six-month period". To ensure that this measure does not pose any "additional security risk" for MSs, provisions are included to extend systematic SIS checks applicable to the processing residence permit applications to applications for long-

stay visas (premise 6). Residence permits issued to people who are the object of an alert in the SIS entered by another MS, will only be granted following consultation with the MS in question for "substantive reasons", namely, "humanitarian grounds or by reason of international commitments".

EUD22's objective is to improve implementation of the CEAS by facilitating, coordinating and strengthening MSs' practical cooperation and to provide operational support to MSs facing "particular pressure on their asylum and reception systems". A worrying aspect concerning this support office's role is the specification in art. 2 that EASO "shall be fully involved in the external dimension of the CEAS", in line with strategic selectivities maintained over time that are identified in Chapter 5. EASO's duties are outlined in Chapter 2 in terms of supporting practical cooperation by developing best practices, acquiring, organising and analysing information on COOs to foster "convergence of assessment criteria", without encroaching on MS authorities about the granting or refusal of applications. Forms of support EASO should provide include preparatory work to enable relocation within the EU to relieve pressure on disproportionately affected MSs, training provision for national authorities, administrations and services, and support for the CEAS's external dimension relevant to resettlement and assisting capacity building in third countries.

The means for establishing that MSs are under special pressure include sudden arrivals of large numbers of TCNs who may need protection and their geographical and demographic situations. EASO should systematically gather and analyse relevant information, also to develop "early warning systems" and coordinate actions to support MSs, to facilitate "initial analysis" of applications, arrange appropriate reception facilities and coordinate possible deployment of asylum support teams (art. 10). This activity should allow EASO to contribute to implementation of the CEAS and centralise information on case-law in relevant databases. A EU contact point should be designated to be operated by EASO experts (art. 20) and each MS will also designate a national contact point.

Both EUD21 and EUD22 work towards mitigating some problematic aspects of immigration and asylum policy implementation, particularly reluctance to issue residence permits and to develop the CEAS. However, they do not significantly influence the strategic selectivities that are prevalent among MS and Council tendencies to organise asylum procedures in way that efficiently exclude large numbers of applicants (lists of safe countries) to undermine the

principle of individual examination of claims, and to restrict access to the EU. Perversely, EUD21 may lead to reluctance in MS to issue long-stay visas as a result of the stronger connection that is established with residence permits.

EUD24, the Eurosur Regulation (1052/2013/EU), is a concrete expression with structural implications of Frontex's systematic and expansive approach to border management. A "gradual geographical roll-out" is envisaged for Eurosur, reliant on obligations for MSs to set up NCCs, first in states "at the southern and eastern external borders", then in other MSs (14). EUD24 was adopted under authority provided by art. 77(2)(d) of the TFEU. This legal basis allows the EP and Council to adopt "any measure necessary for the gradual establishment of an integrated management system for external borders".

27 premises outline Eurosur's policy context and justify its establishment as a "European Border Surveillance System" to strengthen information exchange and operational cooperation between MS authorities, coordinated by Frontex. Eurosur should provide an infrastructure and tools to improve "situational awareness and reaction capability at the external borders" to detect, prevent and combat "illegal immigration and cross-border crime" and enable "protection and saving the lives of migrants". This life-saving function is highlighted in response to increased use of "small and unseaworthy vessels" and a higher death count at sea "at the southern maritime external borders". Eurosur enhances Frontex and MSs' "operational and technical ability" to detect vessels and improve their "reaction capability". EUD24's strategic outlook aims to enhance MSs' "reaction capability" (arts. 14-16) to address any circumstance or incidents requiring a response. MSs should divide their external land and sea borders into relevant "border sections". Border sections will be assigned impact levels as "low", "medium" or "high" by Frontex on the basis of its risk analysis in agreement with concerned MSs, depending on the overall impact of incidents involving "illegal immigration or cross-border crime" on border security. This surveillance system's outlook may be described as strategic, operational and as involving military components and scope for functions assigned to Frontex to organise joint operations and rapid interventions to support MSs.

Modes of reaction are established for the different impact levels assigned to border sections. Low impact levels require national authorities to "organise regular surveillance on the basis of risk analysis and ensure that sufficient personnel and resources" are kept in the border area for "tracking, identification and interception" purposes. Medium impact levels require adoption of

"appropriate surveillance measures" for that border section. High impact levels may require "reinforced surveillance measures", and Frontex may provide support to national authorities "by initiating joint operations or rapid interventions". Coordinating "cross-border measures" between MSs may be necessary when they have adjoining border sections assigned medium or high impact levels.

EUD24's model for external border surveillance defines roles for the Eurosur framework's components, listed in Chapter 4.4. MSs must set up national coordination centres (NCCs) to exchange information between national authorities assigned external border surveillance functions and Frontex, as single contact points for information exchange between national authorities' NCCs and with Frontex. NCCs should operate 24 hours a day, seven days a week, to ensure timely exchange of information on external border surveillance relevant to search and rescue, law enforcement, asylum and immigration with relevant national authorities. NCCs' responsibilities include planning and implementing border surveillance activities, coordinating the national border surveillance system, measuring the effects of such activities and coordinating operational measures with other MSs (art. 5).

NCCs maintain a "national situational picture" (NSP, art. 9) containing "effective, accurate and timely information" to be made available to all authorities responsible for external border surveillance. The NSP draws on information from available sources at the national, EU and international levels. These sources include the "national border surveillance system", "stationary and mobile sensors", patrols and monitoring missions, "local, regional and other coordination centres", Frontex, NCCs in other MSs, ship reporting systems, European and international organisations, etc. The NSP comprises sub-layers on unauthorised border crossings (including incidents presenting a risk for migrants' lives), on cross-border crime, on crisis situations and other events involving unidentified and suspect vessels or people "at, along or in the proximity" of MSs' external borders. Incidents shall be labelled as having "low", "medium" or "high" impact levels.

The NSP's operational level's sub-layers will detail its own assets, "including military assets" to assist "law enforcement missions"; operational areas; and "environmental information", including information on terrains and weather conditions at external borders. The NSP's analysis level's sub-layers include information (key developments and indicators), analysis (risk rating trends, regional monitors and briefing notes), intelligence (attributing impact level

to external border sections) and "imagery and geo-data", such as maps, change detection and "external border permeability" maps. Neighbouring MSs' NCCs will share information on neighbouring external border sections concerning incidents and significant events, tactical risk analysis reports and available assets.

Frontex (art. 6) shall provide a communication network, establish a European situational picture (ESP), a "pre-frontier situational picture", and "coordinate the common application of surveillance tools". The ESP (art. 10) shall provide NCCs "effective, accurate and timely information and analysis" drawn from NSPs, its own sources, Commission assessments and strategic information, and from EU delegations, offices, agencies and international organisations. The ESP's sub-layers resemble those in NSPs on available assets, operations and environmental information.

The "common pre-frontier intelligence picture" (art. 11) extends this surveillance model's range to include relevant information from Frontex, EU bodies and agencies, international organisations, third countries and ILOs deployed abroad on the "pre-frontier area". Information on air border surveillance may be included, and the structure of this picture will be similar to that of the ESP, including determination of incidents' impact level and informing NCCs of "any incident in the pre-frontier area". The common application of surveillance tools will be coordinated by Frontex.

NLIT4 is a law adopted in August 2011 to correct the implementation of Directives 2004/38/EC on freedom of movement for EU nationals and Directive 2008/115/EC on returns (EUD20). Nonetheless, it contains evidence of resistance by national authorities to the specifications codified at the EU level. In fact, although EUD20 limits detention to the execution of returns, the new article 14(1) introduced by NLIT4 expands the grounds for detention to include "transitory situations" that impede the organisation of returns that are not connected with an individual's conduct. Furthermore, accessory requirements which may be applied to prevent the risk of absconding are treated as alternatives to detention, including an obligation to stay in a fixed abode, a duty to report periodically or to hand in a document, without which detention is authorised. Although the initial maximum length of detention is halved from 60 to 30 days, the rules introduced for the measured to be extended bring its maximum length (specified in NLIT3 as 180 days) to the maximum established by EUD20, 18 months. The new article 14(5) allows the initial 30-day detention period to be repeated if there

are difficulties of identification or document acquisition, with two subsequent renewals of the detention measure for 60 days envisaged. Renewals of detention may be introduced, for no longer than 60 days on each occasion, up to a maximum limit of "a further twelve months".

NLIT4 recognises some of the conditions required by EUD20 (art. 16) on detention conditions with regards to provision of necessary assistance and respect of detainees' dignity, including a right to communications beyond the detention centre's confines, also by telephone. However, it disregards some other guarantees like the possibility of contacting legal counsel, family members and consular authorities, provisions on medical care and vulnerable subjects. The need for judicial scrutiny of detention is limited in relation to EUD20's provisions, although a general provision to determine that when a return is unlikely to be achievable the reasons justifying detention cease is included.

It appears that long-term detention is a purpose of this legislative reform. The need for forced returns to result from objective conditions leading to suspicion that TCN in question may abscond result in a wide array of conditions to determine that such a risk exists in amendments to art. 13(2). These conditions include failure to renew expired residence documents by more than 60 days, fraudulent residence document applications, non-compliance with a voluntary departure order, or any past false declarations.

Amendments that lessen the punitive nature of Italian immigration law include not punishing people who are identified at the border in an irregular situation when they are leaving the country. Furthermore, an amendment provides that, rather than being automatic, expulsion decisions by *prefetti* must be adopted on a "case by case" basis, as an indication of compliance with requirements for evaluation of individual circumstances.

Regarding the wide grounds established in NLIT3 to order expulsions of EU citizens for reasons of public security or security of the State reasons are defined in more concrete terms. They apply to serious crimes linked to organised crime and terrorist activities, in the latter case, whereas public security concerns must concern conduct amounting to a "concrete, effective and sufficiently serious risk" for fundamental rights and public safety (art. 1).

Unlike NLIT4, NLUK4 explicitly aims to increase controls on the situation of TCNs to find people staying irregularly for the purpose of expelling them, and to expand the grounds which

may result in loss of status. NLUK4's first part concerns "removal and other powers", including immigration officer's enforcement powers, provisions on detention (including restrictions on detention of UAMs) and bail and biometric information. Part 2 concerns appeals, in particular to limit their scope and to allow the SoS power to admit or prevent appeals from being heard. Provisions are made for appeals not to have suspensive effects on removals by allowing them to be filed from outside the UK if the country to which people are deported is deemed a safe third country or an application was dismissed as manifestly unfounded (s.17).

Part 3 of NLUK4 concerns access to services, to cast a wide net of controls of immigration status to be applied in respect of immigration tenancies (chapter 1), involving disqualification "by immigration status" and "limited right to rent" regimes. Other affected services are access to healthcare provision by the NHS, the right to open bank accounts, to work and to obtain a driving licence, which are subordinated to legal residence requirements. Part 4's provisions on "marriages and civil partnerships" include referrals, a power for the SoS to require investigation, compliance requirements and a schedule on relevant information that may be required. Part 5 grants the Immigration Services Commissioner powers to investigate and conduct inspections on persons and activities registered to provide immigration advice and services, and to suspend or cancel registration (Schedule 7). Part 6's miscellaneous measures include "deprivation of citizenship" if this is conducive to "the public good" because someone's conduct is "seriously prejudicial to the vital interests of the United Kingdom" (s. 66). Citizenship deprivation is the clearest example of the possibility of measures introduced in the context of immigration policy spilling over into measures that undermine the position of wider constituencies. Schedule 1 concerns immigration officers' enforcement powers, including provisions to search people who are detained, to enter and search premises, and to "retain documents" if they deem that a person "may be liable to removal from the UK" and that a document "may facilitate the person's removal".

Taken collectively, the EU documents and national legislation in Part 4 (2010-2014) are more balanced than those in the three period phases examined in this thesis, including measures to expand the right of free movement for TCNs, develop the CEAS and address shortcoming in national legislation relevant to compliance with fundamental rights. Nonetheless, they demonstrate that there are limits deriving from MSs' power(s) to implement EU measures in practice in their jurisdictions in combination with the protection of their prerogatives by the Council enacted by envisaging far-reaching exceptions which may be used instrumentally to

elude obligations. This form of resistance, already evident in NLIT3 in a MS that is subject to Schengen rules, was compounded by provisions in NLIT4 which supposedly corrected erroneous national implementation of EU rules by enacting restrictions to their scope. NLUK4 exemplifies how national legislation can contravene basic legal principles on account of the importance of effective immigration controls as leading to security for citizens or society in ways that affect people with acquired rights, including citizens. EUD24 is a concrete expression, with structural implications, of the far-reaching ways in which a drive to expansively develop migration controls at the EU level can overwhelm limits to state power(s) once it is embedded in a security-minded JHA framework.

Chapter 7: SRA analysis of JHA aspects of European immigration policies

7.1 State theory, power and European immigration policies

This thesis identifies European immigration policies' essential characteristics by relying on the distinction between its formal and substantive aspects across three levels over 20 years. This distinction sheds light on the immigration policy field's inherent contradictions and on the distance between its claims and substance. A concrete expression of this distance concerns formal recognition of human rights' hierarchical prevalence in documents that propose strategies to neutralise their effects in practice. Another expression of the distance between claims and substance concerns justifications to increase state power(s) to target people labelled as "illegal" before the categories subject to such powers are expanded. Focusing on state power(s), strategic selectivities and structures using empirical documents has produced consistent evidence about structural biases and dynamics in European immigration policies. Jessop's Strategic-Relational Approach enabled coherent analysis of state power(s) in policies against irregular migration at different (sometimes conflicting) levels to provide "*a certain apparatus and operational unity horizontally and vertically*" (2016:66-68).

This thesis concerns 20 years of institutional efforts to constitute a policy field (rather than to solve a problem) which has detrimental effects for individuals, groups and societies in the EU and beyond its borders. Its findings open a route to alter relevant frames of reference in academia, policy-making, politics and civil society. The need for an innovative critical approach to European immigration policies required a state-theoretical effort to achieve clarity and identify unity of direction and consistency of outcomes. The different levels that are bound in the EU as a state project are often treated as distinct or conflicting, but they have been shown to interact coherently. This policy field's systemic and structural features are aspects of what the SRA defines a "*state project*" underpinned by a "*hegemonic vision*" that deploys significant ideological work to achieve legitimation. This field's complexity decreases as the documentation's contents emerge in the empirical chapters (4-6) on "*hierarchy and state power(s)*", "*governance and strategic selectivities*" and "*government and structures*". The SRA's conceptual and theoretical model has proved suitable to isolate meaningful features of a unit of analysis (the JHA aspects of European immigration policies at the EU, intergovernmental and national levels in two MSs - Italy and the UK). This thesis identifies inherent problems underlying the assertion of a policy field's objectives in relation to

fundamental principles and positive values in the fields of law, policy and politics. Authority to overwhelm limits to state power(s) is provided by the EU "*state project*" and a supranational governance model that develops its JHA aspects (the Schengen AFSJ).

The thesis translates policy claims into evolving practices to bridge a gap between this policy field's theoretical outlook and the material reality it produces. Documents on immigration policy and the AFSJ concerning developments from 1995 to 2014 period, relevant to a unique and sophisticated state-building effort, offered an opportunity to conduct an empirically concrete state-theoretical analysis. An aspect that stands out in the findings is the continuity of efforts to embed immigration policy within a security-minded JHA outlook, particularly in PP documents to develop the AFSJ. Examining developments at the EU, national and intergovernmental levels enables understanding of migration policies' transformative role that has implications for state power(s). This thesis explains why European immigration policies, as they have been developed for two decades, have reached a point where they affect law, society and politics negatively. Research into the relationship between restrictive immigration policies and state power(s) involves tracking the powers introduced to counter a phenomenon perceived as a problem through regulation. This is not at issue, and nor is this field's development and progress through EU and national political, judicial, bureaucratic and administrative bodies and mechanisms under established procedures in advanced democratic systems.

The empirical findings from the selected documentation show that this policy field's effects lead to a deterioration of standards in pursuit of goals that are never convincingly justified. Without the three-level analysis undertaken using state power as an interpretative key and the SRA as a theoretical model, this thesis could have amounted to reconstructing developments declared, adopted and enacted by authorities, that is, the ordinary functioning of institutions. Instead, this thesis reveals why and how established modes of operation have been degraded into the dogmatic assertion of unshifting strategic selectivities whose common feature is coercion. The priority that underlies these selectivities is to stop illegal migration (unauthorised mobility) into the EU from countries whose citizens are collectively identified as threats. The underlying question is whether migration could have possibly caused the systemic damage that attempts to regulate and stop so-called illegal migration have produced. These problems are identified as the drift of European political society towards authoritarian statism resulting from migration policies' link to the assertion of increasingly discretional forms of state power(s).

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This thesis cannot convey the breadth and strength of the evidence of dynamics from the selected unit of analysis identified in the selected documents. However, it shows how their contents lend substance and coherence to multi-faceted developments over 20 years at three levels. This endeavour's scale was ambitious and further information and findings are omitted for reasons of length, although the research design makes it possible to emphatically answer this thesis' four research questions (see Chapter 7.2). 1) Immigration policies have exceeded their ostensible scope through the expansive development of procedures and criteria to exclude and disqualify people, affecting even people who are not migrants negatively. 2) The expansive exercise of coercive state power(s) is driven by structurally-inscribed strategic selectivities that do not consider the possibility that there may be a point beyond which such powers may come to represent a problem. 3) A proliferation of grounds used to justify controls and possible adoption of punitive measures increases the power differentials between state agents and people upon whom differential regimes are imposed. 4) Setting overambitious policy goals leads to problems that require normative frameworks, competing positive values and societal standards to be overwhelmed to achieve arbitrary targets.

This thesis conclusively establishes that coherence in objectives and modes of intervention makes it possible to establish a common direction of developments in European migration policies at the EU and national levels. There are tensions between a drive to develop EU policies and structures in an ambitious state-building effort and reluctance in some MSs to relinquish competences or comply with EU standards in defence of national sovereignty. The documentation offers evidence of a drive to assert and expand authority to exercise state power(s) to enforce hierarchies designed to penalise population groups. Enforcing the consequences of hierarchies requires clear methods of identification to be implemented and mechanisms to enforce the effects of differentiated statuses. The structures these processes give rise to are materially bound to the state, enabling the expansive exercise of state power(s) by continuously producing sets of criteria and conditions to subject people to procedures. A crucial feature regarding state power(s) is the drive to erode their limits. By default, it appears that duties deriving from the international human rights framework are the only valid restraint that is formally acknowledged. However, harm can be inflicted on people before a practice or treatment reaches a human rights violation threshold, which is an inherent problem in this policy field. The experiences of people targeted by state power(s) to achieve immigration policy goals and the burdens imposed on them are not concerns in the selected documentation.

This omission also applies to state and non-state agents or third states that are called upon, convinced or coerced into cooperating.

Unshifting priorities in immigration policy documents include enacting expulsions, upgrading documents standards and means of control, and removing obstacles to what may be done to people. The documents in Part 1 (1995-1999) already provide evidence of the immigration policy field's expansive outlook, in geographical terms and regarding affected population groups. Regardless of external influences and pressures to which states may be subjected, the examined documentation shows the state to be a means for achieving strategic goals. The essence or rationale underlying this policy field are of marginal interest, if a governance framework requires strategic goals to be accomplished. The same recipe is used consistently to enforce immigration policy and improve implementation. It involves expanding state power(s) to target population groups by modifying normative frameworks that regulate the exercise of state power(s) and enhancing state capabilities.

The choice to focus on state-theoretical aspects by drawing on policy and legislative documents from the national, supranational and intergovernmental levels meant that a degree of abstraction was inevitable. This approach has made it possible to analyse these levels' interaction in the development and implementation of JHA aspects of immigration policies. The way in which legislation from the national level (NL) provided painfully concrete context to more abstract and ambitious policy orientation contents in EUD and PP documents has vindicated this approach. The empirical findings produced through analysis of immigration policies at different levels by tracking the evolution of state power(s) have identified why it is urgent to work towards altering their course due to their inherently problematic effects. The fact that this was possible without relying on material and evidence from outside the institutional framework is a testament to the validity of this approach.

 It should also be noted that the level of documentation that this thesis examines does not necessarily coincide with what happened in practice on the ground in MS territories. The contents of policy plans depended on implementation by MSs and effective cooperation between national authorities and EU agencies and bodies. Third countries often did not comply with supposedly binding readmission obligations (art. 13 of EUD8), leading to the final documents on EU returns policy (EUD25, EUD26) referring to a need for the EU to increase its clout to coerce them into meeting their obligations. The proposed effects of some contents

in national legislation that were patently unconstitutional (in the Italian case) or discriminatory were limited by judicial interventions. Other aspects of laws were not implemented because they encountered resistance by workers in the affected sectors who were tasked with carrying out control functions (like health services). Despite measures introduced to make detention of TCNs staying irregularly in the territory of MSs systematic, effective implementation may also be dependent on the limits of capacity in detention facilities. In the case of the visa list (EUD1), the measure was annulled by the ECJ because the Council had overstepped its powers by failing to consult the EP after substantially amending the version the EP had issued an opinion about.

At the same time, some documents refer to developments that are relevant to previous documents or to the structures that they established. It is possible to track developments in the activities undertaken by Frontex after its creation in subsequent references to joint operations, maritime operations, joint return operations, new regulations and cooperation frameworks. In comparison, slow progress in implementing the CEAS can also be noted in the documentation, including references to lack of political agreement resulting in delays. The intention in this selection was to offer an overview of key measures relevant for JHA aspects of EU immigration policy adopted during four five-year periods, on which agreement was found at a given time. The abundant institutional activity in this field, beyond the specific document selection for this thesis, had the added benefit of enabling replicability. In fact, this thesis is an invitation to conduct this form of research, which could track sequences of regulations or stages in the development of specific structures or policy initiatives over time. Using the SRA's theoretical approach and state power(s) as interpretative key, applied to official documents from the JHA field, has remarkable explanatory potential regarding structural features of the relationship between immigration policy and state power(s). The answers provided to the research questions below are evidence of this potential.

7.2 The problem of European immigration policies

This thesis answers four research questions about JHA aspects of immigration policies at the EU and national levels. These answers contribute to revealing their substance, using state power as an interpretative key.

1) In what ways have the JHA aspects of immigration policy formulation and implementation in the EU, Italy and the UK exceeded the remit of migration control?

From Part 1 (1995-1999) through to Part 4 (2010-2014), empirical materials from the intergovernmental, supranational and national levels provide evidence of expansive dynamics. The findings conclusively demonstrate that JHA aspects of European immigration policies have strayed from their supposed scope in several ways, with harmful effects on people's lives. These expansive dynamics have implications for legal standards, society and the relationship between people and states concerning the effects of the exercise of coercive state power(s). Analysis conducted in Chapters 4-6 focused on "*hierarchy and state power(s)*", "*governance and strategic selectivities*" and "*government and structures*".

Immigration policy formulation and implementation have targeted EU citizens to discourage them from engaging with TCNs and to recruit or coerce them into enforcing migration controls. Non-cooperation was liable to result in them incurring sanctions or penalties. Longstanding priorities to deny entry and expel TCNs have led to EU citizens being affected by measures including investigation of their relationships if they marry TCNs who may acquire rights through marriage. An emphasis on exclusion increases insecurity and conditionality of status for legal residents and citizens due to an expansion of grounds to withdraw acquired rights of abode, and even citizenship or nationality.

Interventions beyond the EU's geographical boundaries promote the discrimination inherent in this policy field in neighbouring countries for migration management purposes. An outlook that promotes the exercise of coercive state power(s) in third countries may produce harmful effects that undermine development goals that are affirmed in documents on cooperation frameworks. Mutually beneficial migration circuits outside the EU are disrupted by requiring third countries to enhance border controls and develop immigration policy enforcement capabilities. Information gathering and analytical functions, including risk analysis (see below), which became prominent in Part 2 (2000-2004), appear harmless on paper. They led

to insidious distinctions of statuses between COOs and transit countries, and between north Africans and "*sub-Saharans*", to direct targeted migration control efforts. Establishment of Frontex intensified a process whereby any available data could be used to justify activities to prevent and criminalise human mobility, presented as an existential threat linked to security.

Coercive structures like detention centres were sources of suffering and judicially certified abuses in Europe, which means that their externalisation to third countries was not innocent. Punitive immigration laws in third countries introduced as forms of cooperation with the EU fostered racial discrimination. Immigration policies have promoted development of coercive state structures, within and beyond the EU, in the guise of assistance and capacity-building, regardless of who the counterparts may be. Cooperation with oppressive regimes has been promoted to achieve migration policy-related objectives, to prevent departures towards the EU and to effectively enact returns. European migration policy implementation has violated human rights obligations, the rule of law and customary international practices in response to perceived crises. JHA aspects of immigration policies have contributed to sustained institutional action to undermine human rights and the rule of law for instrumental migration management purposes. Legislative reforms in the UK have introduced new grounds for exclusion, assigned coercive powers to authorities and undermined rights of appeal and legal guarantees.

However, the most important way in which European immigration policies have strayed from their supposed remit is by legitimating oppressive state practices as contributing to security. This appears in concrete terms in national laws through an array of arbitrary measures to penalise migrants beyond the disadvantage that is intrinsic to their position in host countries. Institutional effort required by NL documents from Italy and the UK is deployed to stop migrants studying, to impede family reunification and acquisition of residence rights or citizenship, and to introduce prerequisites that are hard to fulfil for people not to be considered security risks. It is obvious who the subjects penalised by such measures are, but it is unclear whether anyone, or society at large, may benefit from such interventions and the practices they entail. NL documents over 20 years have shown that the scope for using pretexts to justify undermining people's positions through probation regimes has allowed governments free rein to enact hostility to migrants. If authorities wish to protect migrants' rights and promote integration, some red lines are periodically reasserted which stop them doing so, beyond limited initiatives.

2) Why and how are is this happening?

The immigration management field is straying beyond its supposed remit for three main reasons. Firstly, the examined documentation shows that an inherent feature of European immigration policies is the serial production of hierarchies. Their effect is to promote differential treatment for distinct population groups which may amount to institutional discrimination and to enhance the scope of state power(s). Although the initial targets of this process are TCNs, the NL documents in Part 3 show that the strategic goal of enacting expulsions extends to EU nationals, for reasons including criminal offending and wide-ranging conceptualisations of security threats. The crucial aspect of differential regimes that are introduced on the basis of hierarchy is subordination: NLIT2 imposes an employment contracts that bind TCNs to employers; NLIT3 imposes points-based integration contracts to ensure that TCNs are making efforts to integrate, but shortcomings may lead to disqualification; NLUK4 seeks to intensively engage civil society in controlling migrants. Measures to tighten requirements for naturalisation or to obtain long-term residence permits or rights of abode were followed by a proliferation of grounds enabling such acquired rights to be withdrawn.

Secondly, definition of this policy field and its objectives in ambitious and open-ended ways intrinsically promote the creation of structures for the exercise of state power(s). The pursuit of unshifting strategic goals is not liable to reassessment due to problems caused by attempts to enforce them in practice, which are seldom acknowledged and may be blamed on migration. Failure to achieve goals, harmful systemic effects and recognition that "*illegal immigration is set to continue*" (EUD16) do not influence this field's long-term strategic selectivities. This acknowledgement may be evidence of awareness that this policy field's goals are deliberately set in unrealistic, absolute terms. In turn, this may mean that the creation of structures, deployment of technological resources and the EU's external projection through interventions in third countries may be the purpose of this immigration management model. Several examples of system blocks are present in the selected documents. One such block in Part 1 (1995-1999) and Part 2 (2000-2004) prevented accession countries from influencing policies that had already been settled in the JHA field.

Thirdly, the structures, procedures, technologies, methodologies and powers which are introduced, developed and deployed in pursuit of policy aims do not just concern immigration. They can be applied more widely in different contexts, and the phased conflation of policy fields (immigration and asylum; development; then JHA/AFSJ; antiterrorism; external security

as internal security; external relations) is a central aspect, especially in the three PP documents. The prime characteristic of the forms of intervention that are introduced is coercion. Dehumanisation entails treating people as statistical items, casting wide webs of suspicion and the introduction of requirements and administrative burdens to fulfil arising from pretexts raised in politics and the media. Coercion is a social burden in itself. The stratification these processes entail may be conceptualised as a drift enabling the exercise of increasingly discretional forms of power.

An insight from this thesis' theoretical outlook concerns the formal and substantive aspects of the state and its power(s) that may contribute to understand this phenomenon. This distinction allows enquiry into how formal adherence to values and principles including human rights and the rule of law may be overcome substantively through uncompromising policy goals identified with the common good. Subjecting people to formally rights-compliant procedures and mechanisms to implement policy and enforce laws can entail harmful consequences. Eurodac's development is a case in point, due to its intrinsic function that tends towards placing countries at the EU's external borders in situations of potential crisis. At the same time, the people subjected to practices are aware of their effects as limiting their prospects, capabilities and opportunities, that may result in forms of resistance. In pursuit of instrumental purposes, Frontex, EU institutions and MS national authorities do not consider the people suffering harmful consequences as victims. They are to blame for disregarding a prohibition to enter the EU. They should not exist, regardless of other consideration on why they may have left their COOs. The artificial production of crises in given territories is not considered a problem either, if an institutional outlook welcomes crises as examples of government failure as evidence of a need to develop EU structures. This is the basic notion of multiscalar metagovernance developed by Jessop.

3) What are the consequences of these shifts in terms of authoritarianism?

These shifts are inherently connected to authoritarianism, due to a drift towards increasingly discretional forms to exercise power for coercive purposes that is unlikely to stay within a bounded scope. Once the means to neutralise apparently rigid boundaries are found or devised, they inevitably stray from the limited field for which they are developed. This was apparent in the will to power that was evident in EU documents to develop the AFSJ (PP1-3), on the EU's common policy on illegal immigration (EUD10), on the AFSJ's external dimension (EUD16), and in both Global Approaches (GAM, EUD17, GAMM, EUD23). This trend was a feature of

laws selected for the UK (NLUK1-4) and Italy (NLIT2-4), in which the aim to prevent irregular migration turned into a constant production of grounds to penalise and exclude people beyond migration policy's ostensible scope. A substantial problem relates to the crisis tendencies that Jessop identifies for his six-dimensional view of the state. The EU identified immigration policy as a way to consolidate EU citizenship and their identity as Europeans in opposition to TCNs. However, many European citizens simply disagree and act accordingly, and many TCNs are either compelled or willing to migrate without prior authorisation. Both groups are liable to become targets of efforts to assert this policy field's objectives, with the coercive consequences this entails.

The EU's complex institutional infrastructure emerges in the document selection, particularly when they focus on the composition of structures and the management boards of agencies like Frontex (EUD15) and EASO (EUD22). The division of competences between MSs and EU agencies and bodies obfuscate clarity regarding accountability, producing regimes of entangled responsibility. These concerns apply to joint operations organised through the Council under the coordination of a MS leading operations with operative support provided by EU agencies like Frontex or Europol. Hence, responsibilities become hard to identify at the technical and operative levels. Authorities consequently enjoy margins of discretion to pursue their goals regardless of the implications of the actions they undertake (COSI and the ISS can implement strategies in the internal security field with limited scrutiny). This discretion results from the existence of mutually reinforcing power centres providing cumulative legitimacy to actions carried out collectively, with various sources of authority (democratic, institutional, technical, operative). However, something that is very interesting may be happening that has implications for the EU and for the very nature of statehood. MSs' resistance to relinquishing their competences and EU efforts to constitute its own capabilities and structures, may be reproducing the margins of action that apply in the JHA field. In emergencies involving security and high state purposes, the "*raison d'État*" may be invoked (Bourdieu). This means that as national states may exceptionally act beyond the limits of their authority and powers in response to existential threats, the EU is acquiring an ability to do so for the sake of its expansive development, limiting its scope for critical self-evaluation.

Coercion and the ability for authorities and state power(s) to impose their will effectively on targets and on parties that may disagree or resist in pursuit of their strategic objectives are important aspects of authoritarianism. Long-term pursuit of dogmatic goals, their incorporation

into structures and society, and devising expansive means to achieve them, through criminalisation if necessary, are aspects of a will to assert power. Coercion and control are central features of this policy field, functional to achieving its strategic objectives. Detention, controls, mechanisms of exclusion and removals, alongside claims of formal compliance with normative limits, are prominent in the document selection. The absence of other parties in these documents, other than as agents to be punished, used or coerced into cooperating, is noteworthy. This applies to migrants and to people who should participate in migration controls, and to third countries. Documents in Part 3 (2005-2009) and Part 4 (2010-2014) appear to suggest that EU MSs at its external borders are liable to be coerced into effective implementation of this policy field's objectives. The language used for such prospects is that of solidarity, cooperation and assistance to be provided by MSs and coordinated by Frontex. EUD24 instructs countries that have external EU borders to develop comprehensive border surveillance system and intervention capabilities which include military components.

Historian Achille Mbembe stresses the self-affirming essence of EU policies in a way that isolates it from alternative views or concerns, as is prominent in the selected documentation:

"*We live in a relationship with the world which consists in not giving any value to anything that is not ourselves. This process has a genealogy and a name: the race towards separation and disconnectedness. It takes place against a backdrop of anguish and annihilation. In fact, there are many today who are struck by fear. They are afraid of being invaded and of being about to disappear.*"* (Mbembe, 2016:8-9)

The lack of recognition of problems including discrimination and human rights violations resulting from immigration policy enforcement in the documentation this thesis examines was expected. Nonetheless, this absence acquires a more serious character pointing to dishonesty in references to the EU migration policies' externalisation to third countries. Already in Part 2 (2000-2004), cooperation with Libyan and Moroccan authorities in which Spain and Italy played key roles had resulted in police operations targeting black migrants and human rights abuses. During Part 3 (2005-2009), these effects had worsened. People suspected of being potential illegal migrants were abandoned in the desert in the two north African countries' border regions, and deaths at sea continued. Ordinary migrant workers and refugees were targeted in authorities' efforts to show European counterparts that they were effective in preventing illegal migration. The documents in this selection continued to suggest that

improving border management and enhancing state capabilities was equivalent to promoting development, human rights and the rule of law.

4) Are immigration policies creating more problems than they are solving?

Constituting unauthorised migration as a problem and a field for the expansive exercise of state power(s) linked to border management and law enforcement seems to be immigration policies' purpose. References in the documents acknowledge that migration (or even illegal migration) will continue and that it is not an entirely negative phenomenon, before proposing ways to stifle mobility. Problems like deaths at sea, trafficking networks and irregular employment of TCNs whose status does not allow legal employment, could be attributed to immigration policies. However, they are blamed on either illegal immigration or imperfect immigration policy implementation. Identification of problems tends to result in demand for increased funding in a field whose structures were funded at exceptional levels. Peers tells us that "The EU institutions have almost literally been 'pouring money' into Frontex, resulting in a 360% increase in funding from 2006- 09" (2011: 219-220).

The problems caused by immigration policies that this thesis is designed to counteract are very concrete, notorious and have been researched extensively (see Chapter 2). However, they are marginal features in the selected documentation in which, by and large, problems of coercion, violence, discrimination and abuses resulting from immigration policy enforcement practices are disregarded. The most obvious exception are deaths at sea, which feature prominently in policy documents in Part 3 (2005-2009) and Part 4 (2010-2014). These deaths are used to provide a humanitarian justification for externalising border controls to north Africa and to promote sea monitoring operations to be coordinated by Frontex. The link between such deaths and immigration policy leading migrants to use dangerous routes in the absence of legal alternatives is not drawn, although traffickers and smugglers are blamed for the deaths.

7.3 An urgent research agenda to address systemic problems

Answering these research questions contributes to achieving three research aims. Firstly, to establish the extent to which current approaches to immigration policy development and implementation depend on an erosion of legal rights and safeguards, an increase in coercive state power(s) and an intensification of power differentials. Secondly, to explain how national authorities influenced development of EU immigration policy and structures and were, in turn, influenced by these, bearing in mind that distinct intergovernmental and supranational frameworks exist and interact. The third aim was to identify "*strategic selectivities*" (Jessop, 2008; 2016) that apply to JHA aspects of immigration policy and how they relate to harmful outcomes, collateral damage and supposedly unforeseen consequences. Methodologically, this thesis harnesses the potential of official documents as empirical sources to produce knowledge about complex policy issues and dynamics. In wider terms, this research addresses the heart of the matter: are immigration policies about improving migration management or about asserting and constituting state power(s) and structures for its exercise at three levels?

The underlying hypothesis is that this question cannot be addressed using customary research techniques because national states and the EU, together and in isolation, have acted irrationally in this policy field for some time, within and beyond this thesis' time frame. However, irrationality does not rule out meaning, quite the opposite. In fact, apparent irrationality may point towards some higher, or unstated, purposes beyond those that are publicly declared. In 2018, the EU is at a crossroads. It is important to understand what is happening in terms of the relationship between JHA aspects of immigration policies and authoritarian statism. By analysing twenty years of official documentation produced by EU institutions and national governments between 1995 and 2014, this thesis shows the problem to be different from the one maintained at the top of the institutional agenda, illegal immigration and illegal migrants. Their importance lies in the power effects that fighting them entails, rather than any inherent qualities of immigration. Immigration does not pre-emptively need to be considered a problem unless there are documented reasons to do so, because it is often beneficial in several ways. This is true for migrants themselves, often for the countries that host them, and even policy documents that work to oppose unauthorised mobility in this study occasionally recognise this (EUD19, EUD23), before policy and political obstacles intervene to prevent substantial shifts in direction. More importantly, there is a lack of available modes of representation, modes of

articulation and modes of intervention to oppose restrictive immigration policies, regardless of their consequences.

At the political level, leaders and parties do not want to lose electoral support if they fail to show that they are tough on immigration. This policy field's inherent tendency to promote hierarchical relations in ways that extend the reach of state power(s) is examined in Chapter 4. Chapter 5 on governance and strategic selectivities identifies routes for action and modes of intervention that are opened and created, alongside those that are blocked off by policy outlooks and proposed modes of implementation. Chapter 6 focuses on government practices and the operation of structures, mechanisms, rules and technologies established to enact policy priorities through laws, Directives and Regulations. When advanced states or state-like institutions or bodies pursue policy goals that are costly in human, economic and societal terms, it is a duty to try to understand why that may be, beyond the official reasons that are given. At the political level, opportunism and hostility to foreigners are timeless features which do not prosper unless the right conditions apply.

From the start of the period (1995-2014) under scrutiny, certain features have stayed constant. The first one, in EUD1, listed countries whose citizens could systematically be denied entry into the EU unless they had a visa, constituting a population to which immigration restrictions should be applied. The priorities to justify countries' inclusion in the list were "risks relating to security and illegal immigration", a frequent coupling in the document selection. Treating entire countries and their populations as risks is not harmless. A risk relating to illegal immigration simply means the possibility that someone may arrive and settle in a EU country. This may happen because they like it, because there may be problems where they come from, because they fall in love, find a job or for opportunistic reasons, among others. They may be clever or exceptionally talented... or not. EUD1 shows the bare essence of immigration policy, its reliance on broad modes of discrimination.

Regarding power relations, disqualifying groups of people or segments of populations is a way to enhance the power of dominant groups or the scope for its exercise by authorities. A research interest reflected in question 1 concerned this policy field's expansiveness, which is evident in EU documents from Part 1 (1995-1999). In EUD2, tackling illegal immigration, employment and residence leads immigration policy to affect actors deemed useful for immigration control purposes. These people may be coerced into collaborating through penalties or sanctions. Once these subjects are fined for non-compliance or compelled to do something they object to,

immigration policy has negatively affected EU nationals who are often portrayed as its beneficiaries. The co-optation of groups required to cooperate by checking people's status to make controls pervasive beyond border areas is noteworthy. In geographical and societal terms, this entails expanding border controls beyond state agents and borders, into MS territories and transport hubs, stations, workplaces, social service provision sites and even registry offices, as EUD5 shows.

Any activity by TCNs becomes suspicious if they can benefit from it to gain a right of abode. Moving from the EU to the national level, this is evident in NLUK1, in which superintendent registrars are given powers to request evidence in advance of a marriage. In geographical terms, the evidence is even starker. Documents from the early years primarily concern measures that (MS-dominated) EU institutions recommend or resolve MSs should comply with. The external dimension of EU immigration policy becomes evident in EUD6. An influx of people from Iraq who were liable to be refugees and whose return could have been legally problematic, leads to an effort to draw Turkey into the EU immigration management regime. A UK presidency proposal adopted in Council conclusions suggests that EU countries can mitigate their duties to asylum seekers by assisting development of reception capacity in the region of origin and providing aid. At the same time, formal compliance with the Geneva Convention is affirmed, and PP1 calls for its "full and inclusive application". At the same time, PP1 promotes the development of border control services, presents unauthorised mobility by TCNs as the realm of traffickers to involve Europol and proposes partnerships or cooperation agreements with COOs to secure readmission agreements. Point 27 may have been a reference to the EC/ACP Cotonou Partnership Agreement (EUD8): "*The European Council invites the Council to conclude readmission agreements or to include standard clauses in other agreements between the European Community and relevant third countries or groups of countries*".

Expulsions are another constant feature in EU immigration policy. From EUD3, which calls on MSs to cooperate in conducting expulsions, to EUD25 and EUD26 in 2014 and in each period, enacting returns and problems associated with doing so are prominent. The need for effective readmission agreements with third countries is portayed as mutually beneficial cooperation (EUD8), as a crucial part of EU policy on illegal migration (EUD10), and within the broader cooperation frameworks (EUD17 and EU 23). In 2014, references to a need for readmission agreements mention using the EU's clout, coercion by making development aid dependent on them, the "more for more principle" in the GAMM framework, or requiring third

countries to respect their legal obligations in the EC/ACP partnership agreement. The need to obtain travel documents to enact returns is a further constant feature in the documents.

The EU, whose policies are co-constituted with MS governments, displays a degree of incoherence. EUDs promote migration policies described as "integrated", "comprehensive" or "coherent", but suggest that agreements may be struck bilaterally by MSs, via EU agreements or through international organisations. Hence, this objective must be achieved by any means necessary, using any available pathways, indicating problems of institutional integration. A feature that applies throughout this thesis' timeframe is the conflation of categories. Illegal migration and organised or cross-border crime are treated as synonymous. This means that fighting or preventing illegal migration is a common good, uniting law enforcement and migration management functions and authorities. The asylum and immigration policy fields were united in PP1, whereby respect for refugees' rights was assumed, while actions were undertaken to prevent unauthorised arrivals. This mechanism allowed confusion of purposes (which PP3 inscribed structurally) to be used for purposes like extensive exchanges of information that was initially only meant to be used for the purpose it was collected for.

A trend identified in the documentation is for immigration enforcement to be exercised by any authority or state official at any level (national, regional, local). The proliferation of structures (databases, specialised offices, special appeals tribunals, NCCs) for this purpose appears to be an end in itself. At the national level, the creation of the UKBA was followed extension of its powers to antiterrorist functions and its being assigned customs and excise powers at the border in NLUK3. NLIT3 enables municipal authorities to subordinate registration in the *anagrafe* [local residents register] to migrants by making it dependent on several conditions (income, quality of housing, etc.). The corollary was that failure to register could be treated as evidence that people were security threats, to limit the scope of EUD20. A similar duplicity applies to borders. Borders must be unbreachable for unwanted aliens, but the EU must deploy agents abroad, including ILOs, to assist implementation of EU policies in third states. Migrants' and asylum seekers' mobility should be stifled due to their portrayal as threats, but coercive capabilities should be enhanced and allowed to operate without impediments.

These trends are obvious since PP1 laid the premises for the AFSJ that intensified within an antiterrorist drive at the start of the new millennium. Activities against illegal migration [unauthorised mobility] were incorporated in this field, as shown by EUD10, EUD16 and PP2. PP1 called for a EU immigration management body. Proposals for a European Border Guard

(EUD10) turned into an apparently harmless information gathering, technical analysis and coordination agency to support MS authorities, Frontex (EUD 15). Its role was enhanced by the levels of funding Frontex was assigned and a risk analysis model crudely geared at stopping anyone from entering the EU irregularly. Despite restrictions to its operativity within the EU, these did not apply in its external operations with the Commission and later with the European External Action Service (EEAS). At a global level, Frontex became an agency promoting the creation, reinforcement or enhancement of capabilities, structures and technologies to counter illegal migration. External projection of the AFSJ and the expansive development of migration management structures were deemed crucial for internal security purposes.

Frontex's risk analysis model blames illegal migrants for immigration policy's harmful effects. Anything other than control, destitution, detention and effective returns is interpreted as a "pull factor" encouraging migrants to embark upon their journeys. Frontex treats migrants as statistics, flows and risks, contributing to alter social perceptions. Frontex's creation and mode of operation is a relevant factor to explain expansive dynamics in this policy field and their effects on European societies and politics. This agency provides a scientific method that legitimates institutional discrimination as the technical pursuit of instrumental objectives. Any crisis caused by immigration policy leads to renewed calls for adequate funding and for its powers and capabilities to be strengthened. Frontex's technical data collection and analysis functions enable an intensification of activities, and its hunger for data serves instrumental migration management purposes. A Regulation (EUD24) adopted in Part 4 (2010-2014) requires MSs (starting from those at the EU's external borders) to establish structures to carry out relevant surveillance and interventions in coordination with Frontex. National coordination centres (NCCs) would be responsible for sectioning their country's border areas, providing real-time 24/7 information updates, and setting up multiple modes of intervention at the national, regional, local and EU level. Frontex could assist when necessary through joint operations and rapid reaction interventions. Again, several pathways are considered for such activities and the strategic outlook seems military.

Two principles are repeatedly mentioned in reference to the development of capabilities, instruments and structures at the EU level, particularly in binding legal instruments. These are the principle of subsidiarity, whereby EU initiatives are undertaken to fulfil objectives that cannot be adequately accomplished by MSs, and the principle of proportionality, which requires that activities enacted are proportionate to their purpose. In the context of a policy

field defined in an inherently expansive manner to achieve ambitious goals which some documents recognise as unrealistic, neither principle carries much weight in relation to developments in this policy field.

The theoretical model for this thesis to analyse developments in the JHA aspects of immigration policy is the Strategic Relational Approach. This theoretical outlook and the thesis provide an effective route to challenge current European immigration policies using their inherent characteristics as a starting point. This thesis and its application of the SRA to official documents at different levels over 20 years shed light on problematic aspects of the relationship between the national, EU and intergovernmental levels. It successfully identifies this policy field's strategic selectivities and their inherently harmful properties without relying on the plentiful evidence that is available from experiential accounts, case-law, research conducted by academics and NGOs, and different levels of EU documentation from the technical and operative levels. It was important for this to be the case because, although this account laments the consistency and apparent inevitability of the developments it reconstructs, these documents are from levels at which intervention is possible. A solution can only be found at the political level in MSs (whose dominant role through the Council persists although the Commission and EP are acquiring influence) and at the EU level through recognition that the damage caused by these policies does not just affect migrants. The document selection has shown that harmful consequences affect EU citizens and national, European and international normative frameworks that set limits to the exercise of coercive state power(s). These are increasingly treated as a "problem" for attempts to accomplish this policy field's strategic goals.

This thesis' achievements are its heuristic and methodological contributions to policy studies. By harnessing the explanatory potential of documents from different levels over 20 years, this thesis offers evidence of systemic institutional defects in European immigration policies. These structural aspects open up a route to challenge their causes and to mitigate their effects. This thesis is a stepping-stone to devise solutions to systemic problems by challenging a policy field's premises and mode of operation in structural terms. When a policy field's expansive development is driven by the problems it produces, the solutions it provides intensify its harmful effects. This is shown by the empirical analysis to be a feature of European immigration policies at the EU level, in MSs and beyond the EU's borders, in transit countries and COOs. Jessop's SRA to state power applied to official documentation has revealed this policy field and its development to be more about enhancing state power(s) than about

managing immigration. Immigration policy's instrumental function justifies externalisation, the development of security structures and the deployment of technological and coercive capabilities. The answers to the research questions reveal a distance between the supposed purposes and justifications for this policy field's development and its substantive effects. Twenty years of official documents fail to coherently justify this policy field's underlying premises, despite the inclusion of documents (EUD8, EUD19, EUD23) that seek to justify it in the context of its external projection. However, the document selection also shows how asylum policy is incorporated into the "immigration and asylum" policy field in PP1 and how they are both integrated into JHA policy by stressing their link to organised crime.

An original contribution to knowledge by this thesis moves analysis beyond the imbalances in the JHA field and the EU's third pillar resulting from their intergovernmental bias, to identify structural problems. Such problems concern structural selectivities leading to the development of preferential technical and operational cooperation pathways to enable MSs to act beyond what rules and normative frameworks allow in pursuit of strategic goals. An inherent relationship between border regimes and human rights, racism and institutional discrimination is an obvious concern. The way in which restrictive immigration policies undermine competing positive values should be central to the debate, in academia and beyond, about these policies' legitimacy. This thesis contributes to debates on EU policy frameworks and on ethical aspects of restrictive immigration policy regimes and immigration controls, without venturing into discussion of whether migration may be considered a human right in itself (Carens 2013; Bertram, 2018; Miller, 2016). This last debate draws on the UDHR's art. 13(2) on freedom of movement: "Everyone has the right to leave any country, including his own, and to return to his country", guaranteeing a right to leave but not a duty to allow entry. However, this thesis' findings do contradict justification of the legitimacy of EU restrictive immigration policies based on self-determination and/or domestic considerations. Their externalisation to third countries, with significant effects relevant to authoritarianism and state power(s), has been an integral component of EU immigration policies from 1995, and a strategic objective to be imposed through coercion, if necessary. The documentation in Parts 2, 3 and 4 shows a drive to convince, provide incentives and/or coerce third countries into imposing their own border control regimes for the EU's own interests, portrayed as the common good. Externalisation is a long-term strategic selectivity deemed an integral component of EU immigration policy.

At the EU level, definition of this policy field has been deliberately expansive, vague and open-ended since Part 1 (1995-1999), making it difficult to establish limits to its remit. Implementing the JHA aspects of immigration policies has been a costly endeavour in financial terms and has contributed to polarising European societies around issues of discrimination. Immigration policy's initial function to enable a power grab has developed into an attack on normative limits to state power(s) (a wrecking ball function) due to its ambitious and inherently problematic goal definition. The Brexit referendum in 2016 may have shown, among other factors, that once discrimination in the guise of immigration policy is normalised, it becomes difficult to limit its scope to protect EU citizens. Despite this thesis' critical reading of EU immigration (and JHA) policies, it should be noted that the empirical evidence shows that the UK was a pioneer in this field, and it is not part of the Schengen Area. Expansive dynamics were already evident in NLUK1 and the UK has not set a limit to the length of detention, unlike EUD20, by which it is not bound. NLUK4 introduces the notion that certain human rights may be weighed against public interest considerations and that "little weight" should be given to some people's lives if their status is irregular. Conflicts between MSs over governance failure by states at the EU's external borders, refusals to act in a spirit of solidarity and burden-sharing by accepting refugee relocations, and the proliferation of torture in Libyan camps are aspects of immigration policy's long-term harmful effects. A focus of this thesis is on how the problems caused by a policy approach may lead to more funding and efforts to develop it. Frontex has been a catalyst influencing such developments at three levels: national, supranational and intergovernmental.

In 2015-2019, during the course of this thesis but after its timeframe, problems connected to the continued pursuit of restrictive immigration policy are evident. The chosen course of action has been to intensify existing policies, including externalisation, in order to exclude migrants and secure borders. The supposed failure by MSs to adequately manage the EU's external borders in the context of "influxes" of migrants and refugees (the term "people" may be preferable) has led to calls for the Frontex agency (document EUD15) to acquire greater competencies. Its growth in terms of funding, staff, operations coordinated, activities and operative centres is noteworthy, while hotspots are operating and the prerogative of initiating joint returns flights itself, rather than responding to MS requests, beckons. The agency has been operative for 14 years and it is proving a source of problems as it consolidates. It promotes operations to target migrants, organises deportations, produces risk analyses to advocate an expansion in its role and in the EU's immigration policy enforcement apparatus. At the same time, it helps to export the EU's immigration control policies beyond its borders. Each of these

functions is problematic *per se*. They are more so in the context of policy approaches whose structural features set up frontline states such as Greece and Italy for failure. This results in the routine use of executive or extraordinary measures and practices which transgress legality, sometimes after emergencies are declared. After all, the Dublin Regulation system sought to ensure these countries' long-term responsibility for any asylum seekers who entered the EU through their borders regardless of their wish to remain there.

I have been cooperating with activists, academics, lawyers and journalists on these issues, using this theory and will start an observatory starting precisely from these materials.

DOCUMENT SELECTION

PART 1 (1995-1999)

EUD1: Council Regulation (EC) No. 2317/95 of 25 September 1995 determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States, Official Journal of the European Communities (OJEC hereafter), No. L 234/1, 3 October 1995.

https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31995R2317&from=EN

EUD2: Council Recommendation of 22 December 1995 on harmonizing means of combating illegal immigration and illegal employment and improving the relevant means of control, OJEC, No. C 5/01, 10 January 1996.

EUD3: Council Recommendation of 22 December 1995 on concerted action and cooperation in carrying out expulsion measures OJEC No. C 5/02), 10 January 1996.

EUD4: Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries, OJEC, No. C 221/23, 19 July 1997.

EUD5: Council Resolution of 4 December 1997 on measures to be adopted on the combating of marriages of convenience, OJEC, No. C 382/1, 16 December 1997.

EUD6: Cardiff European Council, 15 and 16 June 1998 Presidency Conclusions (Action Plan on the influx of migrants from Iraq and the neighbouring region) https://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/54315.pdf

NLIT1: Legge 6 marzo 1998, n. 40., "Disciplina dell'immigrazione e norme sulla condizione dello straniero.", published in the Gazzetta Ufficiale no. 59 of 12 March 1998 - Supplemento Ordinario, no. 40, https://www.camera.it/parlam/leggi/98040l.htm

PP1: Tampere European Council, 15 and 16 October 1999, Presidency Conclusions, http://www.europarl.europa.eu/summits/tam_en.htm

NLUK1: Immigration and Asylum Act 1999, 11 November 1999, http://www.legislation.gov.uk/ukpga/1999/33/contents/enacted

PART 2 (2000-2004)

EUD7: Council Regulation (EC) no. 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention, OJEC, No. L 316/1, 15 December 2000.

https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000R2725

EUD8: Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, OJEC, No. L317/3, 15 December 2000.

EUD9: Council Directive 2001/51/EC of 28 June 2001 of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 [carrier sanctions], 10 July 2001.

https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001L0051&from=EN

EUD10: Communication from the Commission to the Council and the European Parliament on a common policy on illegal migration, Brussels, COM(2001) 672 final, 15 November 2001.

http://www.statewatch.org/news/2001/nov/illimm672.pdf

NLIT2: Legge 30 luglio 2002, n. 189, "Modifica alla normativa in materia di immigrazione e di asilo", published in the Gazzetta Ufficiale no. 199 of 26 August 2002 - Supplemento ordinario. https://www.camera.it/parlam/leggi/02189l.htm

NLUK2: Nationality, Immigration and Asylum Act 2002, 7 November 2002.

https://www.legislation.gov.uk/ukpga/2002/41/contents/enacted

EUD11: Council Regulation (EC) no. 407/2002 of 28 February 2002 laying down certain rules to implement Regulation (EC) No 2725/2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention, OJEC, No. L62/1, 5 March 2002.

https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002R0407&from=EN

EUD12: Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence, OJEC, No. L 328/17, 5 December 2002.

https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002L0090&from=EN

EUD13: Council Regulation (EC) no. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, Official Journal of the European Union (hereafter OJEU), L 50/1, 25 February 2003.

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