



MASTER'S THESIS  
INTERNATIONAL ADMINISTRATION  
AND GLOBAL GOVERNANCE

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# EU Democratic Deficit and the Civil Society

Case study on EU migration policy

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## Abstract

The main aim of this study is to provide an insight to the European Union's attempt to find a remedy for the long-debated 'democratic deficit', one of the major issues for the contemporary process of European integration. In the absence of other means for a direct relation with the citizens, as only the European Parliament is elected by all European citizens, the European Commission assumed its role of 'guardian of the Treaties' and implemented a greater openness towards the civil society since the beginning of 2000s, in total compliance with the values of democracy in Europe.

However, as all public policies implemented by national governments have to undergo an analysis of their effectiveness, supra-national policies promoted by the EU institutions need a similar attention. In this context, my thesis should be regarded as an attempt to evaluate the effectiveness of the Commission's improved openness towards NGO representatives, while looking not only at the simple presence of those civic groups in public debates at the EU level, but most importantly how much influence do they really hold in the EU institutional environment (in my case, the Commission). Presence does never grant *a priori* influence.

This thesis will employ as research method the so-called 'policy tracing', which enables a rather detailed focus on a very specific policy area. I will present to the available extent the context of two different Proposals for Directives and the process which determined the European Commission to formulate them, through dialogue with its social partners (especially the European NGOs). The results of my analysis show an unexpected superficiality of the Commission in listening to the civil society's inquiries and recommendations, keeping the Member States as the most influential entities in the process of agenda-setting at the European Commission. The Union's democratic deficit is still far from being cured.

## **Abbreviations**

CSOs – civil society organizations;

EC – European Commission;

EP – European Parliament;

EU – European Union;

NGOs – Non-governmental Organizations;

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# 1. Introduction

Probably the most sensitive issue concerning the project of European integration, besides the scope and degree of ‘integration’ as such, is the problem of ‘democratic deficit’ which concerns the EU institutions in general and the European Commission in particular, as the executive body of the European Union and with a non-elected leadership (Norris, 1997; Treutlein, 2009). In response to the great need for action in this respect, the Commission presented the White Paper on European Governance (COM(2001) 428 final) in which it highlights the solution to this problem – a greater involvement of civil society organizations in the policy-making process.

From this perspective, my thesis will try to contribute both to the *scientific knowledge*, in addition to previous academic research on ‘civil society participation’, as well as the *policy area*, with a case study on two pieces of European Community acquis. It is necessary to mention in brief the way in which my thesis will differentiate itself from previous research in both lines described above. First of all, the scientific community has been focused for a long time on the issue of ‘participation’ of civil society in policy-making at the EU level (Bignami, 2006). My thesis will try to go a step further and capture the difference between ‘participation’ and ‘influence’, as these concepts do not have the same meaning and weight in the highly competitive environment of EU interest representation<sup>1</sup>. Besides the fact that the Commission opened its doors towards the European civil society through granting equal access in voicing their opinions and concerns, which is indeed a great achievement and a step in combating the democratic deficit, still remains the question of how much influence do these NGO representatives really have. This will be the major focus of my thesis, which is to be translated to the policy area through a comparative analysis of two Directive Proposals issued by the European Commission in the area of migration policy. I have chosen this policy area for my case study due to the fact that it captures in a suitable way the relation between EU decision-makers and NGOs. Civil society organizations across the EU pay a great deal of attention to legislative developments and respond promptly to the sensitive problematic of migration, at least with raising awareness on this issue.

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<sup>1</sup> For a better understanding of my thesis’s argumentation, I will use very often a continuum of three essential concepts – *civil society*, *NGOs*, and *interest representatives*. In my understanding, the civil society acts through NGOs which take part in EU decision-making through interest representatives. In a broader perspective, my thesis will consider the interest groups as a tool employed by the civil society in its relationship with the EU institutions.

In fact, the aim of my thesis is to analyze how successful (or not) is the Commission's strategy for a greater involvement of NGOs in its internal mechanisms of policy-drafting in the light of its long criticized 'democratic deficit'. Although previous contributors to the debate tended to point out at the successful implementation of this strategy (Coen, 2007), there is also a great need for a critical perspective, which will be developed in the following pages. The appearance of NGO involvement may actually hide a very limited and restrained 'influence'. A broader picture could show in fact that other interest groups different than NGOs exercise the key influence on Commission's Proposals, while the civil society involvement is valued only as a tool for the Commission's appearance of 'good behaviour'.

In addition, the EU institutions have been confronted with several important events in the past months, both in terms of migration and insufficient regulation of lobby / interest representation. While externally the wave of North-African democratic revolutions have brought the concern of an eventual mass migration towards Europe, the European Parliament is currently struggling with a corruption scandal which shows the high necessity for a strongly enforced regulation of interest representation, beyond the current status of 'recommended codes of conduct'. However, the main accent in my research has fallen on the shortcomings of both scientific- and policy-oriented approach in this field of study. I shall thus continue from this point with a short overview of my thesis and a brief description of the following chapters.

The research method to be used in measuring interest group influence at the EU level is the 'policy tracing', as it will be described in the Methodology chapter. My major belief is that through this method I will succeed in capturing the essential features of three steps in the Commission's agenda-setting<sup>2</sup> – the Green Paper (which launches the public debate on a future Directive); the opinions and contributions presented by NGO representatives in public hearings at the Commission; and the Proposal for a Directive (issued at the end of the period for consultations, it actually launches the EU legislative process). A more detailed presentation of the method is made in the third chapter. In fact, my thesis should be seen as an attempt to observe how much influence the European civil society really has on the pre-legislative mechanisms in dialogue with the European Commission.

The next chapter – theoretical background – will be dedicated to the disposition of several essential concepts and perspectives in the field of 'interest representation' and 'civil society' in the European political arena, which will be introduced later on in the analysis of

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<sup>2</sup> In this thesis I consider the European legislative procedure as consisting of three major phases: 1) the agenda-setting (within the European Commission); 2) the legislative process (between the three main EU institutions); 3) the actual implementation in the Member States.

EU official documents. The contributions from previous research that is relevant for the research question will be presented in brief. However, the fundamental theories for my approach are Hannah Pitkin's definition of 'representation of interests' and Jurgen Habermas's 'deliberative civil society', both of them discussed in the following pages.

The third chapter will be concentrated on a thorough description of the research method, with its pros and cons, as well as a clarification of how it will be introduced in answering the research question and testing the hypothesis. As it has been already mentioned above, the analysis will comprise of three major steps – the Green Papers; opinions and contributions from the civil society; and the final version of the Proposals for Directives. The analysis as such can be found in the fourth chapter of this research paper.

The fourth chapter tries to equip the audience with the main insights gained from the analysis of EU documentation and from the process of agenda-setting under NGO influence, together with eventual paths to be followed in further research on this topic. A critical perspective on the implementation of the Commission's openness towards NGOs and admission of their opinions and proposals will characterize my approach, before drawing the conclusions and policy recommendations, as well as eventual lines for further research, in the fifth chapter of this thesis.

## 2. Theoretical background

This part of my thesis is dedicated to providing an insight to the essential contributions already present in academia on two concepts of primary importance for trying to understand the research question at the background of my thesis – *interest representation* and *civil society participation*. Both Hannah Pitkin's and Habermas's definitions will be placed at the foundation of the following attempt. When both concepts will be operationalized, the aim will be to capture and measure *influence* – the third concept to be employed – which is exercised by civil society representatives in the policy-making process at the EU level.

Once again, my primary reason in conducting this thesis on civil society influence is supported by the issue of *democratic deficit* in the European Union. Beginning with the 1990s the process of European integration reached a level from which national politicians could not handle it in a sustainable manner anymore. The refusal of the Maastricht Treaty by Danish voters in the 1992 referendum and the slight approval in France made the European governments to realize their position 'out of touch' with the electorate (Norris, 1997). The debate on how this democratic deficit might be cured was thus started, with strong critiques against the overwhelming importance given to business groups (the corporate lobby) and their better access to decision-makers. In fact, a real solution to the EU democratic deficit should consider at least an equal access and support given to civil society organisations as well (Kohler-Koch, 2010).

First of all, my thesis will refer to how interest representatives gain access to consultations and official debates within the European institutions – the European Commission for the purpose of this thesis – something which the literature refers to as '*elite pluralism*', to be defined in the following pages. Access as such is of main importance for lobby groups and for this reason it will be the first concept in attention, only to be later changed for 'influence'.

In addition, after the attempt to clarify on which grounds lobby groups gain access at the EU level, the focus will be moved towards the interest representation of civil society organizations, restraining the research area only to those lobby groups. For this reason, some clear references will be made to the European Commission's strategy of openness towards NGO representatives, as well as a definition of 'civil society' and its implications for EU policy-making. As the reader will find out in the next pages, a non-elected institution such as the European Commission is strongly dependent on input from civil society above all, if it wants to avoid a deeper 'democratic deficit' and the subsequent lack of authority.



In order to make the picture complete, the last part of theoretical overview looks more closely at the most common strategy used by NGO lobby groups, namely the practice of *'networking'*. The reader must be aware that *access* alone is not enough for lobby groups to be successful and influential. As it will be shown, this has indeed a great impact through *'opening the doors'* for interest representatives. However, the most important part in lobby activity comes with the strategy employed for achieving the final aim of providing a relevant perspective on the future EU policy in discussion and to influence the policy-maker in order to take that perspective in consideration for the document's final version.

## ***2.1 How powerful / influential are the interest groups? – a critical perspective***

### **2.1.1 On 'interest representation'**

It has been widely acknowledged that interest groups are a familiar reality in western democracies, although not always welcomed. Most political scientists argue and recognize the legitimate and important role played by the public and private interests in the public policy process (Richardson 2000; Warleigh 2001). Sometimes referred to as *'policy networks'* (Rhodes, 1997), interest groups are highly relevant for research as long as they decide which issues are included or excluded from the policy arena, acting with the role of agenda-setting. On the other hand, other political scientists, such as Jeremy Richardson (2000), argue that policy making at the European Union level is more fluid, unpredictable and less controllable, than some enthusiastic models of the network approach predict. Despite the presence of policy communities and networks around the EU institutions showing stability and exclusiveness in controlling the policy agenda, a number of *'counter-tendencies'* seem to lead to a lack of control, unpredictable results and policy instability. As Heinz et al. (1993) observed in the case of the US federal government, although interest groups have created structures in order to control and adapt to uncertainty, they have also contributed to the development of an even more complex and rapidly changing policy environment. In the same logic, interest groups may be linked in a rather messy and unpredictable group of actors if they have very different policy or cultural frames through which they look at the real world (Schon and Rein, 1994; Fligstein, 1997). These groups of interest representatives may represent a network in a very loose sense, inhabiting the same policy area, but with minimal interaction occurring among them. However, the European level of decision-making exhibits a more homogenous lobby activity, as will be shown in the next chapters.

As in the case of the already classical model of democratic federal government practiced in the United States, the European Union is equipped by the successive constitutive Treaties with a multitude of access points for policy professionals and interest groups of all kinds. The literature brings strong evidence suggesting that the EU institutions are indeed very open to the input provided by interest groups. Access to policy-making institutions and their officials is not a problem for Brussels-based lobbyists. Interest groups also seem to be capable of making rational calculations with respect to the allocation of lobby resources among possible lobbying targets – deciding which public institutions to lobby (Coen, 1997; 1998; Bennett, 1997; 1999) or which individual legislators to bribe (Snyder, 1991). In the more pessimistic view proposed by James M. Snyder (1991), the interaction between money and votes, respectively elected officials, is a given fact in majority-rule settings. However, he does not take into account more complex political systems incorporating bicameralism, committee structures and several veto-players, not to mention the extremely balanced institutional system of the European Union.

Inside the EU, the Commission is often considered the most permeable institution to interest groups of all kinds. This is the main reason why its agenda-setting mechanisms will be analyzed further in this thesis. Its openness also strengthens the Commission's claim to legitimacy with a paradoxical argument with roots in the democratic theory as a representative of a great diversity of interests, although the institution's leadership itself is not resulting from democratic elections. Besides the neo-functionalist arguments on the transfer of 'loyalty' from the Member States to the supranational level, empirical facts demonstrate that the centre of gravity in lobbying activity has moved to Brussels (Mazey and Richardson, 1993; 1996). Although the same is not true for the policy areas which come under the EU prerogatives without regularity, it has been acknowledged that all policy sectors will eventually become 'Europeanized', although at different rates. This pushes the lobby groups into acquiring objectives at the European level as well, together with 'Euro-lobbying' strategies to achieve their objectives. As it will be shown in the next chapters, the EU policy game in which interest groups are involved is characterized by a high uncertainty of outcomes as long as rarely does one player control the 'game' of negotiations. Bearing in mind the aim of my thesis, it is thus necessary to realize that 'influence' in EU policy-making is rarely exercised by solely one lobby actor. We are mostly dealing with a complex game with a plurality of 'participants', which in the end achieve different levels of influence. This is often referred to as the 'elite pluralism', the main concern of the European Commission which tries to keep this principle in the consultation process before policy drafting.

### 2.1.2 On 'influence'

When putting together all the previous literature review, there is an obvious need to bring a critical perspective and to underline some seemingly contradictory opinions that characterize the academic research on European interest representation. Although there is a considerable amount of literature on this topic, the field of research lacks some overarching features as well as a solid method of measurement with respect to the 'influence' of interest representatives upon the EU institutions, an area where this research paper also aims to contribute.

First of all, we have to notice the relevance of research in the area of interest group influence both for studies of policy-making in the EU and for the legitimacy of decision-making in the European institutions. As I have already mentioned, previous empirical studies have brought a number of contradictory results on several lines. Above all, there is still not a clear definition of two essential terms for this topic – 'power' and 'influence'. Further on, the researcher has to be aware of the different ways to acquire 'influence' and the difficulty in measuring influence. Some clarification to these three areas will be given in this chapter.

As Greenwood (2007) underlines in his paper, beginning with the mid-1980s there has been a sharp increase in the number of interest groups active in the European Union, both at the national and EU level. Probably the most frequent question when someone comes across these facts is related, almost by reflex, to the success of these groups in the European policy-making process. After all, *how successful are they?*

However, it is somehow surprising that so few attempts have been aimed at measuring interest group influence in the EU, in spite of the significant amount of literature on this issue in the context of national politics (Dur, 2008c). Most of the few studies that actually want to tackle this question are interested in underlining how actually the interest groups involved in negotiations, despite their considerable use of resources, have not been successful in acquiring what they wanted (Balanya et al., 2003). One could say that such approaches to influence measurement are seriously biased in wanting to assure the academia (and the citizens in general) about the limited importance of European lobby. Such positions should definitely not be welcomed among researchers.

Thus, a critical approach towards the literature on interest groups influence is more than necessary, and one strategy in hand is to introduce a comparative perspective on the topic, with the United States and the European Union as two political systems with many characteristics in common, but also very different. A number of four determinants of

influence could be used for the comparison (Dur, 2008c) – interest group resources, political institutions, issue characteristics, and interest groups strategies.

It has been widely debated among scholars that the capacity to influence decision-makers and the subsequent policies are the result of *interest groups' resources* employed in the process of negotiation (Gerber, 1999; Burstein and Linton, 2002). The resources mentioned in this case include most often money, political support, legitimacy, expertise and information. As a consequence, lobby groups usually introduce their resources in the support of an incumbent politician or his challenger in electoral competitions, or the same lobby groups may bring legitimacy to bureaucratic actors, not elected, such as the European Commission and its continuous rush for public support in their actions. It is essential to underline the fact that this is precisely the main justification employed by the Commission since the beginning of the 2000s and their more transparent relationship with interest groups, stated in the Commission's White Paper on European Governance. Probably the most important contribution of interest groups in negotiations prior to policy implementation is their expertise and knowledge regarding market conditions, probable policy results, eventual problems with the implementation, and the popular support of that specific policy if it is implemented. From this perspective, elected politicians and even bureaucratic actors will always be inclined to consult them before a policy proposal. In the same logic, it is normal to expect that not all interest groups will have an abundance of resources and thus there will always be significant differences in terms of influence of those actors. These resources are considered as results of some internal features of each interest group – size of the group, type of membership, internal organization, and degree of geographical concentration of membership which apparently affects the resource endowment of interest groups. More into detail, if we start with the size of the group, the larger is the group of members, the more political legitimacy that group might claim. Regarding the type of membership, on one hand there are interest groups made of firms will have more monetary resources available, while on the other hand those groups made of individuals will mobilize personnel resources more easy than firms (Gerber, 1999). When it comes to the internal organization of interest groups, a clear hierarchy will be more efficient in providing expertise to external stakeholders, while those groups with a conflict environment in their organization will definitely be less successful and not considered a trustful partner.

Mazey and Richardson (2001) have further exploited this approach based on resources brought by interest groups, which make them influential in the end. According to them, and in the spirit of what I have already mentioned before, the system of EU institutions and the

European Commission in particular is characterized by ‘an extensive policy agenda and limited policy resources’ (McLaughlin et al., 1993), which makes it more dependent on interest groups’ input than other actors. In addition, the much discussed democratic deficit and the contested level of legitimacy may also have as a result a higher demand for input from lobby groups. As a consequence, one would expect that interest groups with more resources available to be more influential in such a political system based on open competition among interest representatives. It is often considered an already ‘symbiotic’ relationship between the European Commission and its social partners. The problem with research in these circumstances comes from gathering enough evidence on the resources used by interest groups to gain influence, everything through empirical measurement.

Further in the inventory of possible determinants of influence, *political institutions* themselves are an essential feature, yet often disregarded. Again, there is no agreement on whether the horizontal or vertical division of power in EU institutions would favour or prevent a better access of societal actors to the European decision-makers (Princen, 2007). On the other hand, we should clearly underline the EU’s features which obviously facilitate the involvement of interest groups – EU executive control over domestic agendas, introducing new procedures through which decisions are made, providing the executive with asymmetric access to information, and facilitating the ideological justification of policies (Moravcsik, 1994). However, there are also serious constraints on lobby groups’ activity due to the very complex division of power at the EU level. Such an environment will definitely make it more difficult for interest representatives to establish the most appropriate lobby strategy. Nevertheless, the Commission remains the most approached institution by the lobby groups due to its importance given by the Treaties, which make it both the executive body of the European Union and the only European institution able to initiate the legislative process.

In contrast to that, Pollack (1997) argues that interest groups should be strengthened by the complexity of European multi-level decision-making, as long as it provides an increased number of ‘access points’. Another positive feature is given by the access to the European supra-national judiciary level, through which interest representation might achieve their desired policies as a bypass over the national governments (Bouwen and McCown, 2007). This perspective might be used in further research related to eventual consequences on the national governments and their response to these conditions which facilitate crossing over their competencies and jurisdiction.

As an essential feature of the EU political system, the fact that the legal initiative is granted to a bureaucratic system which is not subject to elections and thus not directly

accountable towards the European citizens, according to some researchers should make the Commission less receptive to demands coming from interest groups, as the bureaucrats do not have to care for re-election. As McLaughlin (1993) argues, due to the fact that the European Commission is not a depository of electoral legitimacy it may actually have an interest in appearing 'even-handed' in the eyes of the public, thus rather staying away from outside influence. On the other hand, in the logic of a completely contradictory field of study, others look at this lack of popular accountability as an incentive for European officials to give more influence to interest groups representatives.

A somehow different situation resides in the European Parliament, where the euro-deputies stay in the sight of the electorate and need to keep a certain stability of their political opinions on sensitive issues for the public. Their positions are more difficult to change because of the demands from lobby groups. There is thus a high probability that European voters would punish previously elected officials *ex post* for their decisions.

In order to make the discussion even more complicated, although we acknowledge the fact that political institutions are playing a central role as a determinant of influence, it is absolutely necessary to realize that the same European institutions are the result of past interest group lobbying and even national lobbying (Princen and Kerrmans, 2008). A clear example in this context is the dual headquarters of the European Parliament, in Brussels and Strasbourg, in what it seems as the French national pride to maintain the monthly plenary sessions of the Parliament in the Alsatian city, in spite of the huge costs with relocation of MEPs and their staff.

More than that, *issue characteristics* could also play the role of determinant in terms of influence. The policy type, degree of technicality and public salience (Dur, 2008b,c) seem to have an effect in this context. According to some scholars, the influence of interest groups should be more visible in the case of technical issues which arise during the policy-making process and less so in situations of 'high politics', where European bureaucrats or euro-deputies do not need external expertise (Bandelow et al., 2000). As Wolf (2005) notices, in the case of technical areas the influence of interest groups might be higher also due to the implementation phase of the policy cycle. Their opinion needs to be taken into account as long as it is primarily the domestic actors which have the greatest importance in the implementation of policies.

Influence seems to depend to a great extent on the public salience and attention given to an issue (Mahoney, 2007). When the public is highly attentive to an issue, interest groups might find it exceptionally difficult to influence the decision-making process, as legislators

are afraid of electoral punishment. Salience in relation to a sensitive topic on the public agenda might also be used as an effective strategy in the competition between interest representatives who want to block the influence of rival groups in that matter. Thus, salience could be used both against and in favour of advocacy campaigns.

Last, but not least, interest group influence is also shaped by the 'strategies' employed in each case. This depends to a great extent on the opportunities provided by the structure of EU institutions, the issue's characteristics, the preferences which they advocate and their strategies in the past. Although there is not enough research in this field, the hypothesis that interest groups often fail to choose and implement the most effective lobbying strategy is very plausible. This is primarily because of the complexity of the EU institutional system, which put the lobby groups in a position to make comparatively more choices than at the national level in order to achieve the maximum level of their influence. To find the right balance and timing between lobbying the European Commission, the Parliament or the Council of Ministers (Bouwen, 2004); to lobby directly or through national associations / European associations (McLaughlin et al., 1993); or to lobby precisely at the moment when the Commission becomes active, when the proposal for a directive is debated in the Council, or when it is finally implemented in the Member States (Crombez, 2002); all these steps make it almost impossible to provide a successful strategy for all cases, as long as the total number of 'combinations' is significant.

As I have already pinpointed before, this field of research is characterized by a considerable number of contradictory empirical findings, as most of the research domains in general. While some researchers argue that predominantly large firms are more influential in designing the policy outcomes of EU regulations in fields such as biotechnology and the energy sector (Bandelow, 2000), according to another study (Dur, 2008a), it is the agricultural and business groups that exercise the greatest influence on the EU's approach in trade negotiations.

With respect to the influence of concentrated interest groups, Michalowitz (2007) argues that the Commission shows a great autonomy towards them and it seeks support from them only if they show similar preferences with the European bureaucracy. Further on, interest groups have also been perceived as successful in wielding influence on the Commission only in the limits of the 'goodwill' shown by the bureaucrats (Coen, 1997). In addition, the Commission seems to draft proposals for directives only if it feels that it will not create a deadlock between the Member States in the Council, keeping an eye open towards the support from the national governments.

A number of contradictory findings should be underlined as well in relation to the influence of diffuse interests in the EU's multi-level system. According to some authors (Pollack, 1997; Ruzza, 2002; Warleigh, 2000), diffuse interests have been surprisingly successful in the EU in order to get the Member States' attention on issues such as the environment protection, consumers' rights and gender equality. By the contrary, other authors argue that diffuse interests are actually unable to foster a real influence of EU policies (Dur and De Bievre, 2007). Especially in trade negotiations it is obvious that diffuse interests represented by NGOs have little impact on the official positions adopted by the EU. Dur and De Bievre (2007) also show how the NGO sector was unable to produce a consistent influence on the European Union's position in negotiations for the Economic Partnership Agreements with African, Caribbean and Pacific countries, in spite of their major public campaigns.

One last point to mention from a critical perspective is the lack of empirical research with respect to the question of strategies that allow the interest groups to achieve maximum of influence. As Eising (2004) shows, it is already widely admitted that lobby groups use both the national and European levels of institutional regulation in order to be influential. However, these contributions do not offer a clear picture on the precise use of strategies and whether they have been successful or not. The simple use of a combined strategy of lobbying both the national and European regulators is not necessarily a guarantee for success in any occasion. This may be sometimes even counter-productive. In conclusion, the main problem regarding the lobby strategies is not that contradictory findings produce a distortion of the picture, but there seems to be rather a lack of hypotheses to connect strategies and their afferent influence which have not been tested so far.

### **2.1.3 Lines for improvement**

From this point of the debate on the significant imperfections of the research carried in the field of interest representation until now, I propose an insight towards some proposals for improvement. The contribution of Andreas Dur (2008a) is definitely essential from this perspective and it is focused on three main 'paths' for further research – the difficulty of defining the concept of 'influence'; the absolute need to take in consideration a plurality of paths towards influence; and the problem of influence measurement, central to the present research paper.

To begin with the first 'path' mentioned above, the reader has to be aware that concepts such as 'influence' and the closely related 'power' are central and probably the most



contested and debated notions in political science. One can look at ‘power’ as both a property / capability of an actor and a causal concept (Hart, 1976). As a result of this dual conceptualization, the researcher is usually pushed either towards the study of resources or the impact of a given actor on policy outcomes. Even further in this complicated debate which spreads over several decades of successive arguments among political scientists, the 1960s and 1970s brought the idea of different ‘faces of power’:

- the traditional perspective of Robert Dahl (1961) of who wins and who loses;
- the actor’s ability to set the public agenda according to his interests or to prevent unwelcome issues away from the agenda (Bachrach and Baratz, 1962);
- an actor’s capacity to prevent other actors from recognizing their own interests, opening the field for manipulation to the degree that weak actors might promote a number of induced preferences that are actually contrary to their fundamental interests (Lukes, 1974).

However, the researcher has to be aware of the great difficulty to define the ‘genuine interests’ of an actor, as long as it is already very difficult to identify the actual preferences.

Another topic which deserves a critical perspective concerns the variety of ‘pathways to influence’, such as access, selection, voice and structural coercion (Dur, 2008c). The notion of ‘access’ equals the capacity of interest representatives to put forward their demands to EU decision-makers. This process can take several forms such as informal communication and taking part in expert commissions or public hearings (Bouwen, 2004). In spite of the fact that some interest groups might consider enough to ‘sit at the table’ in order to influence the legislative process, in most of the cases ‘access’ does not translate directly into ‘influence’. As Dur and De Bievre (2007) also underline, if we consider access as a proxy for influence it is very likely that our research will have a bias in results.

As a second measure taken by interest groups active at the EU level we have to mention the influence they might try to achieve through the European Commission’s DGs in their daily contacts and even in the European Parliament where lobbyists may influence the selection of rapporteurs on a specific Commission proposal.

The third component to be mentioned here is the so-called ‘voice channel’ used to influence a certain political process. Their ‘voice’ can be achieved through a set of activities, such as public manifestations, rallies, petitions, press releases and an active participation in public debates (Dur, 2008c). All these could be easily summarized as ways of ‘campaigning’ (Gerber, 1999), which also includes influence of referenda and citizen initiatives. Kollman

(1998) consistently argues that such forms of ‘outside lobbying’ usually have two types of targets. On one hand the ‘voice channel’ might be aimed at influencing the wider public opinion to make it favourable to the demands of a certain group, usually with a considerable help from private interests on the same topic. By the contrary, the same strategy of ‘outside lobbying’ can be used to inform the political elites on the public’s preferences in that matter. However, we have to underline the lesser use of ‘voice’, in comparison to ‘access’ to the EU institutions. Several explanations are offered by the literature. First of all, making noise can be more costly for the lobby groups than to gain access. It may also be of lesser use when influence is aimed at decision-makers which are not accountable directly to the citizens, such as the bureaucrats in the European Commission. And last, but not least, the ‘voice channel’ may prove successful only if there is a prior salience towards that certain issue among citizens.

In the end, it is primarily the business interests that are usually able to employ ‘structural power’ in their strategy to achieve influence, as they have the capacity to decide the place and timing of their investments in the economy (Bernhagen, 2007). On the free market of EU Member States, investors are the only ones to decide where to settle, according to which legal and political system they consider that serves their interests in the best manner. Such decisions to invest are essential for politicians that rely on a good and stable business climate for their re-election. In brief, politicians depend on firms’ investments for a number of financial reasons. If economic prosperity is achieved, it leads to higher tax revenues, which implies that the same politicians have larger budgets to administer for their desired policies. Although at a first glance this logic applies for the moment only at the national level of government in the EU, the European Commission has given strong signs in the past months that in the near future a system of tax collection at the Union’s level will be implemented, both as a measure of reducing the contribution of Member States to the EU budget and as a hint towards a greater fiscal harmonization in the European Union. Back to the structural power, it might also not be considered a type of lobby, even if business interests can achieve their desired policies in this way. We could also justify such strategies of business groups through the fact that politicians usually lack the necessary information to assess to what extent their policies will influence or even hurt the business sector. In this context, businesses make use of their signal when they consider a policy as harmful, a measure which is sometimes equivalent to a veto right.

However, returning to the aim of my thesis, it is of great importance to have a brief introduction to the EU – civil society relationship, with the issue of ‘democratic deficit’ at its

core since the mid-1990s. The following sub-chapter will focus on the main definitions to be employed further in this thesis – ‘civil society’ and ‘interest representation’.

## ***2.2 Defining civic participation***

In response to the concerns expressed by civil society organizations in several occasions, the European Commission has put forward a set of principles for deliberations on the improvement of European governance, concluding with the Commission’s White Paper on European Governance (Commission 2001). Further on, the Member States took on the initiative and committed to the process of institutional reforms, launching the draft of a Constitutional Treaty which was later on abandoned after the negative results in referendums in France and the Netherlands. However, the common belief was that civil society involvement was the remedy to the democratic deficit and the subsequent legitimacy crisis of EU institutions. A better involvement of civil society was regarded as the best response to all concerns. From the perspective of political theory it was ‘participation’ and not ‘representation’ to be considered a panacea. The representativeness of civil society organizations to be involved in the institutional consultations was not an issue for the European officials.

From a more optimistic perspective, the EU polity already relies on several channels of representation – the Council and the European Council represent the member states; the European parliament represent the electorate; the European Economic and Social Committee represents the functional interests; and sub-national administrative units are represented in the Committee of the Regions (Kohler-Koch, 2010: 102). There was, however, a great need for improvement.

An essential problem to be addressed in relation to the civil society is the widespread and legitimate question – *what sorts of societal associations qualify as civil society organizations?* Although different theoretical approaches bring along different criteria, we should underline the frequent distinction between the ‘deliberative’ approach drawing from theories of democracy in the lecture and tradition of Jurgen Habermas, versus a so-called ‘pluralistic’ approach with roots in the normative theories of liberal democracy.

From Habermas’s perspective, civil society organizations (CSOs) provide and essential institutional core of civil society itself, together with an ‘anchor for the communication structures of the public sphere in the society component of the lifeworld’ (Habermas 1996: 367). CSOs thus guarantee a sort of societal infrastructure for public deliberation which sits at the heart of democracy for Habermas and other supporters of

deliberative democracy. In other words, the civil society relates citizens' experiences in their private lives to the more formal and political decision-making process via the public sphere (Kohler-Koch, 2010: 106). From this perspective, the definition of CSOs becomes extremely wide. All sorts of CSOs may 'qualify' as CSOs as long as they keep performing the above-mentioned function. More than that, the distinction between CSOs and other ordinary interest groups is not based on the self-definition concerning the organizational purpose of an association but depends on the discursive capacity of such a civic association and eventually its close connection to the public sphere.

Although some scholars recommend including any kinds of interest in defining CSOs, most of the professionals who work on civil society issues support a more restrictive approach, including only those associations that claim to represent 'general interests' in the category of CSOs. However, the European Commission is in favor of a broader and 'pluralist' approach to the definition of civil society, which ultimately includes all voluntary and non-profit organizations that give voice to the concerns of citizens, but also to market related actors (Commission 2001: 15).

In relation to the 'pluralistic' civil society we should notice the terminology of Hannah F. Pitkin (1967: 114), who considers 'representation' as the substantive acting for others and in the interest of others. Citizens thus represented in the EU policy-making arena by civil society organizations are witnesses of a type of representation built on the expression of interests. This kind of representation does not automatically qualify as democratic. Representation becomes democratic when the represented citizens have an effective chance of making an impact on the process of representation and on how they are represented. The represented vs. representative relationship should not be neglected in relation to this debate. Pitkin's definition has to be placed at the epistemological foundation of this thesis. In my opinion, it captures very well the aim of the European Commission's White Paper on European Governance in achieving a system of democratic representation through a better involvement of the civil society.

In this epistemological context of this thesis, it is necessary to underline the more consistent features of the 'deliberative' approach brought into the academic discussion by Jurgen Habermas. CSOs are thus expected to deliver with promptitude a response to the constantly changing societal environment and to always bring new topics and issues for deliberation in the public sphere. In such a deliberative context, political institutions are always under the pressure of 'communicative power' from the civil society, augmenting this pressure by bringing together a consistent societal consensus in the public discourse.

Representation is in this sense not something like a role conferred on societal actors, but it is confirmed by their discourse and has to be always renewed in a very dynamic relationship between the public sphere and the CSOs.

In spite of risking a slight oversimplification and leaving aside the structural differences between the political system of a nation-state and the EU, it is worthy to mention the contribution of Bernard Manin, Adam Przeworski and Susan Stokes (1999). They operate a definition of representation in terms of a ‘relation between interests and outcomes’. In their view, any political system achieves the status of ‘democratic representation’ when the outcome of politics matches the interest of the represented people in the way they see it themselves. We have thus all the necessary elements to conceptualize the abstract relation between the represented citizens and their representatives as having on one side the citizens who voice their preferences and share a collective overarching interest and, on the other side, a government / EU institution that is open and responsive to the signals of preference or policy choices sent by the electorate.

### ***2.3 Aim and research question***

Having made the summary of scientific contributions to the relationship between the EU institutions on one hand, and the civil society organizations as interest groups on the other hand, the aim of my thesis is to bring a contribution to the measurement of civil society influence at the EU level and thus the research question of my thesis is the following:

**Q: How successful is the European civil society in influencing the European Commission’s agenda-setting and Directive Proposals?**

After the attempt to answer my research question stated above and in the light of the results of my analysis which will unfold in the next chapters, another research question of secondary importance for this thesis will be answered indirectly as well:

*q: Does the Commission really solve the issue of ‘democratic deficit’?*

The next chapter will describe in a more comprehensive manner the research method to be employed in answering the research questions mentioned above through a comparative analysis of two Directive Proposals in the field of migration policy.

### **3. Methodology:**

An essential part in dealing with the research question assumed by this thesis is represented by the description of an appropriate method to be employed further on. In the end, the question of how much influence do interest groups have on policy outcomes in the EU institutions refers actually to the issue of democratic legitimacy of the EU in general and the common understanding of policy-making processes of this organization. However, only a limited amount of research has been conducted so far in this area, as it is proven by the existing literature (Dur, 2008: p. 559). The relevance of a study dedicated to the measurement of interest group influence cannot be put under question. In the words of James March (1955: 432), ‘influence is to the study of decision-making what force is to the study of motion – a generic explanation for the basic observable phenomena’.

#### ***3.1 Defining and measuring ‘influence’***

The relevance of conducting a research with respect to the influence exerted upon the EU institutions in the decision-making process is hardly questionable. ‘Influence’, together with ‘power’, are two of the dominant terms employed by political science in particular and in social sciences in general. Some clarification has to be brought in regarding the precise definition given to the term of ‘influence’ and its subsequent use in this research paper. As Cox and Jacobsson (1973: p. 3) mention, influence refers to the change of one actor’s behavior caused by that of another. If we consider two actors in a process, A and B, a change in B’s behavior might be given, according to the definition, by the presence, thoughts or actions of actor A. On the other hand, A does not always have to be present physically to intervene in the process; if the decision-makers are familiar with the thoughts of actor A, it might be a sufficient precondition to exercise a significant amount of political influence (Arts and Verschuren, 1999: p. 413). We can easily imagine more complex situations when there is even an actor C, which can transfer the preferences of A upon B, and thus to influence indirectly the decision-maker.

In a similar line of thinking, ‘influence’ should not be solely about prevention and the ability to neutralize the opposition of others (officials, interest groups) during the decision-making process, but it should also facilitate the achievement of an outcome in spite of the opposition of other rival groups. From this perspective, we should notice that such practices of influence are actually essential for the existence of ‘power’ as the aggregate of political resources which an institutional actor can use.

Special attention shall be also given to the complexity of decision-making processes within big international organizations such as the European Union. The adoption and implementation of a certain decision usually requires a large amount of smaller sub-decisions. Moreover, the end of such a negotiation process is not fixed from the beginning, and thus the actors involved might not regard it as a zero-sum game. Such a process also involves a great number of players when it touches upon sensitive issues, both domestically in the Member State, and at the European level. A couple of thousands of interest groups are officially registered with the European Commission and the European Parliament, which should give a general feeling on the great complexity of negotiating at such a level.

As the literature refers to it, ‘influence’ is understood as ‘an actor’s ability to shape a decision in line with his/her preferences’ (Dur, 2008: p. 561). Thus, it draws a clear relationship between the preferences expressed by an actor regarding a policy outcome and the outcome itself. The real challenge regarding influence measurement is caused by the plurality of ways in which influence is exercised. To name one of the definitions used by the literature, a clear distinction is made between ‘direct lobbying’ of policy-makers (Hansen, 1991), ‘outside lobbying’ which aims at influencing public opinion through campaigns and other activities (Kollman, 1998), ‘influence of the selection’ of decision-makers through involvement in electoral campaigns or by influencing the appointment of Rapporteurs in the European Parliament (Fordham and McKeown, 2003), and finally through a so-called ‘structural power’ which influences decision-makers due to the impact of business decisions (e.g. to invest in a certain area) on public policy (Lindblom, 1977).

### ***3.2 Process tracing***

The most frequently used method to measure interest group influence in the EU is, according to the literature, the so-called ‘process tracing’ (Cowles, 1995; Warleigh, 2000; Pedler, 2002; Dur and De Bievre, 2007; Michalowitz, 2007). Alexander George and Andrew Bennett (2005) have written in support of this method about the way in which it ‘attempts to identify the intervening causal process between an independent variable and the outcome of the dependent variable’ (George and Bennett, 2005: p. 206). Thus, process-tracing is used as an attempt to uncover the steps through which causes affect the outcomes (Dur, 2008: p. 561). Regarding the measuring of interest group influence, it might be achieved in several steps: scrutinize the groups’ preferences, influence attempts, access to decision-makers, decision-makers’ responses to lobby attempts, the extent to which groups’ preferences are reflected in

the final outcomes and statements issued by the groups with respect to the outcome, showing satisfaction or dissatisfaction.

Several strengths of such an approach must be also pinpointed. As long as the method of process-tracing is applied to a small number of cases (small-N studies), the researcher is likely to have a reasonably good knowledge of almost all the factors which influenced the decision when it was taken. Thus, several explanations of an outcome, perhaps contradictory, might be taken into account before clearly pointing out the eventual influence exercised by specific interest groups. Many such studies using this method also employ semi-structured interviews, which might also bring different insights for researchers, which perhaps could not be gained exclusively from document analysis or surveys.

On the other hand, process-tracing might face several problems when used for measuring influence, which could not be overcome even in well-designed studies (Dur, 2008: p. 563). Among the difficulties which stand out, we should mention the following: collecting all empirical evidence which is necessary to underline all aspects of the causal process; comparing evidences between sources; defining what ‘influential’ means and finding a ‘yardstick’; avoiding inferences from the level of interest group activity and thus avoiding to become biased in the research in itself; and last, but not least, trying to overcome the hardship of generalizing from a small-N study.

However, as Loomis underlines (1983: p. 186), when the researcher applies the method too strictly s/he might find it too difficult to fill in the gaps of the causal chain, linking interest groups’ activities and the final political outcomes. Documents, press reports and interviews alone might not serve the purpose of the research entirely. At the end of the day, the researcher might underestimate the amount of influence exercised and the conclusion might show that little or no influence was exerted as long as no evidence for a clear link in the causal chain was found. Actually, the real cause might be a lack of sources. In the words of Andreas Dur (2008: p. 563), ‘the absence of proof may be taken as proof of absence’. The most frequent cause is the fact that lobby activities are mainly taking place behind closed doors, which is thus leading to the conclusion that the entire process is lacking evidence of influence.

Another sensitive issue which has to be taken into account when conducting a process-tracing research comes from the gathering of empirical evidence through interviews with both lobbyists and decision-makers. The researcher might thus get a slightly unclear image of all the exercised influence in a given process, as long as the lobby groups have some sort of incentives to over-estimate their influence in a legislative process, while on the other hand the



official decision-makers might try to under-estimate that influence and to support the fact that their actions are free from any type of external influence (Loomis and Cigler, 1995: p. 25). Moreover, when conducting interviews about events in the past, which might require to recollect how the decision-making process went through, failings of memory or something what is known as recollection of the past through the ‘lenses’ of current knowledge, it may lead to imprecise representations.

Further on, in matters related to the European Union regulations, such as the topic of this thesis, one should be aware of a possible selection bias in choosing the available participants for the interviews. Due to the fact that the European Commission, the EU executive body, is located in Brussels and most of its officials could have a particular interest in providing a specific image of a past event, decision or implemented policy, the finding of the research would be seriously altered.

Nevertheless, one last issue to be regarded during the analysis of data gathered is the lack of a ‘unit of measure’ for influence, which is neither given by the existing literature on the topic of measuring influence. In some cases, the researcher might tend to assign a role of influence to a lobby group when its influence in that process is completely dominant. Such a tendency would definitely do much harm to the research paper, as long as not all groups have the same influence in a given process and most of them might not even aim at being the dominant player in the negotiations. In the same logic, the method of process-tracing could also lead to ascribing too much importance to measuring interest group activity. Although a little amount of influence might be observable, the outcomes might be substantially changed by the impact of the lobby group. As Andreas Dur (2008: p. 564) puts it, a lobby group may not be very active when the decision-makers are in the process of adopting a policy which is in line with the group’s interests. This would be a way to avoid unnecessary confrontation with other interest groups, more powerful and with greater resources. In the terms portrayed by Dur and De Bievre (2007), the EU institutions should already be aware of the declared positions of interest groups on topics which have been at the core of negotiations for long periods of time, mostly on sensitive topics such as the labour market or the common agricultural policy. The institutions are thus likely to anticipate the opinions of lobby groups before certain attempts of institutional reforms. Last but not least, lobbyists are sometimes acting for objectives which are not related strictly to gaining more influence, but also for attracting new members to represent or to satisfy the already existing members.

When it comes to the problem of generalizing the findings from a research conducted with the method of process-tracing, which involves usually a small number of cases studied,

this is hard to be done even when the study involves most likely and least likely cases. In general, the question is whether the small sample of selected cases is representative for the entire population, in which case the findings might be generalized. On the contrary, some studies are employing larger samples of studies for the purpose of hiding the bias in the very selection of cases, which might favour an over-representation of some decisions which receive most of the public attention. Some of those impressive ‘meta-studies’ might in fact provide a convenient ‘box’ for the researcher’s predetermined findings.

As it has been shown in this chapter, a solid method of measuring interest group influence has not been agreed upon. Most of the measures previously described have proven to be problematic to some extent. Perhaps it is because of the research methods employed in previous academic contributions on interest group influence that so many contradictions in the empirical findings have been reported. According to Dur (2008b), he considers a plausible fact that studies which employ the method of process tracing will tend to underestimate influence, while studies of the degree of preference attainment tend to rather overestimate influence. However, I have to clearly underline that in spite of Dur’s hypothesis, this research paper uses the process-tracing method with the least possible bias in its findings, considering the resources available and the time constraints. To some extent, this thesis employs this research method as most of the studies carried out so far on the topic of interest group influence in the EU (Cowles, 1995; Moravcsik, 1998; Pedler, 2002; Dur and De Bievre, 2007; Michalowitz, 2007).

In the end, due to the very few studies that deal with measuring interest group influence before the European Commission submits a legislative proposal to the Parliament and the Council, at the agenda-setting stage, this thesis will try to contribute to a better understanding of this precise moment in the European legislative process. For this purpose, we will provide an insight into the public hearings organized by the European Commission before the submission of two Directive proposals with regulatory role in the area of migration policy, starting the analysis with the Green Papers launching the debates long before the directive proposals, followed by the various opinions and contributions sent by NGO representatives in Brussels and ending with the Directive proposals, which actually represent the final phase of the agenda-setting period and start the legislative process in the European Parliament and the Council.

### ***3.3 Case study materials***

Regarding the official documents to be further analyzed in the next chapter, they are easily categorized in two precise areas within the EU migration policy – highly skilled immigration towards the EU Member States and the return of illegal immigrants to their home countries. Once again, my choice for this specific policy area was due to the generous probability to achieve some substantial findings, as long as the civil society across Europe is by definition very sensitive and ready to act in matters related to the rights of migrants.

In the context of the EU's attempt to encourage highly skilled migrants from non-EU countries, the analysis will start with the Commission's Green Paper on an EU Approach to Managing Economic Migration (COM(2004) 811 final), published by the Commission in January 2005. As a second step, a summary of NGO opinions and contributions in the public hearings will be provided, followed by the analysis of the actual proposal for a Council Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment (COM(2007) 637 final), presented by the Commission in October 2007. I have chosen not to conduct interviews as part of my research for this thesis for two reasons: 1) as it was already shown in this chapter, it would be hard to conduct relevant interviews on a legislative process which unfolded in the beginning of the 2000s; 2) the time span and resources available for this thesis were substantially limited. However, I must admit the usefulness of conducting interviews in a more developed version of my thesis in order to achieve stronger results, with more chances to be generalized. Obviously, there is also the option of conducting this research in a quantitative manner. Unfortunately I lacked the necessary basis for such an attempt, but the introduction of several structured interviews in a further research might provide a useful source of data to be analyzed quantitatively, with an even better strength of results.

The second part of the next chapter will deal with the proposal for the regulation of the return of illegal immigrants to their countries of origin. The first step to be looked upon will be the Green Paper on a Community Return Policy on Illegal Residents (COM(2002) 175 final), presented by the Commission in April 2002. In addition, the analysis will continue with the hearings with civil society representatives in July 2002 and it will conclude with a look upon the Proposal for a Directive of the European Parliament and of the Council providing sanctions against employers of illegally staying third-country nationals (COM(2007) 249 final), officially presented by the Commission in May 2007. In addition, as an exceptional measure, the analysis will also take in consideration the actual Directive 2008/115/EC on

common standards and procedures in Member States for returning illegally staying third-country nationals, due to insufficient consistence of the previous Proposal.

This thesis will analyze only the NGO contributions and opinions in the public debates, as it probably represents the most important measure to overcome the ‘democratic deficit’ at the EU level, so much discussed and theorized in the previous chapters of this paper. In other words, I prefer to narrow down the area of research in order to see as well to what extent did the European Commission succeeded in encouraging and active participation of the civil society representatives in the European legislative process and how successful is this process. Thus, the accent will fall on NGO opinions and how much did they influence the final version of the Directive proposal, although this will only employ the advocacy papers published by the Commission as a part of their public hearings. I am aware of the fact that my ‘selection’ of official documents and public statements might be criticized on grounds of consistence and impact on the Proposals’ final texts. However, my analysis employs precisely those public official documents which represent the interface between the EU institutions and the citizens, absolutely essential for the public opinion.

When it comes to describing how I will approach the above-mentioned material in drawing the final conclusions on civil society influence in the EU legislative process, several features have to be stated clearly for a good understanding of my case study analysis. First of all, I will take in consideration the documents’ structure in each of the three steps of my analysis – green paper, NGO proposals, and Directive Proposal. A consistent amount of influence exercised in each of these steps might have as a result a significant change in the scope of the final Proposal, as some issues might be left aside and others introduced in the process. On the other hand, a lesser degree of influence might be proven by the introduction of some points from the NGOs agenda in the debate with the European Commission and further on in the final version of the Directive Proposal. Unfortunately I will not be able to use extensive quotations from the original version of official documents mainly due to their large volume. In this case I will only cite the document’s name and number of registration. I am obviously aware of the eventual shortcomings to be criticized in my approach, as well as the imperfections of influence measurement based on process tracing, as this chapter has shown. However, these methodological constraints are common for the entire academic community.

## **4. Case study – EU migration policy**

### ***4.1 Policy background***

For the aim of this thesis, it is necessary to provide an insight to the most recent theoretical developments in the field of study dealing with migration today, as well as a link to the related EU policies with impact in this area. The following pages will hopefully guide the reader through this context in a clear manner.

From an EU perspective, it is absolutely necessary to correlate the emergence of a common immigration and asylum policy with the implementation of several successive Treaties. Over a period of almost 20 years, the process of European integration was achieved through three main Treaties – the Single European Act of 1986, the Maastricht Treaty in 1992, and the Amsterdam Treaty in 1997.

In a chronological order, it was the Single European Act to introduce the notion of free movement of capital, persons, and goods, within the borders of the EU, leaving aside non-EU citizens. In 1992, the Maastricht Treaty came into force to set up a three pillar structure of European governance, with matters concerning the EU supra-national institutions coming under the first pillar, the common issues regarding the foreign affairs introduced under the second pillar, and the third pillar representing the area of Justice and Home Affairs. What is somehow surprising is the fact that the EU Treaties do not mention any countervailing humanitarian approach, keeping a low voice on the issue of the human rights protection for third-country nationals who are not residents of a Member State. One reason for this could be the economic origins of the EU. It was thus normal that the Third Pillar kept the model of cooperation between Member States together with a strong advocacy in favour of rather restrictive asylum policies. However, the Council of Europe and the UN's High Commissioner for Refugees continued to have a strong mandate for human rights protection in Europe, aside from the EU institutions.

Later on, the Amsterdam Treaty brought a substantial reform to the Third Pillar, bringing both the asylum and immigration areas under the prerogatives of the First Pillar and allowing the European Commission to design EU policies in those areas (Juss, 2005). This is in fact the main argument for my analysis of civil society involvement and influence in the migration and asylum policy-making at the EU level.

Another important 'landmark' in the process of building the framework for a common EU approach to immigration was the Tampere European Council in October 1999, which

brought the notion of human rights to the foundations of a principled body of refugee policy. According to the conclusions of the meeting, it would have been against the European norms and values to deny the concept of ‘freedom’ to those who seek access to the territory of an EU Member State for serious reasons. It is important to underline the manner in which the European Council affirmed the necessity to introduce a common European asylum system while emphasizing Europe’s shared commitment to human rights and endorsing the full application of Geneva Convention which ensures that nobody is sent back if s/he will be subject to persecution in his home country.

In fact, it was in 1991 when the European Commission already called for the inclusion of migration issues into EU’s external policy, together with the need for external approaches once the domestic border controls were perceived as inadequate in managing migration. However, even after the Amsterdam Treaty and the inclusion of migration and asylum policy in the First Pillar, under the prerogatives of EU governance, the European Commission made clear the fact that it was not only the institutional barriers which prevented the emergence of a common European policy in this area. There were apparently significant differences within the Commission’s DGs in terms of how they understood the ‘external’ dimension of such an EU policy. While some officials from DG Justice and Home Affairs were in favour of a substantial reorientation of external and development policy towards the issue of migration, the DGs for development and external relations were rather reluctant to such measures, fearing that such a reorientation would undermine the Commission’s development and external relations goals (Boswell, 2003). Their main concerns were aimed at three main issues. First of all, the development and external relations DGs perceived an eventual preventive policy targeted at keeping potential migrants in their home countries as a possible shift from the regions which are already part of the Commission’s development programs. It is also widely recognized that it is mainly the middle-income countries which produce the most migrants, because of the social pressure within those countries and also due to the fact that more people can afford to travel to the EU.

In terms of an EU migration policy, it started to take shape after the already mentioned Tampere Council of 1999, but more specifically through the so-called ‘Hague Program’ of 4-5 November 2004, together with the Policy Plan put forward by the European Council and the Commission in June 2005.

Regarding the Hague Program, it reaffirmed the need to strengthen the Union’s role in building and defining Europe as an area of freedom, security and justice, a ‘major concern of the peoples of Europe’ (Introduction to The Hague Program in OJ C 53 of March 2005). The

specificity of the Program was the introduction of seven points for common action. Except for the first point which refers to the citizenship of the Union, all the others are placed in the area of immigration and asylum – asylum, migration, and border policy; establishing a Common European Asylum System; legal migration and the fight against illegal employment; integration of third-country nationals; the external dimension of asylum and migration (in partnership with third countries, of origin or transit); management of migration flows, border checks and the fight against illegal immigration through the incorporation of biometric indicators in travel documents (visas and passports); and adoption of a policy on visas (Nascimbene, 2008).

However, the following two sub-chapters will focus only on two of the Commission's proposals for Directives in this policy area, namely the proposal for a Blue Card Directive (COM(2007) 637 final), and respectively the Proposal for a Directive of the European Parliament and of the Council providing sanctions against employers of illegally staying third-country nationals (COM(2007) 249 final). In this context, the analysis of those official documents will try to underline the change in focus and prerogatives in the field of migration policy from the governmental level in each Member State towards the EU institutions.

## ***4.2 The EU Blue Card Directive proposal***

### **4.2.1. Degree of harmonization**

Right from the beginning of the Green Paper published by the Commission, the declared aim is above all to launch the process of 'in-depth discussion between the EU institutions, individual Member States and the civil society at large. As a follow-up, the Commission was to organize a public hearing on this matter in 2005, with contributions to be analyzed in the following pages of this paper. An essential delimitation has to be underlined – the proposal does not deal with the free movement of EU citizens within the Union's territory.

As it has been mentioned previously, the Commission's proposals in the field of migration policy are based primarily on two documents of capital importance for such EU legislation – the EC Treaty and the Conclusion of the Tampere European Council of October 1999. Regarding the EC Treaty, Article 63(3) states that the Council has the prerogatives to adopt 'measures on immigration policy within the following areas: conditions of entry and residence; and standards on procedures for the issue by Member States of long term visas and residence permits'. In addition, the Tampere European Council brought the Commission in

the position to launch a detailed discussion on a strategic project dealing with the issue of economic migration. The very first EU Directive in this field was issued already in 2001, dealing with ‘the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities’. With broadly positive opinions from all EU institutions, the Council adopted this Directive after the first reading of the text.

However, at the moment when the Commission published the Green Paper on Economic Migration, the precursor of the EU Blue Card Directive, in January 2005, it was widely acknowledged that it was time to revisit the previous regulation in this area as a consequence of the broad developments in three years after the adoption of a first Directive in this context. A strong political signal was given at the Thessaloniki European Council in July 2003, which underlined ‘the need to explore legal measures for third-country nationals to migrate to the Union, taking into account the reception capacities of the Member States’. Moreover, even the Draft Constitutional Treaty, which was in discussion at the time and still with a good perspective to be adopted, also stated that ‘the Union has to develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows’ (Article III-267).

It was thus widely believed that the European Union was becoming increasingly dependent on immigration flows in order to meet the needs of the European labour market and to maintain EU’s prosperity, primarily due to the precarious demographic trends in the Member States. An ageing and shrinking population will put an increasingly high burden on Europe’s welfare states, if no other inputs for the labour market will be found. Moreover, the main world regions were already in the process of attracting skilled labour at that time, which put the Union in a position of high risk to lose the competition for further development.

However, the Green Paper fulfils an admirable function of leaving the most essential questions open to further debates with social partners interested to contribute to the final text. First of all there is the question of what degree of harmonization should aim the Directive at. As the issue of access of third country nationals to the internal labour market of the Union is highly complex, the Commission argues that an effective policy in this area has to be introduced progressively, in order to facilitate a smooth transition from national rules to the EU regulation. Several options lay in the Commission’s hands from the beginning. On one hand there is the possibility for a horizontal approach to be adopted, with the benefit to establish a comprehensive common framework for economic migrants, together with a high degree of flexibility. Another option would be the introduction of ‘sectoral legislative proposals’, with a focus specifically on some categories of workers (seasonal workers, intra-



corporate transferees, especially skilled migrants), and with the advantage of an easier adoption of common rules. The third option put on the table by the Commission was the introduction of a ‘common fast-track procedure’ which would allow the admission of migrants in cases of specific labour and skills gaps, activated if several Member States obtain the Council’s authorization to do so. This last option would also remove the risk of an eventual competition between Member States in the recruitment of certain categories of workers needed by the market.

After this being said, it is essential for the aim of this thesis to look at the opinions and concerns raised by NGO representatives during the consultations organized by the European Commission<sup>3</sup>. On the specific issue of harmonization, a number of civil society representatives expressed their support for a horizontal approach in policy-implementation. In their opinion, Member States are the only entities with the right to decide based on their domestic needs on the labour market, as it has been underlined primarily by the Association of Non-profit Human Services of Hungary and December 18. On the other hand, a number of opinions wanted to trigger the alarm concerning the escalation of immigration flows into the EU, which should be avoided by the Member States through ensuring that all domestic vacancies are filled by economic migrants who do not represent a threat to immigration control and do not encourage more economic migrants than it is necessary for their economies. At the first glance, this approach stated by the Immigration Advisory Service reminds of the practice in post-war Europe and the so-called ‘guest worker’ system which became famous in Germany due to its massive Turkish immigration in the 1950s and 1960s. However, the European Coordination for Foreigners Right to Family Life warned precisely about the examples of ‘guest workers’ systems in certain European countries that clearly demonstrate the need to grant workers who are third-country nationals the right of family reunification, with the same conditions as those for citizens of the European Union, for whatever period the residency is accorded. Overall, NGO representatives expressed their preference for a horizontal approach in implementing the future Directive, with an accent on the necessity for a high degree of legal certainty, transparency and information for both migrant workers as well as employers.

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<sup>3</sup> All the references made in relation to NGO opinions on the Blue Card initiative can be found on the European Commission’s website which holds all the advocacy papers presented by the civil society groups in this precise public hearing: [http://ec.europa.eu/home-affairs/news/consulting\\_public/consulting\\_0016\\_en.htm](http://ec.europa.eu/home-affairs/news/consulting_public/consulting_0016_en.htm) [cit. 2011-01-15];

As a consequence to the rounds of consultations with NGO representatives and public hearings organized by the Commission, the third step in the analysis' structure looks at the provisions in the Proposal for a Council Directive (COM(2007) 637 final), which actually ends the stage of agenda-setting in EU policy-making. Thus, several things should be underlined from the 'context of the proposal', as the Commission puts it. In the first place, there is a clear mention to the legislative context in which the Proposal is launched, drawing from the Hague Program of November 2004, which recognizes the important role played by legal migration in developing the knowledge-based European economy. The Lisbon strategy has better chances for successful implementation in this context. Obviously, the main goal mentioned by the Commission is to implement a system which responds promptly to fluctuating demands for migrant labour in the labour market. However, even if only at the level of official declarations, the Commission states that all objectives will be fulfilled with respect to the ability of developing countries to improve their basic social services and to achieve the Millennium Development Goals (MDGs). For this purpose, the Blue Card Directive will encourage measures for circular migration.

Regarding the text of the Proposal, it is worthy to mention the 'scope' under the General Provisions of the document. On one hand, it clearly states that the Directive shall apply to third-country nationals who apply to be admitted to the territory of a Member State for the purpose of highly qualified employment. The second point of Article 3 defines the categories which are not subject to the Directive Proposal, but were the subject of some recommendations issued by civil society representatives. The groups to be excluded are third-country nationals:

- Staying in a Member State as applicants for international protection or under temporary protection schemes;
- Who are refugees or have applied for recognition as refugees and whose application has not yet given rise to a final decision;
- Applying to reside in a Member State as researchers under the provisions of Directive 2005/71/EC with the purpose to carry out a specific research project;
- Who are family members of EU citizens who have exercised, or are exercising their right to free movement within the Community;
- Who enjoy long-term resident status in a Member State in accordance with Directive 2003/109/EC in order to carry out an economic activity in an employed or self-employed capacity;

- Entering a Member State under commitments contained in an international agreement facilitating the entry and temporary stay of certain categories of trade and investment-related natural persons;
- Whose expulsion has been suspended for reasons of fact or law.

At a first glance and from a critical perspective, all the categories to be excluded from the Directive's scope seem to be contrary to some proposals supported by interest representatives of civil society organizations and European associations which were in favour of including the immigrants already present on the territory of EU Member States in the Blue Card Scheme. As they put it, such measures would help diminish the extent of illegal migration and the 'black labour market', widening the legality of many employers and employees in the EU. It was primarily the Medimmigrant organization which asked the Commission to encourage the Member States to include an element of regularization of undocumented migrant workers in a new migration policy. One could argue that, in this specific case, opinions of national governments weighted a lot more than those of civil society actors, introducing a more limited scope of immigration flows allowed by national authorities.

However, the Proposal seems to leave a considerable room of manoeuvre for Member States in deciding precisely which persons are actually admitted to the Blue card Scheme. Article 11 states that 'the application shall be considered and examined either when the third-country national is residing outside the territory of the Member State to which he/she wishes to be admitted or when he/she is already legally resident in the territory of the member State concerned'.

#### **4.2.2 Admission systems**

Another chapter of the Green Paper deals with the clarification of a so-called 'Community preference' principle, which states that 'Member States will consider requests for admission to their territories for the purpose of employment only where vacancies in a Member State cannot be filled by national and Community manpower or Community manpower lawfully resident on a permanent basis in that Member State and already active on the labour market in that member State'. This principle clearly avoids an eventual contradiction between the Proposal for a Directive and the concept of EU citizenship, which would be at risk to fall behind the more non-European skilled migrants. It is easy to understand that especially the New Member States from Central and Eastern Europe lobbied in favour of the Community preference, arguing that there should be first a removal of

transitory restrictions for their citizens on the labour market of most of the EU15 countries before a full EU commitment for external migrants. Moreover, the Commission also appeared in favour of a so-called ‘brain circulation’ which would enable the inclusion into the Blue Card scheme of those who already worked in the EU in the past and returned to their countries of origin. The aim is primarily to encourage foreign workers to return to their countries knowing that if they do so they have greater chances to be readmitted easily if they want to return for work in the EU later on.

Probably the most sensitive part of the Green Paper refers to the applications for work and residence permits. On one hand there was the option of a one stop-shop procedure for a single national application which gives access to a combined residence and work permit. On the other hand there was the option to avoid such regulation at the EU level. However, a third possibility was to achieve a compromise and to propose a single application for both the work and residence permits, even if this would have as a result two different permits based on 27 different national rules on migration.

Regarding the opinions expressed by interest representatives of civil society organizations involved in public hearings on the Green Paper, several points should be underlined. First of all, the proposal for a combined work and residence permit was considered positive. The EU Regeneration Areas Network/Quartiers-en-Crise mentioned that an effective EU migration policy has to become more integrated across policy domains and also more strategic, with a specific focus on the choice of incentives and disincentives for entry, length of stay, work and degree of mobility of migrants. A more drastic opinion was issued by the Immigrant Council of Ireland, stating that if Member States favour national sovereignty over the adoption of a coherent EU policy / framework, this would fail to fully acknowledge that the Union is a region of immigration as a whole. Such an approach would not improve Europe’s relative advantage in competing for high-skilled labour globally and would also hinder the perspectives of implementation of targets set by the Lisbon Strategy which aims at making the EU ‘the most competitive and dynamic knowledge-based economy in the world capable of sustainable growth with more and better jobs, complemented by a greater social cohesion’.

Moving towards the provisions within the Directive Proposal, the first point to be mentioned is the Commission’s perception on how the application for an EU Blue Card has to be done. According to Article 11 of the Commission’s Proposal, ‘Member States shall determine whether applications for an EU Blue Card are to be made by the third-country national or by his employer’. This precise feature was feared by the Commission itself when

it mentioned in the Green Paper that in the case of granting the Blue Card to the employer, immigrants might be in fact ‘owned’, which opens the floor to very dangerous abuse of basic rights.

### **4.2.3 Rights**

The third and last chapter of provisions, included in the Green Paper and submitted to the debate with social partners of the European Commission, refers to the rights granted to third-country nationals entering the Union’s labour market for purposes of high-skilled work. The general opinion put forward by the Commission is that migrant workers must enjoy a stable and secure legal status. This should not take in consideration if they wish to return to their countries of origin or to obtain a more permanent status. Furthermore, they should also enjoy an equal treatment as EU citizens in particular to a number of basic economic and social rights before they obtain the status of long-term residence.

In addition, when the Green Paper brings into discussion whether the owner of the Blue Card – residence and work permit – should be the employee or the employer, the Commission warns about the possibility that the worker might be ‘owned’ in fact by his/her employer who would hold the Card, which opens the way to abuse of the EU policy.

In a more general and broad perspective, the Commission’s Green Paper on an EU Approach to Managing Economic Migration concludes with an introduction to the debate on other eventual measures which would help avoid and/or compensate negative situation in the implementation of the Blue Card Directive. The following measures have been mentioned by the Commission:

- To provide up-to-date information on the conditions of entry and residence in the EU;
- To establish recruitment and training centres in the countries of origin for skills which are needed at EU level and for cultural and language training;
- To create databases per skill/occupation/sector of potential migrants;
- To facilitate the transfer of remittances;
- To compensate third countries for the educational costs of migrants leaving for the EU;

One last point on the agenda was an eventual preference given to some third countries in line with their cooperation agreements with the EU, which would grants their nationals with preference for the admission on the European labour market.

All these points on the Commission's agenda drew considerable attention from NGO interest representatives, perhaps even more than the previous two sub-chapters. Setting a correlation between the EU Neighbourhood Policy and eventual admission preferences was welcomed by the Association of Non-Profit Human Services of Hungary. In addition, the same NGO was in favour of work permits issued to the employer, even if this would cause a limitation of mobility for third-country nationals. In the same logic, the Hungarian organization was openly against a combined permit for work and residence.

On the other hand, the rest of interest representatives involved in the Commission's public hearing expressed their support for a single permit. December 18 considered necessary to introduce a single application procedure which would lead to a combined work and residence permit. As a consequence, this will decrease the levels of European bureaucratization and irregular employment, while it will provide for a more transparent procedure with the result of a considerable reduction in financial costs for the prospective employee. Nevertheless, the European institutions were recommended to have a rights-based approach when developing the EU migration policy, in accordance with the international human rights standards fully adopted by each EU Member State and the Union as a whole.

The European Anti Poverty Network took a more clear-cut attitude in urging the Commission to move away from a rigid and selective approach to admission of new migrants. More than that, this well-known organization underlined that Western societies must recognize the role they have played in creating situations that force people to migrate and they must accept responsibility for that role. The European economy should not be the only target, but also the more delicate humanitarian concerns related to the pressure at Europe's external borders. They also voiced a concern with the standards of living and working conditions of migrants who reside in Europe, their access to rights and to integration services. All these features should not be considered as rewards for the migrant worker, but in should be unconditional and without discrimination. Undocumented migrant workers who are already present in the Union should also be of major concern for the EU Member States.

In a somewhat similar logic is the opinion issued by the European Coordination for Foreigners Right to Family Life. It underlines a clear utilitarian concept of immigration from the introductory text onwards. According to this organization, the Green Paper does not have the goal to improve the situation of immigrant workers and even less the economic situation in their countries of origin, but the Commission seems rather interested to improve the economic and demographic situation of the member States.

An important gender perspective was brought into discussion by the European Network of Women and the European Women's Lobby. They recommend the development of a comprehensive policy to ensure the protection and integration of all immigrant women in the host country, together with a strong promotion of full participation and integration of immigrant women in the social, cultural and civil life and recognizing their contribution to the host society. Without any doubt, immigrant women must have access to the labour market on similar grounds with the men, as well as the opportunity for lifelong learning and training opportunities. Overall, it is absolutely necessary to allow and provide fair deals for migrants coming to Europe, so that they come to a relatively known environment with stable regulations. After their arrival the EU should encourage immigrants to learn languages and customs of the host country together with sharing their own culture. However, this step needs a deeper adjustment of the EU legislation (*acquis communautaire*) with respect to concepts such as 'equality' and 'human rights'.

In a critical perspective on the Green Paper on Economic Migration, the International Federation Terre des Hommes expressed their serious concern with the fact that no reference to children has been included in the first stage. In fact, they consider as the most dramatic mistake the lack of any mention to the word 'children'. As the Federation put it, the Commission seemed to react in contradiction with any previous attempts to mainstream the children's rights through the EU policies. It cannot be denied that children are a very important category directly concerned by the phenomenon of migration, even if they migrate themselves or in case their parents migrate, which affects them indirectly but still to a large extent.

Although the previous sub-chapter showed a rather unsuccessful civil society in accomplishing their targets in the Directive Proposal, Chapter IV of that official document, which is dedicated to defining the rights enjoyed by high-skilled immigrants, could be considered as more balanced with respect to social security. More specifically, Article 15 establishes the terms for 'equal treatment' of holders of an EU Blue Card in relation to nationals of the host country, at least regarding the following points:

- Working conditions, including pay and dismissal, as well as health and safety at work;
- Freedom of association and affiliation and membership of an organization representing workers or employers or of any organization whose members are engaged in a specific occupation, including the benefits conferred by such organizations, without prejudice to the national provisions on public policy and public security;

- Education and vocational training, including study grants in accordance with national law;
- Recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;
- Social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community;
- Social assistance as defined by national law;
- Payment of acquired pensions when moving to a third country;
- Tax benefits;
- Access to goods and services and the supply of goods and services made available to the public including procedures for obtaining housing and the assistance afforded by the employment offices;
- Free access to the entire territory of the Member State concerned, within the limits provided for by national legislation for reasons of security.

It seems obvious that most of the provisions included in the points mentioned above are strongly inspired by NGO contributions. In brief, the Proposal mentions essential features of welfare services, including access to education, membership in trade unions (which grants them equal access to the labour market as for all nationals), social assistance and healthcare.

In addition, Article 16 is dedicated to ‘family members’ and more specifically to the right to family reunification. Through point 8 ‘the duration of validity of the residence permits of family members shall be the same as that of the residence permits issued to the holder of the EU Blue Card insofar as the period of validity of their travel documents allows it’. In this light, the European Coordination for Foreigners Right to Family Life achieved most of the points on its agenda, as they were included in the Commission’s Directive Proposal. However, there is no separate chapter or article on the impact of migration on children, but a broader perspective on the Proposal’s final form allows a ‘lecture’ of the document which is favourable for children as well, as they are included into the category of ‘family members’ to which all the social rights are extended as well.

#### **4.2.4 Final remarks (I)**

Even at a first glance, most of the provisions to be found in the Directive Proposal as resulting from consultations and public hearings with the European Commission have been drafted by Associations of European NGOs claiming to represent the wider civil society. In



order to make a simple inventory of civil society interest representatives which proved to be the most influential in drafting the Commission's Proposal for a Council Directive, the following groups have to be mentioned, with their geographical area of activity in brackets:

- December 18 (European);
- European Anti Poverty Network (European);
- The European Coordination for Foreigners Right to Family Life (European);
- European Network of Women (European);
- European Women's Lobby (European);
- The Immigrant Council of Ireland (national);
- Immigration Advisory Service (European);
- International Federation Terre des Hommes (European);
- Medimmigrant (national);
- Quartiers-en-Crise/EU Regeneration Areas Network (European);

With only two exceptions, all the interest groups that succeeded in providing the European Commission with solid and trustworthy arguments and subsequently introduced their vision in the final document before the legislative process to be initiated are all structured at the European level, with a wide membership basis behind them in the Member States. This observation is relevant for this paper's research question, which assumes that civil society representatives have to create advocacy coalitions and networks in order to achieve 'influence' in the EU legislative process. This is a consequence of both the large popular representativeness which they claim, as well as due to a more effective use of resources brought together for the aim of influencing the Commission through public hearings.

However, the solidity of opinions put on the table by NGO lobbyists in the case of the Blue Card Directive has to be considered from a critical perspective as well. Overarching arguments, such as the necessity to implement a plan for action on the issue of undocumented migrants, are to be found in most of the NGO contributions published for the Commission's public hearing. However, there is no specific mention made in the Directive Proposal, but this doesn't necessarily need to point towards a lack of NGO influence. As most of the lobby groups mentioned above have kept their opinion regarding undocumented migrants only in the limits of 'urging' the Commission for some action, without attaching eventual proposals on how this problem should be solved, it is hard to consider the European Commission as a

‘deaf’ partner in dialogue with its social partners. Perhaps this is a case of insufficient input from the civil society, in which case a proper regulation will be introduced at another moment in the future.

The Proposal’s final form sustains the idea that the Commission placed the great majority of opinions received from civil society representatives in the Chapter on ‘rights’ granted to those high-skilled migrants seeking access on the EU’s labour market. In the end, the Commission’s officials have apparently accommodated those contributions in only one place, going beyond the literal meaning of many recommendations and keeping only the substantial part. In this way, as Article 15 on ‘Equal treatment’ reads, employees under the Blue Card Directive shall be prevented from any sort of discrimination, at least in those fields mentioned by the Proposal’s final version. Although there is no precise provision taken as such from NGO opinions in the public hearing, their ethos is easily to be found in the Proposal’s Chapter IV on Rights. From this perspective, it would be perhaps more appropriate to underline that the entire European civil society achieved a considerable influence in the agenda-setting process at the Commission, without pointing towards some NGOs against others. After all, the major aim of an active civil society is to protect civil rights and liberties in general, although most of NGOs focus on specific areas of advocacy. At the end of the day, the wider picture of civic action has to be appreciated.

In fact, the Proposal contains a brief note on ‘responses and how they have been taken into account’, in the Explanatory memorandum at the beginning of the final draft for a Directive. According to the text, the European Commission retained the conclusion that the contributions showed general support in favour of a common EU policy on economic immigration, in spite of some important differences which were found in the approach to be followed and in the expected end results (COM(2007) 637 final, p. 5). Several clear elements have been underlined, such as the need for common rules to regulate all immigration for employment or at least the conditions of admission for a number of key categories of economic migrants – both highly qualified and seasonal workers. In addition, the Commission also appreciated as important the recommendation for simple, non-bureaucratic and flexible solutions in implementing the future Blue Card Directive. Due to the fact that a considerable number of Member States were not in favour of a horizontal approach, the Commission preferred to introduce the perspective of a sectorial approach as more realistic and better suited for flexibility. From this reading, the Commission renounced to implement a *horizontal* approach described in the Green Paper as ‘the establishment of a comprehensive common framework on economic migration’, choosing the *sectorial* approach which was described in

the same Green Paper as an option that ‘puts aside any overall common framework for the admission of third-country workers’. As the Commission itself underlines, this choice occurred under a strong lobby from national governments, which actually changed the entire scope of the Directive Proposal, introducing considerable limitations which now depend primarily on Member States in the process of implementing the Blue Card Directive. A closer look on opinions and recommendations issued by national authorities and presented in the public hearing before the Commission would probably clarify more in this context. However, this research paper focuses only on the civil society contributions to the drafting of Directive Proposals.

### ***4.3 Proposal for a Directive on the return of illegally staying immigrants***

#### **4.3.1 A common return policy?**

From the start of any attempt to take a closer look at the main three procedural steps behind the Directive Proposal on the return of illegal immigrants – *the Green Paper on a Community Return Policy on Illegal Residents; conclusions from the public hearing; and the Proposal for a Directive of the European Parliament and of the Council providing sanctions against employers of illegally staying third-country nationals (COM(2007) 249 final)* – the following pages will focus on three main areas of interest: the question of a common return policy, the necessity for common standards for return procedures, and the determination of a common readmission policy.

First of all, the Green Paper touches upon the broader context of return. Two main categories of situations are mentioned. On one hand, there are the persons legally residing in an EU Member State, who wish to return to their home-country after a certain time. In some cases, these persons lack the necessary financial means to do so or they fear this might affect their return to the EU later on, once they leave the country of residence. Of specific concern is the category of recognised refugees who wish to return to their country once the situation has stabilised. Among them are also skilled people who should be encouraged to return and take part in the reconstruction and development of their country.

On the other hand, there is the category of illegally residing persons, who do not, or no longer, fulfil the basic conditions for entry, presence and residence on the EU Member States’ territory. This happens either because they entered illegally, or they overstayed their visa / residence permit. In addition, some third-country nationals end up in this situation after their asylum claim has been rejected. As a consequence, these persons have no legal status to stay

in the EU and they can be either encouraged to leave Union voluntarily, or they are forced to do so. In fact, the Green paper focuses solely on the second category – the illegal residents – more specifically on their forced or voluntary return.

It is essential to underline the fact that any third-country national without a legal status enabling residence and for whom the Member State has no legal obligation to tolerate his/her residence has to leave the EU. This is a primary condition to enforce the rule of law, which stays at the foundations of a true area of freedom, security and justice.

Regarding the asylum practices, the Green Paper pinpoints that in spite of an eventual rejection of the asylum claim on the basis of Geneva Convention, that person might still be in need of international protection. In this context, the EU should put in place a complementary system of protection, which is of crucial importance. Moreover, the European Commission clearly states that a return policy must be in full respect of human rights provisions and fundamental freedoms in the context of the European Union's policies on human rights applied both internally and in its foreign relations. As Article 6 of the Treaty on European Union mentions, 'the EU is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States'. In this light, illegal residents must always have the possibility to lodge an appeal before a court of justice during the process of forced return. For this purpose, Art. 6 of the European Charter of Human Rights and Art. 47 of the Charter of Fundamental Rights already represent the basis for a fair trial and the principle of judicial control to be favoured over detention. Another issue that needs full consideration is the protection of personal data, which always needs to be fully respected.

Going further with the analysis of NGO opinions and contributions expressed in the public hearing organized by the European Commission in July 2002 as a follow-up of the Green Paper<sup>4</sup>, the issue of a common return policy at the EU level attracted considerable attention. First of all, the representative of the *Economic and Social Committee* (ECOSOC) underlined the great importance which has to be given to human rights' aspects. The most important feature is that a person without valid travel or residence documents is considered a human being and not a criminal *a priori*. It also supported the preference to voluntary return, while the measure of forced return should remain absolutely exceptional. More than that, ECOSOC stressed that legal migration is an important factor in reducing illegal migration and

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<sup>4</sup> All advocacy papers presented by NGO representatives in this specific public hearing on the return of illegal immigrants can be found on the European Commission's website: [http://ec.europa.eu/home-affairs/news/consulting\\_public/consulting\\_0016\\_en.htm](http://ec.europa.eu/home-affairs/news/consulting_public/consulting_0016_en.htm) [cit. 2011-01-15];

that economic growth is strongly dependent on labour migrants. In the end, the Committee remembered that any actions of forced return should be set up in close consultation and cooperation with the relevant actors in this field, such as UNHCR, NGOs etc.

In fact, a representative of the *United Nations High Commissioner for Refugees (UNHCR)* itself took part in the public hearing with the European Commission and stressed several important elements to be taken in consideration. As such, an effective return policy has to be a part of a comprehensive European policy on migration and asylum. In addition, UNHCR expressed its concern with the fact that rejected asylum seekers are the main target group of return. From this perspective, a satisfactory common asylum system is essential, enhanced by fast and efficient procedures. Nonetheless, UNHCR also supported the process of voluntary return, while forced return has to be always in line with internationally established standards of dignity and safety. Special attention must be given to particularly vulnerable persons, such as minors and separated families.

Although brief, the contribution of ICMPD – *International Centre for Migration Policy Development* raised a very important question left open for discussion: ‘how can states return illegal immigrants without violating human rights?’ Moreover, ICMPD also reinforced the opinion of UNHCR mentioned in the previous paragraph. As a conclusion, in their opinion, states can implement an effective and efficient return policy if the individual is willing to cooperate with the authorities to return to his country of origin.

One of the last contributions issued for this part of policy provisions on a common return policy was put forward by the *Churches’ Commission for Migrants in Europe – CCME*. First of all, it considers the cut in development aid as a factor for an increased incentive to migrate to the EU. It also perceives the UN as the appropriate body to fight criminal organizations involved in smuggling and trafficking of human beings, without being more specific on the mechanisms (if any) to be employed by the United Nations in achieving these targets.

### **4.3.2 Common standards of return**

It is very important to be aware of the fact that ‘forced return’ is always a very significant restriction on the freedom and wishes of the individual concerned. As the Green Paper puts it, a set of common standards regarding expulsion, detention and removal could be established. More than that, once the best practices found in the Member States are applied, this may also have as a result an improved efficiency of the public services involved in this process. However, the Commission leaves some space for debate through the open question

of establishing some *common standards* or setting some *minimum requirements*. The latter option would definitely leave a greater space for manoeuvre for national governments.

A sensitive aspect of this debate is the question of ‘detention’. Coercive measures are often employed in order to enforce the removal. Through the Green Paper, the Commission highlights the possibility for some minimum rules on the conditions of detention to be introduced in order to ensure human treatment in all Member States. Separation from ordinary convicts in order to prevent criminalisation should also be seriously taken in consideration, according to the Commission. Time limits on detention could also be explored, with the possibility to give some pan-European indications on the regular and maximum duration of detention for the purpose of return.

Moreover, the removal itself is a highly sensitive procedure. The Commission underlines among other aspects the necessity to take into adequate consideration the reality in the countries of origin. Instability in those countries might make the removal questionable due to humanitarian reasons. In this context, opinions provided by organisations as UNHCR and other UN bodies should be taken into account.

Regarding the main obstacle for return of illegal immigrants in due course is unclear identity and lack of proper travel documents. In addition, countries of origin often delay or deny issuing new travel documents because of missing data on nationality. In response to these situations, the EU has issued a standard travel document for return purposes only. The Commission also proposed to make greater use of ‘immigration liaison officers’ who are sent to countries of origin or transit. They shall maintain contacts with local authorities and ensure a smooth return procedure and readmission to the country of origin.

Regarding this area of the future Directive’s policy provisions, several well-known international NGOs expressed their opinions and contributions, together with national bodies in the field of migration and asylum. First of all, it is worthy to mention *Human Rights Watch*, which states that there is a significant gap between the Member States’ attitude towards international human rights commitments and the inclusion of such commitments in the community-wide immigration policy regime. As a proof of their concern, HRW underlined the failure to refer sufficiently to international standards that govern the treatment of adult migrants and aliens present in the European Union. In fact, the Green Paper refers only to the ‘possibility to create’ minimum standards in detention and return of third-country nationals, although such standards already existed, as HRW rightly notices. According to their research, Member States regularly violate the rights of migrants and asylum seekers while they are detained in precarious conditions with insufficient procedural guarantees. In their opinion, the

EU could play an important role through the development of a return policy which holds accountable its Member States for keeping their commitments for the respect of human rights. In the end, HRW also criticized the Commission for not including in the Green Paper specific references to any regional (European) or international obligation to protect the right to life.

In the same logic, the representative of the *German Red Cross* opposed the common practice of detention in cases of forced return, as long as people should not be treated like criminals because they were illegal residents. According to the German NGO, the EU should discuss the abolition of detention and seek for alternatives in such cases. In practice, returnees in detention are actually treated sometimes worse than criminals in regular prisons, as the German Red Cross put it. Minors and children should not be detained and the improvement of conditions of detention is needed in order to avoid traumatising refugees. Again, the conclusion was that the Green Paper did not bring into discussion all the aspects necessary to be reconsidered with regard to detention, above all.

The *European Council on Refugees and Exiles* – ECRE also took part in the public hearing. The Council welcomed the Green Paper and the perspective of common principles and standards respecting human rights and dignity, but felt that a greater emphasis needs to be put on voluntary return. A common policy would be more effective in this way. More than that, it insisted that people must never be returned to a situation where they could face persecution. At least the right of appeal and appropriate legal assistance has to be included as safeguards. They are crucial for individuals who did not give their consent for return. In the end, ECRE considered as unacceptable the detention of failed asylum seekers prior to removal for long periods of time and without an effective review of their cases.

CIMADE, a French NGO present in the public hearing with the European Commission, also voiced its concern with detention. In their opinion, a simple violation of an administrative rule does not necessitate detention, which is unacceptable and discriminatory in such cases. Rejected asylum seekers should thus not be included in the wider political context of return, as they would be treated as ‘illegal persons’ in that context. While detention should be strictly limited to the period of time necessary to organize the departure of the returned third-country national, minimum conditions should be also guaranteed, such as sanitary controls, no coercive measures (handcuffs), information for foreigners about procedures of return and their future, as well as access to social help.

A separate opinion focused on the rights of children was issued by the Brussels-based organization ‘*Save the Children*’. From the beginning, the organization expressed its disappointment with the fact that the Green Paper made only two references to children in the

section of vulnerable groups. Special attention has to be given to the return of separated or unaccompanied children, who should receive adequate reception and care in their home country. In the end, they reminded that cases of serious violations of children's rights, such as situations when parents 'rent' their children to traffickers, without being more specific in recommending some methods to combat such serious abuses.

The last contribution in this policy area dedicated to common standards for return procedures was issued by ENAR – the *European Network against Racism*. They reinforced the need for an exact and appropriate formulation of the principle of 'priority for voluntary return'. As a suggestion to the Commission, the groups that require special protection should be extended to include as well minors, pregnant women and persons who are seriously ill (not only particularly protected, but should on no be account detained). In addition, the period of detention should not exceed 15 days and specific training of staff carrying out return enforcement should be introduced, especially with respect to human rights and anti-discrimination.

### **4.3.3 Return programmes**

A long-term experience in Member States shows that it is very important to extend the project of 'return' with a follow up component in the country of origin. Otherwise, the recently returned migrants have a tendency to attempt to go back to the host country as he/she tries to avoid hard conditions, lack of employment or other difficulties in his/her home country. In this respect, several points have been underlined by the European Commission from previous programmes of sustainable return, all with an accent on a better involvement of the countries of origin and better knowledge of the socio-economic reality in those countries. Projects that helped the return community to a certain degree were more likely to succeed in the end. If the local communities benefit from the return, local hostility towards the returnees is diminished or even avoided. Support for construction of infrastructure and schools remains of high importance.

More than that, the Commission proposes through the Green Paper to include readmission agreements and standard clauses in all association and co-operation agreements between the European Community and the relevant third countries or groups of countries. This provides a reliable framework for institutional cooperation and help in order to undermine the credibility and financial interests of all trafficking networks involved.

Regarding the public hearing in front of the European Commission, it included in this section almost exclusively representatives of national governments and public institutions



active in this policy area. German, Greek, British, Turkish, Canadian and US representatives were present and voiced their opinions. The *Immigration and Naturalisation Service of the United States of America* made an important contribution through the outline of the system of returns as it exists in the US. Foreign nationals are detained when they are considered a danger to society, a flight risk or when they have a criminal conviction. The others are put under supervised release. Well defined detention procedures are vital and NGOs are involved in this process when it takes place in the US. Detention standards are enforced both in state owned and in private facilities. In the end, the US authority considered readmission agreements as not feasible due to the fact that it is not possible to have readmission agreements with all countries. In addition, the Canadian representative pointed to the fact that readmission agreements are no guarantee especially when there are no sanctions to be imposed.

#### **4.3.4 A different scope of the Proposal**

Somehow surprising is the Directive Proposal which follows the Green Paper on a Community return policy on illegal immigrants and the public hearing with NGO representatives and national authorities. At the first glance the accent falls unexpectedly on ‘providing sanctions against employers of illegally staying third-country nationals’. As the document’s explanatory memorandum states, this proposal is only a part of the wider EU efforts to develop a more comprehensive migration policy. Actually, one of the main factors that encourage illegal immigration into the EU is the availability of jobs on the ‘black market’. Therefore, the aim of this directive proposal is to reduce the pull factor by regulating in a stricter manner the employment of third-country nationals who are illegally staying in the European Union. As the European Commission underlined, up to 8 million illegal employees are concentrated in several sectors of the European economy – construction, agriculture, cleaning, and hotel/catering.

More than that, besides the pull factor for illegal immigration, illegal employment (along with EU citizens) generates great losses to public finances and can depress wages and working conditions, may distort competition between businesses and leaves the undeclared workers outside the scope of health insurance and pension rights that depend exclusively on contributions. They are also constantly under the risk of being returned to their country of origin if they are apprehended, which keeps them in a vulnerable position in front of their employer. Thus, under this Directive Proposal it is the employer who will be sanctioned, not

the employee (third-country national). However, this Proposal is still concerned with immigration policy and not with labour or social policy.

In brief, the European Commission took in consideration several options for the Directive Proposal, as follows:

1. Status quo;
2. Harmonized sanctions for employers of illegally staying third-country nationals across the EU with an enforcement obligation on Member States;
3. Harmonized preventive measures;
4. Harmonized employer sanctions and preventive measures;
5. EU awareness raising campaign on consequences of hiring an illegally staying third-country national;
6. Identification and exchange of good practices between Member States on the implementation of employer sanctions.

In the end, the Commission proposed a combination of Options 4 and 6, together with the perspective for awareness campaigns as they were mentioned in Option 5.

Although it is not the purpose of this thesis, a short look at the final version of the Directive adopted by the Council is worthy to take in consideration. After the Green Paper on return policy of illegal immigrants and a Directive Proposal on a policy area apparently with little in common with the Green Paper (sanctions against employers of illegal immigrants), the final version of Directive 2008/115/EC of the European Parliament and of the Council deals with ‘common standards and procedures in Member States for returning illegally staying third-country nationals’. From the very beginning, as the title makes it obvious, only one of the three policy areas proposed through the Green Paper in the first stage of the policy-making process was still present in the end. The questions of a common return policy and a common readmission policy were left aside, with the accent now put only on the common standards for return procedures – in fact the most sensitive part of the entire debate.

As the General Provisions of the Directive mention, the aim is to set out common standards and procedures to be applied in Member States for returning illegally staying non-EU nationals in full accordance with fundamental rights as they are provided by general principles of Community law and international law.

In addition, the Commission used the recommendations and opinions voiced by NGO representatives in the public hearing and introduced specific chapters and articles for the following topics: return and removal of unaccompanied minors (one of the most sensitive

debates in the public hearing); voluntary departure; removal; postponement of removal; and entry ban.

The issue of detention is also regulated by this Directive, with clear limits put on conditions of detention, especially for vulnerable persons. However, in spite of the fact that some NGOs underlined the need to restrict the period of time for detention to a maximum of 15 days, the Directive introduces the maximum period of six months.

As for minors and their families, detention should be regarded as a measure of last resort and for the shortest period of time possible. More than that, the removal of minors shall be enforced only with guarantees that he/she will be returned to a member of his/her family or adequate reception facilities in the country of origin.

#### **4.3.5 Final remarks (II)**

As we have seen from the analysis in the previous pages, the process of drafting this particular Directive on common standards for returning illegally staying immigrants seem to follow an unusual path. In comparison with the more clear procedures behind the Blue Card Directive, this time the Directive Proposal might be considered at least unexpected.

In fact, if we look only briefly at the Directive Proposal and focus primarily on the final version of the Directive itself, we may notice how after the recommendation of national authorities the Commission dropped out two of the three policy areas discussed in the Green Paper. As the governmental officials underlined in the public hearing, a common readmission strategy with all non-EU countries is very hard to achieve, if not impossible. A more realistic perspective could restrain such a readmission strategy only between EU Member States and partner countries. As for the first policy area in the Green Paper – a common return policy – it would be hard to regulate through solely one Directive of the Council, due to the complexity of such a policy. From this perspective, national governments were again the most influential partners for the European Commission in public debates. In the end, those actors succeeded in removing two points from the agenda, restraining the final Directive only to ‘common standards of return’. As in the case of the Blue Card Directive, the significant influence of national governments might be explained through the fact that in the end it is the Member State which implements the Directive and holds the most appropriate perspective on that issue.

#### **4.4 Summary – NGO influence**

Before drawing the final conclusions of my comparative analysis through policy tracing on two Directive Proposals, it is absolutely essential to mention the differences and similarities between them.

Regarding the *similarities*, the main characteristic to be underlined is the substantial representation of the European civil society in the institutional dialogue with the European Commission, quantifiable through the number of NGOs and civic associations which showed interest in the legislative initiatives and sent their opinions for the public hearings. More than that, NGO opinions showed a rather strong position in favour of the process of European integration. In the case of the Blue Card initiative, the civil society supported in the majority of advocacy papers the ‘horizontal approach’, which granted a greater involvement of the EU in regulating the admission of high-skilled migrants from non-European countries. This position seems logic in the scope of the initial Green Paper. The Commission began such an initiative from the acute need for a common perspective on this sensitive labour issue, granting a stronger position for all European countries in their search for better competitiveness with other global markets, as well as the need to avoid useless competition within the Union, among individual Member States, fighting for skilled labour force. In addition, European civil society groups firmly supported a clear reference in the Directive’s text to strong guarantees for the rights and liberties of those third-country nationals involved in the Blue Card scheme, on the same grounds as the citizens of the Union.

The same is true for the second Directive Proposal in my analysis. The legal benchmarks and guarantees against abuses of power in relation to illegal immigrants on the verge of being returned by force to their home countries have been the main concern of NGO representatives participating in the public hearing with the Commission. Once again, they strongly criticized the absence of a community-wide approach to the issue of immigration and the gap between the international commitments of EU Member States to principles of human rights and their actual practice which often leads to abuses.

On the other hand, the most obvious *difference* in civil society influence between those two Directive Proposals lies in the comparison between the final Directives’ texts. While in the case of the Blue Card Directive a separate chapter in its text is dedicated to the rights specifically supported by NGOs, the Directive on illegal immigrants’ return contains a much restrained list of rights than the one proposed by the civil society on the whole. A clear example in this case is the fight of some NGOs for the introduction of a time limit on

detention of maximum two weeks, which the Commission did not take into account and set the time limit considerably higher. The second Directive Proposal analyzed in this chapter shows, in my opinion, the clear signs of a terribly limited influence of the civil society in establishing some essential features to guarantee human rights without discrimination of citizenship and origins.

However, one overarching feature brings together both legislative initiatives in my case study. As the empirical findings have underlined since the beginning of my analysis of official documents, the governmental authorities representing the Member States in public hearings at the European Commission retain the heaviest influence on the entire process. The final conclusions will deal in more detail with this issue in the following pages.

**Blue Card Directive****Directive on return of illegal immigrants****Public Hearing – NGO proposals**

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| <ul style="list-style-type: none"><li>• Horizontal approach – member states to decide according to their needs;</li><li>• Extending the framework to every third country national – avoid discrimination;</li><li>• Admission preferences, according to the EU Neighborhood Policy; Integration policies need to be included; Gradually achieve an EU harmonized labor immigration policy;</li><li>• Need for legislation and policies focusing on the undocumented women and children;</li><li>• Rights-based approach, departing from the existing international human rights standards;</li><li>• The Commission must recognize the role of Western societies in creating situations that force people to migrate;</li><li>• Avoid the current utilitarian concept of immigration – the goal today is not to improve the situation of immigrant workers, but the economic and demographic situation of the Member States; this MUST change;</li><li>• Social rights for immigrants, equivalent to those enjoyed by nationals and other EU citizens;</li><li>• Equality of treatment – inform migrants on actual conditions and stop</li></ul> | <ul style="list-style-type: none"><li>• Recognize migration as a twofold right – to leave one’s country and to look for better conditions of life in another country;</li><li>• Promote voluntary return – ‘go and see’ visits to the home country, reintegration assistance to facilitate a voluntary return;</li><li>• Need for cooperation with third countries of origin – burden sharing beyond the EU;</li><li>• UN as a forum to fight criminal organizations involved in smuggling and trafficking of human beings;</li><li>• People should not be returned to a situation where they might face persecution;</li><li>• Safeguards for immigrants – at least the right of appeal and appropriate legal assistance;</li><li>• Considers unacceptable the detention of failed asylum seekers prior to removal; detention should be an exception!;</li><li>• More references to children;</li><li>• Close the gap between the Member States’ obligation to respect their international human rights commitments and their lack in the community-wide immigration law and</li></ul> |
|--|---|

<p>advertising the ‘successful’ west!</p> <ul style="list-style-type: none"> <li>• Promote the full participation and integration of immigrant women in the host society;</li> <li>• Implement the ILO Conventions;</li> <li>• Open vacancies for ‘new’ migrants together with undocumented migrants;</li> <li>• References to children MUST be included in the Green Paper’s reflections;</li> <li>• Recognize the economic, social, cultural and political needs and rights of the migrant worker</li> <li>• Encourage circular migration instead of a sophisticated temporary work permit;</li> </ul>	<p>policy regime;</p> <ul style="list-style-type: none"> <li>• Avoid the term ‘illegal’ immigrants and use rather ‘undocumented’ or ‘irregular’ to avoid stigmatization;</li> <li>• Formulate the principle of giving priority to voluntary return;</li> <li>• Groups not to be detained (require special protection) – minors, pregnant women and persons who are seriously ill;</li> </ul>
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**Proposals for Directive / Directive provisions**

<ul style="list-style-type: none"> <li>• No reference made to undocumented migrants already present in the EU;</li> <li>• Opinions of national governments much more influential;</li> <li>• Member States to decide precisely which persons are admitted;</li> <li>• Member States to determine who applies for the Blue Card: employer vs. employee; space for abuses recognized even by the Commission;</li> <li>• NGO influence is present in the Chapter of Rights – welfare, education, trade union membership;</li> </ul>	<ul style="list-style-type: none"> <li>• A more restrained scope of the Directive, with only one aim from three original points of the Green Paper;</li> <li>• A much longer period of allowed detention than proposed by NGOs;</li> <li>• Opinions from NGOs led to the creation of specific sub-chapters on immigrant rights issues, with ‘return of minors’ as most important.</li> </ul>
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## 5. Conclusion

As all the previous chapters of this thesis tried to underline, the fundamental issue of ‘democratic deficit’ is a real concern for the efficiency of EU institutions in the implementation of the so-called *acquis communautaire*, as well as for the entire process of European integration. Obviously, the European Commission was aware of this issue since the beginning of the 2000s when it published the already cited White Paper of European Governance and thus opened the way for a greater involvement of the civil society in the process of drafting EU regulations. The return towards the people was definitely considered as the necessary step to be taken in order to overcome the problem of democratic deficit within the Union, at least on equal grounds as for the business lobbyists (Kohler-Koch, 2010). As my analysis of official documents has tried to show, the empirical findings point towards a rather superficial involvement of the civil society in establishing the essential points on the European Commission’s agenda. NGOs are apparently useful for the provision of a plurality of opinions in public hearings at the EU level, although the main accent is still put on the positions of Member States.

In addition, this thesis tried to put forward a deeper perspective on the representativeness of the civil society in consultations with the European Commission, as the main initiator of EU legislation, and to consider rather the influence of the European civil society when it takes part in dialogues with the Commission. According to the dual dimension claimed in my research, both scientific and relevant for the policy community, several lines of thought should be reinforced. From the scientific perspective I tried to contribute to the academic debate on *influence* in relation to the civil society participation at the EU level of governance. On the other hand, this thesis is relevant for the European policy actors due to the case study on two Directive Proposals encompassed by the EU migration policy. They serve in my approach as the main material for observation and analysis of the actual implementation of the Commission’s strategy for greater openness towards NGO representatives. In brief, as Greenwood (2007) summarizes the great expansion of lobby activity in the European Union (both business and civic lobby), one important question still needs to be answered – *how influential are in fact those NGO representatives?* This is how the primary aim of my thesis could be summarized.

It should also be said that an eventual path for further research should look precisely at the NGOs active in the EU lobby community and to carry research on their self-perception of their actions. Can they handle efficiently both the function of ‘interest representation’ at the EU level and their role in the implementation of social programs in the Member States? Isn’t



there a sort of fracture between those too dispersed levels of action, both at the supra-national and the community levels? These questions might be addressed in a more developed version of this thesis and they definitely remain open to further scientific contributions. As the chapter of theoretical background has shown, the academic community is still widely divided on the assessment of access and influence of various non-institutional actors on the EU legislative process. More than their divisiveness, authors have often proposed contradictory statements in this field of research, making my orientation difficult to some extent through most of the previous contributions on my research topic.

Regarding the research method used in my analysis, the so-called ‘process tracing’ seemed the most feasible for the time span available for carrying out my research. I am also aware of the shortcomings of the strategy to employ this method only, as I have underlined in the chapter on methodology. Perhaps it would be recommended to conduct a number of interviews as well for a more solid answer to my research question. However, I believe it might be difficult to achieve significant results from interviews on legislative processes which unfolded several years ago (almost a decade), besides the risk of finding that participants to interviews reinforce the position reflected already by the documents.

Going further to the actual analysis of green papers, NGO contributions and final Directive proposals, provided in the case study on EU migration policy, it is necessary to underline firmly several aspects. First of all, from an epistemological perspective, two concepts lay at the foundation of my research: Jurgen Habermas’s perception of the ‘civil society’ as a deliberative environment necessary for the link between the private and public spheres; and Hanna Pitkin’s notion of ‘representation’, which can become democratic only in the presence of a real dialogue with a consistent feedback from the public authorities (in this case the European Commission). Having this in mind, I will summarize the conclusions of my case study in the following paragraphs.

As I have shown in the previous chapter, the gradual process of ‘Europeanization’ which the migration policy faces has determined my choice for the two Directive proposals in my analysis, together with the sensitivity of the civil society to issues of human rights almost by definition. Constraining the EU institutions in promoting constantly the much acclaimed European values of human rights and democracy is actually vital for the efficiency of the entire Union both internally and in relation with other countries and regions around the world. The EU must ‘practice what it preaches’, if it wants to be a credible and respected global actor.

Regarding the NGO involvement in the agenda-setting stage of the European Commission, the analysis shows without any doubt a consistent presence of the European civil society through advocacy papers submitted to the Commission for the purpose of improving or contributing to the ‘open questions’ launched by the Green Papers which actually initiate the public debate and lead to the Directive proposals, after a period of consultations. From this perspective I am aware of the eventual necessity for a lecture of several Directive proposals preceding the Commission’s White Paper on European Governance, which actually opened the door for a greater involvement of NGOs in consultations. This could also be taken into account for further research on this topic. More than that, as the analysis on the Blue Card Directive has shown, the most successful NGOs were those with a considerably large basis of representation, mostly pan-European organizations. Both the argument for better popular representativeness and better use of resources has thus been reinforced in the measurement of civil society influence. They succeeded in introducing essential points on the rights of labour migrants through a separate chapter in the Directive Proposal. This finding was also supported by the second part of my case study, on the return of illegal immigrants, though to a lesser extent.

On the other hand, it was hard not to observe the impressive influence of national governmental authorities in consultations with the Commission, which could be considered as a secondary finding of my thesis, in spite of the fact that my focus has been only on the civil society. From the Blue Card Directive negotiations it was totally obvious how Member States refused to give preference to a ‘comprehensive common framework on economic migration’ (COM(2007) 637 final). The governments achieved the preservation of their sovereignty in choosing which categories of workers and how many of them will be admitted on their labour market, which represents a major detour from the primary aim of the Green Paper for a common policy regulated from Brussels. The same is true of the second part of the case study. For that legislative initiative on the return of illegal immigrants the governmental authorities were successful in removing two out of three major points initially proposed for debate through the Green Paper, which I believe that represents a clear proof of the overwhelming influence owned by the Member States. This is also reasonable if we consider the fact that all Directives adopted by the Council are implemented by the Member States, which makes them the actors with the best knowledge on how the situation really looks on the ground. The civil society can hardly compete from this perspective, unless the States involve more NGOs in the provision of public services.

In the end, although my thesis tried to concentrate exclusively on civil society influence in the EU legislative process, it became inevitable not to observe the substantial influence of Member States. I believe that through the partial move of focus in my thesis I may have succeeded in opening the path for a continuation of this line of research towards new horizons and consolidation of my findings.

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