

Christof Roos and Natascha Zaun
Norms matter! The role of international norms in EU policies on asylum and immigration

Article (Accepted version)
(Refereed)

Original citation:

Ross, Christof and Zaun, Natascha (2014) *Norms matter! The role of international norms in EU policies on asylum and immigration* [European Journal of Migration and Law](#) 16, (1) pp. 45-68
ISSN 1388-364X

DOI: [10.1163/15718166-00002048](https://doi.org/10.1163/15718166-00002048)

© 2014 Koninklijke Brill NV

This version available at: <http://eprints.lse.ac.uk/84504/>

Available in LSE Research Online: October 2017

LSE has developed LSE Research Online so that users may access research output of the School. Copyright © and Moral Rights for the papers on this site are retained by the individual authors and/or other copyright owners. Users may download and/or print one copy of any article(s) in LSE Research Online to facilitate their private study or for non-commercial research. You may not engage in further distribution of the material or use it for any profit-making activities or any commercial gain. You may freely distribute the URL (<http://eprints.lse.ac.uk>) of the LSE Research Online website.

This document is the author's final accepted version of the journal article. There may be differences between this version and the published version. You are advised to consult the publisher's version if you wish to cite from it.

Norms matter! The role of international norms in EU policies on asylum and immigration

Christof Roos and Natascha Zaun¹

(European Journal of Migration and Law, Vol. 16, No. 1, pp. 45-68, date of acceptance: 10 February 2014)

Abstract

This article investigates how international norms impact on EU asylum and immigration policy. To this end we scrutinize the assumption that the robustness of international norms indicates the quality of EU integration. Drawing on international norms literature we argue that four characters define an international norms' robustness: specificity in definition, binding force, coherence with domestic law and international law, and concordant understanding among actors. Our analysis covers three EU policy areas, asylum policy, family reunification policy, and labour migration policy. Across the three areas international norms had had varying degrees of robustness at the time of EU negotiations. The findings show that presence and robustness of international norms on asylum or immigration regulation are reflected in EU legislation. Given that there are more robust norms available on questions of status than on reception conditions or asylum procedures, the qualification directive was much easier to agree on than the reception conditions or the asylum procedures directive which were much more characterized by hard bargaining. The international norm, right to family life, was sufficiently robust and was codified in EU law. However, both the international norm and the EU law do not provide for clear admission criteria. On labour migration, robust international norms with regard to equality provisions for migrant workers are mirrored in EU legislation on residence rights of migrants. With regard to conditions of admission, the absence of international norms indicates little to no EU legislation.

1. Introduction

Research on EU immigration and asylum policies has so far focused on the micro-level² of EU policy-making, studying the negotiations and the role of different actors. We aim at broadening this picture by adding the macro-level perspective to the debate. Borrowing from international relations' literature, we focus on the role of norms and their impact on political action and policy.³ The core question this paper addresses is hence which role international norms play in the EU level policy-making processes. The international norms' literature observes that the more robust a norm is, the

¹ Christof Roos, PhD, is a research associate at the Collaborative Research Centre 597 "Transformations of the State" at University of Bremen. Natascha Zaun is a PhD candidate at Bremen International Graduate School for Social Sciences (BIGSSS) and a researcher at the Collaborative Research Centre 597 "Transformations of the State" at University of Bremen. Both authors contributed equally to the work, and their names are listed in alphabetical order.

² Thielemann, E. and N. Zaun (2013) *Venue-Shopping in European Policy Making: The Role of Non-majoritarian Institutions in Strengthening Migrant Access to National Labor Markets (Paper, forthcoming)*. Ripoll Servent, A. (2012) Playing the Co-decision Game? Rules' Changes and Institutional Adaptation at the LIBE Committee. *Journal of European Integration*, 34:1, 55-73. Guiraudon, V. (2000) European Integration and Migration Policy: Vertical Policy-making as Venue Shopping. *Journal of Common Market Studies*, 38:2, 251-271

³ Goldstein, J. and R. O. Keohane (1993) Ideas and Foreign Policy: An Analytical Framework. In: Goldstein, J. and R. O. Keohane, Eds. *Ideas and Foreign Policy. Beliefs, Institutions, and Political Change*. Ithaca: Cornell University Press, 3-30, Legro, J. W. (1997) Which norms matter? Revisiting the "failure" of internationalism. *International Organization*, 51:1, 31-63.

more likely it is to be observed either on the international or the domestic level.⁴ In the international norms' literature robustness is defined through specificity, binding force, coherence and concordance. Based on these characteristics, we observe similar developments on the EU level. We argue that robustness of international norms indicates whether and what kind of EU legislation in immigration and asylum policy is established. A varying degree of robustness can account for a different degree of integration and liberal or restrictive legislative output in the field. The claim of a causal inference between the robustness of international norms and the density of EU legislation cannot be evidenced by the empirics presented. The identification of a pattern is a first attempt that aims at provoking further research. So far, this relationship between international norms and EU legislation has not been made the focus of attention among EU immigration and asylum scholars. However, looking into it sheds light on one more piece in the puzzle of EU integration in this least likely case for common EU policy. It helps us understand that EU legislation on some issues is more likely than on others. To do so we trace the international dimension of the norms codified in EU law.

We draw on insights from document analysis and interview material.⁵ The paper structures as follows: The next section will be dedicated to the theoretical model we advance. In the third section, we will analyse the role of international norms in the EU level legislative process in the areas of asylum migration, family migration, and labour migration. In the fourth part, the results will be discussed in order to understand how far norm robustness can be seen as an enabling and disabling factor in EU integration on asylum and immigration policies.

2. Theoretical framework: International norms and normative regimes in migration and asylum policy

Two approaches towards norms can be distinguished, namely norms as values and norms as rules. Norms understood as values provide a collective understanding about certain end-states, such as justice and freedom, or about the proper behaviour of actors, such as fairness and solidarity.⁶ Norms

⁴ Franck, T. M. (1990) *The Power of Legitimacy Among Nations*. Oxford/New York: Oxford University Press, Legro, J. W. (1997) Which norms matter? Revisiting the "failure" of internationalism. *International Organization*, 51:1, 31-63, Abbott, K. W., R. O. Keohane, A. Moravcsik, A.-M. Slaughter and D. Snidal (2000) The Concept of Legalization. *International Organization*, 54:3, 401-420.

⁵ Interview data for this article was collected in 2012 for the project "Border regime change and the mobility of persons" at University of Bremen's Collaborative Research Centre 597. 29 semi-structured interviews were held with collective actors in Helsinki and Vienna. We thank the project leader Steffen Mau for sharing the data and Lena Laube for her field research in Austria.

⁶ Bem, D. J. (1970) *Beliefs, Attitudes, and Human Affairs*. Belmont: Brooks/Cole Publishing, 16-17, Legro, J. W. (1997)

as rules differ from norms as values in the sense that they prescribe specific actions on more or less clear-cut issue areas. Values are more general and prescribe preferred goals that inform the attitude of actors.⁷ They usually underpin rules which are an institutionalised and formalised manifestation of norms. Rules and values are hence two sides of the same normative coin. Policy instruments regulate highly specific issues and are usually composed of a set of rules. In this paper we focus on norms as rules and argue that the more robust an international norm has become, the more likely it is to make its way into EU policy instruments and particularly legal instruments.⁸

In doing so, we draw upon the literature on norm robustness and legalization which we adapt for our purposes.⁹ Broadly speaking this literature distinguishes a couple of factors which influence norm robustness. Although the terminology might vary, some of the concepts used are very similar. The factors expected to influence norm robustness are specificity, binding force and coherence. A fourth factor, concordance, is expected to be both a result of robustness and a motor further stipulating robustness and hence the production of EU law in the field.

Norm specificity

Norm specificity describes how well norms are defined and understood by actors. It refers to the question how *clear* a norm is, i.e. whether it seems to be a laborious code or rather is relatively straightforward and simple. Countries arguing about the content of a norm are a good indicator for a norm not being very specific.¹⁰ Other authors refer to this concept as determinacy¹¹ or precision¹². According to Abbott et al. norms are not either precise or imprecise, but can be situated somewhere on a continuum between a vague principle to a precise, highly elaborated rule.¹³ However, norm specificity does not lead to EU legislation in a deterministic way. As norm specification in the case of FRONTEX has shown, unspecific international norms are often developed further in the EU

Which norms matter? Revisiting the "failure" of internationalism. *International Organization*, 51:1, 31-63, 33.

⁷ Kratochwil, F. (1989) *Rules, Norms, and Decisions. On the Conditions of Practical and Legal Reasoning in International Relations*. Cambridge: Cambridge University Press.

⁸ We stay on the macro level looking at criteria that norms must fulfill in order to have an impact on the EU level. We are well aware of a body of literature that studies the processes and role of actors and their use of international norms on the micro level. Scholars from this branch show how these norms are used by actors to put pressure on domestic veto players to achieve their aims (Risse and Sikkink 1999).

⁹ Franck, T. M. (1990) *The Power of Legitimacy Among Nations*. Oxford/New York: Oxford University Press, Legro, J. W. (1997) Which norms matter? Revisiting the "failure" of internationalism. *International Organization*, 51:1, 31-63, Abbott, K. W., R. O. Keohane, A. Moravcsik, A.-M. Slaughter and D. Snidal (2000) The Concept of Legalization. *International Organization*, 54:3, 401-420, Slominski, P. (2013) The Power of Legal Norms in the EU's External Border Control. *International Migration. Forthcoming*.

¹⁰ Legro, J. W. (1997) Which norms matter? Revisiting the "failure" of internationalism. *International Organization*, 51:1, 31-63, 35.

¹¹ Franck, T. M. (1990) *The Power of Legitimacy Among Nations*. Oxford/New York: Oxford University Press., 50-66.

¹² Abbott, K. W., R. O. Keohane, A. Moravcsik, A.-M. Slaughter and D. Snidal (2000) The Concept of Legalization. *International Organization*, 54:3, 401-420.

¹³ *Ibid*, 404.

context to meet new challenges and further align diverging interpretations in EU Member States.¹⁴ In the case of a rather unspecific norm, it is important that the other criteria (including concordance) are fulfilled in order to have successful EU legislation. For instance, if subsequent case law has further specified the norm or a majority of EU Member States adopt a concordant interpretation, chances are higher to have EU legislation.

Binding force

Binding force means that states are legally bound by a rule. Expressly non-legal norms, such as those laid down in declarations are obviously of another quality than binding rules of international law, like *ius cogens* or treaty law.¹⁵ The binding effect is, however, strongest, if norms can be enforced, for instance by courts. Hence, treaties which are under the jurisdiction of a court (e.g. the European Convention of Human Rights) have much stronger binding force than for instance recommendations by the United Nations General Assembly. Abbott et al. distinguish between obligation and delegation. According to them, obligation concerns the degree of formalization of a legal norm and delegation refers to enforcement¹⁶ e.g. through courts. For our purposes here, however, we take them together and subsume them under the notion of binding force.

Coherence

Another aspect which influences norm robustness is coherence with other norms. In order to be considered legitimate a norm needs to resonate with the established normative context into which it is brought.¹⁷ Norm coherence has both a vertical and a horizontal dimension. In the domestic context the norm must be coherent with legal norms of a higher rank (e.g. a constitutional norm) and legal norms of the same rank (e.g. other laws). In an international context it needs to be coherent with domestic norms of signatory states and other international norms.

Concordance

Concordance refers to the way actors agree or disagree with norms that are codified in international treaties and conventions. If the norm is widely accepted in diplomatic discussions on the international level and if states adhere to it domestically, they act concordant with the norm. Norm

¹⁴ Slominski, P. (2013) The Power of Legal Norms in the EU's External Border Control. *International Migration. Forthcoming*.

¹⁵ Abbott, K. W., R. O. Keohane, A. Moravcsik, A.-M. Slaughter and D. Snidal (2000) The Concept of Legalization. *International Organization*, 54:3, 401-420, 404.

¹⁶ Legro refers to a similar phenomenon as delegation when he talks about durability being a necessary condition for a robust norm. But durability, obviously also involves a time factor, saying that norms are more robust if they have a long-standing legitimacy Legro, J. W. (1997) Which norms matter? Revisiting the "failure" of internationalism. *Ibid.* 51:1, 31-63.

¹⁷ Franck, T. M. (1990) *The Power of Legitimacy Among Nations*. Oxford/New York: Oxford University Press, 142.

concordance hence reflects the intersubjective agreement with the norm.¹⁸ In our paper we operationalise concordance through ratification of a treaty in which this norm is enshrined or through endorsement in positions of collective actors (e.g. if there is no pertinent treaty law). Positions were collected in interviews with collective actors in Austria and Finland. Collective actors from these two EU Member States exemplify the spectrum of normative positions, ranging from agreement to disagreement with certain norms that can be expected. Right wing opposition against immigration and diversity has been strong in both countries.

Whereas the binding force is relatively unproblematic to assess, both specificity and coherence of a norm are highly contextual and require interpretation. Hence, a totally robust norm is an ideal type which will never be found in the real world. Even relatively robust norms are subject to varying interpretations among states that subscribe to these norms. Norm concordance is hence expected to be both a result of norm robustness and a factor that strengthens robustness: The more EU Member States have a similar interpretation of a norm, the more likely they are to adapt legislation reflecting this norm and sidelining those Member States which initially followed another interpretation.

Obviously, the more of these factors are present, the more robust the norm is and the more likely is its representation in EU law. With regard to specificity, however, this relationship is not so unidirectional. Rather, as has been shown on similar issues, the lack of specificity of an international norm is the reason why Member States feel the need for EU legislation in the first place. If this is the case, however, the other factors need to be present for EU legislation to be established.

3. European Asylum and Immigration Policies

We will now look closer into three core areas of EU policy-making in the field of immigration, namely into legislation on asylum policies, legislation on family migration, and labour migration in order to understand how the presence or absence of an international normative regime influences EU policy-making in the field.

3.1. The international norms regime and collective actors' position on norms in asylum and refugee policies

Qualification Directive

Negotiations on the qualification directive and its recast were far less controversial than those on

¹⁸ Legro, J. W. (1997) Which norms matter? Revisiting the "failure" of internationalism. *International Organization*, 51:1, 31-63, 35.

the other two directives. As we will show, drawing on some examples of the original directive, this directive contained a number of robust norms such as refugee protection and *non refoulement*. Norms that lacked specificity like non-state persecution were further specified through the qualification directive.

The right to protection for refugees is a comparatively robust norm. It is a norm endorsed by 145 States which are signatories to the Geneva Convention and many of the states party to the Convention finance the United High Commissioner for Refugees (UNHCR), a UN institution which focuses particularly on the protection of refugees. Member States' concordance with the norm can hence be described as high. In fact, none of our interviewees which work for collective actors in states party to the Geneva Convention questioned the fact that people in need of protection from persecution should be granted asylum. Asked who should be granted preferred access to their territory, all of them answered that refugees should, without any reference to quotas etc., be granted access. This position is advanced by actors across all party affiliations, even those which are known for restrictive attitudes towards immigrants in general (ÖVP/A, FPÖ/A, KOK/FIN, True Finns/FIN). Access for these people should be granted unconditional (Green Party/A, UNHCR/A, SOS Mitmensch/A, Red Cross/A, Red Cross/FIN) and society should not have the right to decide who may have access to protection and who not (SOS Mitmensch/A).

Apart from a relatively high degree of concordance, the norm of refugee protection is relatively specific (for exceptions see further below on non-state persecution) and clearly establishes criteria to determine who is a refugee, as shows art. 1 of the Geneva Convention. It defines a refugee as

“[a] person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”.

Moreover, the norm is binding, as it is laid down in an international treaty and it is coherent with a whole range of norms which are established around it. It was hence codified in art. 9 and 10 of the qualification directive.

The norm of *non refoulement* (i.e. the norm not to send a refugee back to a place where his or her life or freedom would be threatened on the account of the grounds stated above) is not only established for refugees (art. 33 para. 1). It is also transferred to other persons by the Convention against Torture and other cruel inhuman or degrading treatment or punishment (CAT) in cases where there are “substantial grounds for believing that he would be in danger of being subjected to torture” (art. 3 para. 1 CAT). 154 states are party to the CAT. In contrast to art. 3 CAT, the

International Covenant on Civil and Political Rights (ICCPR) also covers inhuman treatment or degrading treatment or punishment in addition to torture (art. 7 ICCPR). In various Concluding Observations, Views and two General Comments (number 20 and 31), the Human Rights Committee has established that the 167 states party to the ICCPR are obliged to not send someone to a place where his or her rights under art. 6 and 7 ICCPR risk being violated. Art. 6 para. 1 ICCPR also protects the right to life which could be interpreted as a prohibition to send someone to a country where he or she would face the death penalty. Art. 3 of the ECHR also protects against *refoulement* as case law has established (cf. ECtHR case of *Soering v the UK*). Hence, *non refoulement* is a highly coherent norm which can be found across a number of international treaties (hard law), it is binding to the degree that it can be enforced by the ECtHR in the Member States and all Member States are concordant with it.

The perhaps most controversial issue in the directive was the question whether non-state actors can be considered persecutors in line with the Geneva Convention. As the actors of persecution had not been specified in the Geneva Convention, interpretations of the Geneva Convention were quite divergent on this issue. Hence, this issue remained unresolved for more than a decade: Article 5 of 1996 Joint Position followed the line of interpretation of the more restrictive Member States not accepting victims of non-state persecution. The recognition of victims of non-state persecution, however, became binding with the qualification directive (art. 6 lit. c) in 2004. By the time 13 out of 15 Member States had already accepted victims of non-state persecution and the more restrictive Member States, Germany and France, were increasingly isolated on that matter.¹⁹ Most Member States had become concordant with the more liberal interpretation which was also advanced by UNHCR Handbook (paragraph 65). Moreover, the German and French position was incoherent with developments in international law which recognized the increasingly strong role of non-state actors. The fact that non-state actors are now recognized as state like actors can certainly be seen in cases like that of the Taliban in Afghanistan. Moreover, in the cases of Adan and Aitseguer the UK House of Lords had ruled that it amounted to ‘refoulement’ sending somebody back to France and Germany where non-state persecution was not recognized. Especially French courts had hence started to increasingly introduce elements of the protection view into their jurisdiction (e.g. CRR, SR, 22 July 1994, E, 21; CRR, 17 April 1997, L, 22; CRR, SR, 6 Oct. 1997, B.) At this time most

¹⁹ ECRE (2000) *Non-state agents of persecution and the inability of the state to protect - The German interpretation*. London, ECRE/ELENA (2000) *Research Paper on Non-State Agents of Persecution*. London, Battjes, H. (2006) *European Asylum Law and International Law*. Leiden/Boston: Martinus Nijhoff, Zaun, N. (2012) *Entrapped by discourse? Assessing the codification of non-state-persecution as a ground for refugee status in the EU Qualification Directive*, 9-15.

legal scholars already supported the view that non-state actors could be considered persecutors²⁰ and other regional institutions had already endorsed it. These were article 3 (3) of the Cartagena Declaration of the Organization of American States and article 1 (2) of the Convention of the Organization of African Unity. The EU qualification directive hence led to a specification of the Geneva Convention for the Member States of the European Union.

Overall negotiations on the qualification directive were less controversial than those around the two other directives. The reason for this was the fact that norm robustness was particularly high with regards to the qualification directive and Member States' policies had converged throughout the last decade.

Reception Conditions Directive

The UNHCR Handbook specifies that refugees are refugees as soon as they fulfill the criteria for refugee status which can be well before their status is formally determined: "Recognition does not [...] make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee" (para. 28). Hence, 'asylum seekers' need to be provided at least some rights enshrined in the Refugee Convention, namely those rights which are for refugees which are simply present and lawfully present.²¹

One of the most controversial issues in the reception conditions directive, freedom of movement, is such a right available for applicants who are lawfully present (art. 26). As other norms establish, however, states can restrict the rights of non-nationals as compared to nationals and particularly make 'lawful stay' for non-nationals conditional to a stay in a certain part of this territory. The norm of freedom of movement for non-nationals is not only unspecific but also not coherent with the broader normative context.²² This leads to a very divergent practice in Member States in which most grant it unconditionally, but others make asylum seekers' stay conditional to them living in clearly defined areas with no general permission to travel within this Member State. A point in case is Germany where stay permits are limited to the district of the local office for foreigners by law and the applicant can only leave the district with a special permission or in order to appear before a

²⁰ Hathaway, J. C. (1991) *The Law of Refugee Status*. Toronto/Vancouver: Butterworths, 125 Goodwin-Gill, G. S. (1996) *The Refugee in International Law*. Oxford: Oxford University Press, 71, Carlier, J.-Y. (1997) *Who is a Refugee?* Leiden/Boston: Martinus Nijhoff, 706 Noll, G. (2000) *Negotiating Asylum. The EU Acquis, Extraterritorial Protection and the Common Market of Deflection*. The Hague: Martin Nijhoff, 515-521, Battjes, H. (2006) *European Asylum Law and International Law*. Leiden/Boston: Martinus Nijhoff, 243.

²¹ Goodwin-Gill, G. S. and J. McAdam (2007) *The Refugee in International Law*. Oxford: Oxford University Press, 524.

²² Bank refers in this context to subsequent interpretation (through courts and commentaries) of the ECHR and the ICCPR, namely *Uddayanan and S. Sivakumaran v. Federal Republic of Germany*, European Commission on Human Rights, Decision of 1/12/1986, EuGRZ 1987, 335.

court. Courts have ruled that permissions to leave this area can also be granted to avoid ‘unintended hardship’ in case full participation in school activities depends on leaving the district or visits to close family outside the district would be made impossible. Among others, however, opportunities for imposing restrictions are limited by respect for family life which is protected both by the German constitution and art. 8 ECHR. As Bank highlights “international law does not afford any further protection to asylum seekers”.²³ Member States hence are not concordant with the norm of freedom of movement for non-nationals. This restrictive practice is in fact not incompliant with international law, as there is no specific and coherent norm granting freedom of movement to non-nationals unconditionally. Hence, EU instruments have not taken this norm up yet or even specified it.

Closely related is the issue of detention on which the Geneva Convention only holds that refugees should not be detained for ‘illegal’ entry (art. 31). Art. 5 para. 1 ECHR on ‘liberty and security’ also restricts the states’ possibility to detain. While the first Reception Conditions Directive does not in any way restrict detention of asylum applicants, it was especially the European Commission which promoted limits for detention by introducing several articles on detention into its proposal for the recast directive.²⁴ This norm of freedom from detention seems to be robust. It is not only specific, but has binding force through being enshrined for instance both in the Geneva Convention and the ECHR. Most Member States are also concordant with it. One Member State, however, that detained asylum applicants for illegal entry was Malta. Malta wanted to negotiate illegal entry as a ground for detention into the recast directive (Council Doc. 15119/10: 3, footnote 6), but remained unsuccessful.

On another issue which was highly controversial during the negotiations, i.e. access to the labour market for asylum seekers, the Geneva Convention remains relatively silent. It only establishes this right for refugees who are lawfully resident.²⁵ The norm of access to employment is therefore not specific and binding and accordingly Member State practice varied substantially during both the negotiations on the reception conditions directive and its recast.

Apart from freedom from detention, none of the norms presented here was robust and hence negotiations on reception conditions were much tougher and characterized through bargaining that on the qualification directive.

²³ Bank, R. (2000) Reception Conditions for Asylum Seekers in Europe: An Analysis of Provisions in Austria, Belgium, France, Germany and the United Kingdom. *Nordic Journal of International Law*, 63:3, 257-288, 269.

²⁴ Thielemann, E. and N. Zaun (2013) *Venue-Shopping in European Policy Making: The Role of Non-majoritarian Institutions in Strengthening Migrant Access to National Labor Markets (Paper, forthcoming)*.

²⁵ Goodwin-Gill, G. S. and J. McAdam (2007) *The Refugee in International Law*. Oxford: Oxford University Press, p. 525.

Asylum Procedures Directive

The Geneva Convention remains silent on what a fair asylum procedure looks like. In fact, as para. 189 the UNHCR Handbook holds,

“It is obvious that, to enable States parties to the Convention and to the Protocol to implement their provisions, refugees have to be identified. Such identification, i.e. the determination of refugee status, although mentioned in the 1951 Convention (cf. Article 9), is not specifically regulated. In particular, the Convention does not indicate what type [sic!] of procedures are to be adopted for the determination of refugee status. It is therefore left to each Contracting State to establish the procedure that it considers most appropriate, having regard to its particular constitutional and administrative structure”.

Subsequently, the Handbook only identifies a number of “essential guarantees” which remain, however, rather general such as the clear definition of the authority taking the first instance decision and reasonable time for appeal in case of rejection. These norms are not very specific in the sense that they do not specify the characteristics of a fair procedure but rather list some general principles.

Apart from the UNHCR Handbook there is no legal document and especially no treaty of any binding force which deals with procedural norms. The only norms which can be found are those on access to an effective remedy and legal aid. The norm of an effective remedy is enshrined both in art. 6 and 13 ECHR and it is also a community principle. It is binding, specific, coherent and concordant. What is not specified, however, is whether legal aid has to be free in all cases. Here again practices between Member States differ widely. In Austria for example legal assistance is restricted to counselors specifically designated by national law and in Germany free legal assistance is subject to a merits test.²⁶ There are further examples of practices which were common in some Member States, but completely alien to the procedural system in other Member States. Thus, some Member States considered practices of others unlawful. In the absence of any norms which could serve as focal points, negotiations were highly controversial and the directive itself comprised many exceptions which puts into question the legal quality of the text. Given that procedural norms diverge hugely between Member States,²⁷ any norm that would have been adopted on the EU level would not be coherent with broader normative context on the domestic level which can account for the low degree of harmonization and the number of exceptions introduced in this directive.

3.2. The international norms regime and collective actors’ position on family migration

International norms for regulating immigration and immigrants’ rights can be found dispersed among various treaties defining human rights, labour rights, or trade relations. Actually, there is no

²⁶ Ackers, D. (2005) The Negotiations of the Asylum Procedures Directive. *European Journal of Migration and Law*, 7:1, 1-33, 10.

²⁷ Ibid.

single convention nor treaty or international organization²⁸ that would see after and promote norms on the regulation of all immigrants' admission and stay.²⁹ Basically, conventions on two immigrant groups can be distinguished: migrants that claim access to a country due to family reunification and labour migrants. Within the latter category numerous subcategories can be found that distinguish between the migration of skilled and unskilled as well as specific types of workers.³⁰ In terms of international norms there is a significant difference between family and labour migration. The norm to enjoy family life legitimizes the immigration of family members. However, no such right that would allow to work or to search for opportunities abroad can be claimed by labour migrants. The following paragraph discusses the robustness of the international norm "right to family life". The norm's vague specificity, partial binding force, as well as coherence and concordance will be assessed.

Until 2003 when the family reunification directive was adopted, immigration of spouses and children of third country nationals in the EU was subject to different conventions. The family is considered a core unit of society. Therefore, international conventions define a general right to a family and oblige the state to protect it.³¹ Internationally, the norm calling for the protection of family life is defined in the Universal Declaration of Human Rights from 1948. Article 16(3) defines that: "the family is the natural and fundamental group unit of society and entitled to protection by society and the state". Accordingly, the convention holds its signatories responsible for creating the conditions that protect family unity. The first extension of this norm to migrants was established by the ILO and its convention on migrant workers and its supplementary provisions (C97 and C143 of 1949 and 1975). States that ratified the convention were bound to take measures that allow for the reunification of migrant workers with their families. Those were defined broadly as the migrant's spouse, children, and parents (ILO C143, Art. 13). The European Social Charter (1961 and 1966) (art. 19) as well as the European Convention on the Legal Status of Migrant Workers from 1977 (art. 12) included this norm, too. In addition to the ILO's conventions, the European conventions defined migrants' family reunion more specifically, not only requesting the state to provide for channels of entry but also in terms of a right that can be claimed for by

²⁸ The International Organization for Migration consults its member states on best practices in migration regulation. The organization promotes its mission that migration movements should take place orderly and humane. However, it is more a service provider and efficiency consultant than an actor promoting the implementation of values and norms in border and migration policy.

²⁹ Aleinikoff, A. T. (2011) International Legal Norms on Migration: Substance without Architecture. In: Kunz, R., S. Lavenex and M. Panizzon, Eds. *Multilayered Migration Governance. The Promise of Partnership*. London and New York: Routledge, 467-479, 469.

³⁰ A third category is not recognized in international conventions, which is the category of educational migrants comprising students and researchers.

³¹ Kraler, A. (2010) *Civic Stratification, Gender and Family Migration Policies in Europe*. Vienna: International Centre for Migration Policy Development.

migrants. In this regard, a general principle was extended specifically to migrants. However, ratification of these conventions is rather incomplete³² which does not guarantee the norm's application.³³ In the European context the binding force of the norm was secured by the European Convention on Human Rights (ECHR) from 1950. All 47 members of the Council of Europe signed the convention which codifies in its articles 8 and 12 that everyone is entitled to the right to family life and to start a family. Breaches of these articles can be ruled upon by the European Court of Human Rights.³⁴ On various occasions, the European court protected with its case law immigrants' basic right to family unity at the time the EU directive was not yet adopted (e.g. *Moustaquim v Belgium*, *Beldjoudi v France*). The ECHR, although enforced by a supranational court, mainly protected migrants' families that were already resident within the territory of a Member State.³⁵ Conditions for family reunion were hardly defined in the conventions. This provoked a situation in which conditions for family reunion would not be covered by an international norm's binding force. The binding force of the norm was limited by its vague specificity.³⁶ At the same time, all Member States would consider the right for family unity in their domestic legislation or even in their constitutional law. Most of them would also provide for legislation that allowed for immigrants' family reunification.³⁷ Accordingly, three out of four factors defining a norm's robustness were present.

However, one should not conclude from the coherent application of the norm that domestic actors fully agree with immigrants enjoying a right to family life. For example, in Finland and Austria, actors call for restrictions of the right of migrants to reunite with their families. Domestic actors' claims on the issue are ambiguous: On the one hand the right to family is hardly denied; on the other hand, agreement on the terms and conditions as to how families of migrants should be able to reunite is not given. Actors confirm that international norms confine the state's power to control family migration (SPÖ/A, SOS Mitmensch/A, AK/A, RedCross/FIN, Church/FIN) and most agree that the right must be respected as an obligation from international law (Caritas/A, Red Cross/FIN,

³² As of February 2013 ILO's convention C143 has been ratified by only 23 countries. The European Convention on the Legal Status of Migrant Workers of the Council of Europe was ratified by only 11 European countries among which are seven EU Member States.

³³ Guiraudon, V. and G. Lahav (2000) A Reappraisal of the State Sovereignty Debate. The Case of Migration Control. *Comparative European Politics*, 33:2, 163-195, 167-171, Cholewinski, R. (2007) The Rights of Migrant Workers. In: Cholewinski, R., R. Perruchoud and E. MacDonald, Eds. *International Migration Law: Developing Paradigms and Key Challenges*. The Hague: TMC Asser Press, 255-274, 265-266.

³⁴ Guild, E. (1999) *The European Convention on the Legal Status of Migrant Workers. An Analysis of its Scope and Benefits*. Centre for Migration Law. University of Nijmegen.

³⁵ Guiraudon, V. and G. Lahav (2000) A Reappraisal of the State Sovereignty Debate. The Case of Migration Control. *Comparative European Politics*, 33:2, 163-195, 178.

³⁶ Roos, C. (2013) *The EU and Immigration Policies: Cracks in the Walls of Fortress Europe?* Basingstoke: Palgrave Macmillan, 89-90.

³⁷ CEC (1999, 638) *Proposal for a Council Directive on the Right to Family Reunification*. Commission of the European Communities. Brussels. 1 December, 1999.

WKÖ/A). Others interpret the right to protection of the family as a right that should be dependent upon conditions. They demand that the state should not compromise its sovereign right to admit selectively (AK/A, Red Cross/A, Church/FIN). They argue that family migration puts a burden on social systems because many family members of migrants are unemployed and have hardly any professional qualifications (True Finns/FIN, SDP/FIN, SPÖ/A). Therefore, the right of immigrants' spouses and children to join should be conditional upon requirements such as language skills, assessment of their employability on the local labour market, and familiarity with the culture in the destination country (ÖVP/A, KOK/FIN). Some even claim that immigrants would abuse the right and thus delegitimize the system of human rights based immigration (True Fins/FIN). In comparison, actors do not claim such measures in order to restrict the refugee protection norm. Accordingly, domestic actors' concordance with the norm is only partially given. The international norm right to family life for migrants is vaguely specific, partially binding, coherent and partially concordant. Accordingly, it should be considered to be robust with limitations.

The EU directive on family reunification mirrors this quality of the international norm. Key issues in negotiations on the policy at the EU level were the conditions for reunion which had remained unspecific in international conventions. In its proposal for the directive the Commission mentioned this gap of international provisions. The directive was proposed in order to give more legal security to immigrants' right for family reunification by defining entry and residence conditions.³⁸ During negotiations on the directive in the early 2000s, Member States used these conditions to claim for restrictions on migrants' right to family unity. At the time, Germany, Austria, Greece and the Netherlands demanded for provisions that would restrict the right to family reunion as well as derogation clauses that would reaffirm their national approaches and leave them the flexibility in implementation.³⁹ Some of the requirements that must be met by the sponsor and the family members to be eligible for enjoying family unity in a European country reflect actors' call for restriction. For example, the German as well as the Austrian government were successful in pushing for a provision in the directive that allows Member States to require immigrant children above the age of 12 to comply with integration conditions (art.4 (2)).⁴⁰ This age threshold and integration conditions could result in separating children from their families. Giving in to claims from Austria and the Netherlands, the requirement to comply with integration measures was extended to

³⁸ CEC (1999, 638) *Proposal for a Council Directive on the Right to Family Reunification*, Brussels, 9

³⁹ Agence Europe (2001b) *Bringing Directive on Family Reunification into Question? European Coordination Expresses Fears for Foreigners' Right to Family Life*. Brussels. 8 May, 2001.

⁴⁰ Roos, C. (2013) *The EU and Immigration Policies: Cracks in the Walls of Fortress Europe?* Basingstoke: Palgrave Macmillan.

migrants' spouses.⁴¹ Using the ability to integrate into the host society as a criterion to be met for admission could serve as a means of reducing the number of people who would have access to the right of family reunification.⁴² Further conditions defined by the EU directive were the financial means available to immigrants' families and the spouse's access to the labour market. The provisions agreed upon could discourage family-related immigration because access to the labour market can be restricted and a call for "sufficient" financial means (art. 7(1)) can be defined arbitrarily by member states and lead to restrictions.⁴³ The discussion during Council negotiations points to an understanding of family reunification as a potential burden to social systems that should be reduced.⁴⁴ A public consultation launched by a Green Paper on the directive, put forward by the Commission in 2011, aimed at reopening negotiations in order to agree on more specific and less restrictive provisions.⁴⁵ Since some Member States responded by calling for a new directive that allows further restrictions, the Commission's plans to suggest amendments to the directive were cancelled.⁴⁶ Thus, the rather unspecific international norm could only partially lead to specific legislation on the EU level. Member States were not concordant with regard to the directive's purpose; but found their lowest common denominator on disabling family induced migration. EU legislation confines member states to a certain extent, but member states still enjoy a wide range of discretion on deciding about admission of a migrant's family. The international norm, right to family life, was sufficiently robust in order to enable its codification in EU law but not robust enough to provide for clear admission criteria. The core of the norm, migrants' right to family life, is enforced by EU legislation and EU institutions such as the Commission monitoring the directive's implementation and the ECJ reinforcing its binding force.

3.3. The international norms regime and collective actors' position on labour migration

Compared to asylum and family migration, international norms on regulating labour migration are least developed. The Geneva Refugee Convention defines refugees' rights of protection and the

⁴¹ Schneider, H. and A. Wiesbrock (2005) The Council Directive on Family Reunification: Establishing Proper Rights for Third Country Nationals? In: Schneider, H., Ed. *Migration, Integration and Citizenship. A Challenge for Europe's Future. Volume II. The Position of Third Country Nationals in Europe*. Maastricht: Forum Maastricht, 35-69, 52-53.

⁴² Roos, C. (2013) *The EU and Immigration Policies: Cracks in the Walls of Fortress Europe?* Basingstoke: Palgrave Macmillan, 101-102.

⁴³ Weber, A. and A. Walter (2003) The Right of Protection of Family for Migrants in Europe: Access and Integration of Family Reunion. In: Hoffmann, B. v., Ed. *Towards a Common European Immigration Policy*. Frankfurt a. M.: Europäischer Verlag der Wissenschaften, 227-239.

⁴⁴ Agence Europe (2001a) *No Progress Made at JHA Council on Family Reunification*. Brussels. 28 September, 2001.

⁴⁵ CEC (2011, 735) *Green Paper on the right to family reunification of third-country nationals living in the European Union*. Commission of the European Communities. Brussels. 15. November 2011.

⁴⁶ CEC (2012) *Summary of Stakeholder Responses to the Green Paper on the Right to Family Reunification of Third-Country Nationals*. Commission of the European Communities DG Home Affairs. Brussels. 11 May 2012.

ECHR holds its signatories accountable for the protection of family life. Both conventions have implications for admission and residence conditions of these immigrant groups. For labour migrants no comparable international rights on admission exist. Two conventions of the ILO (C 97, C 143), the UN's International Convention on the Protection of all Migrant Workers and their Families (ICMW) from 1990 and the Council of Europe's convention on the legal status of migrant workers from 1977 deal with labour migrants' rights as workers and residents. The UN convention attempts to secure the human rights of all migrants, such as freedom from servitude and freedom of association.⁴⁷ The ILO conventions attempt to cover the entire itinerary of the worker from orderly recruitment, to regular entry, protection of stay, to safe return.⁴⁸ On the regional level, the European Convention on the Legal Status of Migrant Workers defines equality of treatment of migrant workers with nationals in areas such as housing, schooling, and social security (art. 13, 14, 18). Most EU Member States have not ratified these conventions⁴⁹ although many had implemented key provisions in their national law.⁵⁰ Coherence of international norms with domestic legislation was partially given; still the international norms had no binding force due to fact that not all signatories had also ratified the conventions.

Whether and how states should allow for migrant workers to access their territories is not determined by any of these conventions either. The only multilateral agreement that touches upon labour migrants' rules of admission is Mode 4 of the General Agreement on Trade in Services (GATS) from 1994. The agreement, monitored by the World Trade Organisation (WTO) commits states to set up rules for service providers entering their territory temporarily. The agreement was signed by 148 states and is the only agreement in force regulating labor mobility on a global level. It only applies to a tiny group of mobile people, business visitors and intra-corporate transferees. Scholars are critical on the agreement's immediate impact but see that in the long run GATS Mode 4 could make rules on labour migration more binding. As of 2011 they do not consider the agreement to create "significant or reciprocally negotiated obligations" on labour migration.⁵¹ In the

⁴⁷ Böhning, W. R. (2003) *The protection of temporary migrants by conventions of the ILO and the UN*. Workshop on Temporary migration: Assessment and practical proposals for overcoming protection gaps, Geneva, International Institute for Labour Studies, ILO.

⁴⁸ Cholewinski, R. (2007) The Rights of Migrant Workers. In: Cholewinski, R., R. Perruchoud and E. MacDonald, Eds. *International Migration Law: Developing Paradigms and Key Challenges*. The Hague: TMC Asser Press, 255-274.

⁴⁹ As of March 2013, the ICMW was ratified by 47 countries, ILO C 97 was ratified by 49 countries, and the ILO C 143 is ratified by only 23 countries. The Convention on the legal status of migrant workers of the Council of Europe was ratified by only 11 out of 47 states that are member to the organisation. Most EU Member States are not party to these agreements.

⁵⁰ CEC/ SEC (2007, 1408) *Commission Staff Working Document. Accompanying Document to the Proposal for a Directive on a Single Permit and on a Common Set of Rights for Third-Country Workers*. Commission of the European Communities. Brussels. 23 October, 2007.

⁵¹ Betts, A. and L. Cerna (2011) High-Skilled Labour Migration. In: Betts, A., Ed. *Global Migration Governance*. Oxford: Oxford University Press, 60-77, 67.

absence of a guiding post defined by international norms, Member States' legislation on the medium and long-term immigration of labour developed very differently.⁵²

The specificity of norms on labour migration varies and their binding force is not given across conventions. On the level of residence conditions norms are quite specific in terms of defining areas in which labour migrants should enjoy equal treatment. Yet, EU Member States' have not given binding force to these norms by ratifying the conventions. On the level of admission procedures, the norm to provide a channel of entry for international business mobility is rather specific but hardly binding. Any further international norms than the GATS norms on the admission of labour migration do not exist. The discourse of domestic actors on labour migrants' admission and residence conditions reflects this pattern. With regard to residence conditions actors are concordant with granting equal treatment to migrant workers as defined in the conventions. Concerning admission, the conditions of skilled and unskilled migrants' access to labour markets remain disputed. Thus, international norms on migrant workers' residence conditions can be considered robust. In comparison, the few norms on admission have limited robustness.

The norm that basically all actors in Finland and Austria share is the norm of equality in key areas such as working conditions and access to social security. Local workers as well as migrant workers should be covered by the same rights in order to be protected from exploitation or social dumping. International norms on migrants' rights as workers and residents lacked binding force, but were coherent with national law, quite specific and concordant with actors. As such they were sufficiently robust and became codified in EU legislation (Directive 2011/98/EU). Still, actors in Finland and Austria disagree on the conditions that define workers' admission. Some hold that admission should only be allowed if residents cannot be found for a job. They claim that labour market tests should protect local workers against competition from foreign workers (WKÖ/A, AK/A, Red Cross/A, ÖVP/A, KOK/FIN). Others disagree with labour market tests and argue that those tests can be obstacles to growth and employers' access to the best workers on the international labour market. Accordingly, foreigners should only be required to have an employment offer by a company (Network for Free Movement/FIN, STTK/FIN, EK/FIN, IV/A).

The discussions at the EU level on the EU Blue Card, the scheme for entry and residence conditions for highly skilled labour, reflect that actors were not concordant on the issue. The Council negotiations on the Blue Card showed that admission conditions for labour migration are

⁵² CEC (2007, 1403) *SEC. Accompanying Document to the Proposal for a Council Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purpose of Highly Qualified Employment. Impact Assessment.* Commission of the European Communities. Brussels. 23 October, 2007.

understood to be defined according to Member States' individual needs. As a minimum requirement for a common legislation, Member States lacked a common understanding whether they actually wanted to open their labour markets to workers from third countries. Germany and Austria were openly opposed to enhancing competition on their labour markets by allowing foreign workers' entry.⁵³ Also, labour market conditions varied from country to country which led to flexible provisions for the EU Blue Card. For example, suggested salary thresholds as a condition for admission could contradict collective bargaining agreements. In Sweden and Finland the freedom of social partners to negotiate such agreements is particularly protected. Among other provisions, the obligation for a labour market needs test was left to Member States' discretion, too (Council Directive 2009/50/EC).⁵⁴

In comparison, the single permit and rights' directive, negotiated from 2009 to 2011, is a piece of EU legislation that reduces Member States' discretion considerably. The directive defines equal treatment in areas such as access to social security, public services and working conditions. Although the directive implies EU influence on social policy, the goal to grant rights at the EU level in order to avoid differential treatment across Member States found acceptance in the Council and the European Parliament (EP). In contrast to the Blue Card, opposition could not be bought off by granting flexibility in implementation. Limitations in the areas where equality should be assured would mean that the directive could not function as a horizontal measure. International norms on migrant workers' equality were coherent with EU law establishing equality for EU nationals using their freedom rights within the single market. These rights had been developed since the 1950s and step-by-step increased the rights of EU nationals that are resident in another Member State. Accordingly, with regard to residence and workers' rights for migrants, existing EU legislation that established the freedoms of the single market for EU nationals was already well ahead of international conventions claiming equality. Still, international norms could serve as a frame of reference for the equality rights of third-country nationals. The EP involved as a co-legislator acted as an advocate for immigrants' rights for which it could draw on robust international norms. For example, it was successful with changing some Council provisions that would have meant that equal treatment with regard to social security would not apply to migrant workers that were laid-off.⁵⁵

⁵³ Roos, C. (2013) *The EU and Immigration Policies: Cracks in the Walls of Fortress Europe?* Basingstoke: Palgrave Macmillan, 175-178.

⁵⁴ Ibid.

⁵⁵ CEC (2011, 832) *Communication from the Commission to the European Parliament concerning the Position of the Council on a Proposal for a Directive on a Single Permit and on a Common Set of Rights for Third-Country Workers*. Commission of the European Communities. Brussels. 25 November, 2011.

EU legislation on migrant workers reflects that the international norm of equality for migrant workers was sufficiently robust to be codified in EU legislation. With regard to admission conditions, only the GATS agreement defines the need for admission for a narrow group of people. Norms that would define equality in access to the labour market or social justice to be considered in migrant workers' admission are not existent at the international level. These limitations in international norms development are an indicator for EU legislation that leaves Member States' maximum freedom with implementation. EU policy making reflects that there is a limited common understanding of norms that should be applicable to the admission of labour migrants.

4. Norms as an enabling factor in EU integration on asylum and immigration policies

As we have shown in this paper, a varying degree of robustness of norms (e.g. codified in international conventions and treaties) reflects the legislative output on the EU level concerning asylum migration, family migration and labour migration. This is also shown by positions of collective actors in Austria and Finland illustrating this pattern. In our theoretical chapter we have stated that the specificity of a norm, its binding force, coherence with domestic norms and its concordance (i.e. acceptance among states and endorsement among collective actors) are crucial for the norm to be sufficiently robust to make its way into EU legislation.

The norm of refugee protection can be described as relatively robust, although for instance the question of who qualifies as a potential persecutor has for a long time not been clarified. The norm of recognizing non-state actors as persecutors, however, gained increasing robustness, being coherent, increasingly concordant and binding. EU legislation (i.e. the qualification directive) helped to further specify it. The norm of freedom of movement for non-nationals at the same time was neither specific, binding or coherent and hence did not make it into the reception conditions directive. Freedom of movement more narrowly defined as freedom from detention, however, was strengthened through the recast reception conditions directive, because this norm was robust and advanced both by the Geneva Convention and the ECHR. In the absence of a robust norm providing for employment access for non-nationals, negotiations on this issue were particularly tough. The case of the asylum procedures directive furthermore illustrates how the absence of international norms which can serve as guiding posts in negotiations leads to rather contradictory legislative output which completely misses the aim of harmonization. Hence, only very general norms such as access to an effective legal remedy made it into EU legislation.

As concerns family migration the international norm that any person should enjoy the right to a

family life was sufficiently robust to make its way into EU legislation. All Member States have for instance ratified the ECHR which grants this right in its art. 8. Also, family reunification was coherent with Member States' domestic or constitutional law, which provided for respective provisions. However, many collective actors in Member States see family migration as a huge burden to the welfare state and outspokenly consider restrictions on family migration to be legitimate. Actors in Finland and Austria, for example, see a need for select immigration in this area too and define conditions such as integration requirements. Concordance with the norm can hence only be confirmed partially. Given that there is no international law on the reunification of migrant families, but rather on family unity, and the fact that it is not ruled how family members should get together norm specificity is not given. International conventions hardly touched the definition of conditions for admission as a family migrant. The negotiations leading to the Council directive on family reunification from 2003 reflect that conditions were not specified by an international normative regime and thus open for discussion. A partially binding directive was the result of EU policy-making. Although the right to family reunification can be considered a sufficiently robust norm, its insufficient specificity and partial concordance among actors leaves room for Member States' diverging interpretation and application.

In comparison to the two forms of immigration discussed above, the absence of any comprehensive international normative regime on rights to access for labour migrants, norms on admission are in a nascent stage at the EU level. Thus, actors consider it legitimate to deliberately define the conditions of admission for labour migrants. The heterogeneous discourse on the national and EU level reflects that pre-defined norms hardly exist. Actors' claims on admission conditions diverge on the question if foreign workers' access to the labour market should be restricted or not. Different conditions on labour markets and disagreement on the need for labour migration made it impossible to find concordance of actors in EU level negotiations on the Blue Card. Thus, the EU scheme for attracting skilled labour migrants leaves flexibility to Member States' implementation. The only international rights which are robustly established are those of non-discrimination and equal treatment of national and foreign workers. Those norms were codified in international conventions of the ILO, UN, and the European Convention for the Legal Status of Migrant Workers. International conventions were quite specific and actors in Member States were concordant in demanding equal treatment for local and foreign labour. Also, the claim for equality between locals and foreigners was coherent with Member States' domestic legislation and a key element in the single market legislation on freedom of movement for labour. Accordingly, the EU directive on rights for workers gave binding force to the robust equality norm.

5. Conclusion

The paper was dedicated to giving substance to the observation that robust international norms indicate the quality of EU integration in the policy area of EU asylum and migration. The theoretical model we advanced was derived from the literature on compliance and international norms. We argued that the establishment of a dense regulation and harmonization on an issue on the EU level is more likely when a norm is robust. We found that the robustness of international norms does reflect the density of EU legislation in an issue area. Whether a norm's robustness also indicates the restrictiveness or expansiveness of EU legislation in a respective issue area is difficult to assess. EU asylum and immigration policy is often criticised for being restrictive and undermining human rights. At the same time, we observe that most international norms on asylum and immigration regulation define human rights such as the right to physical integrity, non-refoulement, family unity, and individual freedom. Implementing these norms in EU legislation on asylum and immigration means to include norms that lie at the core of liberal political theory. Since decision makers in the EU multi polity cannot ignore these norms international norms become a relevant factor in defining and negotiating policy. They constrain actors' positions and thus have an indirect impact on EU integration. Accordingly, we observe that a rather liberal agenda of individual rights and freedoms finds its way into EU law.

To this point we have identified a pattern; robust international norms are reflected in EU legislation. Further research will be necessary to identify the causal links and agents connecting the two levels. Then one might observe issue areas where the international level impacts the EU level and vice versa. The international level should accordingly not be neglected when studying decision-making in the multi polity EU.

Interviews

Number	Interview	Date
#1	Green Party of Austria	18.05.12
#2	United Nations High Commissioner For Refugees (UNHCR), Austria	22.05.12
#3	SOS Mitmensch, Austria	22.05.12
#4	Red Cross, Austria	29.05.12
#5	Red Cross, Finland	02.05.12
#6	Austrian People's Party (ÖVP)	13.06.12
#7	Freedom Party of Austria (FPÖ)	30.05.12

#8	National Coalition Party (KOK), Finland	10.05.12
#9	True Finns Party, Finland	09.05.12
#10	Socialdemocratic Party of Austria (SPÖ)	15.05.12
#11	Arbeiterkammer (AK), Austria	24.05.12
#12	Finnish Lutheran Church	09.05.12
#13	Social Democratic Party of Finland (SDP)	08.05.12
#14	Caritas, Austria	30.05.12
#15	Austrian Federal Economic Chamber (WKÖ)	23.05.12
#16	Asylkoordination, Austria	23.05.12
#17	Network for Free Movement, Finland	07.05.12
#18	Finnish Confederation of Salaried Employees (STTK)	03.05.12
#19	Confederation of Finnish Industries (EK)	04.05.12
#20	Federation of Austrian Industries (IV)	16.05.12
#21	Finnish Refugee Council	03.05.12
#22	Central Organisation of Finnish Trade Unions (SAK)	04.05.12
#23	Österreichischer Gewerkschaftsbund (ÖGB)	14.05.12