
Renewed Inter-institutional (Im)balance after the Lisbon Treaty? The External Dimension of the EU's Migration Policy

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Abstract

With the commencement of the Lisbon Treaty in December 2009, the EU member states have committed themselves to the creation of “a common immigration policy”. Despite the increasing “communitarisation” of EU migration policy over the past decade, there has been a tendency to retain intergovernmental control over the EU policy-making process. The assertive responses of member states to purported migratory flows associated with the EU’s immediate neighbourhood, particularly the old member states subject to high levels of intra-EU secondary migration, are particularly resonant for the external dimension. Mapping out the legal and institutional framework of EU migration policy after the Lisbon Treaty, the article assesses the renewed inter-institutional balance in the EU related to policy towards the immediate neighbourhood and candidate countries.

Key Words

EU migration policy, external dimension, EU neighbourhood, Lisbon Treaty, EU policy-making.

Introduction

Over the past decade, there has been an increasing emphasis on integrating a comprehensive migration dimension into the EU’s external policies. In view of the migratory pressures on the EU, particularly from its broader neighbourhood, considerable efforts have been made to establish a dialogue with the main countries of origin and transit of migrants. Since the early 2000s, cooperation on irregular migration has become a precondition for an intensified partnership for third countries.¹ Parallel to the adoption of the “Global Approach to Migration” in 2005, the “need for a balanced, global, coherent approach covering policies to combat illegal migration and, in cooperation with third countries, harnessing the benefits of legal migration” has been accentuated.²

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Although the external dimension of the EU's migration policy has traditionally focused on the fight against irregular migration, the EU has been working on integrating different dimensions of migration in its cooperation particularly with the countries in its broader neighbourhood including the candidate countries for EU accession in recent years.

Despite the increasing “communitarisation” of EU migration policy over the past decade, there has been a tendency to retain intergovernmental control over the EU policy-making process.

In its initial years, the management of the external dimension of EU migration policy was largely undertaken by the intergovernmental circle of justice and home affairs officials. The role of EU institutions in the area of migration has been considerably enhanced since the ratification of the Amsterdam Treaty in 1999. Despite the commitments made towards the communitarisation of EU migration policy, there has been a tendency to retain intergovernmental control over the EU policy-making process. With the Lisbon Treaty, the EU member states have committed

themselves to the creation of a “common immigration policy” and reached a consensus regarding further communitarisation. Nevertheless, the analysis and calculation of the relative powers of the EU institutions have several aspects that need to be taken into account.³ Acknowledging this, this article explores the changes in the decision-making competences of EU institutions concerning the external dimension of migration introduced by the Lisbon Treaty. Thus, instead of making a judgment regarding the overall institutional balance, the article focuses solely on the decision-making dimension of the evolving inter-institutional dynamics. Parallel to the increasing emphasis that the EU has put on adopting a holistic approach to migration, this article aims to present a comprehensive, comparative study of the three policy areas which constitute the main framework of migration cooperation between the EU and the countries in its broader neighbourhood: (i) irregular migration, (ii) visas, and (iii) labour migration.

This article is composed of four sections: The first introduces the theoretical framework underlying this study, building on intergovernmentalism and new institutionalism. The second section presents a brief historical overview of EU-level cooperation on

migration policy since the ratification of the Maastricht Treaty. The third section maps out and examines legislative developments in the three policy areas being studied. Finally, the conclusion reflects on the post-Lisbon institutional dynamics based on these policy areas.

Intergovernmentalism vs. New-Institutionalism

Intergovernmentalism has been perceived in the literature as relevant to EU decision-making on the external dimension issues of migration. Migration policy fits into the category of so-called “high politics” issues that are subject to limited institutional constraints at the EU level. In 1966, Hoffmann introduced the term high politics to identify the policy domains in which member states seek to sustain their national control in line with state-centric theoretical approaches to the EU.⁴ Drawing on the intergovernmentalist approach to EU policy-making, Hoffmann argued that high politics issues are to a large extent dominated by inter-state negotiations and subjected to limited institutional constraints. Adopting a narrow definition of supranational decision-making, intergovernmentalist theories assert that the EU integration process does not lessen the power of national governments. Acknowledging that

European integration involves a “pooling of sovereignty” among member states, it is argued that “negotiation and coalition-building take place within the context of agreements between governments.”⁵ EU institutions are subject to member state influence and in particular to the superseding power of the European Council.⁶ Drawing on international relations, intergovernmentalist theoretical approaches to the EU predominantly put their state-centric models to trial with negotiations concerning further integration and treaty reforms among EU member states. On the other hand, the analytical tools of intergovernmentalist theories are also adjusted to explain the routine decision-making mechanism of the EU. This is mostly relevant to high politics areas that are central to national sovereignty.⁷

The limitations of the Treaty paved the way for increased dialogue and interchange among the member states outside of the EU framework.

This state-centric viewpoint clashes with the recent emphasis on the influence and constraints imposed on the EU decision-making process by the EU’s own institutional framework. When the complex institutional structures and

decision-making mechanisms of the EU are taken into account, explaining EU decision-making from the perspective of macro-level international relations theories appears challenging. The main criticism of the historical dominance of international relations theories in explaining EU decision-making has come from comparative politics scholars.⁸ Questioning the state-centric focus of the intergovernmentalist approach, Hix argues that the “internal institutional dynamic” created within the EU could influence state behaviour and preferences at the EU level.⁹ Drawing on comparative politics, Hix suggests using the new institutional approaches to the EU to analyse the “decision-making environment” within the EU. The new institutionalist approaches to politics stress the “role” of political institutions. Institutions are considered “political actors” with a certain level of independence.¹⁰ The fact that several variants of new institutionalism have emerged over the past few decades calls into question the extent to which new institutionalism is a “unified body of thought.”¹¹ Nevertheless, although each institutionalism has a different focus concerning actor-institution relations, they are connected by a common analytical ground.¹² Despite their differences, Hall and Taylor argue that an interchange, rather than strict

differentiation, among these variants could enhance the explanatory power of new institutionalism as each variant focuses on a partial dimension.¹³ In the EU context, despite their different views concerning the characteristics and extent of institutional influence, all three main variants of new institutionalism challenge intergovernmentalism’s sole focus on member states. Focusing on decision-making competences, this article examines the changing inter-institutional balance concerning the external dimension of the EU’s migration policy.

EU-level Cooperation in the Area of Migration

In 1992, the Maastricht Treaty was signed establishing a legal basis for EU level cooperation in the area of justice and home affairs. Defining this politically sensitive area as “common interest”, the Treaty of Maastricht asserted that the EU member states have the shared aim of developing “close cooperation on justice and home affairs”.¹⁴ Among the spheres of EU competence under Title VI of the Treaty on European Union (TEU) were asylum, borders, immigration, and the policies regarding documented and undocumented third country nationals.¹⁵ Due to the lack of consensus among the member states to

cede sovereignty during the negotiations in Maastricht, cooperation in the area of justice and home affairs was placed under the intergovernmental third pillar.¹⁶ As indicated in Article K.4 (3) TEU, the intergovernmental legal basis allowed the Council to act unanimously.¹⁷ Unlike the European Community pillar, the European Commission, according to Article K.3 (2) TEU, shared the competence to initiate legislative proposals with member states regarding asylum, borders, immigration, and third country nationals. The Commission and the Presidency of the Council of the EU, as stated in Article K.6 TEU, should inform and consult the European Parliament (EP), but the position of the Parliament was not binding on the member states.

Legislative developments in justice and home affairs policy were limited under the intergovernmental framework of the Maastricht Treaty. The decision-making process was prolonged due to the unanimity requirement and intricate decision-making for the adoption of measures. As a result, the member states were discouraged from cooperating within the narrow Treaty competence.¹⁸ Instead, the limitations of the Treaty paved the way for increased dialogue and interchange among the member states outside of the EU framework.¹⁹ Joint positions were adopted primarily to

control migratory pressures on the EU in the post-Maastricht period. Among these measures were the harmonisation of the list of countries whose nationals require a visa to cross EU borders and the transfer of responsibility to third parties, including the “carrier sanctions” that make the airline companies liable if they take undocumented migrants on board.²⁰ Despite its limited scope and the problems related to its effectiveness, EU level cooperation in the area of justice and home affairs under the Maastricht Treaty’s intergovernmental framework further impelled the member states, in view of their increased interdependence, to enhance commitment in migration policy.²¹

Since the ratification of the Amsterdam Treaty, there has been a growing consensus among member states regarding the enhancement of the external dimension of the EU’s immigration policy.

With the ratification of the Amsterdam Treaty in 1999, the member states approved the transfer of the items related to immigration and asylum from the intergovernmental domain to the Community to establish more comprehensive management at the EU level.²² The member states committed

to change the decision-making procedures, moving from unanimity in the Council to qualified majority voting and also granted co-decision powers to the EP. In line with reservations in the member states, an agreement was reached on a five-year transition period to fulfil the commitments made in Amsterdam regarding the adoption of the necessary legislation.²³ In October 1999, a European Council meeting was organised in Tampere to deal exclusively with issues of justice and home affairs.²⁴ This specialised summit resulted in a declaration to start working towards a common EU policy on migration and asylum with a multi-annual scheme. The European Council conclusions put forward firm targets and deadlines for the development of EU-level legislation directed towards “the creation of an area of justice, liberty and security.”²⁵

Since the ratification of the Amsterdam Treaty, there has been a growing consensus among member states regarding the enhancement of the external dimension of the EU’s immigration policy. Following Tampere, the European Council has adopted two multi-annual schemes regarding the course of action in justice and home affairs. Both the Hague Programme (2004-2009)²⁶ and the Stockholm Programme (2009-2014)²⁷ have incorporated a detailed external dimension to the EU’s justice

and home affairs policy. Through the introduction of these multi-annual programs, the European Council has acted as an “agenda setter” in the domain of justice and home affairs.²⁸ On the other hand, in line with the increasing use of co-decision procedure and the transfer of executive competences to the Commission, the resources and capacities of EU institutions with respect to the domain of migration have increased. The following section maps out the evolving legislative framework of EU cooperation with third countries in the areas of (i) irregular migration, (ii) visas, and (iii) labour migration.

Decision-making Competences after the Lisbon Treaty

Irregular migration and readmission agreements

The return of irregular migrants residing in the EU to the countries of transit or origin has been particularly important to the external dimension of the EU’s migration policy. Traditionally concluded at the national level, readmission agreements have become primary tools for member states to cooperate with each other and with third countries.²⁹ In 1999, the Amsterdam Treaty granted the Community the

competence to adopt measures in the area of irregular immigration and return of undocumented immigrants. Article 63(3) (b) (under Title IV of the TEC) introduced the call for the development of measures concerning “illegal immigration and illegal residence, including repatriation of illegal residents”, providing a legal basis for readmission agreements between the EC and third countries. Accordingly, the Community was given the competence to conclude readmission agreements with third countries on behalf of the EU.³⁰ At the Seville European Council in 2002, it was agreed that “any future cooperation, association or equivalent agreement which the European Union or the European Community concludes with any country should include a clause on joint management of migration flows and on compulsory readmission in the event of illegal immigration.”³¹ This requirement demonstrates the impulse towards using the leverage of partnership with the EU to help member states smooth the progress of returning undocumented immigrants.

Cooperation in the area of readmissions has been very important with the countries in the EU’s neighbourhood that are considered to be major transit points. Since the early 2000s, EU level readmission agreements have been concluded with several partner countries

in the Western Balkans and Eastern Europe.³² The concerns pertaining to transit migration to the EU through Turkey have become particularly evident following the endorsement of its full membership candidate status in 1999.³³ In 2002, the Council gave directives to the European Commission to negotiate a readmission agreement with Turkey.³⁴ Formally opened only in 2005 due mainly to the unwillingness of Turkey to commit to an EU-level readmission agreement, the negotiations on the draft agreement lasted until 2011.³⁵ It is clear that readmission agreements predominantly serve the interests of EU member states since the migratory pressures are on the EU rather than on the partner countries themselves. In its 2011 evaluation of EU level readmission agreements, the European Commission raised a number of issues that tend to impede EU readmission negotiations including the matter of readmission of third country nationals, the financial burden of readmissions, and the lack of incentives for third countries to sign readmission agreements.³⁶ For the EU-Turkey readmission agreement to be signed, Turkey has principally demanded the initiation of the visa liberalisation process in parallel with the readmission agreement.³⁷

Under the Amsterdam Treaty procedures, Community readmission

agreements were settled based on Article 300 (1) of the TEC which dealt with the conclusion of the international agreements that the EC acquired competences.³⁸ According to Article 300 (1) of the TEC, the Commission had the exclusive right to make recommendations regarding the conclusion of international agreements between the EC and third countries. Commission proposals regarding readmission agreements had to be approved by the Council acting with a qualified majority. After the approval of a proposal by the Council, the European Commission was responsible for the negotiation process with third countries. Although the Commission had a considerable role in leading the negotiation process on behalf of the EU, it was supposed to be in close contact with relevant Council working groups. Given that its policy position was not legally binding under the consultation procedure, the EP did not have strong influence in the readmission agreement negotiations with third countries under the pre-Lisbon procedures.

The negotiations between Turkey and the EU concerning the abolition of the visa requirement have been tightly linked to cooperation in the area of irregular migration.

When the Lisbon Treaty came into force in December 2009, the competences of the EU to conclude international agreements with third countries on managing the return of irregular migrants to their countries of origin or transit became explicit. Although the EU concluded several readmission agreements on the legal basis of the Treaty of Amsterdam, there was no direct reference to readmission agreements with third countries in the Treaty. Due to the lack of a clear mention, signing EC readmission agreements with third countries was identified as “implied” competence of the Community.³⁹ Article 79 (3) of the Treaty on the Functioning of the EU (TFEU), which replaced Article 63(3) of the TEC with the ratification of the Lisbon Treaty, explicitly refers to signing EU level readmission agreements stating that the EU could “conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States.”⁴⁰

The EP’s role has been strengthened with the Lisbon Treaty with the introduction of the “consent requirement”. In line with Articles 79 (which incorporated the TEC 63(3)) and 218 (6) (a) (formerly Article 300 (3) of the TEC) of the

TFEU, the approval of the EP has become a requirement for the conclusion of readmission agreements.⁴¹ Under the consent procedure, the Council is bound by the post-Lisbon legal basis to take into account the position of the EP when concluding such agreements with third countries.

Schengen visa policy and visa facilitation

The Schengen Convention, signed in 1985, paved the way for the abolition of the internal borders among participating states.⁴² Keeping long term visas and resident permits as an exclusive national competence, the participating states agreed to harmonise short-stay visas to enable border crossing within the Schengen zone. In line with the demands of third countries regarding the enhancement of cross-border mobility, visa policies have become an important dimension of cooperation between the EU, the partners in the neighbourhood, and the candidate countries. Turkey, negotiating accession to the EU since 2005, has demanded the initiation of a visa liberalisation process in parallel with the signing of the readmission agreement. In June 2012, the Council's conclusions gave the mandate to the Commission "to take steps towards visa liberalisation as a gradual and long term perspective" alongside the signature

of the readmission agreements.⁴³ The negotiations between Turkey and the EU concerning the abolition of the visa requirement have been tightly linked to cooperation in the area of irregular migration.

According to Article 100c (1) of the TEC, the Council had the competence to determine the list of countries whose citizens needed a visa for (short-term) entry to the Schengen Area, voting unanimously on a Commission proposal. As stated in Article 100c (3), the voting requirement had changed from unanimity to qualified majority voting by January 1996.⁴⁴ This meant that the veto power of an individual member state concerning visa requirements for third countries was abolished. Yet the EP's role regarding the determination of the visa list was negligible in the sense that the Council was not required to take its position into account.

The Amsterdam Treaty integrated the Schengen *acquis*, initially negotiated outside the EU Treaty framework in an intergovernmental setting, into the EU's legal framework.⁴⁵ Referring to the adoption of measures in relation to "rules on visas for intended stays of no more than three months", Article 62 (2)(b) of the TEC created an EU level legal basis for short-stay visas.⁴⁶ The legal basis of the EU measures regarding visa

domain was only applicable to short-term Schengen visas. The member states which opted out of the Schengen *acquis* (i.e. Denmark, Ireland and the United Kingdom) were excluded in line with Schengen procedures.⁴⁷

As in readmission agreements, the EP was consulted by the Council before a decision was reached regarding the conclusion of an agreement with a third country.

In 2001, the member states adopted a regulation on the list of countries exempted or whose nationals are required to obtain a visa to enter the Schengen area.⁴⁸ The following procedure was relevant under the Amsterdam Treaty to amend the 2001 Regulation. Article 67 of the TEC stated that the proposals on the measures related to determining visa requirements or exemptions for third country nationals should be made solely by the Commission to the Council and the EP. The decisions on the proposals were taken in the Council by qualified majority. The EP did not occupy a very influential position due to the consultation procedure. Despite the extension of co-decision procedures in a number of areas related to the justice and home affairs field following

the adoption of the Hague Programme in November 2004, the competences of the EP concerning the visa lists remained unchanged.

The influence of the EP regarding short-term visa policy significantly increased after the ratification of the Lisbon Treaty in 2009, when Article 77 (2) of the TFEU replaced the 62 (2) (b) of the TEC on short-stay permits.⁴⁹ Ordinary legislative procedure⁵⁰ is extended to measures for determining the list of nationalities that are required to obtain a short-stay visa and those who may travel to the EU without a visa for short stays. The introduction of co-decision as well as the ordinary legislative procedure has given the EP the role of co-legislator alongside the Council regarding short-term visa policy.

Another significant policy tool that the EU has recently employed in the external dimension of migration is the conclusion of visa facilitation agreements.⁵¹ Such agreements are a means of compromise by which third countries consent to sign readmission agreements, thereby receiving modest mobility facilitation concessions in return.⁵² These agreements were particularly considered to accelerate readmission agreement negotiations with the EU's neighbourhood.⁵³ In 2004, the Hague Programme gave a "political mandate" to the possibility of coupling

EU readmission agreements with the facilitation of “the issuance of short-stay visas to third country nationals, where possible and on basis of reciprocity, as part of a real partnership in external relations including migration-related issues”.⁵⁴ The first visa facilitation agreement, signed with Russia, came into force in 2007. This was followed by the agreements concluded with a number of Eastern Partnership countries and candidate countries in the Western Balkans.⁵⁵

Mobility Partnerships allow voluntary cooperation between interested member states and partner countries, and the “tailor-made” bilateral cooperation between a partner country and a member state is made based on their mutual needs.

Under the Amsterdam Treaty procedures (described in Article 300 (1) of the TEC), the process of signing a visa facilitation agreement with a third country had to be initiated by a proposal from the European Commission.⁵⁶ After the Council’s approval to start negotiations is secured, the Commission held the main responsibility for negotiating with the third country.

However, the Commission was expected to maintain close contact with the relevant committees formed of member state representatives. The mandate and authorisation granted by the Council could, however, also limit the scope of the Commission’s action in the course of the negotiations.⁵⁷ As in readmission agreements, the EP was consulted by the Council before a decision was reached regarding the conclusion of an agreement with a third country. As in the case of readmission agreements, Article 218 of the TFEU (formerly Article 300 of the TEC) has increased the influence of the EP in relation to visa facilitation agreements.⁵⁸ After the ratification of the Lisbon Treaty, EP approval has become a legal requirement before a visa facilitation agreement can be signed.

Labour migration and mobility partnerships

The external dimension of the EU’s immigration policy has a rather narrow labour migration component. Behind this are mainly the longstanding reservations of certain EU member states that have become traditional migrant-receiving countries in the post-war period (particularly France, Germany and the United Kingdom). Being a policy area highly central to national interest and sovereignty, labour

migration remains a contentious topic because of the reluctance of member states to transfer their competences to the EU level. Nevertheless, in recent years, there has been a growing emphasis on the need for a more “comprehensive approach” to cooperation on migration, legal as well as irregular, in the framework of the EU’s renamed “Global Approach to Migration and Mobility” policy.⁵⁹ In its 2006 communication “Global Approach to Migration one year on”, the Commission emphasised the importance of responding to the needs of the labour market by allowing the admission of specific groups of migrants, such as highly-skilled or seasonal workers.⁶⁰ In its December 2006 conclusions, the European Council put forward the concept of “circular migration” as a policy tool to “strengthen and deepen international cooperation and dialogue with third countries of origin and transit, in a comprehensive and balanced manner.”⁶¹ The concept, originally proposed by France and Germany, refers mainly to “time-lined” temporary labour migration opportunities for partner countries in return for their cooperation with the EU and is primarily concerned with irregular migration.⁶² In 2007, the Commission presented the Mobility Partnerships proposal, which integrated the concept of temporary labour migration into the broader context of

EU cooperation with partner countries and migration management.⁶³ The aim was to incorporate cooperation with third countries regarding legal migration, irregular migration, and address the linkage between migration and development aspects in the source countries (such as brain drain and remittances). Mobility Partnerships allow voluntary cooperation between interested member states and partner countries, and the “tailor-made” bilateral cooperation between a partner country and a member state is made based on their mutual needs.⁶⁴ The EU has, to date, signed mobility partnership agreements with three countries in its eastern neighbourhood (Republic of Moldova, Georgia and Armenia) and two in its southern neighbourhood (Cape Verde and Morocco).⁶⁵

With the ratification of the Lisbon Treaty in December 2009, EU member states have lost their veto with respect to labour migration policy.

Regarding the treaty basis, already in 1999 with Article 63(3) (a) of the TEC, the Community acquired the competence to adopt measures regarding “conditions of entry and residence, and standards on procedures for the issue

by Member States of long-term visas and residence permits, including those for the purpose of family reunion”.⁶⁶ As such, the exclusive competence of the member states in determining the volume of economic migrants that could enter their labour markets was secured.⁶⁷

Due to the traditional liberal and pro-mobility approach of the EP, it could be argued that the changes in the decision-making procedures will have a significant impact in the course of EU level negotiations concerning visa policy.

According to the decision-making procedures indicated in Article 67 of the TEC, decisions related to the policy areas covered under Article 63 of the TEC had to be taken unanimously.⁶⁸ Although Article 67 of the TEC stated that the unanimity requirement would be abolished after a five-year transition period, legal migration areas were exempt from this requirement, as pointed out in Article 63 of the TEC, due to the reluctance of member states to give up their power of veto. In line with this exception, the Hague Programme did not provide a political mandate for the transfer of the legal migration domain to qualified majority voting. Due to their

veto power, the member states retained strong control over the decision-making process.⁶⁹

With the ratification of the Lisbon Treaty in December 2009, EU member states have lost their veto with respect to labour migration policy. Article 79(2) (a) of the TFEU has replaced Article 63(3) (a) regarding long-term visas and residence.⁷⁰ Under the ordinary legislative procedure, the decision-making procedure in the Council with respect to labour migration changed from unanimity to qualified majority voting in the Council. Under the Amsterdam Treaty, the EP had a limited level of involvement in the course of decision-making on legal migration due to the consultation procedure. With the Lisbon Treaty, the EP has become a co-legislator on migration alongside the Council. Despite further “communitarisation” of the policy area, Article 79(5) of the TFEU clearly protects “the right of the Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed”.⁷¹

Conclusion

The communitarisation process in the area of migration policy started with the Amsterdam Treaty, which triggered a gradual transfer of competences to EU

institutions. However, the legal basis of the EU was predominantly developed with respect to internal issues in the area of migration, while the external dimension is a rather novel phenomenon. This article investigated the relative competences of EU institutions and the decision-making procedures related to the external dimension of migration after the ratification of the Lisbon Treaty. The analysis above has demonstrated that the Lisbon Treaty empowers the EP *vis-à-vis* the Council by the extension of the ordinary legislative procedure. Among the areas analysed, the decision-making procedures concerning Schengen visa policy have significantly changed with the introduction of the ordinary legislative procedure. Due to the traditional liberal and pro-mobility approach of the EP, it could be argued that the changes in the decision-making procedures will have a significant impact in the course of EU level negotiations concerning visa policy. In the conclusion of readmission and visa facilitation agreements, the EP's role has also considerably increased as its approval has become obligatory to conclude international agreements. Regarding labour migration, the abolition of the unanimity requirement in the Council and the introduction of co-decision procedures could change the inter-institutional dynamics between the Council, EP and Commission. However,

the Lisbon Treaty safeguards the exclusive competences of the member states concerning the volume of economic migration to their territory.

The endorsement of the European Council as an EU institution could increase the impact of intergovernmental negotiations on the EU level policy-making process.

It should also be noted that, with the ratification of the Lisbon Treaty, the European Council has also become a full EU institution as stipulated in Article 13(1) TEU.⁷² The conclusions of the European Council meetings have an overriding authority to shape and influence EU decision-making. Issues related to justice and home affairs have been of particular importance to the European Council. The multi-annual programmes for the EU's justice and home affairs policy (Tampere, Hague and Stockholm) have provided substantial political support for the expansion of the external dimension of the EU's migration policy. EU institutions traditionally abide by the conclusions of the European Council due to its political authority.⁷³ On the other hand, according to Article 15 (1) of the TEU, the European Council cannot "exercise legislative

functions”. The Lisbon Treaty underlines that the exclusive role of the European Council is “political leadership” across all policy areas.⁷⁴ The endorsement

of the European Council as an EU institution could increase the impact of intergovernmental negotiations on the EU level policy-making process.

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