Metadata of the chapter that will be visualized online

Chapter Title	The Europeanization of Immigration Policies	Q1
Copyright Year	2016	
Copyright Holder	Springer International Publishing Switzerland	
Corresponding Author	Family Name	**Hadj-Abdou**
	Particle	
	Given Name	**Leila**
	Suffix	
	Division	
	Organization/University	University of Sheffield
	City	Sheffield
	Country	UK
	Email	l.haj-abdou@sheffield.ac.uk
Abstract	The control of international immigration touches the core of national sovereignty. The regulation of admission is usually seen as the deepest expression of self-determination. Despite this, over the last decade immigration has become a thoroughly Europeanized policy field, and this process has significantly contributed to European integration. This chapter reconstructs the evolution of the process of Europeanization in the domain of immigration, and analyses its dynamics. It focuses on the following questions: To what extent, and why, have EU member states opted to cooperate on the highly sensitive issue of migration? What effect does Europeanization have on the rights of immigrants—do we see a restriction or an expansion of rights? The chapter demonstrates that, while national governments have chosen to Europeanize the issue of immigration primarily in order to foster and to enhance migration control, in doing so they have actually put constraints on their ability to regulate immigration, which in turn has led to an increase in the protection of immigrants' rights.	

AUTHOR QUERIES

Q1 Please confirm the chapter title.

Chapter 7
The Europeanization of Immigration Policies

Leila Hadj-Abdou

7.1 Introduction: Immigration Policies, the Core of National Sovereignty

> Before 1914 the earth had belonged to all. […] There were no permits, no visas, and it always gives me pleasure to astonish the young by telling them that before 1914 I travelled from Europe to India and to America without passport and without ever having seen one (Zweig 1943).

The author Stefan Zweig remembers here the changes in the wake of the First World War. Although Zweig's memory is based on the specific experience of the bourgeoisie, and does not accurately capture the surveillance of, and the restrictions on, the movement of other societal groups (Mau et al. 2012: 19), his words are a reminder that with the emergence of modern nation states movement across international borders became a major focus of control. A paradigmatic example is the French revolutionary regime, which issued passports in 1791, in order to establish a sense of national community.[1] Other European states followed its example (Mau et al. 2012: 16). However, as industrialization spread, the control of movement was challenged by the increasing demand for labour, and between 1843 and 1889 passports were abolished in many countries in Europe (Mau et al. 2012: 18). The outbreak of the First World War changed border policies once again. The (re)-imposition of passport controls by many Western European states and the United States enabled

[1] Passports have previously existed, but pervasive and systematic control of movement is closely linked to the emergence of modern nation states, as Torpey (2000) demonstrates. The French revolutionary regime, moreover, initially also used passports to control those considered ideologically unreliable or socially marginal (Mau et al. 2012, 17). For the disciplinary function of border control see Chap. 10, in this volume.

L. Hadj-Abdou (✉)
University of Sheffield, Sheffield, UK
e-mail: l.haj-abdou@sheffield.ac.uk

A. Amelina et al. (eds.), *An Anthology of Migration and Social Transformation*,
IMISCOE Research Series, DOI 10.1007/978-3-319-23666-7_7

governments to identify their citizens, to distinguish them from non-citizens, and to fully construct themselves as nation states (Mau et al. 2012: 21). Borders are therefore constitutive of modern statehood, and the regulation of admission and control of people is usually seen as the deepest expression of national sovereignty. From the perspective of sovereignty, it thus seems unlikely that nation states would choose to cooperate in the policy area of immigration (see Messina 2007: 139). Indeed, European Union member states have long been hesitant to Europeanize matters of immigration. Yet in spite of this, in recent years immigration has been increasingly subjected to European integration. This development suggests a major social transformation in itself, a shift away from a national to a *post-national* framework of immigration politics and immigration policy making. The field of migration and the emergence of a European framework demonstrates that states are changing, but they are not disappearing; or as Sassen (2007: 436) has aptly put it in reference to the European Union, we are witnessing an 'endogenizing of the non-national (the universal) inside national, without eliminating the national state'.

The aim of this chapter is to explore the extent to which EU member states have actually opted to cooperate on the highly sensitive issue of immigration. Focusing[2] on the member states and the EU institutions, the chapter also addresses the question of what effect Europeanization has had on the rights of immigrants. Do we see restrictions on, or an expansion of, their rights? The Europeanization of immigration matters has often been associated in the media with the image of the 'Fortress Europe'—that is, the idea that controls have become ever more restrictive, and the rights of immigrants have been curtailed. Similarly, albeit in a more differentiated way, much migration research has been emphasizing the restrictive effects of the European integration processes in relation to immigration: the so far dominant approach in migration research interprets the devolution of decision-making power to the EU level as a strategy of national governments to pursue restrictive immigration agendas by circumventing liberal forces at the domestic level, such as national courts and pro-immigrant advocacy groups. This chapter emphasizes that, while EU member states have indeed pursued this aim, this does not imply that they have actually achieved it.

To address these issues, the chapter begins with an overview of the development of Europeanization and its dynamics in the domain of immigration, and then discusses the impact of these developments on the rights of immigrants.

[2] The restricted focus on these two sets of actors does not imply that non-state actors do not play an important role in the process of Europeanization of immigration policies. However, national governments, as well as the EU institutions, hold a key position in decision-making and in the implementation of European policies. Moreover, the impact of non-state actors differs considerably. Wunderlich (2011), for instance, showed that international organizations such as IOM and UNHCR are important brokers of Europeanization when it comes to the implementation of immigration policies (see also Chap. 9, in this volume). While acknowledging the importance of think tanks and lobby groups, Boswell and Geddes (2011: 211) noted the irrelevance of grass-roots movements, concluding that mobilization on behalf of migrants (not by them) proves to be successful. Finally, Menz (2011) noted that employers' organizations have little influence on Europeanization in the domain of migration and asylum.

7.2 The Process of Europeanization

7.2.1 Europeanization and Its Complexity

The old dilemma of nation states: how high to build the walls, and how small to make the doors to protect the nation state from immigration, has remained the same over the years, but the setting of policy-making has ultimately changed, as Geddes (2011b: 87) observed. Previously an exclusive responsibility of the nation state, immigration control and immigrant integration are nowadays of a multi-level nature, and the European Union has become a major player in that realm. As will be demonstrated in the following, immigration matters have become a major issue since the 1980s, and there has been a common EU migration policy since the Treaty of Amsterdam (1997), which was further consolidated by the ratification of the Lisbon Treaty in 2009.

This chapter focuses on this emergence of legal EU competences and on the subsequent sharing of power between national governments and the European Union in migration policy-making. Thus, it is interested in the process by which key decisions about public policies are gradually transferred to the European level (Richardson 2012:1). While this chapter is devoted to a specific aspect of Europeanization, it has to be emphasized that Europeanization involves more than the formal transfer of power. Radaelli (2000:4) defines Europeanization as "the construction, diffusion and institutionalization of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things' and shared beliefs and norms which are first defined and consolidated in the EU process and then incorporated in the logic of domestic (national and sub-national) discourse, political structures and public policies".

In order to understand the evolution and the nature of Europeanization of immigration policies, it has to be emphasized that the European Union is no monolithic entity. Thus, salient policies such as those of migration are often the object of a range of competing interests (see Boswell and Geddes 2011: 47). When setting and developing policies, different actors and institutions pursue different interests, and face different constraints. While state authorities often tend to frame immigration as a threat, 'Eurocrats' tend to portray immigration in a more positive light, and appear more sympathetic to the rights and freedoms of immigrants (Luedtke 2009: 2). This reflects the potential disjuncture between economic and political interests, which Hollifield (1992) has framed as the 'liberal paradox' of open markets and closed political communities. While the European Commission is predominantly guided by economic considerations and the goal of market-making (see Joppke 2011), as well as by the aim of achieving equality in rights, national governments are first and foremost vote maximization seekers. To put it differently, national governments face pressures from their electorates, who can often hold unfavourable attitudes towards immigrants. Members of the European Commission, by contrast, do not

face such direct electoral pressure (Luedtke 2009: 2). The fact that the constituents of national politicians tend to prefer having control over liberalization (Lahav and Luedtke 2013: 113), has spurred cooperation at the EU level in the domain of unwanted (irregular) migration, rather than cooperation in the domain of legal migration (Geddes 2011a: 198). It should be noted that, while the European Parliament has often exhibited a pro-integration and migrant-friendly approach (Boswell and Geddes 2011: 66), until recently its power was very limited (for a discussion of a possible shift of the EP's attitude since its increase of powers, see Acosta 2009).

Different actors also allow for different voices to be taken into account. The European Commission derives much of its credibility from its technical expertise (Boswell and Geddes 2011: 62), and thus allows for a large scope of expert influence on policy-making, meaning that think tanks and lobby groups have more of a say in this area than in policy-making processes at other levels.

Moreover, interests shift over time, either because the actors themselves have changed, such as through elections in member states or other changing circumstances. In the 1990s, for instance, Germany, Austria, and Italy were supporters of EU control over immigration policy but in the new millennium changed their position. France and Sweden, by contrast, shifted in the other direction, from opposition to support. Belgium is one of the few nation states that have constantly favoured the supranationalization of immigration policy (Lahav and Luedtke 2013: 113).

Member states also differ in their capacity to shape EU policy-making. Consequently, some member states have been quite proactive in shaping European policies on immigration, while others have been more passive 'takers' (Börzel 2003) of European demands for domestic change. This is particularly true of newer member states that have joined the EU since 2004. During the accession period the migration policies of some accession states such as Poland became more Europeanized than those of the member states at the time, despite very low levels of immigration (see e.g. Kicinger et al. 2007).

In sum, actors and institutions exhibit different capacities and face different constraints, but they also follow multiple and different, partly even contradictory, policy goals, and this renders policies incoherent and leads to 'deliberate mal-integration'; that is, more or less intentional incoherence in the output of the EU's migration and immigrant integration agenda, as well as in individual policies (Boswell and Geddes 2011: 47). Most notably, there is a manifest tension between economically oriented perspectives focusing on legal labour migration and the security-oriented perspective, which is focused on irregular migration (see Hansen 2010: 91).

7.3 Evolution: From the Treaty of Rome to the Treaty of Lisbon

7.3.1 Immigration: From a Neglected Issue to a Common Concern

As Robert Schuman, one of the founding fathers of the EU, once put it, one of the aims of the European project was to take away the 'rigidity' and 'intransigent hostility' of borders (Schuman 1963 cit. in Geddes and Hadj-Abdou forthcoming). The 1957 Treaty of Rome provided for the establishment of a common market, which would be based on the free movement not only of services, goods, and capital but also of persons. Notwithstanding this fact, immigration matters were of no major relevance in the first decades of the European integration project. The interest of national governments in cooperating on immigration was eventually triggered by the adoption of the Single European Act (SEA) in 1986. With the SEA, the member states decided to establish a single European market, implying the removal of all internal frontiers. The stipulated abolition of internal border control made the issue of immigrants from outside the EC more pressing. In 1985 the European Commission issued a communication to the Council of Ministers on Guidelines for a Community Policy on Migration, with the intention of launching a debate on how to proceed in that area (Talani 2012: 63). However, because of tensions between the different institutions the only viable way of coordinating immigration policies was outside the community system, through intergovernmental arrangements. Consequently, 1 year before the entry into force of the SEA in 1987 the national ministers responsible for immigration established an ad hoc immigration group of senior officials (AHIG). The AHIG emerged from the TREVI group, an intergovernmental body whose objective was to combat terrorism across the European Community (Messina 2007: 141). Thus, from the start the logic embedded in intergovernmental cooperation on immigration was security-driven. The major aim of the AHIG was to emphasize external border control in each member state, to maintain the border security of the Community as a whole, and to facilitate the coordination of national policies (Messina 2007: 141). For the first time ever, in the framework of the AHIG a supranational body, namely the Commission, was invited to take part as an observer in the meeting of a working group on migration matters (Talani 2012: 64). The working group served as a cooperation forum until 1993, when it was substituted by a coordinating committee on immigration matters in the Treaty on the European Union signed in Maastricht in 1992 (Messina 2007: 141). Two of the most important intergovernmental policy agreements in the domain of immigration in that period were the Schengen Agreement of 1985 (implemented in 1995), which abolished border controls among participating members by establishing a common external border and reinforcing control measures, and the Dublin Convention of 1990 (implemented in 1997), which determined which member states would have jurisdiction in matters of asylum.

Taking into account the reluctance of the nation states to communitarize immigration, these agreements represented a feasible solution—albeit one that excluded the European Parliament, the Commission, and the Court of Justice (Talani 2012: 51). The Maastricht Treaty (formally, the Treaty on the European Union), which came into effect in 1993, formalized, but did not supranationalize, cooperation on immigration; It drew cooperation that had been outside the Treaty into an intergovernmental pillar of the newly created European Union (Geddes 2008: 88). The Justice and Home Affairs pillar, referred to as the 'third pillar' by the Treaty, institutionalized prior patterns of ad hoc cooperation on migration, as well as asylum, policing, and judicial cooperation (Geddes 2008: 96). The Treaty's section on the third pillar provided for unanimous voting in the Council of Ministers as the basis for decision-making, a very limited role for the European Parliament, and only a shared power of initiative for the Commission (Peers et al. 2012: 9); in addition, the Court of Justice was stripped of its power of jurisdiction, unless this was specifically allocated under the terms of an international convention (Geddes 2008: 100).

7.3.2 Maintenance of Intergovernmentalism Despite Formal Communitarization

The Amsterdam Treaty of 1997 introduced a new era. For the first time, legal competences were given to the EU in the field of migration. By introducing a new title (Title IV), immigration, along with asylum, visa, external border control, and civil law matters, were transferred from the intergovernmental Justice and Home Affairs pillar to the first, the European Community pillar. More precisely, as of May 1, 1999, the Treaty provided power for the Community to adopt measures on immigration policy in the following areas: conditions of entry and residence and standards on procedures regarding long-term visas and residence permits, including those for the purpose of family reunion; and irregular immigration and irregular residence, including the repatriation of irregular residents. The Community was also entitled to set measures defining the rights and conditions under which nationals of third countries who are legally resident in a member state may reside in other member states (Peers et al. 2012: 10). The Schengen Convention and the measures implementing it (Schengen acquis) were incorporated into the legal order of the EU in 1999, when the Treaty of Amsterdam entered into force (Peers et al. 2012: 24). The Amsterdam Treaty also established jurisdiction of the European Court of Justice (CJEU) regarding migration policies, where previously it had not had any competences in the areas of justice and home affairs, and thus had not been entitled to review measures adopted by the Council in that realm (EU 2014).

Since the Amsterdam Treaty the framework for EU migration and asylum policy has been organized into three consecutive 5-year work plans: the Tampere, Hague, and Stockholm action plans (Boswell and Geddes 2011: 52). The first crucial measures in the area were adopted in 2003: Directive 2003/86 on the right to family reunification and Directive 2003/109 concerning the status of third-country nationals who are long-term residents.

However, these developments did not imply that the resistance of member states to communitarizing immigration matters had ended. It is more accurate to say that formal communitarization had de jure started, but de facto intergovernmental modes of regulating immigration matters continued. Three relevant limitations were enshrined in the Treaty of Amsterdam.

First, it introduced a transitional period until the full application of the new competences for the supranational level (Wolff and Trauner 2011: 64). Most importantly, the application of the Community Method, which would have granted the Commission the exclusive right to initiate legislation, and would have included the European Parliament in the legislative process, was suspended (Reslow 2010: 2). During a period of 5 years the Commission would share the right of initiative with the member states, the Council would act unanimously, and the European Parliament was entirely excluded. After 5 years the Commission would be granted the sole right to initiate legislation. However, all immigration issues would remain subject to unanimous decisions of the Council and to consultation of the European Parliament, unless the Council decided unanimously to alter these voting rules and to apply the co-decision procedure,[3] including qualified majority voting in the Council (Reslow 2010: 2). In 2005 the Council decided to apply the co-decision procedure to the adoption of measures regarding irregular migration but prevented its expansion to measures relating to legal migration. The unanimous decision-making procedure was kept for legal economic migration until the adoption of the Lisbon Treaty (Wolff and Trauner 2011: 67).

Second, triggered by the fears of national governments about the application of the perceived 'overly integrationist outlook' of the CJEU (Guiraudon 2000, cited in De Somer 2012: 11), the Treaty imposed a number of important limitations to the Court's competencies in this area: it could only act if called upon by a national court, the Council, the Commission, or a member state to rule on a question regarding the interpretation of the new title or of measures adopted on its basis (Talani 2012: 69). These provisions prevented direct access to the CJEU by citizens. Comparable limitations did not exist in any other policy field (De Somer 2012: 11).

Third, three EU member states negotiated ways not to take part in measures under Title IV. The UK and the Irish governments opted out of Title IV and maintained the Common Travel Area between the two countries (Geddes 2008: 125), meaning they upheld national controls. Denmark also abstained from taking part in measures under Title IV, with the exception of measures determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the member states and measures relating to a uniform format for visas (Vedsted-Hansen 2004: 65–66).

[3] The co-decision procedure, introduced by the Treaty of Maastricht in 1992, is referred today to as ordinary legislation procedure. In a co-decision procedure the European Parliament and the Council jointly adopt legislation.

7.3.3 The Victory for Supranationalization Over National Power

As already indicated, a major feature of the process of communitarization of immigration matters is that member states were much more inclined to cooperate on irregular migration and border control than on measures of legal migration and refugee protection (see Wolff and Trauner 2011: 67). The Tampere Summit in 1999 recognized demographic and sectoral labour market needs, but member states were very cautious about committing to common policies in that realm.

The Commission, in turn, made repeated attempts to put labour migration on the agenda. For instance, in 2001 it had already proposed a directive to establish common conditions for a joint residence and work permit for third-country nationals, with the aim of strengthening the competitiveness of the Community in attracting labour forces. Faced with protests by some member states—most notably Germany, Austria, and France, which protested that there was no legal basis for the adoption of such a measure—the Commission had to withdraw its proposal (Cerna 2014: 78).

The Hague Programme (2004–2009) emphasized anew the need to have an open debate on economic immigration, and thus aspired to a truly common European immigration policy beyond external border controls (Cerna 2014: 69). Alarmed by the incessant demographic changes, the Commission issued COM (2004) 811, a Green Paper on an EU approach to managing economic migration in 2005, and subsequently adopted COM (2005) 669, a policy plan on legal migration. In 2007 the Commission eventually released a draft proposal 'on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment' (the so-called Blue Card Directive) in order to promote the international competitiveness of the Union. However, the final version, adopted in 2009, provides only a minimum framework for the admission of high-skilled labour, which leaves important decisions to the discretion of member states (Cerna 2014: 77). Christian Joppke poignantly noted that the Blue Card was nonetheless a first and significant crack in Europe's still nationalized control of economic migration, and that 'legal labour migration is by now the last bastion of state sovereignty in Europe, though an end to this is nearing also' (Joppke 2011: 223, 225).

In the same year as the Blue Card was adopted the Treaty on the Functioning of the European Union, more commonly called the Lisbon Treaty, entered into force. The Lisbon Treaty represents a victory for supranationalization over national power in that it extended the co-decision procedure to measures on legal migration (Article 79). Today member states vote on migration issues in the Council according to a qualified majority, and the Commission has the sole right to propose laws. The European Parliament is involved by co-decision; it has the power to propose amendments and the power to veto. Moreover, the European Court of Justice now has an important role to play in immigration matters because the restrictions in this field have been lifted (see Bonjour and Vink 2013: 401). Consequently, for the first time the Commission has brought infringement actions to the Court of Justice, which challenged the substance of national implementation of EU legislation (Peers et al. 2012: 25).

However, member states retained the right to determine the number of migrants entering their territory. Thus, the Lisbon Treaty has significantly widened the cracks of economic migration control, to borrow Joppke's metaphor again, but it has not entirely torn down the national walls. Moreover, the sensitive nature of migration-related issues is still mirrored in the prevalence of soft methods of cooperation in the domain of immigrant integration. Although no binding measures exist, the EU's immigrant integration agenda has effectively stimulated vertical processes of policy diffusion, and triggered processes of policy-learning, particularly in regard to polities which do not have a long history of immigration, such as the newer EU member states.

7.3.4 Why Europeanization? Revisiting the Venue Shopping Approach

The previous sections showed that immigration was at first an issue politicians did not rank highly in the creation of the common market. Later the issue increased in importance at the Community level, but national governments were reluctant to cede any authority in that domain to the supranational level. Instead they opted for intergovernmental cooperation. This cooperation, however, paved the way for the later actual communitarization of migration politics. Today immigration is a competence shared between the member states and the institutions of the European Union. How can we understand this striking evolution from an issue off the table to a deeply Europeanized one?

One strand of the literature has suggested that, in order to explain this development, we have to consider changes brought about by globalization: in a globalizing world the power of individual states to control immigration has diminished; the transaction costs of international migration have declined and, as a result, national borders have become more porous (see Messina 2007: 147 ff.). Such a perspective captures some relevant dynamics of social change and its relation to the political regulation of migration. It is in particular consistent with the initial development of intergovernmental cooperation in regard to border control of European states. However, it is not adequate to entirely grasp the more far-reaching communitarization of immigration policies.

Another strand of the literature, the one based on neo-functionalist theory, has explained the Europeanization of immigration policies as a result of what have become known as 'spillover' effects, according to which cooperation in one policy area often leads to cooperation in others. As the reconstruction of the Europeanization of immigration policies showed, spill-over effects were indeed a crucial driver. The single-market programme was a major trigger for the advancement of a common immigration agenda. The free movement of citizens of EU member states and the abolition of internal border controls contains a strong logic for cooperation on immigration issues. However, 'contrary to neo-functional assumptions, the progress of a European immigration policy regime has been painfully slow and uneven' Messina (2007: 157).

One of the most powerful explanatory approaches, and the most dominant one so far, is the intergovernmentalist approach, which is based on the 'venue shopping' concept (Guiraudon 2000). According to this concept, national governments support European integration because it empowers them in relation to other domestic actors. To put it more specifically, venue shopping at the EU level is considered as a strategy, which enables national governments, in particular restrictive interior ministers, to circumvent domestic constraints imposed by the jurisprudence of higher courts, nongovernmental organizations, interest groups in favour of immigration and migrants, and other pro-immigrant political actors.

Indeed, the EU level initially allowed national policy-makers to prevent constraints (Kaunert et al. 2013: 179): The CJEU had very few competences on migration matters, if any, as was pointed out earlier in this chapter. The fact that immigration policies were mostly dealt with within the separate Justice and Home Affairs pillar, which was governed by intergovernmental mechanisms, also kept the European Parliament and the European Commission—institutions which tend to be in favour of immigration and immigrants' rights—out of the way. This made venue shopping to the EU level a viable strategy for national governments and interior ministers to implement their restrictive agendas (Kaunert et al. 2013: 182). As Geddes (2008: 55) so aptly summarized it, these opportunities have led to a 'politics of Europeanization' rather than a 'Europeanization of policy'.

However, since the Treaty of Lisbon entered into force, these arrangements have ultimately changed. Hence, while intergovernmentalism was able to capture crucial dynamics of European migration politics in the past decades, it is not adapted for capturing recent processes (Bonjour and Vink 2013: 192); the dominant idea that Europeanization has led to securitization and restriction is to a great extent built on such intergovenmentalist perspectives (Bonjour and Vink 2013: 390). Thus, the question is to what extent these conceptions are still appropriate, if they ever actually were, to capture current realities. The following section will shed some light on this question, clarifying whether Europeanization has actually extended or restricted the rights of immigrants.

7.4 Extension or Restriction of Rights?

As was pointed out in the previous section, national governments have chosen the European Union as the level of policy-making in order to maximize control and security. Many studies have argued that the regulations set at the European level were accordingly restrictive, allowing national governments to lower their standards. Lahav and Luedtke (2013: 116), for instance, found that only three of the policies adopted by the EU Council extended immigrants' rights and freedoms significantly, namely the directives on the admission of students, researchers, and highly skilled workers. But in these cases the extension of rights was linked to the fact that directives mentioned regulate only rather low-salience issues and because they address some sort of 'elite' migration, these policies were little contested;

indeed, 'overall, EU policy has aided national politicians in enacting stringent measures targeting illegal immigrants' (Lahav and Luedtke 2013: 116–117). However, judgements such as this are often based on an analysis of policy output, ignoring the policy outcomes, that is, the effects of these policies.[4]

The Family Reunification Directive, proposed in 1999 and adopted in 2003, illustrates this point well. The process of policy-making with regard to this Directive is a clear example of an uploading of political preferences by restrictive-minded member states. A particularly crucial element, pushed through in the legislative process by the Netherlands, Germany, and Austria, was the possibility to introduce integration tests for family members aged 13 years and older. Failing the test could be used as grounds for refusing admission to the country. France was among the strongest supporters of the Family Reunification Directive because the adoption of the Directive would provide it with the opportunity to significantly weaken its own domestic legislation (Luedtke 2009: 13)—that is, to restrict immigration. Indeed, immediately after the Directive had been released the French government passed a national immigration law that lowered the state's generous family reunification standards (Joppke 2011: 228). The Spanish government used the Directive in a similar vein, adopting integration tests for minors to reduce family migration (Luedtke 2009: 13).

However, particularly in the newer EU member states the Directive actually led to the raising of standards (Joppke 2011: 228). Thus, while some member states have indeed used the EU as a venue to restrict their domestic policies, in other member states Europeanization has actually led to an extension of rights.

The effects of EU legislation on the rights of immigrants are even more extensive. The communitarization of migration policies is increasingly constraining governments in ways they did not anticipate (Bonjour and Vink 2013: 390), as a further analysis of the Family Reunification Directive reveals: as early as 2008 the European Commission criticized the Netherlands for failing to fulfil their legal obligation to implement family reunification policy (Bonjour and Vink 2013: 394). While the Dutch government rejected this criticism, its conduct was condemned by the ECJ in 2010 (Judgment of the Court C-578/08, Rhimou Chakroun v Minister van Buitenlandse Zaken). The Court held that the Dutch government must not use the margin for manoeuvre given to member states in a manner which would undermine the objective of the Directive: namely to promote family reunification. In 2011 the CJEU dealt with yet another claim against the Netherlands related to the Family Reunification Directive (C-155/11, Bibi Mohammad Imran v Minister van Buitenlandse Zaken). The question was whether the Dutch policy requiring immigrants to pass an integration exam before arrival was compatible with the Directive or not; the Dutch government eventually granted a permit to the wife whose husband had initiated the case in order to prevent a ruling by the Court. The case was

[4] Approaches that equate Europeanization with restriction on migrants' rights also ignore that Europeanization has actually led to a complex stratification of migrants' rights. For a comprehensive discussion of the multidimensionality of migrants' rights produced by EU law, see Carmel and Paul (2013).

dropped, but not before the Commission had delivered its opinion to the Court; the Commission argued that the Directive does not allow for a family member to be denied entry merely on the grounds of having failed the integration exam abroad (Bonjour and Vink 2013: 400). Although the case was subsequently withdrawn, it clearly demonstrated the constraining impact of the CJEU on EU member states' capacity to restrict immigration (Acosta Arcarazo and Geddes 2013: 190). The French government had already attenuated its proposal for integration requirements for family migrants in 2007 to prevent condemnation by the Court (Bonjour and Vink 2013: 405), and a similar dynamic can be observed regarding the rights of migrants who are usually seen by nation states as the least wanted group of migrants, namely irregular migrants (see Acosta Arcarazo and Geddes 2013).

The CJEU has been called upon several times to interpret the Return Directive (2008/115/EC), which establishes common standards and procedures in EU member states for returning irregular third-country nationals, and to establish its scope of application. Most notably in the El Dridi case (C-61/11), concerning the imprisonment of an Algerian national who stayed in Italy without a residence permit, the Court of Justice ruled that national legislation 'providing for a prison sentence for illegally staying third-country nationals in the event of refusal to obey an order to leave the territory' is not in line with EU law. In a later ruling, the Achughbabian case (C-329/11), the CJEU noted that member states may place irregular migrants in detention, but it made clear that – contrary to what had been the practice of quite a few member states – the potential scope of such measures is actually extremely limited.

These recent developments show that 'Europeanization has become a double-edged sword' (Bonjour and Vink 2013: 404). While member states initially chose to communitarize immigration matters to control and restrict immigration, they have, paradoxically, severely constrained this control. Even immigration lawyers underestimated the effects EU law would have on national immigration law (Groenendijk 2006, cited in Joppke 2011: 228): once 'sucked into the ambit of supranational actors within the EU, immigration becomes infused with the liberal rights logic of free movement' (Joppke 2011: 225). Legal principles such as proportionality, effectiveness, and effective legal remedies now apply (Joppke 2011: 228). This ultimately leads to a strengthening of the rights of immigrants, even in the case of EU laws that have been criticized for their restrictive character, such as the family reunification and the return directives.

7.5 Conclusion

The construction of the supranational architecture in the EU has been described as 'the most radical political-economic and cultural transformation of space in Western Europe since the French revolution' (Swyngedouw 2014: 173). This chapter has retraced the evolution of this transformation and the impact it has had on a policy area, which is particularly sensitive because it lies at the very heart of national

sovereignty: immigration. It has been shown that the shifting of competencies in that domain to the supranational level was a slow and uneven process, and that nation states eventually ceded power to the EU level to enforce restrictive agendas that would curtail immigration. However, national governments underestimated the long-term dynamics of supranationalization. Far from asserting that nation states have become powerless spectators, this chapter has emphasized that the agency of the European Commission, and especially the increasing competences of the European Court of Justice on immigration matters, have put significant constraints on national governments attempts to pursue their restrictive aims.

The walls built by the European states in the aftermath of the French revolution to insulate them from immigration are still there. Their doors are not open, but national governments are no longer the only ones possessing a key.

References

Acosta Arcarazo, D. (2009). The good, the bad and the ugly in EU migration law: Is the European parliament becoming bad and ugly? *European Journal of Migration and Law, 11*(1), 19–39. doi :10.1163/157181609X410575.

Acosta Arcarazo, D., & Geddes, A. (2013). The development, application and implications of an EU rule of law in the area of migration policy. *JCMS: Journal of Common Market Studies, 51*(2), 179–193. doi:10.1111/j.1468-5965.2012.02296.x.

Bonjour, S., & Vink, M. P. (2013). When Europeanization backfires: The normalization of European migration politics. *Acta Politica, 48*(4), 389–407. doi:10.1057/ap.2013.11.

Börzel, T. (2003). *Shaping and taking EU policies: Member state responses to Europeanization* (Queen's Papers on Europeanisation 01/2003). Belfast: School of Politics, International Studies and Philosophy, Queen's University of Belfast. https://www.qub.ac.uk/schools/SchoolofPoliticsInternationalStudiesandPhilosophy/FileStore/EuropeanisationFiles/Filetoupload,38412,en.pdf

Boswell, C., & Geddes, A. (2011). *Migration and mobility in the European Union*. Basingstoke/New York: Palgrave Macmillan.

Carmel, E., & Paul, R. (2013). Complex stratification: Understanding European Union governance of migrant rights. *Regions & Cohesion, 3*(3), 56–85. doi:10.3167/reco.2013.030304.

Cerna, L. (2014). The EU Blue Card: Preferences, policies, and negotiations between Member States. *Migration Studies, 2*(1), 73–96. doi:10.1093/migration/mnt010.

De Somer, M. (2012). *Enhanced competences for the European Court of Justice: "Re-shuffling" the dynamics of EU migration policy-making?* (LSE Migration Studies Unit Working Paper No. 2012/01). http://www.lse.ac.uk/government/research/resgroups/MSU/documents/workingPapers/WP_2012_01.pdf

EU. (2014). *Treaty of Amsterdam amending the treaty on European Union, the treaties establishing the European communities and certain related acts*. http://www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf

Geddes, A. (2008). *Immigration and European integration: Towards fortress Europe*. Manchester/New York: Manchester University Press.

Geddes, A. (2011a). Borders and migration in the European Union. In N. Phillips (Ed.), *Migration in the global political economy: IPE yearbook* (Vol. 17, pp. 193–208). Boulder: Lynne Rienner Publishers.

Geddes, A. (2011b). The European Union's extraterritorial immigration controls and international migration relations. In R. Hansen, J. Koehler, & J. Money (Eds.), *Migration, nation states, and international cooperation* (pp. 87–99). New York/London: Routledge.

Geddes, A., & Hadj-Abdou, L. (forthcoming). An unstable equilibrium: Freedom of movement and the welfare state in the European Union. In G. Freeman, & N. Mirilovic (Eds.), *Handbook on international immigration*. Northampton: Edward Elgar Publishing.

Groenendijk, K. (2006). Family reunification as a right under community law. *European Journal of Migration and Law, 8*(2), 215–230. doi:10.1163/157181606777975003.

Guiraudon, V. (2000). European integration and migration policy: Vertical policy-making as venue shopping. *JCMS: Journal of Common Market Studies, 38*(2), 251–271. doi:10.1111/1468-5965.00219.

Hansen, P. (2010). More barbwire or more immigration, or both? EU migration policy in the nexus of border security management and neoliberal economic growth. *The Whitehead Journal of Diplomacy and International Relations, 11*(1, Winter/Spring), 89–101.

Hollifield, J. F. (1992). *Immigrants, markets, and states: The political economy of postwar Europe*. Cambridge: Harvard University Press.

Joppke, C. (2011). European immigration policies: Between stemming and soliciting still. In E. Jones, P. M. Heywood, M. Rhodes, & U. Sedelmeier (Eds.), *Developments in European politics 2* (pp. 220–240). Basingstoke/New York: Palgrave Macmillan.

Kaunert, C., Léonard, S., & Hoffmann, U. (2013). Venue-shopping and the role of non-governmental organisations in the development of the European Union asylum policy. *Comparative Migration Studies, 1*(1), 179–200. doi:10.5117/CMS2013.1.KAUN.

Kicinger, A., Weinar, A., & Górny, A. (2007). Advanced yet uneven: The Europeanization of Polish immigration policy. In T. Faist & A. Ette (Eds.), *The Europeanization of national policies and politics of immigration: Between autonomy and the European Union* (pp. 181–200). Basingstoke/New York: Palgrave Macmillan.

Lahav, G., & Luedtke, A. (2013). Immigration policy. In C. Bretherton & M. L. Mannin (Eds.), *The Europeanization of European politics* (pp. 109–122). New York: Palgrave Macmillan.

Luedtke, A. (2009). Uncovering European Union immigration legislation: Policy dynamics and outcomes. *International Migration, 49*(2), 1–27. doi:10.1111/j.1468-2435.2009.00588.x.

Mau, S., Brabandt, H., Laube, L., & Roos, C. (2012). *Liberal states and the freedom of movement: Selective borders, unequal mobility*. Basingstoke/New York: Palgrave Macmillan.

Menz, G. (2011). Stopping, shaping and moulding Europe: Two-level games, non-state actors and the Europeanization of migration policies. *JCMS: Journal of Common Market Studies, 49*(2), 437–462. doi:10.1111/j.1468-5965.2010.02123.x.

Messina, A. M. (2007). *The logics and politics of post-WWII migration to Western Europe*. New York: Cambridge University Press.

Peers, S., Guild, E., Acosta Arcarazo, D., & Groenendijk, K. (2012). *EU immigration and asylum law* (Vol. 1). Leiden: Brill.

Radaelli, C. M. (2000). Whither Europeanization? Concept stretching and substantive change. *European Integration online Papers (EIoP), 4*(8), 1–25.

Reslow, N. (2010, June 23–26). *Explaining the development of EU migration policy: The case of the mobility partnerships*. Paper prepared for the fifth Pan-European conference on EU politics, Porto, Portugal. http://www.jhubc.it/ecpr-porto/virtualpaperroom/008.pdf

Richardson, J. (Ed.). (2012). *Constructing a policy-making state? Policy dynamics in the EU*. Oxford: Oxford University Press.

Sassen, S. (2007). Response. *European Journal of Political Theory, 6*(4), 433–446.

Schuman, R. (1963). *Pour l'Europe*. Paris: Éditions Nagel.

Swyngedouw, E. (2014). Excluding the other: The production of scale and scaled politics. In R. Lee & J. Wills (Eds.), *Geographies of economics* (pp. 167–176). Oxon/New York: Routledge.

Talani, L. S. (Ed.). (2012). *Globalization, migration, and the future of Europe*. Oxon/New York: Routledge.

Torpey, J. (2000). *The invention of the passport. Surveillance, citizenship and the state*. Cambridge/New York: Cambridge University Press.

Vedsted-Hansen, J. (2004). Denmark. In I. Higgins & K. Hailbronner (Eds.), *Migration and asylum law and policy in the European Union: FIDE 2004 national reports* (pp. 65–87). Cambridge/New York: Cambridge University Press.

Wolff, S., & Trauner, F. (2011). A European migration policy fit for future challenges. In S. Wolff, F. Goudappel, & J. de Zwaan (Eds.), *Freedom, security and justice after Lisbon and Stockholm* (pp. 63–78). The Hague: T.M.C. Asser Press.

Wunderlich, D. (2011). Europeanization through the grapevine: Communication gaps and the role of international organizations in implementation networks of EU external migration policy. *Journal of European Integration, 34*(5), 485–503. doi:10.1080/07036337.2011.611385.

Zweig, S. (1943). *The world of yesterday* (p. 409). New York: Viking.

Author Queries

Chapter No.: 7 0002591850

Queries	Details Required	Author's Response
AU1	Please confirm the chapter title.	
AU2	Please provide department name for the author "Leila Hadj-Abdou".	