



**The influence of pro-migrant groups within the shaping  
process of the EU asylum and migration policy**

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## Table of contents

1. Introduction.....	1
1.1 Background to the doctoral research project .....	1
1.2 Theoretical framework.....	7
1.3 Research Design.....	8
1.4 Originality of the research project .....	9
1.5 Outline of the PhD thesis .....	12
2. Literature Review.....	16
2.1 Introduction.....	16
2.2. Necessity for an EU asylum and migration policy .....	16
2.2.1 Changes in migration patterns .....	16
2.2.2 Growing attention for asylum and migration issues at national level.....	18
2.2.3 Securitisation of asylum-seekers and migrants.....	19
2.3 Development of the EU asylum and migration policy.....	21
2.3.1 Early forms of intergovernmental cooperation .....	22
2.3.2 Trends towards communitarisation.....	23
2.3.3 Assessing EU asylum and migration instruments: fortress Europe or a truly humanitarian approach? .....	25
2.4 The involvement of pro-migrant groups in asylum and migration affairs.....	27
2.4.1 Pro-migrant groups at national level.....	28
2.4.2 Requirements for organising at EU level.....	30
2.4.3 The lobbying repertoire of pro-migrant groups active in the EU arena.....	32
2.5 Conclusion .....	33
3. Theoretical framework.....	36

3.1 Introduction.....	36
3.2 Requirements of the research project.....	37
3.3 Resource dependence theory.....	38
3.3.1 Original approach.....	38
3.3.2 Previous adaptations to the EU system.....	39
3.4 Adapting the theory to the research purpose: Resource interdependence between EU institutions and pro-migrant groups .....	41
3.4.1 Resource dependencies of the European Commission .....	41
3.4.2 Resource dependencies of the European Parliament .....	44
3.4.3 Resource dependencies of the Council of the European Union.....	47
3.4.4 Resource dependencies of pro-migrant groups.....	50
3.5 Expected influence of pro-migrant groups to be exerted on the different case studies .....	53
3.6 Conclusion .....	56
4. Methodology .....	60
4.1 Introduction.....	60
4.2 Ontology and epistemology .....	61
4.2.1 Different ontological and epistemological views .....	61
4.2.2 Which ontological and epistemological view fits the research project?.....	62
4.3 The logic of inquiry .....	62
4.4 Choice of case study .....	64
4.4.1 What is a case study? .....	64
4.4.2 Application of case studies to the research project.....	65
4.4.3 A case study's alleged weakness .....	66

4.5 Methodology selected and alternatives not selected .....	68
4.5.1 Difference between qualitative and quantitative methods .....	68
4.5.2 Methodology selected .....	69
4.5.3 Methodology not selected .....	71
4.6 Conceptualisation and operationalisation of influence .....	73
4.6.1 Conceptualisation.....	73
4.6.2 Operationalisation .....	74
4.7 Ethical and legal issues involved in the research project.....	76
4.8 Conclusion .....	77
5. Assessment of the political influence of pro-migrant groups on the Long-term Residents Directive .....	80
5.1 Introduction – Background to the Long-term Residents Directive.....	80
5.2 Influence Assessment.....	82
5.2.1 Preference attainment towards the Commission.....	83
5.2.2 Preference attainment towards the Council .....	87
5.2.3 Attributed influence assessment .....	92
5.3 Which factors affected the influence of pro-migrant groups? .....	95
5.3.1 Empirical assessment of the ability of the pro-migrant groups to provide expert knowledge .....	96
5.3.2 Empirical assessment of the ability of the pro-migrant groups to provide support.....	100
5.3.3 Empirical assessment of ability of the pro-migrant groups to provide legitimacy.....	103
5.4 Conclusion .....	107

6. Assessment of the political influence of pro-migrant groups on the Qualification Directive.....	110
6.1 Introduction – Background to the Qualification Directive .....	110
6.2 Influence Assessment.....	112
6.2.1 Preference attainment towards the Commission.....	112
6.2.2 Preference attainment towards the Council .....	116
6.2.3 Attributed influence assessment .....	123
6.3 Which factors affected the influence of pro-migrant groups? .....	128
6.3.1 Empirical assessment of the ability of the pro-migrant groups to provide expert knowledge .....	128
6.3.2 Empirical assessment of the ability of the pro-migrant groups to provide support.....	132
6.3.3 Empirical assessment of ability of the pro-migrant groups to provide legitimacy.....	134
6.4 Conclusion .....	138
7. Assessment of the political influence of pro-migrant groups on the extension of the Long-term Residents Directive .....	141
7.1 Introduction – Background to the extension of the Long-term Residents Directive.....	141
7.2 Influence assessment.....	142
7.2.1 Preference attainment towards the Commission.....	143
7.2.2 Preference attainment towards the Parliament and the Council .....	144
7.2.3 Attributed influence assessment .....	149
7.3 Which factors affected the influence of pro-migrant groups? .....	152

7.3.1 Empirical assessment of the ability of the pro-migrant groups to provide expert knowledge .....	152
7.3.2 Empirical assessment of the ability of the pro-migrant groups to provide support.....	156
7.3.3 Empirical assessment of the ability of the pro-migrant groups to provide legitimacy.....	160
7.4 Conclusion .....	165
8. Assessment of the political influence of pro-migrant groups on the recast Qualification Directive.....	168
8.1 Introduction – Background to the recast Qualification Directive.....	168
8.2 Influence Assessment.....	170
8.2.1 Preference attainment towards the Commission.....	170
8.2.2 Preference attainment towards the Parliament and the Council .....	174
8.2.3 Attributed influence assessment .....	181
8.3 Which factors affected the influence of pro-migrant groups? .....	187
8.3.1 Empirical assessment of the ability of the pro-migrant groups to provide expert knowledge .....	187
8.3.2 Empirical assessment of the ability of the pro-migrant groups to provide support.....	192
8.3.3 Empirical assessment of the ability of the pro-migrant groups to provide legitimacy.....	198
8.4 Conclusion .....	203
9. Conclusion .....	207
9.1 Purpose of the doctoral research .....	207
9.2 The influence of pro-migrant groups – Results from the four case studies .....	209

9.2.1 Results from the LTR Directive.....	209
9.2.2 Results from the extension of the LTR Directive .....	211
9.2.3 Results from the Qualification Directive .....	213
9.2.4 Results from Recast Qualification Directive .....	215
9.2.5 Results gained from the cross-case study comparison.....	216
9.3 How do the findings of this analysis speak to the wider literature on the EU asylum and migration policy? .....	220
9.4 Limitations of the study .....	224
9.5 Avenues for future research based on this work.....	226
10. List of References .....	228
11. List of Interviews .....	241

## List of tables and illustrations

Table 1: 2x2 typology of lobbying conditions for pro-migrant groups inferred from authority and responsiveness of the EU institutions .....	55
Table 2: Comparison of recommendations of pro-migrant groups and Chapter 1 of Commission proposal.....	84
Table 3: Comparison of recommendations of pro-migrant groups and Chapter 2 of Commission proposal.....	85
Table 4: Comparison of recommendations of pro-migrant groups and Chapter 3 of Commission proposal.....	86
Table 5: Comparison of recommendations of pro-migrant groups and Chapter 1 of Council directive .....	88
Table 6: Comparison of recommendations of pro-migrant groups and Chapter 2 of Council directive .....	89
Table 7: Comparison of recommendations of pro-migrant groups and Chapter 3 of Council directive .....	90
Table 8: Categorisation of pro-migrant groups regarding their ability to provide expert knowledge .....	100
Table 9: Categorisation of pro-migrant groups regarding their ability to provide support.....	102
Table 10: Categorisation of pro-migrant groups regarding their ability to provide legitimacy.....	106
Table 11: Summary of preference attainment.....	107
Table 12: Comparison of recommendations of pro-migrant groups and Chapter 1 of Commission proposal.....	112
Table 13: Comparison of recommendations of pro-migrant groups and Chapter 2 of Commission proposal.....	113



Table 14: Comparison of recommendations of pro-migrant groups and Chapter 3 of Commission proposal.....	114
Table 15: Comparison of recommendations of pro-migrant groups and Chapter 4 of Commission proposal.....	115
Table 16: Comparison of recommendations of pro-migrant groups and Chapter 5 of Commission proposal.....	115
Table 17: Comparison of recommendations of pro-migrant groups and Chapter 1 of Council Directive .....	117
Table 18: Comparison of recommendations of pro-migrant groups and Chapter 2 of Council Directive .....	118
Table 19: Comparison of recommendations of pro-migrant groups and Chapter 3 of Council Directive .....	119
Table 20: Comparison of recommendations of pro-migrant groups and Chapter 5 of Council Directive .....	119
Table 21: Comparison of recommendations of pro-migrant groups and Chapter 6 of Council Directive .....	119
Table 22: Comparison of recommendations of pro-migrant groups and Chapter 7 of Council Directive .....	120
Table 23: Categorisation of pro-migrant groups regarding their ability to provide expert knowledge .....	131
Table 24: Categorisation of pro-migrant groups regarding their ability to provide support.....	134
Table 25: Categorisation of pro-migrant groups regarding their ability to provide legitimacy.....	137
Table 26: Summary of preference attainment.....	138

Table 27: Comparison of recommendations of pro-migrant groups and Chapter 1 of Commission proposal.....	143
Table 28: Comparison of recommendations of pro-migrant groups and Chapter 2 of Commission proposal.....	144
Table 29: Comparison of recommendations of pro-migrant groups and Chapter 1 of Directive.....	146
Table 30: Comparison of recommendations of pro-migrant groups and Chapter 2 of Directive.....	146
Table 31: Comparison of recommendations of pro-migrant groups and Chapter 3 of Directive.....	147
Table 32: Categorisation of pro-migrant groups regarding their ability to provide expert knowledge .....	156
Table 33: Categorisation of pro-migrant groups regarding their ability to provide support.....	159
Table 34: Categorisation of pro-migrant groups regarding their ability to provide legitimacy.....	164
Table 35: Summary of preference attainment.....	165
Table 36: Comparison of recommendations of pro-migrant groups and Chapter 1 of Commission proposal.....	171
Table 37: Comparison of recommendations of pro-migrant groups and Chapter 2 of Commission proposal.....	172
Table 38: Comparison of recommendations of pro-migrant groups and Chapter 3 of Commission proposal.....	172
Table 39: Comparison of recommendations of pro-migrant groups and Chapter 5 of Commission proposal.....	173

Table 40: Comparison of recommendations of pro-migrant groups and Chapter 7 of Commission proposal.....	173
Table 41: Comparison of recommendations of pro-migrant groups and Chapter 1 of Directive.....	174
Table 42: Comparison of recommendations of pro-migrant groups and Chapter 2 of Directive.....	176
Table 43: Comparison of recommendations of pro-migrant groups and Chapter 3 of Directive.....	177
Table 44: Comparison of recommendations of pro-migrant groups and Chapter 4 of Directive.....	177
Table 45: Comparison of recommendations of pro-migrant groups and Chapter 5 of Directive.....	177
Table 46: Comparison of recommendations of pro-migrant groups and Chapter 7 of Directive.....	179
Table 47: Categorisation of pro-migrant groups regarding their ability to provide expert knowledge .....	192
Table 48: Categorisation of pro-migrant groups regarding their ability to provide support.....	197
Table 49: Categorisation of pro-migrant groups regarding their ability to provide legitimacy.....	203
Table 50: Summary of preference attainment.....	204
Table 51: Cross-case study comparison of influence of pro-migrant groups (preference attainment rate and attributed influence) .....	217
Table 52: Cross-case study comparison of dependence structures of EU institutions .....	219

Figure 1: Changes in authority and responsiveness of EU institutions during negotiation and ordinary legislative procedure.....	223
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## **Declaration**

Some of the material used in this thesis has been published or is going to be published in journal articles or as book chapters. The publications are listed below.

Hoffmann, Ulrike (2012), 'Lobbying for the rights of refugees and persons who otherwise need international protection – An analysis of the lobbying strategies of pro-migrant groups on the Qualification Directive and its recast', *Journal of Contemporary European Research*, 8 (1), 21-39.

Hoffmann, Ulrike, 'Können Pro-Migranten Gruppen Einfluss auf die EU Asyl- und Migrationspolitik ausüben? – Wie Ressourcenabhängigkeit über politische Einflussnahme auf EU Ebene bestimmt', in Uwe Hunger, Stefan Rother, and Roswitha Pioch (eds.), *Jahrbuch Migration 2012/2013* (Münster: LIT Verlag), (forthcoming 2013: accepted for publication).

Hoffmann, Ulrike (with Sarah Leonard und Christian Kaunert), 'Venue-shopping and the role of NGOs and civil society in the development of the EU asylum policy', *Comparative Migration Studies*, (forthcoming 2013: accepted for publication).

## **Abstract**

At the 1999 Tampere Council Summit, the Heads of the European Union member states agreed to harmonise national migration policies and protection standards by 2012. The Long-term Residents Directive and the Qualification Directive as well as their extension and recast form core elements of the common European asylum and migration policy. The negotiations of these directives have been followed actively by pro-migrant groups. Their intensified political involvement and presence in Brussels did not remain unnoticed by political scientists. However, previous studies mainly focused on the analysis of the factors that affect the mobilisation and claim-making of such groups as well as the key features that they need to make themselves heard in Brussels. This study adds to the existing literature by assessing the actual influence that the pro-migrant groups exerted on the four directives. To do so, in an extensive document analysis, the political objectives of the pro-migrant groups on the different directives were compared with the standpoints of the EU institutions. In addition, 50 in-depth expert interviews were conducted in which interest representatives and EU officials were asked to comment on and assess the influence of the pro-migrant groups on said directives. What is more, following the resource dependence theory, it was tested to what extent the ability to provide expert knowledge, political support, and legitimacy decided lobbying success and failure. The sample of the case studies finally allowed scrutinising whether the decision-making procedure – negotiation procedure and ordinary legislative procedure – has had an effect on the influence of the pro-migrant groups. The preference attainment analysis and the attributed influence assessment reveal that on all four directives the pro-migrant groups exerted more influence during the drafting stage than during the further negotiations. With a view to the effect of the decision-making procedure on the influence of the interest groups, no clear conclusions can be drawn from the cross-case study analysis. While no such effect was found when comparing the results of the original Long-term Residence Directive and its extension, after the introduction of the ordinary legislative procedure, the influence of the groups on the recast Qualification Directive has increased. Finally, regarding resource dependence, the empirical data confirms the dependence of the EU institutions on expert knowledge as assumed in the theoretical framework. For the Commission's and the Parliament's reliance on support and legitimacy, however, no empirical evidence could be found.

# **1. Introduction**

## **1.1 Background to the doctoral research project**

Asylum and migration are policy areas whose importance has grown over the last few decades. Cross-border movements are witnessed all around the world. Europe, in particular, has seen a major change in migration patterns – having gradually turned from a net emigration region into a destination for migrants and asylum-seekers. The latest Eurostat statistics reveal that in 2011, 20.7 million third-country nationals (TCNs) lived in the European Union (EU). Migration statistics further suggest that the inflow into the EU peaked in 2007 and that a total of 1.7 million people immigrated to the EU in 2011 (Eurostat 2013a). With a view to the asylum figures, Eurostat reports that in 2012 332,000 people applied for asylum out of which 14 per cent were granted refugee status, 10 per cent obtained subsidiary protection status and 2 per cent were authorised to stay for humanitarian reasons (Eurostat 2013b). In that context, national asylum and migration legislations in Europe need to be regarded as both the cause of shifting migration patterns and as a response to the new reality. Countries with postcolonial links abroad such as Britain and France started to open their labour markets with recruited migrants as early as the late 1940s, while Germany, the Netherlands, Austria, Sweden and Belgium followed suit in the 1950s and 1960s. In the 1990s South European countries began to respond to the needs of their labour markets and, after the enlargement of the EU in 2004 and 2007, the new EU member states also opened their labour markets for non-citizens.

Growing cross-border crime, terrorist incidents, and ultimately the great economic and financial crisis prompted the heads of the EU member states to review their asylum and migration policy. While the EU member states have long dealt with asylum and migration matters at national level, the launch of the Schengen area, heralding the abolishment of internal border controls, made integration efforts in those policy areas necessary. What followed was the adoption of the Dublin Convention that introduced minimum standards for the application for asylum and the 1993 Maastricht Treaty that, amongst others, introduced a uniform visa design, common conditions of entry and residence for TCNs as well as joint border controls. However, all these measures remained subject to intergovernmental cooperation and it was not until the coming into force of the 1999 Amsterdam Treaty that asylum and migration matters were incorporated in the *acquis communautaire*.



Since then not only have the policy goals regarding a common European asylum and migration policy become more ambitious, but the decision-making procedures in these areas have been reformed too. Three successive action plans (the Tampere, Hague, and Stockholm Programme) cover a great variety of asylum and migration related issues such as the establishment of a Common European Asylum System (CEAS), the improvement of migration and border management as well as integration practices, and a fair cooperation with sending countries. Moreover, policy decisions in the area of asylum and migration are no longer reached between governments. Treaty reforms, notably the 1999 Amsterdam, the 2004 Nice, and the 2009 Lisbon Treaty, gradually led to an empowerment of the Commission of the European Communities (Commission), the European Parliament (Parliament), and the Court of Justice of the European Union (ECJ) – thus creating a balance to the hitherto dominance of the Council of the European Union (Council). Today, all legislative drafts related to these policy areas are initiated by the Commission and jointly decided upon by the Parliament and the Council. In addition, the Commission monitors the transposition at national level and the ECJ ensures that newly adopted measures comply with EU law.

The EU has become a crucial actor in asylum and migration affairs; therefore, monitoring policy-shaping processes and scrutinising the policy provisions individually is becoming ever more important. As outlined earlier, the EU is home to millions of non-European citizens. Thus, it is crucial to investigate whether the EU takes seriously its responsibility to integrate those who come to study or work in the EU and protect those who seek refuge in Europe. Civil society, human rights groups and many scholars have long been accusing the EU of creating a ‘fortress Europe’ which clearly conflicts with the self-set objective of ‘fair treatment of third country nationals’ as most recently declared in the Stockholm Programme (European Council 2010). Given the opposed views on the true objective of the EU in asylum and migration affairs, this PhD thesis aims to trace back the policy-shaping processes of selected case studies to reveal the positions of the different policy-makers involved. In so doing, it will assess how the final policy outcome evolved. In addition to the official EU policy-makers, the focus of this PhD thesis is on interest groups that represent the concerns of migrants and asylum seekers; the pro-migrant groups.

With asylum and migration being included in the realm of authority of the EU, new policy venues have been created in Brussels for pro-migrant groups to participate in the policy-making processes. The literature on interest groups, indeed, suggests that non-governmental

actors have been taken into consideration in the analysis of policy-making processes at EU level. In fact, what can be observed is that with the progressing communitarisation of various policies and the increase of legislative competencies on the part of the EU institutions, the number of interest groups actively lobbying in Brussels has grown too. Studies (Beyers et al. 2008; Michalowitz 2007b) have revealed that in the early 1990s the interest group population has developed dynamically. In that period, it was particularly business lobbying actors that dominated the Brussels arena. The rapid growth of corporate lobbying actors, however, led to an oversaturation of business representation at EU level. Organisations advocating for public interests – both individual NGOs and EU umbrella groups – benefitted from the decelerated growth of business interests and started entering the EU lobbying arena in the late 1990s. The coincidence of facilitated entry conditions for representatives of public interests and the arising of a common European asylum and migration policy in the second half of the 1990s is expected to have strengthened the political influence of pro-migrant groups.

As a matter of fact, the following two quotes that are taken from the websites of the Amnesty International European Institutions Office (AI Europe) and the Migration Policy Group (MPG) convey the impression that interest groups play a significant role in the shaping process of the EU asylum and migration policy.

Amnesty International is a worldwide movement of people who campaign for internationally recognized human rights to be respected and protected for everyone. [...] Our members and supporters exert influence on governments, political bodies, companies and intergovernmental groups (AI Europe 2012b).

Since our establishment in 1995, we have played a pivotal role in shaping European migration, integration and anti-discrimination policies and law – many original MPG initiatives have become established features of the European Union's legal and policy landscape (MPG 2012).

Yet, the groups do not provide evidence of their influence. Nor have political scientists sought to assess the success rates of those groups. What is more, facilitated entry conditions alone do not equal influence. Influence rather presupposes access to the legislative institutions at EU level. Scrutinising the validity of the two opening quotes about the influence of pro-migrant groups is the purpose of this PhD thesis. The primary research question that drives this doctoral research is the following: how influential are pro-migrant groups on the EU asylum and migration policy? To answer this question, four case studies – the Long-term Residents

Directive<sup>1</sup> (LTR Directive), the extension of the LTR Directive<sup>2</sup>, the Qualification Directive<sup>3</sup>, and its respective recast Directive<sup>4</sup> – have been selected for this research. With the Qualification Directives, the heads of the EU member states commit to the ‘absolute respect of the right to seek asylum’ by fully and inclusively complying with the Geneva Convention. They further set their sights on the establishment of uniform ‘rules on the recognition and content of the refugee status’ and ‘measures on subsidiary forms of protection’. With a view to long-term residence, the heads of states envisage a ‘more vigorous integration policy’ that grants long-term residents ‘a set of uniform rights which are as near as possible to those enjoyed by EU citizens’ (Parliament 1999b).

The 2003 LTR Directive and the extension to that directive that was adopted in 2011 differ with respect to their scope. While the original directive did not apply to refugees and beneficiaries of subsidiary protection, the 2011 version addresses both categories. In that context, it needs to be noted that TCNs and stateless persons who are unwilling or unable to return to their country of origin or habitual residence ‘owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group’ qualify as refugees (Art. 2 (d) Directive 2011/95/EU). TCNs and stateless persons who fall out of the refugee protection status but, nevertheless, cannot return to their country of origin or habitual residence ‘due to a real risk of suffering serious harm (torture or inhuman or degrading treatment, death penalty or execution, serious individual threat to the life or person as result of indiscriminate violence)’ (Commission 2012d) are eligible for subsidiary protection. In a wide range of areas such as access to the labour market, education and vocational training, social protection and assistance, and other goods or services, both LTR Directives grant persons who have lived legally in a EU state for an

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<sup>1</sup> Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents

<sup>2</sup> Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection

<sup>3</sup> Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted

<sup>4</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)

uninterrupted period of five years the same treatment as EU citizens. In regards to the two Qualification Directives, again, it is the scope in which they differ. The original Qualification Directive that was adopted in 2004 was limited to refugees exclusively and determined the eligibility criteria as well as the rights attached to refugee status. In 2011, the Qualification Directive was extended to beneficiaries of subsidiary protection with the adoption of the recast directive. While the eligibility criteria as outlined above differ in the grounds for persecution, a nearly uniform protection status has been created for refugees and persons eligible for subsidiary protection that includes access to employment, education, and procedures for recognition of qualifications acquired in a non-EU country as well as access to healthcare and accommodation.

For each of these four directives, this doctoral research seeks to assess the influence that pro-migrant groups could exert on the respective content. Pro-migrant groups, in this context, are non-governmental organisations that directly addressed EU decision-makers to convince them of their viewpoints regarding the directives.

Overall, the following 13 pro-migrant groups have been identified as actors that have actively lobbied on the four directives. The groups are very heterogeneous in the sense that the issues they focus on differ massively. Only a few of them seem to focus on migration and asylum issues exclusively – Asylum Aid, the Immigration Law Practitioners' Association (ILPA), MPG, the European Council on Refugees and Exiles (ECRE), the Churches' Commission for Migrants in Europe (CCME), and Churches and Christian Organisations in Europe on Migration and Asylum (CCOEMA). Asylum Aid is a national registered charity that was founded in 1990. Its principal mission is to offer legal advice to asylum-seekers and to represent them in the UK. Furthermore, the group cooperates with Brussels based organisations in joint advocacy campaigns (Asylum Aid 2012b). ILPA was founded in 1984 by leading UK immigration practitioners. The solicitors, barristers, and advocates involved in ILPA promote advice and representation in immigration, asylum and nationality law (ILPA 2012b). The 1995 established MPG refers to itself as a non-profit think-and-do-tank. Its research and advocacy work is concerned with issues of migration, anti-discrimination, and diversity (MPG 2012). Founded in 1974 as a platform of five NGOs, ECRE was originally meant to assist refugees that were fleeing the Soviet Union at that time. Today, it has grown to a European umbrella organisation that represents 67 member groups throughout Europe and advocates the promotion of a 'comprehensive and coherent' refugee protection system

(ECRE 2012b). CCME was founded in 1964 as an association of churches and ecumenical councils. The advocacy work of the Brussels Secretariat of CCME and its 25 member organisation covers 'the whole area of migration and integration, refugees and asylum, and racism and xenophobia' (CCME 2012). Under the umbrella of CCOEMA, Caritas Europa, CCME, Commission of the Bishops' Conferences of the European Community, International Catholic Migration Commission, Jesuit Refugee Service Europe, and the Quaker Council for European Affairs jointly lobby on asylum and migration affairs. CCOEMA is not an institutionalised organisation; its members rather cooperate on an ad-hoc basis (CCOEMA 2004b: 6-25).

Other groups such as the Starting Line Group, the European Network Against Racism (ENAR), the Amnesty International European Institutions Office (AI Europe), and the Red Cross EU Office (Red Cross) do not solely focus on asylum and migration matters but on a far broader range of policies. The Starting Line Group, established in 1991, and its approximately 450 member organisations was aimed at raising the awareness of persistent racial and religious discrimination in EU (Chopin 1999a). During 1997, the European Year Against Racism, it was replaced by ENAR. ENAR has become a widespread umbrella group in Europe that jointly seeks to fight against racism and to bolster full equality and solidarity (ENAR 2012). AI Europe represents 25 national branches to the EU institutions. Its lobbying work is diverse, ranging from human rights concerns to asylum and migration matters, judicial and police cooperation through to economic, cultural and social rights (AI Europe 2012b). The Brussels Secretariat of the Red Cross is the representation of its 26 National Societies of the EU member states, the Norwegian Red Cross, and the International Federation of Red Cross and Red Crescent Societies. Its working areas are just as comprehensive as its membership base. Its Secretariat engages with disaster management, health and social care, migration and displacement, non-discrimination as well as international development (Red Cross 2012a).

A third group of pro-migrant groups represent people with special needs and interests. For groups like Terre des Hommes International Federation (TdH), the European Women's Lobby (EWL), and the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), asylum and migration affairs are only one aspect of their advocacy work, as they want to ensure that the needs and concerns of their target groups are taken into account in all policy areas. TdH works for the promotion of children's rights.

Guided by the Convention on the Rights of the Child, the group offers support to children in need ‘without racial, religious, political, cultural or gender-based discrimination’ (TdH 2012a). Since 1990, EWL has been working ‘to achieve equality between women and men, to promote women’s rights in all spheres of public and private life, to work towards economic and social justice for all women in their diversity, and to eliminate all forms of male violence against women’ (EWL 2012a). Finally, ILGA represents lesbian, gay, bisexual, transsexual, and intersex people. Its advocacy work is oriented towards the fight against ‘discrimination on the grounds of sexual orientation, gender identity or gender expression’ in any policy area (ILGA 2012b)<sup>5</sup>.

Despite their diverse concerns, all groups have been active in the areas of asylum and migration matters and addressed EU policy-makers to exert influence on the LTR Directive, the extension to the LTR Directive, the Qualification Directive, and its recast directive. The principal objective of this PhD thesis is to assess the actual influence of these groups on EU asylum and migration policy. To do so, the political objectives of the pro-migrant groups on the different directives are analysed. In addition, the groups are scrutinised for the lobbying strategies that they pursued and for factors that might have impeded their efforts. A fact that needs to be stressed here is that this doctoral research does not envisage to individually assess the influence of each group. Within this PhD thesis, the groups are rather seen as a advocacy allies that lobby for the same or similar political objectives. The success or failure of their lobbying attempts are analysed against the background of external factors such as political opportunity structures and internal factors including group specific features. A more detailed insight into the theoretical framework of how to assess the influence of the pro-migrant groups is given in the following subsection.

## **1.2 Theoretical framework**

The theoretical framework upon which this doctoral research is based, is the resource dependence theory developed by Aldrich, Pfeffer, and Salancik in the 1970s (Aldrich and Pfeffer 1976; Pfeffer and Salancik 1978). According to them, for the fulfilment of their responsibilities, state organisations are always dependent on their environment. Thus, in

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<sup>5</sup> As anti-migration movements appear to have a predominantly nationalist and cultural focus, groups like Migration Watch UK (see <http://www.migrationwatchuk.org/>) operate at national level rather than becoming involved in the Brussels arena. They are therefore not considered in this study.

responding to these demands, actors of the environment are able to exert influence on the state organisations. Unlike the grand theories of European integration such as intergovernmentalism, institutionalism, neo-functionalism and multi-level governance, the advantage of the resource dependence theory is that it does not only consider official policy-makers like the EU institutions but also non-state actors such as pro-migrant groups. Moreover, by looking at the resources that policy-makers rely on, and the ability of non-state actors to provide them with the required resources, the theory concedes both parties the capability of co-shaping the EU asylum and migration policy. The original resource dependence theory has been adapted to the political system of the EU for this PhD thesis. In this context, it is first assumed that, rather than being self-sufficient authorities, the EU institutions rely on expert knowledge, support, and legitimacy. Just as the EU institutions are diverse in responsibility, size, organisation, and workload, so are their resource dependence structures. The Commission and the Parliament are expected to depend on all three resources, whereas the Council is supposed to be exclusively and only to a limited extent reliant on expert knowledge and support. It is further assumed that in order to get access to the EU institutions, pro-migrant groups need to provide them with expert knowledge, support, and legitimacy. Their ability to do so depends on their financial and personnel capacity, organisational structure, their political positioning, their ability to ally with political actors, the design of their participation structures, their representativeness and effectiveness as well as the basis of their argumentation. Thus, only if the EU institutions are dependent on expert knowledge, support, and legitimacy, will they be accessible to pro-migrant groups. Only if the groups are capable of providing the EU institutions with the required resource, can they use the access to exert influence on policy instruments.

### **1.3 Research Design**

For the assessment of the influence of pro-migrant groups, a multiple case study design is applied that comprises of the LTR Directive, the extension of the LTR Directive, the Qualification Directive, and the recast Qualification Directive. The cases have been selected to examine the effects of the decision-making procedure on the overall influence of the pro-migrant groups. While the two original directives were negotiated under consultation procedure, the recast Qualification Directive and the extension of the LTR Directive have been adopted under ordinary legislative procedure.

What is more, this research also features an embedded case study design that analyses the lobbying strategies of the different pro-migrant groups – research units – across the different cases. As explained above, 13 groups, which either lobbied on one or more case studies, were identified. The Starting Line Group, ECRE, ENAR, MPG, ILPA, and CCME lobbied on the LTR Directive. The number of groups actively engaged in extending the LTR Directive was lower – limited to ECRE, CCME, and AI Europe. As regards the Qualification Directive, it was ECRE, AI Europe, and CCOEMA that were involved in the policy-shaping process. Finally, AI Europe, CCOEMA, ECRE, EWL, the Red Cross, Asylum Aid, ILGA as well as TdH advocated on the recast Qualification Directive.

What all of the groups have in common, is that they tabled their recommendations on the directives, circulated them among the EU institutions, and met with EU officials to convince them of their ideas of what the LTR Directives and the Qualification Directives should contain. Their ability to get their ideas reflected in the decisions of the Commission, the Parliament, and the Council is therefore regarded as political influence. Since this phenomenon is not directly observable because decision-making processes at EU level are interweaved, the following operational concept has been developed. First of all, the recommendations of the pro-migrant groups were compared with the positions of the EU institutions that they addressed by tracing the decision-making process. Their recommendations were also compared with UN Conventions and further guidelines and suggestions tabled by the United Nations High Commissioner for Refugees (UNHCR) as well as court decisions on these issues. Secondly, the pro-migrant groups were asked to describe their satisfaction with the policy outcome and to assess their own influence. Thirdly, the EU policy makers that were involved in the negotiations were questioned about their cooperation with pro-migrant groups and about the reasons for that consultation. Finally, the EU officials were interviewed on their perception as to how influential the groups have been.

#### **1.4 Originality of the research project**

Even though the asylum and migration policies were not communitarised until the entry into force of the Amsterdam Treaty and initiatives aiming at the harmonisation of national standards among the EU member states have just recently been launched, political scientists followed these developments closely. However, current literature is lacking in detailed analyses of the driving forces in asylum and migration affairs and the evolution of certain policy outcomes. Instead, early studies on the initial efforts of intergovernmental coordination



and cooperation remained rather descriptive, whereas recent works engage more critically with the instruments of communitarising asylum and migration policies at EU level. These recent works assess the development of the EU asylum and migration policy, considering whether new initiatives have created better access to the EU and higher protection standards (El-Enany and Thielemann 2011; Hailbronner 2008, 2009; Kaunert 2009; Kaunert and Léonard 2012) or whether they have in fact contributed to the establishment of a fortress Europe (Brinkmann 2004; Dauvergne 2008; Guild 2003, 2004, 2006; Guiraudon 2000, 2003; Levy 2005; Maurer and Parkes 2007; Papagianni 2006). Nevertheless, the analysis of the harmonisation process of national asylum and migration legislation remains at the surface and does not address the different positions of EU policy-makers on particular asylum and migration instruments. Studies have found that, in terms of asylum and migration matters, the Council is the institution that subverts a truly rights based approach. With the empowerment of the Commission, Parliament and ECJ, there are now four institutions responsible for asylum and migration affairs whose realms of competence are comprehensive and interweaved. To learn about the evolution of asylum and migration policy outcomes, the positions of the different policy-makers need to be traced back and compared with each other. Only then can reliable statements be made about the provenance of certain provisions.

This doctoral research seeks to overcome that gap in the literature. To do so, it focuses on four case studies, which allows a comparison of the evolution of policy outcomes over time. As pro-migrant groups are at the centre of this study, in addition to inter-institutional power struggles, the influence of non-governmental actors is taken into account. In tracing back the policy-making process of the four directives this PhD thesis provides an detailed analysis of what was proposed by the Commission, how did the Parliament and the Council react on the proposals for the directives, and the stumbling blocks faced during the discussions. This study also reveals at which points of the decision-making process pro-migrant groups became involved, with which EU institution did they concur most and least and whether they were successful in convincing less likeminded EU officials of their views. This research further includes the guidelines and conventions of the UNHCR and court decisions that influenced the shaping of the four directives in its analysis. In so doing, this PhD thesis gives an encompassing overview of how the LTR Directive, its extension, the Qualification Directive, and its recast have emerged – an analysis whose comprehensiveness is unique. Theoretically, the research is based on the resource dependence theory, which allows the inclusion of both official EU policy-makers and non-governmental actors in its analysis. This detailed

examination is the consistent continuation of earlier studies, as it means one can pinpoint the actors that support the harmonisation of asylum and migration legislation within the EU and those that act as a blockage to said efforts. As such, this analysis helps explain where certain policy outcomes originate from and, thus, sheds light on EU policy-making processes that are usually not documented and require in-depth expert interviews.

The investigation of the influence of the pro-migrant groups and factors that affect their lobbying portfolio, moreover, constitutes a first evaluation of the advocacy work of the pro-migrant groups that are active in Brussels. Such an evaluation is still missing in the literature available. Previous studies are constrained to the effects of the political opportunity structures on the lobbying conditions of national groups and the requirements pro-migrant groups need to meet in order to lobby at EU level. Scholars are accordant that interest groups need to be highly professional in order to be able to monitor the comprehensive decision-making processes in Brussels and to liaise continuously and flexibly with prominent opinion leaders. But neither scholarly investigations nor self-assessments on the part of the pro-migrant groups have touched upon how successful the advocacy work of these groups actually is. As reasons for not evaluating their own lobbying performance, the interest representatives who were interviewed for this research project named limited capacities and time-constraints. Since they also face a constant high personnel turnover, however, they also emphasised how important such an evaluation would be for the development and professionalisation of their advocacy work. In times of high personnel turnover, the organisational memory of an interest group is particular weak. Information about the effectiveness of certain lobbying strategies, observations about the decision-making process, contact data of and personal contact to important EU officials risk going astray. Against this background, the representatives of the analysed pro-migrant groups showed themselves to be very interested in this research. According to them, the assessment of their influence over time helps them to learn from the past and adapt their lobbying strategies according to their internal possibilities and external political opportunity structures.

Hence, the added value of this research project is twofold: firstly, the precise examination of the positions of the involved decision-makers reveals the different institutional positions and identifies potential allies and opponents of the pro-migrant groups. Tracing the policy-making processes of the four directives, therefore, helps understanding the policy outcomes. Secondly, the analysis of the lobbying strategies of the pro-migrant groups and the

confrontation with their actual influence allows an evaluation of the advocacy work of the groups. From the critical reflection on the strengths and weaknesses of previous lobbying approaches, the advocacy work of the pro-migrant groups can be enhanced in order to achieve a greater effectiveness.

How those research objectives are going to be examined is outlined in the following subsection. Starting with the literature review, proceeding with the theoretical framework and the methodology, then leading over to the four case studies, and finally closing with a conclusion, the subsequent outline will introduce the purpose and structure of each chapter.

### **1.5 Outline of the PhD thesis**

This PhD thesis begins with a literature review whose purpose it is to place the research question of this PhD thesis in the wider scientific debate on the EU asylum and migration policy. Reviewing the literature, three major research strands have been identified: firstly, the necessity for a common EU asylum and migration policy; secondly, the development of said policy; thirdly, the involvement of pro-migrant groups in asylum and migration affairs. As for the former, scientific contributions are categorised into changes in the migration patterns, the growing attention for asylum and migration issues at national level, and the securitisation of asylum-seekers and migrants in response to the increase in issues related to migration. The section on the development of the EU asylum and migration policy begins with studies on early forms of intergovernmental cooperation and then leads over to research concerning the communitarisation of national asylum and migration affairs since the entry into force of the Amsterdam Treaty. This section also contains previous assessments of the contents of EU asylum and migration instruments. The final section of the literature review looks into the role of pro-migrant groups as an additional party that is involved in asylum and migration policy. It first traces back literature on the emergence of interest groups representing the concerns of migrants in different EU member states and across countries and portrays how those groups have responded to different political opportunity structures. It then engages with the requirements pro-migrant groups need to meet in order to get involved in the decision-making process at EU level. A final subsection exposes research findings on the lobbying repertoire of those pro-migrant groups that are active in Brussels. In so doing, the literature review acknowledges the richness of research conducted on the EU asylum and migration policy. However, it also demonstrates that pro-migrant groups have only recently been discovered as potential actors in the EU policy-making process. As such, the present PhD thesis does not

only speak to the current literature but also alludes to another crucial aspect of the EU asylum and migration policy; namely, the political influence of pro-migrant groups on concrete instruments.

Subsequent to the Literature review, comes the theoretical framework. Based on the research question that forms the basis of this doctoral research, the minimum requirements that the theoretical framework needs to meet to describe the influence of pro-migrant groups are defined. Next, the grand theories of European integration that have been utilised in the past to describe policy developments are scrutinised in terms of whether they are adequate for an analysis of the influence of pro-migrant groups. Owing to the weaknesses of the respective theories, the resource dependence theory that describes the interdependence between state and non-state actors is introduced as a more adequate framework. Following this, the chapter outlines the resource dependence structures of the EU institutions taking into consideration their duties, size, organisation, and workload. Further to that analysis, hypotheses about the dependencies of the EU institutions regarding expert knowledge, support, and legitimacy are made. The chapter then looks into the supply side of the resource dependence theory and develops a concept on how to assess the ability of pro-migrant groups to provide the EU institutions with expert knowledge, support, and legitimacy. In so doing, a theoretical framework is laid that ascribes both the EU institutions and the pro-migrant groups the potential of pro-actively shaping policy outcomes in asylum and migration affairs. Based on that framework, for each selected case study the influence of the groups can be assessed. As a further step, it is tested whether and to what extent the decision-making procedure under which the directives had been negotiated affected the overall influence that the groups exerted on the policy outcome.

As has been outlined above, influence – the core subject of this thesis – is a phenomenon that needs to be made observable in order to be assessed. The method chapter, therefore, describes the steps that are to be undertaken to address the research question on the influence of pro-migrant groups. First, the chapter addresses the ontological and epistemological assumptions that this PhD is based upon. In this context, ontology describes the different ways reality can be perceived, whereas epistemology refers to the methods available to gather knowledge about the reality. The method chapter then looks into the logic of inquiry or research strategy that is applied to link the theory to the empirical analysis. In a further step, the case study design that is chosen for this research is introduced and the strengths and weaknesses of case

studies are highlighted. In another section of the chapter, appropriate methods for the analysis of the influence of the pro-migrant groups and the factors that affect their influence are selected. At this point, it may be said that the methodology applied for this doctoral research comprises a combination of semi-structured expert interviews and the documentary analysis of primary and secondary literature. Further to the methodology, a framework is presented as to how to conceptualise and operationalise the phenomenon of influence. The chapter ends with ethical and legal issues such as access to documents, the protection of the confidentiality of interviewees, and the usage and storage of data that need to be considered.

After the basis for the empirical analysis of the influence of pro-migrant groups is laid, the following four chapters engage with the selected case studies: one, the LTR Directive; two, the Qualification Directive; three, the extension of the LTR Directive; four, the recast Qualification Directive. Each case study follows a similar outline. As an introduction to each case study, the background to the directive is explored. This includes the analysis of the conditions under which the Commission drafted its proposal for each directive and the brief presentation of the decision-making procedure that followed the drafting stage. The introduction of each case study further elaborates on the pro-migrant groups that were actively engaged in the relevant directive and summarises their lobbying strategies. Each case study then continues with an in-depth assessment of the influence of the pro-migrant groups on the relevant directive. Depending on the strategies that they pursued, their recommendations are compared with the positions of the Commission, the Parliament, or the Council. In addition to the analysis of the preference attainment, a self-assessment of the influence of pro-migrant groups is conducted and juxtaposed with a peer assessment on the part of the EU officials that were involved in the policy-making process of the respective case study. Another section of each case study engages with the factors that affected the influence of pro-migrant groups. Step by step the ability of pro-migrant groups to provide expert knowledge, support, and legitimacy is examined. Relating to the provision with expert knowledge, the interest groups are scrutinised for their annual budget, personnel capacity, and their organisational structure. In connection with the ability to provide the EU institutions with political support, the positioning of the groups is compared with the positions of the different EU institutions. Moreover, the groups are analysed for their access to the different policy-makers and the experience of allying efforts on the part of the EU institutions. For an assessment of the groups' ability to provide legitimacy, their participation structures, their representativeness throughout the EU, their effectiveness, and their basis of argumentation are

examined. As this comprehensive analysis draws only on the supply side of the resource dependence structures, each case study elucidates to what extent the different EU institutions were reliant on expert knowledge, support, and legitimacy. It is not until both the supply and the demand side of the resource dependence structures are thoroughly examined, that an estimation about the factors that affected the influence of the pro-migrant groups on the four directives can be made.

In a final chapter, the conclusions of the different case studies are brought together. Starting with the influence assessment of the pro-migrant groups, the results of the preference attainment assessment gained from the comprehensive documentary analysis as well as the interview results on the attributed influence are compared across the case studies. In doing so, more general statements can be made about the different levels of influence during the drafting stage of a directive and the further negotiations among the member states or between the Council and the Parliament. As a second step, the theoretical framework about the resource interdependence between the EU institutions, on the one hand, and the pro-migrant groups, on the other hand, is going to be recapitulated – juxtaposing the assumptions with the empirical findings from the four case studies. This cross-case study comparison allows to pinpoint the internal factors that are crucial to successfully lobby at the EU institutions. As a third step, the research question regarding the effects of the decision-making procedure on the influence of pro-migrant groups is addressed. Comparing the results across the four cases, the effect of the authority of an EU institution on its responsiveness towards pro-migrant groups can be analysed. As such, the study adds to the broader literature on the development of the EU asylum and migration policy. The conclusion closes with a discussion of the limitations of this study and suggests avenues for future research.

## **2. Literature Review**

### **2.1 Introduction**

There has been a growing literature on asylum and migration in Europe. In fact, as the EU member states intensified their commitment to the creation of European solutions to asylum and migration issues, the academic interest in this policy area increased as well. Highlighting the different aspects of the scientific debate and capturing particular research results, this literature review does not only identify what is already covered in the literature but also pinpoints what has not sufficiently been explored yet: the influence of pro-migrant groups on the EU asylum and migration policy.

In the first section, the scientific debate on the necessity of creating a European asylum and migration policy is depicted. The second section reviews literature on the development of the EU asylum and migration policy, whereas the third section reflects on the literature that looks into the active involvement of pro-migrant groups in policy-shaping processes. As the political system of the EU comprises multiple actors and multi-layered decision-making processes in which non-governmental actors appear to play an important role, in the conclusion of this chapter, it is demonstrated how further research on pro-migrant groups can deliver additional insight into the EU asylum and migration policy.

### **2.2. Necessity for an EU asylum and migration policy**

Reviewing the literature on the EU asylum and migration policy has revealed that a multitude of scholars have engaged with the necessity to establish a common European asylum and migration policy. More precisely, this section engages with academic explanations for, firstly, the changes in migration patterns; secondly, the growing attention for asylum and migration issues at national level; thirdly, the increasing securitisation of asylum-seekers and migrants on the part of politicians, bureaucrats, and media.

#### ***2.2.1 Changes in migration patterns***

As one of the main factors that prompted the heads of the EU member states to commit to a common asylum and migration policy, scholars refer to shifting migration patterns. While during the 19th and early 20th century, as the scholars (Boswell and Geddes 2011; Castles and Miller 2009; Freeman 1995; Geddes 2005; Guiraudon and Joppke 2001) explain, Europeans emigrated to North America or to colonial territories in the South; Europe has now become a destination for migrants from the South and East. In their studies, they specify that

countries with postcolonial links abroad such as Britain and France had already, by the late 1940s, experienced a growth of immigration from their respective colonies. In the 1950s and 1960s, Germany, the Netherlands, Austria, Sweden and Belgium all began recruiting labour migrants to foster their economy. From the 1990s, the southern European countries (principally Portugal, Spain, Italy, and Greece) started to become destinations rather than sources of immigration. Following the enlargement of the EU, countries such as Poland, the Czech Republic, and Hungary have followed suit. In recent years, however, as political scientists point out (Huysman 2000; Lindström 2005; Thränhardt and Miles 1995) governments have replaced their lax recruitment policies by more restrictive measures in response to increasing numbers of asylum-seekers, terrorist attacks, the continuing economic and financial crises, and unresolved issues regarding the integration of those migrants who currently live in the EU member states.

As reasons for the changing migration patterns in Europe, scientific works refer to neo-classicist concepts whereupon disparities in price and quantity between different regions form push and pull factors that affect the decisions of migrants to move. In this context, numerous studies (Castles 2004; Dover 2008; Nyberg-Sorensen et al. 2002; Zolberg 1989) name violent conflicts, human rights abuses, and poor government in Southern countries as push factors for cross-border migration. They further this list of factors by adding ethnic division, political and economic corruption, inert economic development, unstable prices, unemployment, as well as inadequate education and health systems. Referring to the authors, emigration is driven by the hope to survive violence, to find a place where the whole family can live in freedom and security, or to improve personal incomes. Moreover, governmental programmes that encourage emigration as a form of development policy, according to which remittances of migrant workers are expected to contribute to the development of the sending region, are also regarded as pull factors (Abella 1993; Appleyard 1989; Castles 2004; Saith 1997).

On the other hand, political scientists also identify incentives and supportive circumstances in receiving countries as factors that have an impact on migration flows. First of all, they (Castles 2004; Hollifield 1992; Miles 1993; Portes et al. 1999) put emphasis on the importance of media communication and networks between already settled migrants and relatives in their countries of origin, which both serve as transfer channels to help finding accommodation and employment in the receiving region. Secondly, it is suggested that regressive demographic developments in receiving countries and the related shortages in



European labour markets form further pull factors (Castles 2004; Jahn and Straubhaar 1998; Overbeek 1995). According to the authors, to meet the requirements of the labour market situation in the EU, additional migrant workers are needed. This especially concerns jobs which locals are not able or not willing to do. Thirdly, Jahn and Straubhaar (1998: 17) allude to those employers in receiving countries that hire illegal migrants because of rational economic considerations. By favouring cheap labour offered by illegal migrants, employers can significantly reduce personnel costs and avoid indirect social contributions. As Jahn and Straubhaar (1998: 28) illustrate, despite the risk of getting punished and caught, clandestine labour appears to be a pull factor because salary and working conditions are still preferable to the conditions in some countries of origin. Finally, as Castles (2004: 214 et seq.) concludes, politicians are aware of the shortages in the European labour markets. Rather than fighting illegal migration rigorously, some countries therefore respond with lax immigration control mechanisms or frequently granted amnesties.

### ***2.2.2 Growing attention for asylum and migration issues at national level***

Against the background of shifting migration patterns and the identification of root causes of migration, a second strand of academic works deals with the growing attention for asylum and migration issues at national level. In this subsection, literature that explores the development of national migration policies – from an insignificant policy towards an important one – is reviewed. As part of that observation, authors engage with the role of different interests and the balance of power among them.

To begin with, some authors (Freeman 1979, 1995; Katznelson 1973; Messina 1990) agree that migration issues used to be underrepresented both during and after election campaigns. During election campaigns political parties did not include migration issues in their election manifestos and as a result migration issues were largely excluded from the political agenda of the subsequent legislative period. In contrast, non-governmental actors are described as having been interested in migration matters longer than politicians. Industrialists who are dependent on migrant workers and service providers who do business with transnational communities appear to have long been in favour of liberal immigration policies. Whereas local workers who compete with foreign workers for jobs seem to genuinely oppose too lax or unspecified immigration policies.

Other works (Freeman 1995; Hollifield 1992; Kindleberger 1967) further elaborate that as cross-country migration has changed in the past decades so has the attitude of society and

decision-makers towards migration. According to them, during the initial inflows migrants were regarded as an additional workforce that contributed to the economic growth of the receiving country's economy. At this stage, immigration policies used to be liberal because the number of those benefitting from migrant workers outnumbered those who opposed immigration. This is because, as Freeman (1995: 885) and Perlmutter (1996: 375) point out, migration matters produce diffused costs for the opponents of immigration but at the same time create concentrated benefits for the proponents. Employers, business associations, or individual firms were more successful in expressing their interests to politicians than poorly organised employees.

This phase of the migration process, however, is usually followed by family reunion and chain migration, which brings the issue of integration onto the agenda. In countries where the government does not respond adequately to integration problems, the balance of power between the different interest groups is likely to change. While opponents of immigration take advantage of influencing the general opinion on migrants and articulate their own claims, previous beneficiaries of migration have no interest in hiring migrants during times of recession and refrain from advocating for migrant interests. Reflecting on the migration history of Germany, France, the Netherlands, and the UK, scholars (Bale et al. 2011; Green 2007; Guiraudon 1997; Hampshire and Bale 2012; Merkl 1989; Perlmutter 1996) affirm that during times of economic growth there is a great need for migrants as additional workers; thus, beneficiaries of migration can easily influence political decisions. During recessions, in contrast, the costs of migration rise and government seeks to protect the jobs of its citizens and reduce the strain on public services. Consequently, the impact of proponents of liberal migration policies decreases.

### ***2.2.3 Securitisation of asylum-seekers and migrants***

With the growing importance of asylum and migration policies in Europe, the public opinion on asylum-seekers and migrants has changed abruptly. Until the early 1970s, as phrase it, migration was presented without any negative connotation. A migration-crime nexus was regarded a taboo for ethnic considerations but also because official statistics disproved such a linkage. As turning point Guiraudon and Joppke (2001: 16-17) refer to the mid-1970s when governments imposed recruitment stops for migrant workers in many European countries. Leaving unwanted migrants without any legal opportunity to enter and reside in Europe, there appears to be a growing willingness of taking illegal steps to get to Europe. The supposed

danger of immigration, however, has been overstated or even misused by politicians, bureaucrats, and the media, as the review on the literature concerning the securitisation of asylum-seekers and migrants will show.

Firstly, scholars (Bigo 2001b; den Boer 1995; Huysman 2000; Martiniello 1992; Thränhardt and Miles 1995; van Dijk 1993; Weaver et al. 1993) suggest that national governments have pursued the strategy of construing migrants as threats to distract the attention of their constituency to migration related problems. They name three areas in which migrants are construed as threats by decision-makers: internal security, cultural security, and the welfare state. As regards the issue of internal security, politicians across Europe and from different political angles, bureaucrats, and the media are revealed to blindly equal immigration to serious crimes such as trafficking in mass destruction and nuclear weapons, radicalisation, terrorism, or money laundering and minor crimes like urban delinquency and incivility. Some reporters are even said to have paid people to act as criminal migrants to draw the attention of the public to issues related to immigration and integration and biased public opinion. Moreover, reinforced external border controls are presented as a solution to track impending cross-border crime that could otherwise be overlooked in the EU Schengen system (Battegay and Boubaker 1993; Bigo 2001b; Butterwegge 1996; Chutterbuck 1992; Horchem 1995; Huysman 2000).

In addition to the above listed security concerns, political scientists (Battegay and Boubaker 1993; Bigo 2001b; Butterwegge 1996; Huysman 2000; van Dijk 1993) cite voices that worried about the homogeneity and identity of the society in the receiving country. Purposely overstating the actual number of incoming migrants, politicians and the media are said to construe migrants as a menace to European identity. According to them, at times where identity and homogeneity decreasing, there is a great need for more restrictive immigration measures to maintain political and social coherence.

Furthermore, studies (Battegay and Boubaker 1993; Bigo 2001b; Butterwegge 1996; Huysman 2000) reveal that both politicians and the media accuse illegal migrants of jeopardising the European welfare state by not paying taxes and fees while still using public goods. Especially with a view to asylum, it is often reported that many asylum-seekers do not face persecution or serious danger in their country of origin but rather pretend to be in need of refuge. To counteract those so-called 'economic refugees' who seek welfare benefits,

politicians and the media call for a strong restriction of any rights to welfare provisions in order to reserve scarce goods for citizens.

All reviewed authors strongly distance themselves from the statements outlined above. They emphasise that those statements are construed by politicians and bureaucrats and overrepresented in the media to sensitise the public for the danger that migrants allegedly pose to Europe in order to be able to adopt more restrictive measures. For example, they (Bermejo 2009; De Haas 2007; Huysman 1995) criticise that the threatening people are never defined precisely. Mass media, politicians, and bureaucrats often use inadequate terms to describe the inflows, which exceed the real number by far. In his seminal works, Bigo (2001b, 2001a) questions the actual menace that migrants constitute to the internal security of Europe. Instead, he believes that police and security agencies, in the fierce competition for personnel resources, funding, and technology, construe migrants as a greater danger to security than they actually are to ensure the survival of the respective agency. Dover (2008: 116-118) adds to this argument that threats emanating from sending countries; e.g., human, arms, or drug trafficking need to be interpreted against the background of money laundering and trade in light weaponry from Europe to sending countries, particularly failed states. Huysman (2000: 762) and Martiniello (1997: 14) further doubt that migrants could endanger European identity, as even before Europe had become a destination for migrants, its social, cultural, and political identity was not homogeneous. In fact, national identity has always been changing and, therefore, multiculturalism must not be regarded as a threat to cultural security.

In this section, numerous works that engage with the global, European, and national developments that led up to the harmonisation of asylum and migration policies in Europe have been compiled. As outlined by the scholars, while nation states used to manage migration on an ad-hoc basis according to their labour needs, changing migration patterns prompted governments to deal with migration matters more considerably and proactively. More importantly, authors have observed a tendency on the part of politicians, bureaucrats, and the media to securitise asylum-seekers and migrants as threats to the receiving countries in the attempt to receive support for more restrictive policies.

### **2.3 Development of the EU asylum and migration policy**

This section engages with the scientific examination of the harmonisation process of asylum and migration matters. The first part deals with early forms of intergovernmental cooperation before the entry into force of the Amsterdam Treaty, the second part reviews works on more

recent harmonisation efforts. The third part juxtaposes opposing views on the question of whether the integration of this policy area has resulted in the establishment of a fortress Europe.

### ***2.3.1 Early forms of intergovernmental cooperation***

Regarding this first phase of early coordination and cooperation, the reviewed authors identify the Schengen and the Dublin Convention as well as the Maastricht Treaty as important steps in the creation of a common asylum and migration policy.

To start with, political scientists agree that it was not until the 1990s that the EU member states began to intensify their integration efforts in asylum and migration matters. In fact, according to ter Steeg (2006: 68) and Stetter (2000: 85), before the introduction of the Schengen Convention the member states only touched upon asylum and migration in their decision to create joint police operations and an ad hoc Working Group on Immigration to deal with external border controls, visa coordination, and information exchange. Greater importance, however, is attached to the 1990 Schengen Convention and the 1990 Dublin Convention (den Boer 1995; Geddes 2008; Monar 2012; Overbeek 1995; Santel 1995; Stetter 2000; ter Steeg 2006). The Schengen Convention introduced the following provisions: first, the abolition of internal border controls of EU citizens and TCNs; second, the harmonisation of visa policies and conditions of entry; and third, the launching of cooperation on asylum legislation including the exchange of asylum data. The Dublin Convention introduced minimum standards for the application for asylum. The studies in particular single out the regulation on the responsibility of the member state through which an applicant enters the EU to decide upon an application for asylum as being a major achievement. Beyond that, however, they explain that for the full harmonisation of asylum matters, common procedures for the examination of asylum applications are required.

The entry into force of the 1993 Maastricht Treaty is regarded as a gate opener for the integration of asylum measures into community policies (Brinkmann 2004; Monar 2012; Stetter 2000). The Treaty introduced a uniform visa design and a list of third countries for whose citizens visas are obligatory to enter the EU. Measures determining, amongst others, the conditions of entry and residence for TCNs as well as joint border controls remained subjects of intergovernmental cooperation. According to Brinkmann (2004: 183), another achievement of the Maastricht Treaty is the introduction of the area of freedom, security and

justice, as it guarantees free movement, fundamental rights, and non-discrimination to EU citizens and TCNs.

Nevertheless, this form of intergovernmental cooperation on asylum and migration matters has been widely criticised for having delayed the integration process in these areas. In her critical examination, Mester (2000: 44) argues that unanimous voting in the Council did not only produce lowest common denominator agreements but also led to the adoption of recommendations, joint actions, and agreements which do not constitute legally binding instruments. Apart from that, Lindstrøm (2005: 590) criticises that while asylum and migration policies were developed within the second and third pillar of the EU, measures to implement these decisions formed part of the first pillar. The author further criticises the then policy-shaping procedures for having interdicted any parliamentary and judiciary scrutiny. While the Parliament only had the right to be consulted, the jurisdiction of the ECJ was restricted to international conventions. Finally, since the negotiations in the second and third pillar did not produce EU law, the Commission did not hold the right to monitor the compliance of the member states.

Hence, instead of choosing an effective form of promoting the integration of asylum and migration matters, scholars (Brinkmann 2004; Geddes 2008; Guiraudon 2000; Stetter 2000) accuse the EU member states of having calculatedly opted for the form of cooperation that suited their own interests best. Intergovernmentalism allowed the heads of government to engage all EU member states in minimalist cooperation to compensate for the abolishment of internal border controls. Beyond that, however, the member states remained in charge of their national migration policy, which they could mould to the needs of their labour market and individual cost-benefit calculations.

### ***2.3.2 Trends towards communitarisation***

As the member states intensified their efforts in establishing a common asylum and migration policy, so did the scholarly analysis of the subsequent developments; namely, the Amsterdam Treaty, the Lisbon Treaty, and concrete policy programmes. In the following subsections, the evaluation of the different steps towards the communitarisation of asylum and migration affairs is reviewed.

Political scientists (Brinkmann 2004; Geddes 2008; Kaunert and Léonard 2012; Märker 2004; Niemann 2008; Stetter 2000) agree that the 1999 Amsterdam Treaty forms the milestone in

the shaping of the common EU asylum and migration policy because it incorporates asylum and migration issues as well as the Schengen and Dublin Conventions into the *acquis communautaire*. More precisely, the authors regard the arrangements to abolish the internal borders of the EU within five years as particularly important. Along with that, the scholars name joint external border controls and joint operations against international crime as crucial measures on the way to a common asylum and migration policy. With regard to the authorities of the different EU institutions, the authors present themselves satisfied with the gradual empowerment of the Parliament, the introduction of qualified majority voting (QMV) in visa and asylum affairs, and the granting of the exclusive right of initiative to the Commission. As Guiraudon (2003: 276) explains, the Amsterdam Treaty also brought an end to arbitrary actions of the executive branch and provided the ECJ with the right of preliminary ruling, thus, enabling it to further extend its jurisdiction by linking judicial subjects concerning migration matters to the four freedoms of the single market.

Further constitutional innovation has been ascribed to the Nice and the Lisbon Treaty. The provisions of the 2004 Nice Treaty introduced QMV for legislation dealing with legal migration, visa policy, and the integration of third country nationals. The 2009 Lisbon Treaty, finally, pools all provisions pertaining to Justice and Home Affairs (JHA) in Title V ‘Area of Freedom, Security and Justice’. Furthermore, the Treaty entitles the Parliament to share with the Council the right to legislate on border, asylum, and migration policies under QMV (Boswell and Geddes 2011; Kaunert 2010; Kaunert and Léonard 2012; Märker 2004; Niemann 2008; Papagianni 2006).

Where the content of the EU asylum and migration policy is concerned, the reviewed literature (Boccardi 2002; Boswell and Geddes 2011; Geddes 2008; Kostakopoulou 2010) attaches great importance to the three action plans that the member states have agreed upon since 1999. The Tampere Programme that covered the period from 1999 until 2004 included the following objectives: promotion of partnerships with countries of origin, establishment of the CEAS, alignment of the rights of TCNs to those of EU citizens, and the improvement of migration management. The subsequent Hague Programme (2005-2009) concretised the idea of migration management as a balanced and integrated approach to fight cross-border crime and further included the improvement of national integration policies. In addition to the goals of the previous programmes, the Stockholm Programme (2010-2014) looks to use the effects of migration to develop sending countries, to harmonise admission policies, asylum

procedures and protection statuses as well as to introduce a system of burden sharing as regards the admission of refugees.

As the scientific debate on the content and form of the concrete asylum and migration instruments is being reviewed thoroughly in the next subsection, at this point the review engages with the concerns of academics about the way constitutional changes and reforms in asylum and migration matters have been decided upon. Hayes-Renshaw and Wallace (2006: 225-28) state that until the entry into force of the Lisbon Treaty the Council could adopt asylum and migration instruments widely unscrutinised by the Parliament. Regarding the monitoring of the implementation of pre-Lisbon legislation, Papagianni (2006: 268) complains about the exclusion of national parliaments and sub-national governmental authorities in many EU member states. Thus, even though asylum and migration policies have great implications for EU citizens, legislation in this area is reported to have long been adopted without any significant input from the civil society. Niessen (2002: 79-83) and Curtin (2001: 37-43) expand that argument; claiming that the dominance of the Council and the lack of transparency in that policy area have long prevented non-governmental actors from monitoring and engaging in the policy-making processes at EU level. Despite the current obligation of making policy documents publicly available, the authors assume that access barriers do still exist, as the member states prefer to treat national positions on sensitive issues like asylum and migration confidentially.

### ***2.3.3 Assessing EU asylum and migration instruments: fortress Europe or a truly humanitarian approach?***

Many scholars have engaged with the assessment of the asylum and migration instruments that have been adopted in the course of the harmonisation process in this area. In their evaluation, they reflect on the following directives: the Temporary Protection Directive, Qualification Directive, Reception Directive, Procedure Directive, and Long-term-Residents Directive. While the Temporary Protection Directive harmonises temporary protection status for displaced persons in the context of mass influx, the Qualification Directive sets minimum standards for refugee and subsidiary protection status. The Reception Directive and the Procedure Directive, in turn, introduce common standards on various aspects of the reception of asylum-seekers and the granting and withdrawing of refugee status. Finally, the Long-term Residents Directive determines the eligibility criteria for said status and the rights attached to



it. The verdicts of the reviewed scholars on the above listed directives, however, vary significantly.

Many political scientists argue that the EU asylum and migration policy has been mostly restrictive – aiming to reduce the numbers of immigrants and asylum-seekers coming to Europe (Brinkmann 2004; Dauvergne 2008; Guild 2003, 2004, 2006; Guiraudon 2000, 2003; Levy 2005; Maurer and Parkes 2007; Papagianni 2006). To explain that phenomenon, Guiraudon (2000, 2003) developed the concept of ‘venue-shopping’, whereupon national policy-makers that intend to adopt more restrictive asylum and migration policies but encounter liberal pressures at national level, increasingly appeal to the European arena to circumvent those obstacles.

According to Dauvergne (2008: 153 and 55), however, ‘[t]he spectre of Fortress Europe is only partially correct’. Even though she agrees with the aforementioned objective of some EU member states to restrict entrance to the EU, she also acknowledges that the harmonisation of asylum instruments in particular has aligned European protection standards to international human rights law.

Papagianni (2006: 264-65), in turn, claims that the European migration policy is generally driven by security concerns. As an example, the author refers to the Long-term Residents Directive that, rather than granting civic and political rights to TCNs, expands the grounds on which long-term residence is to be refused. Drawing on the institutional setting in which asylum and migration legislation is negotiated, Brinkmann (2004: 191 and 97) argues that the ambitious attempts of the Commission to significantly increase the protection standards in Europe have widely been sabotaged by the Council – resulting in solutions that only represent the lowest common denominators. Papagianni (2006: 241) even goes one step further claiming that over time the Commission has become more pragmatic in dealing with the Council. In order not to risk that a directive will be rejected by the Council altogether, the Commission now accepts compromising agreements that leave far behind what the Commission had initially proposed.

Opposed to the above viewpoints on a ‘race to the bottom’, another set of works assesses the harmonisation efforts in the area of asylum and migration as having hindered some EU member states to uphold or introduce more restrictive measures (El-Enany and Thielemann 2011; Hailbronner 2008, 2009). In addition, they emphasise that there is no evidence that

member states with comparably liberal asylum systems have lowered their protection standards after the introduction of the minimum standards in order to render themselves ‘less attractive’ to asylum-seekers. The Qualification Directive particularly, according to many scholars (Ferguson Sidorenko 2007; Kaunert 2009; Kaunert and Léonard 2012; McAdam 2005), has significantly improved the international protection system within the EU. As evidence, they list the introduction of a common subsidiary protection status that put an end to national discretion as well as the inclusion of non-state actors as ‘actors of persecution or serious harm’. Moreover, the Temporary Protection Directive is regarded as facilitating access to international protection for persons requiring it in situations of ‘mass influx’ (Garlick 2010). The Reception Directive is also looked upon favourably as it provides refugees with freedom of movement within the territory of the host state or within an assigned area and constricts the grounds for detention to identity checks only. The Procedure Directive is also said to have required several EU member states to improve their asylum practices (Ackers 2005; El-Enany 2008; Fullerton 2005; Monar 2005). Amongst others, the directive facilitates access to the asylum process providing asylum-seekers with the right to interview, interpretation, and legal assistance. Thus, as the majority of EU member states were using more restrictive practices before the adoption of the directives, it is concluded that protection standards in Europe have increased (Hailbronner 2004; Kaunert 2009).

In the course of this subsection, the main steps towards the development of a EU asylum and migration policy have been explored. According to prominent scholars in the field, after a long period of intergovernmental cooperation, the entry into force of the Amsterdam Treaty and Lisbon Treaty significantly improved the conditions for shaping asylum and migration policies at EU level – empowering the Commission, the Parliament, and the ECJ. Nevertheless, previous harmonisation efforts are received differently by the social scientists. While some authors deem the new instruments to be driven by security concerns and to create further and more restrictive admission requirements for migrants, others regard the directives as having overall raised the standards, particularly in the area of asylum.

## **2.4 The involvement of pro-migrant groups in asylum and migration affairs**

This third section of the literature review engages with scientific works that look into the role of non-governmental actors, more precisely pro-migrant groups that are active in asylum and migration affairs. Firstly, studies about the effects of political opportunity structures on national pro-migrant groups are depicted. Secondly, literature that engages with the

requirements that pro-migrant groups need to meet to organise at EU level is reviewed. Thirdly, works analysing the lobbying repertoire applied by Brussels-based pro-migrant groups are reflected upon.

#### ***2.4.1 Pro-migrant groups at national level***

A multitude of political scientists have engaged with the mobilisation of pro-migrant groups at national level – albeit referring to different actors. The main characteristics by which they are defined are their constituency, their political objectives, and their regional scope. Most of the studies engage with different classifications of groups. Some works (Giugni and Passy 2004; Statham 1998) differentiate between collective action by migrants and ethnic minorities and collective action by members of the dominant culture. Other studies (Eggert and Giugni 2010; Giugni and Passy 2004; Koopmans and Statham 1998; Koopmans 2001) further concretise the constituency of the groups as e.g. labour unions, employers, churches, racial and religious groups, or national and ethnic groups. In addition, the groups have been categorised as e.g. anti-racist mobilisation, pro-migrant mobilisation, and xenophobic mobilisation – corresponding to their objectives (Koopmans 2001; Statham 1998, 2001). Finally, the groups have been differentiated along their regional scope in e.g. subnational, national, or European groups (Guiraudon 2001; Koopmans et al. 2005a).

Although the authors look at different groups, the majority of the studies investigate the factors that promote the emergence of pro-migrant groups. A first set of studies looks into the characteristics that activists need to feature in order to establish and maintain groups. The authors (Eggert and Giugni 2010; Schrover and Vermeulen 2005) identify socio-economic factors such as civic and language skills and occupational status as well as sociodemographic factors like education as aspects that determine the emergence of pro-migrant groups. With regards to the viability of pro-migrant groups, Schrover and Vermeulen argue that a too high personnel turnover prevents groups from stabilising procedures and formalising the organisation. The same has been said for groups that assemble too many interests, which makes compromising difficult. Groups that are too small, in turn, might not be capable of establishing formal organisation structures (Schrover and Vermeulen 2005; Vermeulen 2005).

A second set of studies compares the mobilisation on asylum and migration matters in different European countries to examine how political opportunity structures affect the emergence of pro-migrant groups, their strategies, and claims. The most prominent case studies are Britain, Germany, France, Switzerland, Italy, and the Netherlands. Those studies

(Giugni and Passy 2004; Ireland 2006; Koopmans 2004; Koopmans et al. 2005b; Statham 1998) engage with the effects that access to citizenship and the entailed cultural rights have on the mobilisation and claims-making in asylum and migration matters. In countries where migrants are excluded from political participation and have no institutionalised access to policy-makers, pro-migrant groups tend to address homeland issues and are mainly directed against xenophobic and racist violence. In states that grant migrants social and political rights, where cultural differences are recognised, and where the political authorities offer participation structures for migrants, the groups mobilise on the basis of their racial and cultural difference from the host society and request extended minority rights. In the same way as the claims made by immigrants are determined by the citizenship regime so is the means that groups use. In countries with an open civic territorial citizenship that accepts cultural pluralism, pro-migrant groups tend to articulate their demands exclusively through institutional channels. Instead of making public statements and using conventional actions, in rather closed ethno-cultural states that require migrants to assimilate, the tools of pro-migrant groups are limited to protest action and sometimes even confrontational public demonstrations.

Besides the intensive investigation of the factors that determine what types of pro-migrant groups are established, what strategies they pursue, and what claims they make, only a few studies look into the factors that either increase or hinder the influence of pro-migrant groups on policy-makers. Above all, the authors draw on the political orientation of national governments. As ideal allies for pro-migrant groups they name leftist parties like the Socialists or the Greens as they share similar views on admission and integration policy. Parties of the right of the political spectrum, on the contrary, are supposed to be less receptive towards the claims of the pro-migrant groups as they favour more restrictive policies (Giugni and Passy 2006; Koopmans 2004). Other factors are related to the economic and sociodemographic situation of the country. At times where the economy flourishes, pro-migrant groups are more likely to benefit from state subsidies than during times of cuts in public spending. At times where immigration is needed to respond to shortcomings in the labour market, pro-migrant groups are expected to be able to exert influence on admission policies. When the inflow of immigrants is perceived too high, if at all, demands concerning the integration of migrants are supposed to be successful (Giugni and Passy 2006). In his case study on interest movements in Italy, Statham (1998) deals with another aspect – the absence of migration matters in the public discourse. As Italy has only recently turned into an

immigration country whose politicians did not pro-actively recruit labour migrants, migration issues have long been neglected in the public debate. In fact, it was pro-migrant and anti-racist groups that brought migration issues onto the political agenda. According to Statham, interest movements can be successful, if they are able to raise the media attention and are dominant in the debate.

#### ***2.4.2 Requirements for organising at EU level***

Whereas political scientists that investigated the strategies and policy-venues used by pro-migrant groups in the 1990s were sceptical of a trend towards the Europeanisation of those groups, more recent studies retort that a new network of pro-migrant groups has managed to break into the European arena in Brussels. In their cross-country comparisons of pro-migrant groups in Britain, Germany, France, Switzerland, and the Netherlands in the 1990s, Koopmans and his collaborators did not find any evidence that pro-migrant groups had extended their advocacy work beyond the nation-state. What is more, the analysis of the campaigns of the pro-migrant groups reveals that they did not frame their claims in a European context either. In fact, their results show that it was state actors that appealed to EU policy-makers at that time (Koopmans and Statham 1998; Koopmans et al. 2005a).

The fact that the groups did not approach EU institutions, though, does not mean that they exclusively focussed on the country in which they were based. While some groups maintained relations with groups in their country of origin, others cooperated transnationally with other activists in Europe to exchange experiences (Guiraudon 2001; Ireland 1991; M. Miller 1981; Niessen 2002). The transnationalisation of the groups has been subsidised by the Commission and the Parliament because they believed that European integration is not detached from non-EU citizens and because they were interested in expanding their own realm of competence in asylum and migration affairs. Together with pro-migrant groups, these EU institutions sought to establish European solutions for the Europe-wide issue of immigration (Geddes 1998, 2000; Guiraudon 2001, 2003). Rather than using this funding to get involved in EU policy-making processes, a case study on Italian and Spanish groups for instance uncovers that they continued trying to exert influence on national authorities. According to the author, those groups did not perceive the European arena as an autonomous policy-venue or did not have sufficient knowledge about the policy-making processes at EU level (Danese 1998).

Not even the shift in competencies in asylum and migration policies that empowered the Commission, the Parliament, and the ECJ encouraged many national movements to intensify

their activities at EU level. First of all, as Niessen (2000) explained, many of the national pro-migrant groups have long regarded the European arena as a policy-venue at which member states call in order to adopt more restrictive asylum and migration measures and therefore avoided Brussels in their own advocacy work. Moreover, examining the structure, action repertoire, and basis of argumentation of the national pro-migrant groups, political scientists (Danese 1998; Geddes 1998; Gray and Statham 2005; Guiraudon 2001; Monforte 2009) agree that these types of groups are poorly suited for responding to the procedures at EU level and the needs of the EU institutions. As the authors reveal, most of the national groups are grass-root movements that are oriented towards mobilising public opinion through demonstrations and petitions. Their claims are politicised and framed according to the national situation in which they operate; e.g., the logic of citizenship of the respective country. Furthermore, the groups are described as being focussed on their activist basis and, therefore, lacking an appropriate organisational structure.

What is necessary for the organisation at EU level, as those studies point out, is the capability of being in frequent contact with the different EU policy-makers in order to keep informed about the proceedings and progress of decision-making processes. Only groups that employ asylum and migration experts and maintain a secretariat in Brussels are able to liaise continuously with EU opinion-leaders and can anticipate policy initiatives. Moreover, as the authors emphasise, transnational networks or umbrella groups with members in different EU member states are more likely to provide the EU institutions with the information that they need to draft European solutions for national asylum and migration issues. As a consequence, rather than national grass-root movements, the studies refer to professionalised lobby groups, international NGOs and European coordination of national associations as groups that are able to operate at EU level. As examples, recent works list the Starting Line Group, the Churches' Commission of Migrants in Europe, the Migration Policy Group, Amnesty International, the Red Cross, or the European Council on Refugees and Exiles that do not only represent national organisations but also cooperate with each other in networks such as the European Union Migrants Forum, the Odysseus network, or the Platform on EU Migration and Asylum Policy. National groups, on their part, even though they are not well-suited to get involved in decision-making processes at EU level, can stay informed about new initiatives by becoming members of the Brussels-based organisations.

#### ***2.4.3 The lobbying repertoire of pro-migrant groups active in the EU arena***

The studies listed above, however, only engage with the capacities that pro-migrant groups need to possess in order to be effective at EU level. They do not elaborate on the actual lobbying repertoires of these groups and on their cooperation with the EU institutions. In fact, it is practitioners employed with these groups who have the necessary insights into their organisation that have added to the previous literature. According to them (Chopin 1999a; Niessen 2000, 2002), Brussels-based pro-migrant groups regard it their responsibility to open the debate on concrete issues and ensure that these issues are included in the European agenda on asylum and migration. Furthermore, it is their duty to convince relevant policy-makers that the best way of confronting issues with national asylum and migration practices is to create European legislation. In order to ensure that the concerns of migrants, asylum-seekers, and refugees are considered in those instruments, reference documents need to be formulated that serve as guidance in the inter-institutional negotiations. Thus, instead of responding to new policy initiatives, pro-migrant groups at EU level are described as being pro-actively involved in the shaping of these policy instruments.

The practitioners (Chopin 1999b, 1999a; Niessen 2000) emphasise that in order to exert influence at EU level Brussels based pro-migrant groups try to disseminate their recommendations widely among all relevant European and national policy-makers. According to them, it is essential to continuously establish contacts with the officials involved in the negotiations and to study their attitudes towards their claims in order to find out from which policy-makers it is likely to expect support or opposition. Whereas when liaising with Commission officials and Members of the European Parliament (MEPs) it is crucial for pro-migrant groups to be based in Brussels, the experts stress that the position of the Council can only be affected by lobbying national politicians via national contacts in the EU member states. For this purpose, as the interest representatives explain, national member organisation or partners are informed about the overall objectives of a network or an umbrella group and provided with an argumentation structure to be used as guidance in the lobbying campaigns. A plausible justification of the claims that the groups raise, the experts agree, is crucial in order to be influential at EU level. Therefore, pro-migrant groups appear to refer to international human rights obligations to promote equal treatment of TCNs. Moreover, they highlight the involvement of TCNs in economic activities as well as in social and cultural life from which the EU may benefit and which justifies the alignment of the rights of TCNs to those of EU citizens (Chopin 1999a; Niessen 2000).

The actual influence of the described advocacy work of pro-migrant groups at EU level, again, is not examined in the literature. Rather than systematically contrasting the recommendations of the groups with the instruments adopted at EU level, experts of those groups (Chopin 1999b; Niessen 2002) illustrate how they can add to the decision-making process. They refer to long lasting expertise in national immigration and integration policies and problems with national practices. In addition to claiming to be a supplementary source of information for EU policy-makers, they argue that pro-migrant groups also constitute a source of legitimacy.

This section has engaged with numerous case studies on pro-migrant groups in different EU member states. It has revealed how diverging political opportunity structures affect the mobilisation and claim-making of the groups. Moreover, the section has reflected upon the characteristics that groups need to feature in order to lobby at EU level. According to the authors, rather than national organisations, it is mainly umbrella groups or international NGOs that use the European arena as another venue for their advocacy work because their funding and organisation better matches the demands of the EU institutions.

## **2.5 Conclusion**

What this literature review has clearly illustrated is that numerous works have dealt with the development of the EU asylum and migration policy. In fact, there is a rich literature covering investigations of the reasons that provoked the harmonisation process, critical assessments of the various steps that led up to the common asylum and migration policy, and the analysis of the involvement of non-governmental actors in the shaping process of said policy. The first part of the literature review uncovered that the harmonisation of asylum and migration matters has become necessary because of changing migration patterns that turned the EU into a destination region for migrants. It has also shown that as immigration increased so did the interest of politicians, bureaucrats, and the media. Many regard immigration as a threat to the internal security of the EU member states. As a consequence, the call for joint responses to ensure the security in Europe has grown louder. The second part of the literature review portrays the critical scholarly assessment of the different steps of the harmonisation process. It entails the major reforms on the way to a common asylum and migration policy but also quotes those voices that criticised the manner the reforms have been introduced, the content of some reforms, and the intention behind adopted legislation. The third part of the literature review, analyses those works that deal with non-governmental actors that try to influence



policy decisions in the area of asylum and migration. It contrasts the findings that literature offers on the lobbying strategies of national and European pro-migrant groups.

The studies on pro-migrant groups are a crucial element of the literature on the EU asylum and migration policy. The fact that numerous scholars have engaged with pro-migrant groups and ascribe them the capacity of using political opportunity structures to effectively make their claims confirms the opinion of those authors that are convinced that decision-making within the political system of the EU is multi-layered and does not exclude non-governmental actors (Blatter 2001b; Hooghe 1996; Kohler-Koch and Eising 1999; Marks 1996). What both scholars of the pro-migrant groups and proponents of the multi-level governance approach have in common is that they ascribe non-governmental actors an active role in the European decision-making process but at the same time they miss evaluate that role.

The extensive analysis of the advocacy work of pro-migrant groups active at EU level and their cooperation with EU and national policy-makers, however, would provide crucial insights into how decisions on asylum and migration legislation have been reached. Tracing concrete policy-making processes would uncover the different attitudes of the involved officials towards asylum and migration and towards pro-migrant groups. Who are the driving forces in adopting asylum and migration legislation and what are the attitudes of the different parties are questions that are not officially documented. A close retracing of how the content of selected directives has changed during the inter-institutional negotiations helps to better understand the development of the EU asylum and migration policy. Including pro-migrant groups into this analysis is a vital undertaking. To date, scholars have solely confirmed that pro-migrant groups, because of their comprehensive on the ground expertise in asylum and migration practices, have added to the information that the EU institutions require to propose and decide about new legislation in this area. To what extent their expertise and recommendations have influenced the decisions of the EU institutions, however, is not analysed in the existing literature. Previous studies have suggested that the Commission and the Parliament appear to be more responsive towards the claims of pro-migrant groups than the Council is. But is that true for all EU member states or do some states in fact support the ideas of the groups? And assuming that the influence of the pro-migrant groups towards the Council is marginal, does that mean that their overall influence on asylum and migration policy is limited?

Hence, if one considers the political system of the EU to be multi-layered and policy decisions as the result of interactions between the member states, the EU institutions, and non-governmental actors, one has to look into these interactions more carefully. This is best done by tracing the decision-making process of the EU institutions on selected case studies while at the same time investigating the advocacy work of pro-migrant groups on those case studies. This approach allows us to shed light on the decision-making process from different angles and to double-check how decisions and compromises have been reached. Constitutional reforms and policy programmes do only determine the ground rules for legislative processes and set the framework for political endeavours. They, however, cannot explain how concrete instruments have evolved, what interests and intentions the different parties pursued, and which actors were able to convince the others of their interests. Finding out about these aspects requires research that focuses on certain case studies and analyses governmental and non-governmental actors.

### **3. Theoretical framework**

#### **3.1 Introduction**

In the previous chapter the main themes of research regarding the EU migration and asylum policy were identified. While it has been demonstrated that this literature is rich, dealing with the causes and effects of migration, concrete policy contents, and the competences of the different policy-makers, the review also revealed that an analysis of the influence of pro-migrant groups on European decisions is still missing. Furthermore, scholars of interest groups have not committed themselves to assessment of political influence until recently.

In previous years, many political scientists became interested in the analysis of the lobbying mechanisms within the European Union. Early studies (Eising 2004; Green Cowles 1995; Greenwood et al. 1992; Haas 1958, 1964; Hooghe and Marks 2001; Marks 1996; Moravcsik 1991, 1993, 1999; Pollak and Slominski 2006; for a more differentiated analysis see ch. 3.2) predominantly describe the EU lobbying system looking on it as a whole and generalising the grand interrelations of policy-makers and interest groups. In more recent works (Dür and De Bièvre 2007; Klüver 2009; Mahony 2007; Michalowitz 2007a; Princen 2007), factors that determine influence (such as institutional structures, type of interest, policy content) are analysed. Other scholars (Arts and Verschuren 1999; Dür and De Bièvre 2006; Dür 2008a) show interest in the assessment of the interest groups' capability of exerting influence on EU decisions applying self-assessment, peer assessment and the analysis of goal-achievement. However, these studies focus on business interests exclusively. To provide similar insights in the policy-making of asylum and migration legislation, the present thesis intends to promote this field of research and to shed light on the influence of pro-migrant groups.

In the following subsections, the theoretical framework, in which the case studies are going to be embedded later on, is developed. To adapt a suitable framework, first of all, the requirements that the theoretical framework needs to meet are determined. While the grand theories of European integration are dismissed, the resource dependence theory is chosen as an appropriate framework that ascribes non-governmental actors the ability to pro-actively shape policies contents. After the original concept and recent adaptations of the theory are presented and reflected upon, the resource dependence structures of the EU institutions and the pro-migrant groups are analysed. As the resource dependence structures of the EU institutions appear to differ, so does the chance of the interest groups to access and exert influence on the different policy-makers. More precisely, it is argued that the Council is the

least dependent institution. As a consequence, under consultation procedure, the influence of pro-migrant groups is expected to be lower than under ordinary legislative procedure – where Parliament and Council share legislative power. In this chapter, theoretical predictions about the likeliness of pro-migrant groups to exert influence on policy outcomes are being made that in the further course of this thesis are tested empirically.

### **3.2 Requirements of the research project**

The overall aim of this research project is to analyse the influence of pro-migrant groups in the shaping process of the EU asylum and migration policy. Political influence, according to Arts and van Tatenhove (2004: 346), varies depending on the power of the interest groups themselves and on the political opportunity structures offered by the EU institutions. A suitable theory that fits the research question, thus, needs to consider both the pro-migrant groups and the policy-makers in its framework. With a view to pro-migrant groups, the theoretical framework, in particular, ought to take into consideration their ability to monitor policy-making processes, to liaise with relevant policy-makers and stakeholders, and to provide resources that are of added value to the EU institutions. Including these aspects in the theory enables us to assess the capacity of the groups to meet the demands of the EU institutions. With a view to the EU institutions, the theoretical framework needs to encompass the dependence structures and requirements that they impose on interest groups as they form the political opportunity structures in the policy-making process. To sum up, the research project regards both governmental and non-governmental actors as being able to co-shape EU policies. Therefore, they all have to be considered in the theoretical framework to assess the actual political leverage an interest group can exert on European decisions.

The grand theories of European integration that are usually used to explain how EU policies evolve, however, do not appear suitable frameworks for this research project as they do not ascribe non-governmental actors the ability of pro-actively influencing EU policy-shaping processes. To start with, intergovernmentalists (Hoffmann 1981; Hoffmann and Keohane 1991; Milward and Sørensen 1993; Moravcsik 1991, 1993, 1999; Putnam 1988) picture the political system of the EU as state-centric in which sectoral interests are only active at national level and only to a certain extent. Thus, not only does the theory neglect the ability of interest groups to co-shape policy outcomes, it also overlooks the legislative power that the EU institutions have obtained through the various treaty reforms. Acknowledging the legislative power of the EU institutions, institutionalists (Hall and Taylor 1996; Pollak and

Slominski 2006; Scharpf 2000, 2003) follow a more liberal idea of policy-making. They assert that the EU institutions determine the participation opportunities of interest groups and in so doing affect their chances of influence. Yet, this theory neglects the ability of pro-migrant groups to influence policy outcomes actively. Neo-functionalists (Haas 1958, 1964; Schmitter 1969), on the contrary, attest that European officials are dependent on the support of interest groups to foster integration processes. Political integration, thereby, is boosted by EU officials who link progress in a non-political and technical sector to political issues. However, this theory accounts less for the specific characteristics of interest groups and the effects that they have on lobbying strategies and success. Proponents of the multi-level governance approach (Greenwood et al. 1992; Hooghe 1996; Marks 1996; Pollack 1997), in turn, stress that European policies are negotiated at subnational, national, and EU level which offers interest groups a multitude of access opportunities. Yet, there exists no consensus among the scholars on the limitation of each actor's influence. In fact, they (Ansell 2000; Beyers 2002; Blatter 2001a; Kohler-Koch and Eising 1999; Peterson 2001; Ronit and Schneider 1999) argue that the influence of each actor cannot be clearly defined because networks overlap.

Summing up, none of the above-presented theories of European integration allow the identification of the factors that affect the influence of pro-migrant groups and the assessment of their lobbying success. Thus, another theory – the resource dependence theory – is applied that is suited to describe the relationship between the governmental and non-governmental actors involved in policy-shaping.

### **3.3 Resource dependence theory**

#### ***3.3.1 Original approach***

The theoretical framework that is evolved for this research project is based on the resource dependence theory developed by Aldrich and Pfeffer (1976: 83-85), Pfeffer and Salancik (1978: 40-42), and White (1974: 367-69). Their studies are the first works which deal with the dependency of organisations on their environment. With their analyses, they wanted to shed light on the interrelation of American interest groups and the US government. The scientists were interested in how and why organisations choose a particular actor for cooperation. In this section, first of all, Aldrich's, Pfeffer's, and Salancik's conception of a resource dependence model is depicted followed by more recent adaptations of the model.

According to Aldrich, Pfeffer, White, and Salancik, organisations are not capable of generating all the resources needed for the maintenance of their duties. To overcome their shortcomings, they have to co-operate with private actors that control the demanded resources. The more resources they require, the more receptive they are towards their environment. Resource providers, in turn, can respond to the demand of the organisations. Referring to White (1974: 367), these resources include skills, knowledge, materials, equipment, and customers. Sticking to the language of the dependence theory, both terms, resources and access goods, are used synonymously in the following analysis.

The demand of resources and the provision of resources determine whether cooperation between the organisation and an actor from the environment takes place and, consequently, affects the influence of an actor. In other words, a resource provider is more likely to co-operate with an organisation that is receptive to the offered access good. In this context, the authors claim that the more an organisation is reliant on the resources and the less actors within the environment provide this particular access good, the more durable the relationship between both actors will be. In that case the authors speak of a reciprocal interdependence. If, on the contrary, an organisation can select a suitable access good provider from a pool of suppliers, the relationship is dependent on the organisation's perception and, consequently, less durable.

### ***3.3.2 Previous adaptations to the EU system***

Bouwen (2002), Greenwood et al. (1992), and Princen and Kerremans (2008) have adapted the original resource dependence theory to the political system of the EU – transforming the organisations to EU institutions and replacing the former environment of the organisations by interest groups. Against this background, Greenwood et al. (1992) depict the relation between the institutions and interest groups as follows. The more authority an EU institution possesses in a certain field, the more interest groups try to access it. At the same time, they argue that institutions with a high degree of authority do strongly depend on the external provision with resources. With regards to the interest group's opportunity structures, Princen and Kerremans (2008: 1131) suggest that they are exogenous because the group which provides a certain access good has no influence on the kind of resources the institution requires and it is not guaranteed that policy-makers make use of the provided resources. Nevertheless, the authors admit that an interest group that is able to generate essential expertise about a certain issue becomes less replaceable.

Translating this in relation to the resource dependence theory, one can say that the interdependence between a certain EU institution and a particular interest group determines the exchange conditions for both actors and, thus, affects the influence of an interest group. The more dependent an institution is on the access good an interest group provides, the more likely it is that this institution takes into consideration the recommendation of the respective group. Hence, the quality of the resource and the responsiveness of the respective EU institution determine the interrelation between institution and resource supplier. It is most durable if both actors offer something of value to each other (Princen and Kerremans 2008: 1134). However, the benefits are not necessarily equally distributed.

Bouwen (2002: 369) describes access goods as informative and classifies them into expert knowledge, information about European encompassing interests, and information about domestic encompassing interests. Expert knowledge, thereby, comprises expertise and know-how about which legislation is most suitable in a certain policy area. Information about European and domestic encompassing interests inform about issues in certain European or domestic sectors. Those access goods are critical in EU policy-making. Taking into consideration information about encompassing interests fosters the EU's input legitimacy, whereas expert knowledge increases the EU's ability to encounter problems efficiently and effectively and, thus, fosters its output legitimacy.

What kind of information is required differs among the various institutions and between the stages of the decision-making process. Bouwen (2002: 379-81; 2004: 476-78) argues that while the Commission is dependent on additional expertise from private actors, the Parliament needs information on European interests, whereas the Council, in turn, requires information on domestic interests. Princen and Kerremans (2008: 1134) reply to this suggestion that all institutions require all kinds of information at some point. They are dependent on expert knowledge during the drafting stage and require information about encompassing interests during the decision-making stage because the decisions need to be legitimised by the public.

To summarise, it can be said that the EU institutions, rather than being self-sufficient bodies, are dependent on information resources from interest groups. But only if an interest group is able to produce the information required by the policy-makers, will they be open for collaboration. However, which institution requires what form of information at what time has not been conclusively clarified yet. Following up these recent adaptations of the resource

dependence theory, in the next sections a framework is conceptualised that fits the shaping process of the EU asylum and migration policy.

### **3.4 Adapting the theory to the research purpose: Resource interdependence between EU institutions and pro-migrant groups**

To suit the resource dependence theory to the purpose of analysing the influence of pro-migrant groups, it is adapted so that it encompasses the dependence structures between the EU institutions and the groups. Therefore, the legislative competences of the Commission, the Parliament, and the Council as well as their consequential dependencies on external resource providers are presented. Moreover, what resources pro-migrant groups need to provide to access and exert influence on the decisions of the EU institutions is analysed. Hence, the innovation of this adaptation lies in the correlation of resource dependence structures and political influence. Unlike Bouwen's study, this piece of research classifies expert knowledge, support, and legitimacy as access goods. What is more, the analysis is taken one step further – elaborating how decision-making procedures affect the influence of the pro-migrant groups. Therefore, hypotheses are formulated that are tested in the course of the empirical analysis.

#### ***3.4.1 Resource dependencies of the European Commission***

With reference to the Lisbon Treaty (Articles 77(2), 78(2), 79(2) TFEU), asylum and migration policy is negotiated under the ordinary legislative procedure – formerly known as co-decision procedure (EU 2009). Thereby, acts are adopted jointly by the Parliament and the Council after being initiated by the Commission (Article 294 TFEU).

Obtaining the right of legislative initiative (Art. 294 TFEU), the Commission is in charge of drafting proposals and altering or withdrawing them during the drafting and decision-making stage (Art. 293 (2) TFEU). Formulating a proposal is a bottom-up process within the Commission in which the lower units report their suggestions to the respective commissioner. Usually, one directorate is in charge of a particular proposal. But in case another directorate is affected by that draft, it has the right to be consulted (Commission 2010a). The directorate-general (DG) responsible for asylum and migration matters is the DG Home Affairs. Usually a Head of Unit or an official with similar experience drafts the so-called dossier (Nugent 2001: 242). During this drafting phase, the Director General and her deputy, who are in charge of the DG, can give advice on controversies that may occur. In addition, the draft is checked for legality by the Commission's Legal Service (Nugent 2001: 250). The draft is then referred to the other DGs and their comments are added to the proposal before the lead



Commissioner and her Cabinet decide about its approval (Donnelly 1993: 77). Finally, the draft requires adoption by the College of the Commission. Non-controversial drafts are approved by the College without discussion, whereas highly contested proposals are referred back to cabinet or rapporteur level, or if no agreement could be reached there, are discussed at College level (Nugent 2001: 251). The process concludes with the publication in the Official Journal.

In the further course of the policy-shaping process, the Commission follows the negotiations in the Parliament and the Council closely. It is represented by a desk officer and an official from the Secretariat General in the parliamentary committee and plenary sessions as well as in meetings of Council working groups, the COREPER, or Ministers. Thus, it obtains the information necessary to mediate between the Parliament and the Council in the first and second reading and during the conciliation procedure (Nugent 2001: 253; Art. 294 (11) TFEU).

From its legislative duties, three resource dependencies are important for the Commission: it is dependent on expert knowledge, support, and legitimacy. In the following paragraphs, these resource dependencies are further elaborated.

The Commission's need for additional expert knowledge is the result of its lack in personnel (Donnelly 1993: 79; Kohler-Koch 1997: 3; Mazey and Richardson 2001: 3; Nugent 2001: 241). Compared to the number and scope of issues the Commission deals with, its staff – approx. 23000 – is limited. Moreover, its directorates-general are differently sized which means that not all issues are handled by specialised experts (Commission 2010b). This lack in personnel notwithstanding, the Commission needs to ensure that its proposals are technically correct and that the proposal withstands the evaluation by the Parliament and the Council. Consulting external information providers, according to Downs (1967: 2), appears to be the most efficient way to ensure that those demands are met.

Moreover, political scientists are accordant that the Commission is reliant on support (Donnelly 1993: 81; Mazey and Richardson 2001: 3; Nugent 2001: 241; Quittkat and Kohler-Koch 2011: 78). In this context, as Mazey and Richardson (2001: 17) put it, it does not matter that additional expertise adds up the overall knowledge the Commission possesses on a certain issue. What counts is that the group that provides information publicly supports the Commission's proposal. Since the very establishment of the European Economic Community,

Quittkat and Kohler-Koch (2011: 77) argue, the Commission has always been in need of support from external partners to overcome the occasional resistance of some national governments. While initially scholars and industrial experts were consulted, the Commission progressively opened its consultation for industrial associations, branches, professionals, and trade unions. Quittkat and Finke (2008: 187) ascribe powerful business actors and economic actors the greatest capacity in providing political support. As migration and asylum matters form another milestone in European integration but member states are only reluctantly willing to give up their sovereignty, the Commission is in need of allies that support their policy proposals in the negotiations. To ensure that ambitious but highly controversial policy drafts do not get watered-down as a result of finding a compromise that suits all interests, the Commission cooperates with like-minded allies to jointly convince doubtful member states or MEPs of their shared ideas.

In addition, the Commission needs to cooperate with representatives of the civil society to ensure that its harmonisation endeavours in the area of asylum and migration are sufficiently legitimised (Hüller 2010: 76; Mazey and Richardson 2001: 3). Being an institution that is not directly elected by the European citizens, Judge and Earnshaw (2003: 86) argue that the Commission can only compensate its legitimacy deficit by opening its consultation regime to the public. Already in the mid 1980s, the Commission launched its social dialogue inviting NGOs from the social sector – especially human rights groups and women rights groups – to discuss agendas and policy drafts. This was followed by financial programmes that sought to support non-profit European umbrella organisations like the Social Platform that was established to consult on employment and social matters (Harvey 1993: 191 and 98; Quittkat and Finke 2008: 188; Quittkat and Kohler-Koch 2011: 78-79). The resignation of the Santer Commission as a result of a financial fraud affair in 1999 caused further exogenous pressures for legitimisation. As a consequence, the Commission committed itself to participatory democracy through partnership including ‘those affected by the policy; those who will be involved in implementation of the policy; or bodies that have stated objectives’ (Commission 2001b: 11; 2002: 19). However, Quittkat and Kohler-Koch (2011: 85) assess the opening of the Commission’s consultation regime as a political self-commitment rather than a legally binding commitment.

Summing up, the Commission’s reliance on external expert knowledge arises from its lack in personnel and the technicality of policy proposals. Its dependence on external support, in turn,

originates from the institutional competition between the EU institutions. To ensure that its policy drafts do not fall prey to national resistance, the Commission relies on external allies that support its initiatives in discussions with MEPs and Council officials. The Commission's reliance on legitimacy, finally, is the result of the nature of the asylum and migration policy that until recently has been under the sovereignty of the member states. Only with the support of the public, the Commission can justify and legitimise its harmonisation endeavours to the national governments and EU citizens.

### ***3.4.2 Resource dependencies of the European Parliament***

The above illustration of the Commission's responsibilities may lead someone to assume that agenda-setting is not within the Parliament's sphere of authority. But the following two privileges dissent from this assumption: firstly, the Parliament can invite both the Commission and the Council to deepen their integration efforts in certain policies; secondly, the Parliament obtains the right to call on the Commission to propose an initiative to the Council (Parliament 2010a).

Nevertheless, the decision-making process is the stage at which the Parliament is most influential since the introduction of the ordinary legislative procedure in asylum and migration matters. Similar to the multi-layer process of agenda-setting in the Commission, the formulation of a response to that proposal includes various steps within the Parliament. This comprehensiveness is due to the structure of the Parliament itself including 754 MEPs that form the plenum, 7 political groups, 20 parliamentary committees as well as sub-committees or temporary committees that focus on selected policy areas or special issues (Parliament 2010c).

After the Commission's proposal is distributed to the parliamentary committees for the first reading, the committee responsible for the policy area appoints a rapporteur. In asylum and migration matters, it is the Committee for Civil Liberties, Justice and Home Affairs (LIBE) that is responsible. With the help of the experts of the political group's secretariat, the rapporteur drafts a report on the Commission's proposal. The remaining political groups appoint shadow rapporteurs whose task it is to monitor the formulation of the report (Article 294 (3) TFEU) and to influence the outcome of the report. Moreover, unofficial intergroups on special areas of interest try to exert influence on the rapporteur. After the report has been finalised, it is passed to the plenary, which discusses and votes on it. If the act is not adopted by the Parliament and the Council in the first reading, the Council's common position is

passed to the Parliament for a second reading. If the second reading does not result in an agreement, a conciliation committee is formed consisting of officials of the Council and the Parliament as well as a mediating Commission official (Commission 2010c). If the delegates of the Parliament and the Council reach a compromise, they formulate a joint text and, thus, the act is deemed to have been adopted (Article 294 (13) and (14) TFEU). If, on the contrary, they cannot agree on a joint text, the act failed (Article 294 (12) TFEU). From the legislative obligations of the Parliament, three resource dependencies arise that are highlighted in the following analysis.

First of all, the Parliament requires expert knowledge for the evaluation of the policy drafts proposed by the Commission and for the formulation of its position on the said drafts. However, just like the Commission, the Parliament lacks the capacity to generate this knowledge on its own. Scholars (Judge and Earnshaw 2003: 105; Kohler-Koch 1997: 6) name the rather generalist nature of MEPs (due to their high workload), time constraints (resulting from their obligation to travel between Strasbourg, Brussels, and their constituency), and the Parliament's lack in personnel as factors that contribute to its reliance on external expert knowledge. With regards to the sort of information MEPs are looking for, Judge and Earnshaw (2003: 105) speak of 'predigest' information that allows non-experts to assess the complex and highly technical policy drafts of the Commission. To ensure their re-election, parliamentarians also need to be responsive to their electorates. As such, MEPs want the concerns of their constituency to be considered in the Parliament's report and are, thus, open and responsive to recommendations from interest groups that convey those issues (Judge and Earnshaw 2003: 112; Kohler-Koch 1997: 5). According to a survey conducted by Judge and Earnshaw (2003: 112), interest organisations are the fourth most frequently used information source after the services of the Parliament and the Commission and national governments. Moreover, they identify rapporteurs, committee chairmen, vice-chairmen, and shadow rapporteurs as the major consumers of information provided by external actors because they are directly involved in the positioning process (Judge and Earnshaw 2003: 105).

The second resource MEPs rely on is support. At the beginning of the 1950s, the European Parliament of today was an institution that did not have any legislative power. A multitude of treaty reforms, however, gradually empowered the Parliament resulting in the ratification of the Lisbon Treaty that has made the Parliament an equal legislative partner of the Council in the negotiations of most policy areas (Judge and Earnshaw 2003: 33 and 37). The undoubted

empowerment of the Parliament notwithstanding, it is still only one of three co-legislators and has to make sure that its policy recommendations are not disregarded by the Commission or the Council. As such, MEPs rely on external actors that support their views towards the Commission and the Council. In addition, MEPs even need to protect their ideas against the lobbying efforts of the Commission and the Council and therefore seek external allies. According to the study by Judge and Earnshaw (2003: 110-11), Commission officials arrange ex ante discussions with MEPs to convince them of their policy proposals, whereas national governments and officials of the various Permanent Representations try to ensure that MEPs consider their respective national concerns in the Parliament's position. Some governments even go further and provide MEPs with tailored voting lists that reflect the desired outcome of their nation. Hence, only with external support, the Parliament is able to defend and extend its decision-making power (Kohler-Koch 1997: 5).

As shown above, the Parliament is the one EU institution whose competencies have been steadily expanded and that is now on a par with the Council as regards most policy areas. The extension of the Parliament's legislative power has always been justified with the fact that it is the only EU institution that is democratically legitimised. Democratic legitimacy, in this context, is perceived as the direct political participation of EU citizens through elections and their indirect participation by means of being represented by the MEPs that they have voted for. Indeed, the Parliament's legislative authority appears to be more legitimised than the authority of the Commission and the Council neither of which are directly elected institutions. Nevertheless, in recent years public criticism about the Parliament's legitimacy has become louder and louder. Judge and Earnshaw (2003: 76 and 80-85) list various reasons for that criticism. Firstly, the turnouts in European elections tend to be low. Secondly, there is no European election campaign as national parties compete for votes on predominantly domestic issues. Thirdly, due to the lack of a European identity, there is no European demos; and without that European demos, the Parliament is not democratically legitimised. Thus, Kohler-Koch (1997: 5-6) infers that MEPs are only too willing to cooperate with interest groups, as this promotes their democratic legitimacy. She has even observed a growing competition for legitimacy between the Parliament and the Commission in the way that both institutions are becoming progressively more responsive to the public. For those reasons, the Parliament is assumed to be dependent on legitimacy.

The above analysis has demonstrated that the resource dependence structures of the Parliament resemble those of the Commission. This is due the fact that both institutions have to cover a multiplicity of policy areas despite their limited personnel capacity and time constraints. For the evaluation of the Commission's proposal and the formulation of the Parliament's position, MEPs are dependent on the provision with expert knowledge. Moreover, the Parliament, being only one of three legislative bodies, relies on interest groups that support and defend their ideas towards the Commission and the Council. Finally, even though MEPs are directly elected, they appear to rely on further legitimacy to justify European decisions to their electorates.

### ***3.4.3 Resource dependencies of the Council of the European Union***

Just like the Parliament, the Council is actively involved in the decision-making but also in the agenda-setting stage. This is because of the increasing importance of the Presidency of the Council. Presenting a political agenda to influence the initiatives of the Commission has become a vital element of the Presidency of the Council. Moreover, the Council can call on the Commission to draft a proposal on a certain issue or enact soft law such as recommendations, common opinions, resolutions, and agreements to influence the agenda (EU 2010).

However, the main function of the Council is certainly of a legislative nature. Although it is a unitary body, the Council currently consists of 10 configurations dealing with different policies. The one responsible for asylum and migration matters is the configuration on 'Justice and Home Affairs'. Each configuration, in turn, comprises various working parties and committees that prepare the Council's response to the positions of the Commission and the Parliament (Council 2010). The two working parties that are important for this thesis are the 'Working Party on Integration, Migration and Expulsion' and the 'Asylum Working Party'. If a dispute cannot be settled at working party level, the dossier is referred to the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA). If SCIFA cannot arbitrate in a very political dispute or solve a technical problem, the dossier is passed to COREPER (Nilsson 2004: 131 and 35).

COREPER is composed of high-ranking diplomats from the Permanent Representations of the member states. As a interface between working parties and national ministries, Permanent Representatives inform their ministers about technical issues and the positions of the various member states and receive instructions on how to raise national concerns in the discussion at

COREPER meetings. During these meetings, the Presidency of the Council mediates between opposing parties (Westlake and David 2004: 207-13). Issues which the working party or COREPER agreed on in advance are approved by the Council (respective national ministers) without discussion. Issues about which they could not arrive at an agreement are either referred back to the responsible working party for revision or need to be discussed in the Council before a decision can be made. This decision-making procedure applies to the first and second reading. If the Parliament and the Council cannot agree on a draft, selected members of the Parliament, Commission officials, and representatives of the Council enter into a trialogue for the conciliation procedure. In a case where the conciliation committee is not able to agree on a compromise, the legislation is deemed to have failed (Bostock 2002: 219-20).

As the Council is composed of representatives from the various member states, it is supposed to be the one institution that puts more weight on domestic concerns and interests. Each member state considers in its national position the implications a legislation might have for its constituency. Moreover, each member state needs to identify the concerns and reservation of the other member states to prepare compromise suggestions and to enhance its negotiation power. Finally, for the negotiation in the Council, technical expertise is also needed to evaluate the feasibility of the proposed legislation. As the staff of the Council is limited – the configuration of Justice and Home Affairs only consists of approximately 60 persons – the Council staff relies on the external provision with expert knowledge (Nilsson 2004: 139). The same dependence on external information applies to the COREPER which Nilsson (2004: 136) describes as ‘understaffed’ compared to the increasing number of policy areas it has to deal with. At national level, Nilsson (2004: 131) regards the personnel that directly work for the ministers as limited too and consequently queries their capability to cover all policy aspects autonomously. However, Council officials are high-level actors who appear to be hardly accessible for interest groups but are well interlinked at national and EU level. Hence, rather than depending on interest groups for expert knowledge, it seems to be more likely that they resort to experts in the national ministries.

Similar dependence relations become apparent with the Council’s dependence on support. On the one hand, the Council needs to ensure that its position is not jeopardised by the Parliament, given the predominance of the ordinary legislative procedure. To convince the Parliament of its own views and standpoints, however, JHA Counsellors personally meet with

MEPs from their member state and provide them with background studies that highlight national interests or even prepare concrete voting lists. In each Permanent Representation, additionally, there are attachés responsible for the cultivation of contacts with the Parliament. They meet with MEPs before plenary meetings to communicate their objectives (Judge and Earnshaw 2003: 110-11). Hence, there is no doubt about the Council's reliance on external support; however, officials affiliated to the Council directly lobby MEPs rather than depending on interest groups that serve as external allies.

With a view to legitimacy, due to the genesis of the political system of the EU, it appears that the Council does not need to further justify its legislative authority. From the very beginning, the heads of government decided about the development and integration speed of the EU. With the consolidation of the Commission as initiator of new legislation and the empowerment of the Parliament, the legislative power of the Council has even been narrowed. This marks the difference between the Commission and the Parliament, on the one hand, and the Council, on the other hand. While the former have become more powerful through the successive treaty reforms, the Council had to yield its exclusive claim to decide about new legislation. A decrease in power, in turn, does not require further legitimisation. As such, the Council is not expected to be dependent on additional legitimacy provided by interest groups.

As has been shown above, the Council, in order to be able to fulfil its duty as a legislative institution, relies on additional expert knowledge to assess the effects policy proposals might have for the various member states. In spite of being dependent on interest groups, however, the Council can refer to national experts and ministries for the required information. Furthermore, the Council relies on the support of the Parliament because most legislative acts are now being adopted under ordinary legislative procedure. Council representatives, however, are reported to liaise with MEPs directly to convince them of their interests. Unlike the Commission and the Parliament, the Council does not require legitimacy from interest groups to justify its decisions because its position as legislative body is not challenged.

To sum up, all three EU institutions do suffer from personnel deficits which cause resource dependencies for the provision of technical expertise and information that is required to propose a legislation or to assess its feasibility and effects on the member states (expert knowledge). However, with access to national ministries and experts, the Council has alternatives to interest groups that it can address. Moreover, as policy-making in the EU is



shared between the three legislators – Commission, Parliament, and Council – each institution needs to ensure that its concerns are not overruled by the others. As such, they all rely on external support. Whereas the Commission and the Parliament are expected to seek cooperation with external allies that represent their interests to the other institutions, affiliates to the Council are supposed to lobby the other institutions directly. While the Council appears to be sufficiently legitimised by the treaties, the Commission and the Parliament have gradually extended their competencies and, thus, need to legitimise their empowerment through the public.

#### ***3.4.4 Resource dependencies of pro-migrant groups***

In the analysis above, the resource dependence structures of the EU institutions and their origin have been examined. As a result, it has been argued that to varying extents the EU institutions rely on the provision with expert knowledge, support, and legitimacy. This, however, only constitutes one part of the resource interdependence between the EU institutions, on the one hand, and pro-migrant groups, on the other hand. To get the full picture on the interrelation between governmental and non-governmental actors, the resource dependence structures of the latter need to be examined too.

As interest groups seek to be consulted during the policy-shaping process to get their ideas across, the resource they require the most is access to the institutions. Access to the policy-makers is the precondition for exerting influence on policy contents. To gain access to the EU institutions, interest groups need to respond to the institutions' resource dependencies. Hence, they are required to accommodate their demand for expert knowledge, support, and legitimacy. These resources, in turn, can only be provided by an interest group that features certain characteristics.

For the generation of expert knowledge, an interest group, first of all, needs to be adequately endowed. Funding is crucial to employ sufficient personnel that are capable of liaising with all those policy-makers that seem to lead the debate in the drafting and decision-making processes. Moreover, interest groups need to be able to closely monitor the inter-institutional decision-making process, as abrupt turns in the negotiations might occur at any time and interest groups are required to respond flexibly to them (Nugent 2001: 241). Therefore, it is crucial that an interest group is present in Brussels and the best way of realising this is by means of a liaison office. Furthermore, in order to provide the EU institutions with expert knowledge, the groups need to be in possession of information that the EU officials cannot

obtain themselves. On the ground information about what is happening in the member states – be it information about best practices or problems – appears to be the expertise that complements the data that the EU institutions possess. To gather that kind of information, the liaison offices in Brussels need to cooperate efficiently with experts and practitioners in the different member states. To provide the groups with timely and accountable information, the liaison office can either refer to its own member organisations or, if it is non-membership based, cooperate with academics and national think tanks. Dividing labour between the liaison office and national organisations ensures that the information is of an accurate quality and allows for flexibility in the provision of information (Nugent 2001: 241; Slim 2002: 5). Finally, as there are not only EU officials involved in the negotiations but also national politicians and bureaucrats, to convince all important decision-makers of the relevance of the information for their final decision on a file, interest groups should apply a versatile lobbying strategy. Thus, they are well advised to flank the direct lobbying of EU officials with the lobbying of national decision-makers through their member organisations.

Providing the EU institutions with public support requires another range of characteristics. First of all, an interest group can only support the position of a certain EU institution if both positions resemble each other in substance. Only if an interest group agrees with the political intention of an institution (at least partially), will it be willing to support these objectives in public and when speaking to officials of the other institutions. On the contrary, if a group does not share the same views on a policy proposal with a certain institutions, it is rather likely that that institution has to face contestation from the interest group. Secondly, to provide an institution with support, an interest group needs to be capable of accessing the other EU institutions in order to convince them of the standpoint shared with its allied institution.

In order to strengthen the legitimacy of the EU institutions, interest groups need to prove that they are themselves legitimised. Here one has to differentiate between input and output legitimacy. As Scharpf (1999: 6) and Smismans (2004: 72) put it, input legitimacy is guaranteed when the will of the members of an interest group is reflected in the group's policy recommendations. Output legitimacy, on the contrary, is ensured as long as the members are satisfied with the outcome of a policy-making process. Thus, to demonstrate input legitimacy, pro-migrant groups ought to represent those affected by EU asylum and migration policies. Ideally, this is the case whenever migrants or asylum seekers are organised

in the respective groups. The issue with pro-migrant groups, in that context, is that rather than being self-organisations of migrants or asylum-seekers, they are advocacy groups that represent the interests of migrants and asylum-seekers. As Fowler points out, this is a typical characteristic of NGOs which are usually composed of a 'self-perpetuating, self-selected set of directors or trustees' (Fowler 2000: 36). To compensate for this participation deficit, it needs to be demonstrated that the members of the pro-migrant groups – either individual members or national member organisations – participate in the decisions of the umbrella organisations or Secretariats in Brussels. This can be done by appointing representatives, by getting involved in the positioning process of the group, or by participating in lobbying campaigns (Wiercx 2011: 44). Moreover, the legitimacy of a group is strengthened if it can demonstrate its representativeness by proving that its claims are supported by a multitude of member organisations present in as many EU member states as possible. If that kind of input legitimacy is lacking, Fazi and Smith (2006: 20) and Slim (2002: 7-8) argue that NGOs can justify their advocacy work by referring to international human rights law or to moral values such as human equality, dignity, impartiality, justice, or freedom in the work they do. For the output legitimacy of a group, it is crucial that it can demonstrate that, on the one hand, its policy-recommendations reflect its general mission to which the members commit (Marshall 2002) and that, on the other hand, the policy outcome reflects the claims of an interest group (Vedder 2007: 207). Thus, only those groups that are in the position to justify their advocacy work may also be capable of strengthening the legitimacy of the EU institutions.

The overview of the dependence structure of pro-migrant groups has demonstrated that access to the EU institutions is undoubtedly the resource that pro-migrant groups rely on the most. How successful they are in accessing the EU institutions, namely, by responding to their demand for expert knowledge, support, and legitimacy, however, forms a more complex part of their dependence structure. In particular, the financial endowment and personnel capacity of an interest group has been identified as a critical characteristic that affects its ability to provide the EU institutions with expert knowledge. To support the position of an EU institution, a political closeness to the respective institution is required as well as access to those policy-makers that need to be convinced of the shared ideas. In order to strengthen the legitimacy of the EU institutions, pro-migrant groups have to prove that their work is legitimised too. In that context, it is worth noting that even those groups that are not self-organised by migrants or asylum-seekers, can claim their legitimacy based on representativeness and the reference to international human rights law.

### **3.5 Expected influence of pro-migrant groups to be exerted on the different case studies**

In order to hypothesise about the actual influence of pro-migrant groups on the four case studies that are to be examined in the course of this PhD thesis, the resource dependence structures of the EU institutions and the pro-migrant groups need to be linked with the decision-making procedures at EU level. In so doing, the political opportunity structures that pro-migrant groups encounter at EU level are sketched. In that context, political opportunity structures are defined as, one, the authority that the EU institutions hold during a policy-shaping process and, two, their responsiveness towards the claims of the pro-migrant groups.

The authority of the EU institutions is construed from the different decision-making procedures under which the four case studies have been adopted. While the original LTR Directive and the original Qualification Directive were negotiated under consultation procedure, the extension of the LTR Directive and the recast Qualification Directive were adopted under the ordinary legislative procedure. Having said that, while the legislative authority over the two original directives has been shared between the Commission and the Council, all three EU institutions – Commission, Parliament, and Council – were responsible for the two recent directives. Thus, the Commission and the Council have been authoritative legislators during the negotiations of all four directives, whereas the Parliament only recently obtained authority in the decision-making processes of the extension of the LTR Directive and the recast Qualification Directive. The responsiveness of the EU institutions, in turn, can be deduced from their dependence on resources provided by the pro-migrant groups. Recapitulating, it is the Commission and the Parliament that are expected to rely on all three types of resources; namely, expert knowledge, support, and legitimacy. The Council, on the contrary, is assumed to be exclusively and only partly reliant on pro-migrant groups for the provision with expert knowledge. As the dependence structures of the three EU institutions differ significantly, it does seem reasonable to believe that the Commission and the Parliament are more responsive to the claims of the pro-migrant groups than the Council is.

Pro-migrant groups, on their part, are assumed to choose their lobbying strategies and venues according to the legislative authority of the different decision-makers and their responsiveness towards the objectives of the groups. In this context, it is assumed that an institution with high authority and responsiveness towards the demands of the groups constitutes the ideal lobbying object. An ideal institution is easily accessible, its policy proposals are aligned to the ideas of the pro-migrant groups, and it is powerful enough to drive the policy-making process.

On the contrary, a low level of authority and low responsiveness towards the claims of the groups would render the lobbying of that institution hopeless because neither is the said institution accessible nor does it hold enough authority to actively shape the policy outcome. In addition, lobbying an institution that has low authority in the policy-making process but is responsive towards the political objectives of the pro-migrant groups is expected to be unfeasible because it appears to be unlikely that this institution is able to convince more authoritative policy-makers of its ideas. Finally, an institution with high legislative authority but low responsiveness towards the claims of the interest groups is believed to be difficult to lobby. But even though the lobbying might be elaborate, it seems to be worthwhile as the said institution holds enough authority to actively shape the policy outcome.

As a consequence, it is expected that, rather than approaching the Parliament which had only the right to be consulted when the original LTR Directive and the original Qualification Directive were negotiated, the pro-migrant groups focussed their lobbying efforts on the Commission and the Council. The Commission, in that context, appears to have been the natural cooperation partner of the pro-migrant groups, as it was in charge of drafting the proposals for the directives and based on its resource dependencies must have been responsive to the claims of the pro-migrant groups. The Council, on the contrary, is supposed to have been less responsive towards the objectives of the pro-migrant groups. Nevertheless, the Council is understood as having been worth lobbying because it had the unrestrained right to decide about the proposals of the Commission. The legislative authority with regards to asylum and migration matters, however, changed with the coming into force of the Lisbon Treaty. During the negotiations of the extension of the LTR Directive and the recast Qualification Directive, therefore, the Commission and the Parliament are expected to have been crucial lobbying objects. They shared legislative authority over asylum and migration issues and, deducing from their resource dependence structures, are supposed to have been highly responsive towards the claims of the pro-migrant groups. The Council, too, held legislative authority over the two post-Lisbon case studies – albeit less authority than before the introduction of the ordinary legislative procedure. Its expected low responsiveness towards the ideas of the pro-migrant groups as a result of its resource independence, however, seems to have rendered the lobbying efforts of the groups more elaborate.

The four variants of lobbying conditions for pro-migrant groups that result from the two properties ‘authority’ and ‘responsiveness’ of the EU institutions are summarised in the following table.

		<b>Responsiveness</b>	
		<b>High</b>	<b>Low</b>
<b>Authority</b>	<b>High</b>	<b>Ideal lobbying conditions</b> Pre-Lisbon: COM Post-Lisbon: COM and EP	<b>Elaborate lobbying conditions</b> Pre-Lisbon: Council Post-Lisbon: Council
	<b>Low</b>	<b>Unfeasible lobbying conditions</b> Pre-Lisbon: EP	<b>Hopeless lobbying conditions</b>

**Table 1: 2x2 typology of lobbying conditions for pro-migrant groups inferred from authority and responsiveness of the EU institutions**

Following the above considerations, it can be summarised that the responsiveness of the EU institutions towards the ideas of the pro-migrant groups is supposed to have remained stable in the course of the negotiations of the original directives and the renegotiations. This assumption is justified by the resource dependence structures of the EU institutions that are not expected to have changed over that period of time. By contrast, the authority of the Parliament has increased as a consequence of the introduction of the ordinary legislative procedure, whereas the Council has lost its exclusive right to decide upon asylum and migration matters. The entry into force of the Lisbon Treaty, in turn, did not modify the Commission’s right of initiative. With the effect of authority and responsiveness on the part of the EU institutions in mind, null hypotheses and alternative hypotheses about the influence that pro-migrant groups can exert on the different policy proposals are inferred. Thereby, the null hypothesis states that there is no relationship between two phenomena; it is contrasted with an alternative hypothesis. In the context of this study, the following null hypotheses assume that there is no relationship between the decision-making procedure and the influence of pro-migrant groups, whereas the alternative hypotheses suggest that this relationship does exist. In total, four hypotheses are inferred – two for the effect of the consultation procedure on political influence and two for the effect of the ordinary legislative procedure on political influence.

**H<sub>01</sub>: The influence of pro-migrant groups on policy proposals that are discussed under consultation procedure is medium or higher than medium.**

**H<sub>a1</sub>: The influence of pro-migrant groups on policy proposals that are discussed under consultation procedure is less than medium or low.**

**H<sub>02</sub>: The influence of pro-migrant groups on policy proposals that are discussed under ordinary legislative procedure is less than medium or low.**

**H<sub>a2</sub>: The influence of pro-migrant groups on policy proposals that are discussed under ordinary legislative procedure is medium or higher than medium.**

To meet the criteria for ‘medium or higher than medium’ influence, firstly, the groups need to attain at least 50 per cent of their preferences on average. Secondly, results gained from the attributed influence assessment need to confirm that the interest representatives and the EU officials ascribe the pro-migrant groups significant influence on the respective policy proposal. To meet the criteria for ‘less than medium or low’ influence, firstly, the preference attainment analysis needs to produce rates that are below 50 per cent. Secondly, interest representatives and EU officials need to acknowledge that the groups exerted marginal or moderate influence on the respective policy proposal.

### **3.6 Conclusion**

To assess the influence of pro-migrant groups on the EU asylum and migration policy, the resource dependence theory, developed in the 1970s to describe the interrelation between organisations and their environment, has been modified. This theory appears to be more suitable for the assessment of political influence than theories of European integration because it starts from the premise that both governmental and non-governmental actors can shape EU policy. Furthermore, the theoretical framework allows consideration of resource interdependencies and the decision-making procedure under which policy proposals are negotiated that both form crucial factors in the exertion of influence on policy outcomes.

Starting with the works of Aldrich, Pfeffer, and Salancik, the original idea of resource interdependence between organisations and their environment has been introduced. Secondly, previous adaptations of the theory to the political system of the EU have been reflected upon. In this context, Bouwen’s assumption about the dependence of the EU institutions on expert knowledge and information about European or domestic encompassing interests has been

presented. For the purpose of this research, thirdly, the resource interdependence of the EU institutions and the pro-migrant groups has been concretised. On the part of the EU institutions, expert knowledge, support, and legitimacy have been identified as resource dependences, whereas pro-migrant groups appear to be primarily dependent on access to the policy-makers. These resource dependence structures determine the conditions for political participation. As a fourth step, this theoretical framework goes beyond the original concept of the resource dependence theory. In linking the resource dependencies to the decision-making procedures under which the different case studies were adopted, assumptions about the expected influence of the pro-migrant groups on the four directives have been made. In the following paragraphs, the assumptions about the resource dependence structures between the EU institutions and the pro-migrant groups are recapitulated, as they form the basis of the subsequent empirical analysis.

For the identification of the resource dependencies of each EU institution involved in the shaping of the EU asylum and migration policy, the responsibility of the institutions, their internal decision-making structures, and deficits are summarised. As the Commission is responsible for the drafting of new legislation but at the same time faces a high workload and a comparably low number of employees, it is heavily dependent on external expert knowledge. Furthermore, as a non-directly elected body, the Commission also requires legitimacy from stakeholders to justify its policy proposals. Finally, the Commission is only one of three legislators and, therefore, relies on external allies that support its objectives in the negotiations with the Parliament and the Council. The Parliament, just like the Commission, is dependent on the provision with external expert knowledge to overcome its personnel deficit and to guarantee that policy drafts are scrutinised thoroughly. It also requires supporting allies to ensure that its recommendations are not watered down too much in the course of the inter-institutional negotiations. Even though the Parliament is the only directly elected EU institution, it, nevertheless, requires further legitimacy from outside because its own legitimacy is challenged through the inexistence of European parties, European election campaigns, and a European demos. The Council, on the contrary, is less dependent on interest groups, although it lacks sufficient personnel to generate the required expert knowledge and although it has to defend its position to the other institutions. Rather than relying on pro-migrant groups, the Council can refer to tried and tested information providers such as national experts or ministries. To persuade other policy-makers of its position, the Council is reported to lobby these actors directly and not by means of non-governmental allies. Thus, the



Commission and the Parliament appear to be more reliant on, and consequently more open towards, interest groups than the Council is.

On the part of the pro-migrant groups, it has been elaborated that the resource that they are dependent on the most is access to the EU institutions. To access the EU policy-makers, they need to meet the requirements of the EU institutions by providing them with expert knowledge, support, and legitimacy. But only groups that feature appropriate working structures are able to supply those resources. For instance, interest groups need sufficient funding in order to employ enough staff and run a liaison office in Brussels. This again is necessary to build up contacts to the EU officials and to follow the policy-making process closely. Moreover, a group needs to be able to collect timely on the ground information and to flexibly formulate positions to the negotiations at EU and national level. The provision of the EU institutions with support, in turn, can only be guaranteed if the claims of the pro-migrant groups are in line with the position of the EU institution that is to be supported and if the groups have access to those policy-makers that need to be convinced of this position. Finally, in order to provide the EU institutions with legitimacy, pro-migrant groups need to legitimise their advocacy work at EU level; for instance, by demonstrating that they have adequate participation structures, a sound basis of argumentation, or sufficient representativeness.

From the resource dependence structures of the EU institutions, their responsiveness towards the claims of the pro-migrant groups has been inferred. Following the assumption that a greater dependence on pro-migrant groups results in a greater responsiveness towards the claims of the groups, the Commission and the Parliament are predicted to be more responsive towards the recommendations tabled by the interest groups than the Council. This would make the Commission and the Parliament the ideal lobbying subjects of the pro-migrant groups. However, the influence of the pro-migrant groups on the 2003 LTR Directive and the 2004 Qualification Directive is presumed to have been marginal because the Parliament did not have the right to co-decide with the Council upon the scope and the content of the two directives. On the outcome of the extension of the LTR Directive and the recast Qualification Directive, on the contrary, the influence of the pro-migrant groups is believed to have been higher because in those two policy-shaping processes the Commission and the Parliament had sufficient legislative authority to negotiate with the Council on an equal footing.

Summing up, this chapter provides assumptions about the influence of pro-migrant groups on EU asylum and migration legislation. Those assumptions are based on the resource

dependence structures between the EU institutions and the pro-migrant groups, which, in turn, have been inferred from the responsibilities, organisation, and objectives of the said actors. Their validity will be tested empirically in the following four case studies. By means of preference attainment analyses as well as attributed influence assessments, the influence of pro-migrant groups on the 2003 and 2011 LTR Directives and the 2004 and 2011 Qualification Directives is examined from different angles. To find out about the external and internal factors that have affected the influence of the groups, EU officials from the different institutions and interest representatives are asked to assess their dependence on expert knowledge, support, and legitimacy as well as their ability to provide said resources. Finally, a cross-case study comparison will allow to test whether the level of influence on the four directives actually varies as a consequence of the different decision-making procedures under which the directives were adopted.

## **4. Methodology**

### **4.1 Introduction**

EU policy-making is a comprehensive process including governmental actors from local, national, and EU level as well as non-governmental actors that try to access all those policy venues to influence EU legislation. This research investigates the relationship between pro-migrant groups and officials from the Commission, the European Parliament, and the Council. In the previous chapter, it has been outlined why, in theory, interest representatives and policy-makers collaborate. Firstly, the EU institutions rely on external expert knowledge, support, and legitimacy and thus, albeit to varying extents, they are responsive to the suggestions of resource providers. Secondly, pro-migrant groups need to respond to the resource demands of the EU institutions because they are dependent on the policy-makers' receptiveness in order to influence policy outcomes.

From this theoretical framework, the following research questions have emerged. How influential are pro-migrant groups within the shaping process of the EU asylum and migration policy? Which factors determine the success of pro-migrant groups? How these questions are addressed methodologically is going to be illustrated in this chapter. According to Silverman (2001: 4) methodology refers to the instruments that a researcher applies to examine a single phenomenon or the causal relationship between phenomena. There is not one methodology one can choose to investigate a particular question but different tools (Marsh and Stoker 2002: 15). For each single step of the research project — planning, data collection, data analysis, and data presentation — a scientist needs to weigh up the available instruments against their suitability.

To start with, methodological considerations include a project's ontology, epistemology, and its logic of inquiry. Thereby, ontology refers to the way we think the reality is constructed, whereas epistemology describes the manners available to gather knowledge about the reality. The logic of inquiry, in turn, deals with the different strategies a scientist can apply to answer a research question. In addition, the choice of applying case studies is justified in another section of this chapter. One of the advantages of a case study design is its flexibility; it allows the researcher to employ different methods. Speaking of methods, in general, research is categorised in, firstly, quantitative methods namely structured questionnaires or interviews and content analysis of documents and, secondly, qualitative methods such as participant

observation, unstructured or semi-structured interviews, and focus groups. Today, however, more and more scientists mix their methods (Marsh and Stoker 2002: 16). Which methods appear to be most appropriate to fulfil the research purpose, is highlighted in a further part of this chapter. Moreover, in the section on operationalisation, the different possibilities of measuring influence are elaborated. This chapter will close with ethical and legal issues involved in the research project that need to be considered.

## **4.2 Ontology and epistemology**

Ontology and epistemology are disciplines that address the construction of the nature of reality and the different ways aspects of reality can be studied (Blaikie 2010; Marsh and Stoker 2002; Mason 2000). Both aspects are important for every research project because the methods a researcher applies to a particular project are based on her view about the construction of the social world. But before the ontological and epistemological focus of this project can be elucidated, both terms need to be defined more precisely.

### ***4.2.1 Different ontological and epistemological views***

In his definition, Blaikie (2007: 92) suggests that ontological assumptions refer to ‘what kinds of social phenomena do or can exist, the conditions of their existence, and the ways in which they are related’. This includes general aspects of social life as well as the interrelation between different social phenomena. Ontology also asks whether reality exists dependently of our knowledge about it or if reality is always a social construct. Depending on the scientist’s view on what we can know about the world, different epistemological considerations on the generation of knowledge about this world can be applied. In this context, Marsh and Stoker (2002: 20-22) evolved three categories of social scientists — positivists, realists, and researchers following an interpretivist approach.

While positivism and realism are based on the assumption that the reality exists independently of our knowledge of it, the interpretivist approach suggests that every aspect of reality is socially constructed and, consequently, the world does not exist independently of the observer. Positivists assume that all social relationships are observable, whereas realists regard their findings as one way of approaching reality. Interpretivists, on the other hand, assume that the interpretation of social phenomena is linked to the observer’s understanding of it. Therefore, the researcher’s findings are never objective and cannot be generalised, as the understanding of a particular interrelation might change across time and space.

#### ***4.2.2 Which ontological and epistemological view fits the research project?***

This research project examines the influence of several pro-migrant groups on the EU asylum and migration policy. In the previous chapter, a scheme has been designed that illustrates how internal and external factors affect the lobbying success of pro-migrant groups. Those factors appear to be observable, but this does not necessarily mean that influence, as a dependent variable, is observable as well. Especially, as there are various actors involved in the policy-shaping process of the EU, one may argue that the actual influence of each actor is not observable. In the final section of this chapter, however, an operationalisation strategy is developed through which influence is going to be made measurable and thus observable. Nevertheless, rather than claiming to be capable of uncovering any form of influence, this operationalisation strategy focuses on direct lobbying that allows the researcher to examine the actual influence on the policy outcome. The fact that influence cannot be observed in all its forms, consequently, allocates this research in a critical realist environment (Blaikie 2010: 101). Most of the independent variables clearly exist independently of the observer. To measure the dependent and less observable variable influence, however, instruments that extend the senses such as the attributed influence assessment are going to be applied. As this measure is based on self- and peer assessment, the findings that are being produced reflect only one approach of capturing reality.

#### **4.3 The logic of inquiry**

In this section, after identifying this research project as a critical realist one, its logic of inquiry is going to be defined. The logic of inquiry refers to the researcher's strategy. Thus, the terms logic of inquiry and research strategy are used synonymously. The logic of inquiry deals with the research purpose and describes how theory and fieldwork are linked to each other. In this section, first of all, four different research strategies are illustrated and then the research strategy of this project is specified. The four strategies identified in the literature are induction, deduction, abduction, and retroduction.

Inductive studies are predominantly exploratory. They aim at generating theories or generalisations about features of individuals or social phenomena, possible patterns, and causal relationships (Blaikie 2010: 83; Hammersley 1992: 168). To analyse these aspects of reality, the researcher needs to start with data collection on the respective research subjects and then has to transform this information in broader clusters. Doing this, the researcher

generalises from individual cases to more abstract patterns (Blaikie 2010: 154; Burns 2000: 8; Neuman 2000: 159).

Deduction, on the contrary, starts with a theory that is necessary to explain relationships between phenomena. This theory and its related conclusion is then tested empirically (Blaikie 2010: 85; Hammersley 1992: 168). Testing a theory, thereby, means to challenge it under various conditions in order to come closer to reality. If the theory is consistent with the data gathered empirically, it is temporarily confirmed for these cases. If, however, the theory is not confirmed by the collected data, it needs to be redefined or even refuted (Blaikie 2010: 85-86; Burns 2000: 8).

Retroductive research is a cyclic process. Retroductive studies intend to explain observable regularities. Therefore, the underlying mechanisms need to be identified (Blaikie 2007: 82; 2010: 155). Since these mechanisms are unobservable, a hypothetical model has to be constructed in which potential mechanisms are linked to regularities. The model is, then, tested by including ‘further consequences of the model [...] additional to the phenomena we are trying to explain’ (Blaikie 2007: 83). Depending on the empirical data, the model is confirmed, redefined, or refuted.

Abductive research is another spiral process in which theory construction and testing intertwine. Its aim is to generate a theory ‘derived from social actors’ language, meaning, and accounts in the context of everyday activities’ (Blaikie 2007: 89). That means this approach exclusively focuses on individual meanings and perceptions and uncovers the reasons for certain actions or behaviour (Blaikie 2007: 90). The insights gained from in-depth interviews need to be categorised, whereby the language of the categorisation usually stays close to the answers of the participants. To construct a theory, however, concepts and categories need to be generalised (Blaikie 2010: 89-91).

The research strategy applied to this project follows a deductive logic. Before the research has been carried out, a theory about the resource dependence structures between the EU institutions and the pro-migrant groups had been developed. Deducing from these interdependences, hypotheses about the conditions under which pro-migrant groups are expected to be most and least influential had been formulated. Subsequent to the hypotheses, the influence of those pro-migrant groups that lobbied the EU institutions directly have been analysed empirically. By so doing, the theoretical propositions have been challenged and,

where required, refused or adjusted. From the empirical findings of the different case studies, the theory on the influence of pro-migrant groups can be expanded or refined. As such, the research follows a deductive logic of inquiry.

#### **4.4 Choice of case study**

In this section, the manner of how knowledge about the influence of pro-migrant groups is going to be gathered, namely by applying a case study design, is concretised. In the following subsections, therefore, the characteristics of case studies, the reasons for applying them, and potential application difficulties are discussed.

##### ***4.4.1 What is a case study?***

According to Hammersley (1992: 183), case studies, as a particular kind of research strategy, emerged in the 1920s in the USA. In the literature, cases are defined as phenomena located in space and time, as contemporary phenomena, or as features of social life (Hamel et al. 1993: 1; Hammersley 1992: 184; Yin 2003: 13). More concretely, cases range from individuals, groups, events, policy areas, or institutions to a national society or international social system (Burnham et al. 2004: 53; Hammersley 1992: 184). By focussing on particular cases, the researcher is able to thoroughly investigate the research subject, its interactions, behaviour patterns, and structures.

Apart from the differentiation in different kinds of cases, there is another classification that can be made – the distinction between single and multiple case studies. In principle, the basic difference between single and multiple case studies is that the former seeks to explain a phenomenon concentrating on one particular case and the latter analyses different cases and allows to test hypotheses on a social phenomenon under different conditions. As such, multiple case studies are regarded as more compelling and robust because this form of replication fosters theory development (Burnham et al. 2004: 55; Burns 2000: 464; Yin 2003: 46).

Both forms of case study research can exist in either a holistic or embedded study design (Yin 2003: 42-43). A case study that analyses the performance of an organisation, for instance, is embedded if it includes in the research the various units of the organisation. The same research objective, however, can be pursued by means of a holistic examination focussing on the overall performance of the organisation rather than scrutinising the various departments. This distinction illustrates that even single case studies, to a certain extent, provide the

opportunity to examine a phenomenon from different angles although they are limited to one particular case.

#### ***4.4.2 Application of case studies to the research project***

To study the influence of pro-migrant groups, a multiple case study design has been applied. The following directives were selected as cases: the Long-term Residents Directive (LTR Directive), the extension of the LTR Directive, the Qualification Directive, and its respective recast Directive. While the two original directives introduce minimum standards in the EU asylum and migration policy, with the others it is intended to harmonise these policies beyond the level of minimum standards. As the four directives were negotiated under different policy-making procedures, it is possible to test the hypotheses about the negative effects of the consultation procedure and the positive effects of the ordinary legislative procedure on the actual influence of pro-migrant groups.<sup>6</sup> Another advantage of these four directives refers to the feasibility of analysing them. In this context, feasibility alludes to the problems of being able to trace back the policy-making process and spot and access all the important actors involved in the process. For their retracement, it can be confirmed that all the major official documents from the Commission, Parliament, and Council were accessible and most of the bureaucrats involved in the negotiations consented to participate in interviews. As for the Council, fewer documents were available but this problem might also occur for alternative directives because the Council has a tendency of working in closed sessions. Even the analysis of the two recast directives was not jeopardised by time constraints since both directives have been adopted in time – just as Commissioner Malmström had assured in 2010 (ECRE 2010d: 2).

With a view to the case study design, the researcher follows an embedded case study approach that facilitates the examination of the impact of different pro-migrant groups on the different EU institutions. This means the different pro-migrant groups form the units of the

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<sup>6</sup> This research aims to test whether and how the decision-making process affects the influence of pro-migrant groups on policy outcomes. As EU directives in the area of economic migration have not been subject to a recast procedure, these measures could not be considered for this research. It is safe to assume, however, that non-governmental actors like transnational companies and employers' associations that benefit from labour migration are influential lobbying actors in Brussels because they want to ensure that their interests are reflected in EU legislation and they are well-endowed to approach relevant policy-makers.



embedded case study. Thus, in addition to the findings gathered from the multiple case study approach, the data set is expanded by scrutinising the diverse interest groups separately. The feasibility of this embedded case study design is assured because contributions of various pro-migrant groups on the four directives could be collected. Approaching the problem this way enables the researcher to examine whether certain internal or external variables affect the influence of pro-migrant groups. The overall advantage of this research design is the production of extensive data that can be compared between the cases. The comprehensive data redound to more detailed findings and more compelling conclusions than what could have been achieved by analysing only one case.

A multiple case study design also has another benefit: it facilitates the organisation and structure of the different chapters. As each directive can be studied in isolation, a single chapter can be dealt with irrespective the other cases. Moreover, the different pro-migrant groups can be explored separately as they form the individual units. In addition, working on the first case study, the researcher can evolve a *modus operandi* that fits the research best and also helps to structure the other case studies. Nevertheless, a case study design provides enough flexibility to arrange the different cases according to individual characteristics and requirements.

Finally, analysing the influence of pro-migrant groups on the outcome of EU directives in a case study design offers flexibility with the application of methods because a case study is a research strategy and does not prescribe the research methods. This means that the decision of applying a case study design does not have any affect on the further orientation of the research project. Burnham et al. (2004: 53) suggest that the choice of methods instead depends on the research questions. Blaikie (2010: 188), Burns (2000: 460), and Yin (2003: 14) agree with that by explaining that a case study can either be quantitatively or qualitatively designed. Leaving sufficient space for the methods to be applied, a case study design offers the researcher the flexibility to adjust her research project whenever it becomes necessary.

#### ***4.4.3 A case study's alleged weakness***

Irrespective the above presented advantages, case studies have always been criticised. This criticism refers to the alleged lack of objectivity, validity, and reliability as well as the inability to generalise from case studies. In the following, the main arguments of these critics and their relevance are discussed.

To start with, the argument that case study research lacks objectivity refers to the assumed potential for bias emanating from the reliance on informants (Hamel et al. 1993: 25; Yin 2003: 19). In this context, one once again needs to take into consideration that rather than being a research method, a case study is a research strategy. To limit the dependency on informants in the present research, different research methods are going to be applied and different data sources are used. A more detailed elucidation on the employed methods is given in the subsequent section. But for the time being, this case study design cannot a priori be criticised for being biased.

The problem of generalising from the case under investigation to a wider population appears to be a case study specific issue. Findings derived from case studies, in particular, have constantly been criticised for not being generalisable because they do not seem representative enough to infer from a limited sample to the universe (Burnham et al. 2004: 53; Hamel et al. 1993: 20). Multiple case studies, according to Hamel et al. (1993: 34), are more representative. Nevertheless, the cases studied in such a research design are limited and, therefore, it cannot be guaranteed that future research will produce the same results if other cases are examined. To overcome this problem, Yin (2003: 10) distinguishes between statistical generalisation and analytical generalisation. Rather than aiming at statistical generalisation, Yin suggests that case study research intends to add to the expansion and refinement of theory. Following Hamel et al. and Burnham et al., Yin (2003: 32) believes that a study appears to be more generalisable, the more cases are analysed. In this sense, analytical generalisations that are confirmed by several cases are more solid than those derived from a single case. Summing up, the present case study design intends to contribute to the refinement of resource dependence theory that ought to describe the influence of pro-migrant groups. Testing the propositions on political influence under different conditions and between different cases increases this study's analytical generalisability.

Other critics, in addition, question that case studies present valid research. In terms of validity, one can distinguish between construct validity, internal validity, and external validity (Yin 2003: 34-37). Construct validity refers to the problem of the adequate operationalisation of the concepts under investigation. With this research project, this problem is encountered in the first place by triangulating different kinds of measures through which the concept of influence is operationalised. Internal validity, on the contrary, alludes to the traceability of the findings. Case studies are not a priori less internally valid than other research designs.

Nevertheless, to avoid this problem, the different research steps are well documented and reported. External validity, finally, addresses the problem of generalisability. As this issue has already been discussed in the previous paragraph, it is sufficient to say that this study aims at being analytically generalisable and not statistically generalisable (Yin 2003: 32-33).

Reliability, in turn, corresponds to the reproducibility of a study (Mason 2000: 39; Neuman 2000: 171). Once again, this is a problem that does not exclusively affect case studies but all sorts of research. In order to increase the likeliness that a study can be repeated at a different time and place and by a different researcher, Yin (2003: 34 and 38) suggests that the research project be split up into as many steps as possible. Thus, again, the researcher uses her best endeavours to document the operation of the study in order to increase its reliability.

To recap, the researcher is aware of the potential problems that a case study design might cause and seeks to limit them. These potential problems notwithstanding, the application of a multiple case study design suits this research because, on the one hand, it helps structuring the further course of the research and, on the other hand, provides flexibility to study the different cases individually. In addition, as the multiple case study design is classified into the different directives, it is possible to scrutinise whether the policy-making procedure affects the influence of pro-migrants groups. Moreover, subdividing each case study into units allows the researcher to analyse whether internal or external variables take effect on the actual impact of pro-migrant groups. Thus, a multiple case study design increases the analytical generalisability of the study because propositions can be tested under various conditions.

#### **4.5 Methodology selected and alternatives not selected**

For the description of the interrelation between the EU institutions and the pro-migrant groups and for the assessment of the influence of the latter, appropriate methods that help producing and analysing the required data are presented (Blaikie 2010: 204; Neuman 2000: 122). Generally, the literature divides the methods available into qualitative and quantitative ones. What this distinction refers to is illustrated in the following passages. Furthermore, this section highlights why some methods are more suited for this research than others.

##### ***4.5.1 Difference between qualitative and quantitative methods***

Quantitative and qualitative methods differ in both their ontology and epistemology. As far as ontology is concerned, quantitative researchers can only study social phenomena, which are observable – directly and indirectly – and their findings intend to represent the truth.

Qualitative research findings, however, are regarded as interpretations of reality. As such, quantitative studies intend to produce general laws that help predict the future, while qualitative researchers analyse certain cases whose findings cannot always be inferred to a broader universe (Burns 2000: 3-4 and 11; Hammersley 1992: 169). The oppositional ontological conceptions also affect the epistemological perception of both schools. Quantitative research seeks to count and measure phenomena, whereas qualitative research offers discursive descriptions to explain phenomena (Blaikie 2010: 204; Neuman 2000: 122). While the course of quantitative research is planned in advanced, standardised and somehow predictable, qualitative research offers flexibility to move back and sideways in order to reflect on a phenomenon as authentically as possible (Neuman 2000: 122).

One has to keep in mind, that the influence of pro-migrant groups is not directly observable because policy-making processes in the EU are very comprehensive and non-transparent. Therefore, an operationalisation that helps to make influence visible is elaborated in another section of this chapter. For the remainder of this section, it is illustrated how knowledge about the influence of pro-migrant groups is going to be gathered.

#### ***4.5.2 Methodology selected***

For the study of the influence of pro-migrant groups, the researcher attaches great importance to viewpoints of the actors involved in the policy-making process. Therefore, conducting elite interviews with representatives of pro-migrant groups and officials working in the EU institutions is fundamental to the research project. In more specific terms, a semi-structured interview technique has been applied. According to Gillham (Gillham 2005: 24 and 70) and Mason (Mason 2000: 62-63), semi-structured interviews are both structured and flexible at the same time. On the one hand, the interviews conducted for this PhD thesis were based on a fixed list of questions that helped to guide the discussion and to keep the topic focused. Moreover, all interviewees were asked the same questions and for all interviews an approximately equivalent time was allowed. This rather strict structure enabled the researcher to compare the answers from the different interviews. On the other hand, the questions posed were rather open and gave each interviewee the opportunity to tell her story. In case the interviewee showed particular interest in one topic, it was possible to spontaneously pose a supplementary question. On the contrary, whenever an interviewee had to leave early, the questions could be adapted to the given time constraints. As such, the semi-structured

interviews were flexible enough to allow the researcher to enter the world of each participant and gather contextual knowledge about the different views and perceptions.

However, one must bear in mind, that statements collected in interviews cannot be treated as facts. First of all, the interviewed interest representatives and EU officials are usually trained in giving interviews and can decide what exactly they want to uncover in the interview. The answers a researcher gets in interviews therefore depend on ‘who we are – in their lives’ (J. Miller and Glassner 1998: 127). That means that the course of the interview and the answers an interviewee gives vary among interviews depending on how important the interview is to the interviewee and how comfortable the interviewed person feels. What can be said about the interviews that have been conducted for this research project is that all interest representatives and most EU officials were very open and willing to share their experience. Some more conservative or high-level bureaucrats were more reluctant to answer questions about the consultation of pro-migrant groups and the influence that they had on their positioning. With the knowledge gained from other interviews, however, it was often possible to encourage them to reveal more than they were initially willing to do because they understood that some of their colleagues had already addressed similar issues. To build up the trust of the interviewees, they were also offered to cross-check references to their interview before publication.

Nevertheless, to avoid too much bias and a one-sided usage of information sources, it was endeavoured to triangulate research methods and data sources. Therefore, additionally to semi-structured interviews, a document analysis based on documents produced by the EU institutions and the pro-migrant groups was employed. This, amongst others, includes sources such as legislative drafts, adopted acts, position papers, reports, agendas, press releases, annual reports, and budgets. Analysing primary sources added to the quality of the research as they helped to uncover different aspects of the social reality, because unlike the conducted interviews primary sources are produced by the actors involved in the policy-making process during or immediately after an event. Thus, they allow assessing a social event contextually and situationally. They have revealed variables, such as the structure and operation of pro-migrant groups, their claims and the responses of the EU institutions, which facilitated the exploration of the actual influence of the interest groups. All these sources were treated carefully to limit the risk of including manipulated figures or statements in the analysis that might distort the findings about the actual influence of pro-migrant groups. Therefore, the

authors of the document, the context, and the purpose for which the document was produced were taken into consideration for the analysis. In addition, the validity of questionable documents was cross-checked in the interviews.

Elite interviews and the analysis of primary sources, additionally, were complemented by secondary literature. This includes all resources produced by independent observers such as books, academic journal articles, or surveys. The advantage of this kind of resources is that they are produced by experts and academics whose work is peer reviewed. Through those kinds of sources, empirical data can be put into perspective.

To summarise, if only one of these methods had been applied, the research would have run the risk of only uncovering one aspect of the social reality or of producing biased conclusions. As the present study explores the influence of pro-migrant groups from different angles and intends to avoid bias and inaccuracy, elite interviews were triangulated with the analysis of primary and secondary resources.

#### ***4.5.3 Methodology not selected***

Although the research intends to guarantee a high degree of accuracy and reliability by applying as many methods as possible, some methods do not appear to be appropriate or practicable. In this subsection, first of all, the impracticability of certain qualitative methods is discussed followed by a discussion of the inappropriateness of employing quantitative methods to the research project.

Above it has been illustrated that the inclusion of individual opinions and perceptions into the description of the influence of pro-migrant groups is vital to this research. Therefore, the researcher conducted semi-structured interviews. The same sort of information, however, could also have been gathered by inviting practitioners and EU officials to participate in focus groups. Like semi-structured interviews, focus groups are planned and structured beforehand. Unlike in interviews, however, the researcher poses questions to a group of participants to encourage a thorough discussion (Blaikie 2010: 207). This method might contribute to more reflective answers because the participants need to justify their viewpoints to the other participants. Yet, this method was not practical for the present research, as it is unlikely that different EU officials would participate in one focus group. Contacts with interest representatives and the cooperation with external information providers are delicate issues and are treated confidentially. Moreover, focus groups consisting of different interest

representatives and EU officials are just as difficult to organise because of their busy schedules. Thus, semi-structured interviewing was considered a more appropriate method because here the interviewees are not confronted with opposing views, which might result in rather secretive answers.

Participant observation is another qualitative method that allows immersion in the lives of the people being studied. This method enables the researcher to observe and experience daily routines, manners of behaviour, and unconscious codes of conduct (Blaikie 2010: 206; Mason 2000: 55 and 85; Neuman 2000: 36). For the investigation of the influence of pro-migrant groups this would mean the uncovering of deep and rounded information. Unfortunately, participant observation is time-consuming but the time frame of the research was limited. Consequently, the application of participant observation would require a reduction of the number of research subjects. As the researcher attaches importance to representative research, she preferred to consult more interest representatives and EU officials by means of interviews.

In addition to those qualitative methods that do not appear to be suited for this research project, quantitative methods do not seem to be appropriate either. The following quantitative methods are discussed in the remainder of this subsection: surveys, structured interviews, and experiments.

Unlike semi-structured interviews, surveys and structured interviews are standardised and do not leave space for the individual needs of the participant. Both methods feature closed questions where the participant can either choose her answer from a given range of answers, has to assess herself on a numerical scale, or can answer freely but as briefly as possible (Blaikie 2010: 205). The answers are then used to generate conclusions from a sample to a greater population (Neuman 2000: 34). Through both methods an atmosphere is created that keeps the interviewer at a distance and does not allow her to immerse in the reality of the participants. Thus, neither surveys nor structured interviews are regarded appropriate methods that satisfy the research purpose of uncovering the context in which a phenomenon is embedded.

Conducting experiments is the structured form of observing participants. Thereby, some participants (control group) are given detailed information about the phenomenon the researcher is interested in, whereby others are kept uninformed. This approach enables the scientist to control certain variables and to analyse whether a phenomenon is dependent on

these varying conditions (Blaikie 2010: 205; Hammersley 1992: 163; Neuman 2000: 33-34). Rather than aiming at an artificial setting, the purpose of the present research project was to capture the reality of the participants. In addition, as the research subjects are high-level officials, it would have been impossible to ask them to participate without being informed about the research project.

Recapitulating, as this research examines the influence of pro-migrant groups from different angles, including the different views of the interest representatives and EU officials, quantitative methods that do not picture individual perceptions were not applied. Instead, the researcher employed qualitative methods such as semi-structured interviews and qualitative document analysis. This triangulation of methods allowed her to map the different opinions on influence and, at the same time, limited the risk of bias, subjectivity, and unreliability.

#### **4.6 Conceptualisation and operationalisation of influence**

Following the section on the research methods that are applied to analyse the influence of pro-migrant groups, it is now being elucidated how the phenomenon of political influence has been conceptualised and operationalised. In this context, conceptualisation refers to the refinement of a construct by relating it to the actual research question, whereas operationalisation describes how this conceptual definition is going to be measured (Neuman 2000: 157-58).

##### ***4.6.1 Conceptualisation***

The conceptual definition of political influence has been elaborated by several scientists in the past. First of all, influence is defined as the capability of one actor to modify the behaviour of another actor (Berry 1979: 183; Cox and Jacobson 1973: 3; Dür 2008b: 561). For the present research project this means that a pro-migrant group is influential if it is able to modify the decision of policy-makers in line with its preferences. Michalowitz (2007a: 134) adds to this view that influential actors are able to persuade actors ‘to pursue a certain course of action, even if they initially did not wish to do so’. Arts and Verschuren (1999: 413) distinguish between positive goal achievement and negative goal achievement. While the former is delineated as the achievement of one’s own objectives or the accomplishment of ‘a goal that is opposite to that of [...] competitors’, negative goal achievement means the prevention of something that is not intended by the respective actor or that is intended by competitors.



#### ***4.6.2 Operationalisation***

Although political scientists appear to be in agreement on the conceptual definition of influence, no universally valid instrument for the measurement of influence has been developed yet. The reason for this is that influence of non-governmental actors within the multi-layered system of EU policy-making is not directly observable. The variety of actors and channels of influence impedes the assessment of a single actor's influence, as its performance always needs to be seen in relation to the performance of other actors. Moreover, actors are free to apply different lobbying strategies that range from direct lobbying or trying to affect the selection of policy-makers to influencing the public opinion. Consequently, a universal tool for the measurement of influence does not exist.

The present research is intended to measure the influence of the pro-migrant groups that are directly involved in the policy-shaping process. In more concrete terms, this means that only the groups that have access to the EU institutions and directly address EU officials of the Commission, the Parliament, or the Council with their positions or amendments are considered. As a starting point for sampling the groups, the Commission's database on open consultations has been scrutinised for direct involvement by pro-migrant groups. During interviews with interest representatives, the snowball sampling technique has then been applied, whereby interviewees have been asked to recommend other interest groups that are active in the areas of asylum and migration. All other indirect forms of lobbying are excluded from the research.

As measurements, the preference attainment method and the attributed influence method are applied. To start with, for the preference attainment method, those pro-migrant groups that forwarded their positions on the draft legislation under examination to the EU institutions have been identified. Therefore, particular attention has been paid to contributions of pro-migrant groups to the Commission's online consultation on the 'Future of the Common European Asylum System'. Moreover, the websites of the pro-migrant groups have been scrutinised for policy papers that address the four selected directives. In addition, in interviews with interest representatives, it has been investigated whether the respective groups have formulated further recommendations that are not available on their website. To assess the preference attainment of the pro-migrant groups, their position papers and the draft legislation and positions of the EU institutions have been scrutinised by means of a document

analysis. In so doing, the documents of the EU policy-makers and the positions of the interest groups are examined for congruence (Dür 2008b: 567).

The preference attainment method is flanked by process-tracing and the attributed influence method. The attributed influence method distinguishes between self- and peer assessment (Arts and Verschuren 1999: 418; Dür 2008b: 565). For this research project, interest representative have been interviewed on their satisfaction with their advocacy work and their influence on the policy-outcome of the four directives. Their answers have then been compared with the statements by EU officials on the performance of pro-migrant groups and the results derived from the document analysis. Asking both the interest representatives and the policy-makers to assess the influence of the pro-migrants groups limits the potential for biased answers.

The two measurements notwithstanding, one interest group might be ascribed influence because its preferences are reflected in the policy outcome although this result is not due to its influence but to alternative causes. Verschuren and Arts (1999: 499-500) list three causes – other bargainers, external factors, and autonomous developments – that put interest groups in the lucky position of winning a policy-making process without being influential at all. Another bargainer, be it a state or a non-state actor, might be successful in advocating for the same or similar interests as the interest group under investigation. As a consequence, the interest group benefits from the influence of the other bargainer. In addition, external factors such as incidents or events might affect the decision of policy-makers. Court decisions, for instance, are to be complied with by policy-makers. Hence groups that address issues that are already reflected in court decisions might appear more influential than they actually are. Autonomous developments, finally, refer to changes in the public opinion on asylum and migration matters. As EU officials constantly face democratic deficits, they might need to respond to the demands of the public. The lobbying efforts of groups that advocate for the same political goals as the public could be misinterpreted as being influential. In order to avoid that these alternative causes manipulate the influence assessment of the pro-migrant groups, they have been included in the evaluation. Therefore, guidelines by the official advisory bodies like the UNHCR are considered in the influence assessment as well as decisions of the ECJ or ECHR and European and international resolutions and conventions. Moreover, rather than trying to individually assess the influence of each pro-migrant group,

the groups are regarded as allies in their attempt to influence policy outcomes, since they pursue similar objectives.

Each of the methods applied on its own could cause biased research findings. The attributed influence method tends to under- or overstate the influence of the pro-migrant groups. The assessment of preference attainment carries the risk that external causes that affect the policy outcome cannot be controlled for. To minimise these effects, both research methods are included in an all-encompassing evaluation of the behaviour of interest representatives and EU officials. Triangulating the methods it is sought to reduce bias and inaccuracy.

#### **4.7 Ethical and legal issues involved in the research project**

After it has been outlined how the doctoral research is carried out, this section engages with ethical and legal challenges that need to be addressed. Correct behaviour may vary between different societies and cultures. Research ethics, according to May (1997: 55) however, ‘take on a universal form and are intended to be followed regardless of the place and circumstances in which the researchers find themselves’. Therefore, Kent (2000: 62) calls upon every researcher to orientate her behaviour towards the accumulation of well-being of all directly and indirectly aggrieved parties. This approach is supported by Burnham et al. (2004: 252) who argue that researchers always ought to avoid doing harm.

To guide researchers in their methods and procedures, more and more institutions draw up codes of conducts (Burnham et al. 2004: 251). This also applies to the University of Salford. To make sure that ‘the subjects’ rights and privacy’ (University of Salford Research Governance and Ethics Committee 2004: 1) are respected, every research proposal needs approval from the University Research Governance and Ethics Committee. This approval evaluates how the researcher deals with issues such as informed consent and data protection. A detailed discussion of these issues is enclosed in the subsequent paragraphs.

Interviews carry the risk of harm to participants, in particular their privacy and confidentiality. Already before the interview, as Burns (2000: 19) suggests, the researcher is advised to inform the interviewee about the research purpose and the interview procedures. In an email, therefore, potential interview partners were provided with information about the research subject and the intention of the research. Furthermore, in this email the researcher assured that participation in the interview is voluntary, that the interviewee is free to skip answers, to keep information private, or to withdraw their consent at any time. Only if the

interviewee agreed to all the conditions and gave the researcher her informed consent, the interview was conducted. During the interview, again, the researcher introduced the research project and endeavoured to create a comfortable and trustful atmosphere. Moreover, all interviewees have been informed about how the empirical data is going to be published in journal articles and the final PhD thesis and they all gave their consent. To protect their confidentiality, the researcher offered to make all information anonymous so that the identity of the single participants cannot be deduced from the publications. In addition, the researcher offered the interviewees the opportunity to counter-check her findings in order to make sure that they are not misinterpreted.

For document analyses, extensive use has been made of EU documents. The main legal issues that arise from using these sources regard accessibility and usability. Both issues are regulated in Article 255 ECT in which it is determined that '[a]ny citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents' (European Union 2002: 135). For unofficial documents and documents referring to third parties, however, Mason (2000: 118) suggests to ask all parties involved to consent to the usage. Therefore, the policy papers of the pro-migrant groups have been discussed extensively during the interviews. For the usage of all documents, be they of primary or secondary nature, it is essential that the researcher avoids deception and scientific fraud (Mason 2000: 253 and 64). Concerning these matters, the researcher assures that her research is guided by telling the truth and no information gathered from documents has been manipulated. Finally, the researcher made every endeavour to avoid plagiarism by referencing all forms of direct and indirect quotes.

Summing up, to protect the privacy and confidentiality of the persons participating in interviews, they have been informed about the research objectives and purpose in advance and all empirical data has been made anonymous. Moreover, the participants were free to decide what information they would like to reveal for future publication. Finally, while the access to and usage of official EU documents is legally guaranteed, the authors of unofficial writs had been asked consent before those document were used.

#### **4.8 Conclusion**

Methodological considerations are important for every scientific research project. Depending on the respective research question, a scientist has to decide which research strategy and

methods are appropriate, how certain phenomena are measured, or which ethical and legal issues may occur in the course of the study.

If nothing else, the way a researcher designs her study relies on her ontological and epistemological viewpoint. In this regard, it has been outlined that political influence within the system of the EU is not directly observable, as the numerous actors involved in the policy-making process can choose various influence strategies and routes. This ontological problem notwithstanding, the researcher is convinced that knowledge about the influence of pro-migrant groups can be gathered. Therefore, a comprehensive theoretical framework was designed that considers both governmental and non-governmental actors. Following a deductive approach, the theoretical assumptions about influence have been tested empirically.

For the adequate test of the propositions, a multiple case study design was deployed. Therefore, four directives have been selected. Moreover, different pro-migrant groups form the various units that have been scrutinised. In so doing, the researcher can assess how the decision-making procedure, the resource dependence of the EU institutions, and group specific factors affect the political influence of pro-migrant groups. This multiple and embedded case study design allows to collect an extensive amount of data which, in turn, adds to the development and refinement of theory.

The data has been collected by means of conducting semi-structured interviews and analysing primary and secondary sources. Through interviews, the participants' perception of either their own influence or the impact of others was analysed. Primary sources, on the other hand, help to assess these answers contextually and situationally by measuring the preference attainment of the groups. Secondary sources, in turn, add a further and less personal angle to the research. The triangulation of the different sources allows the researcher to examine the phenomenon of influence from different angles and at different levels. As in-depth research that allows immersion in the reality of the persons involved in policy shaping is regarded essential for the assessment of political influence, qualitative methods appear to suit this research better than quantitative methods.

In another section of this chapter, the conceptualisation and operationalisation of influence has been developed. In this sense, an actor is influential if she is able to persuade another actor of her opinion. Influence, hereby, is measurable by means of the preference attainment method and the attributed influence method. Combining these measures allows the researcher

to assess to what extent the groups' preferences are reflected in the positions of the EU institutions and how satisfied both EU officials and interest representatives were with the policy outcomes and the performance of the pro-migrant groups. Moreover, the results of the measures are put into perspective by tracing the policy-making process to find out about external factors that also affected the outcome of the four directives.

Ethical and legal issues that might occur in the course of the research have also been discussed. In this regard, the researcher ensures that the privacy and confidentiality of the persons participating in interviews has been protected at all times. For the use of information from both interviews and unofficial documents, informed consent has been asked. Finally, all direct and indirect quotes have been referenced to avoid plagiarism.

## **5. Assessment of the political influence of pro-migrant groups on the Long-term Residents Directive**

### **5.1 Introduction – Background to the Long-term Residents Directive**

The aim of this chapter is to assess the influence of the pro-migrant groups that tabled recommendations on the Long-term Residents Directive. In March 2001, the Commission published its proposal for the LTR Directive. According to the Commission, a long-term resident is a ‘non-EU national who has legally resided in an EU State for a certain period of time [who] should thus be granted a set of uniform rights, almost identical to those enjoyed by EU citizens’ (Commission 2011). Today, the directive concerns more than two and half a million TCNs in the 24 Member States<sup>7</sup> to whom the directive applies (Eurostat 2010). The proposal of the Commission was followed by the European Parliament’s report in November 2001 and the adoption of the directive in November 2003. But the final directive traces back to earlier events in the EU integration process. At the European Council meeting on 15 and 16 October 1999 in Tampere, the creation of an area of freedom, security and justice in the European Union was specified. In this context, a basic guideline for the integration of TCNs was adopted. The Commission was invited to launch initiatives with the aim of fighting discrimination by granting long-term residents rights similar to those of EU citizens (e.g. the rights to reside, receive education, and work) (Parliament 1999a). In its 2000 communication, the Commission took up these guidelines and declared that the fair treatment of third country nationals can only be realised by approximating ‘the national legislations on the conditions of entry and residence of third-country nationals’ and approximating their ‘legal status’ (Commission 2000a: 12). For these purposes, the Commission asked political scientists at the University of Nijmegen to conduct a study on the legal status of TCNs who are long-term residents in a Member State of the European Union. This report highlighted which national provisions diverged in terms of content and needed to be harmonised; namely, the acquisition of long-term resident status, rights attached to it, the status of family members, conditions for withdrawal of the status, as well as the requirements necessary to obtain nationality (Groenendijk et al. 2000: 103).

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<sup>7</sup> Denmark, Ireland, and the United Kingdom are not bound by the directive.

Given the immense divergence between national legislations regarding long-term residence, interest groups interested in the improvement of the long-term residence conditions are supposed to have been actively involved in the shaping process of the LTR Directive. In fact, six groups have been identified as lobbying actors in this policy-shaping process. The first umbrella group that lobbied on the LTR Directive is called the Starting Line Group that was supported by more than 400 NGOs in the late 1990s. In 1998 it published its 'Proposals for legislative Measures to combat Racism and to promote equal Rights in the European Union'. This publication was aligned on the new Title IV of the Amsterdam Treaty and was intended 'to strengthen the rights, and improve treatment of workers who are nationals of their party countries arriving in European territory' (Chopin and Niessen 1998: 5). In 2000, the group was merged into the European Network Against Racism. The second approach of lobbying on the LTR Directive was undertaken by a network – Network 1 – of three umbrella groups; namely, the European Council on Refugees and Exiles, the European Network Against Racism, and the Migration Policy Group. The Network's recommendations for the LTR Directive formed part of its 1999 publication titled 'Guarding Standards – Shaping the Agenda' (Chopin et al. 1999). Network 1 advocated the effective harmonisation of immigration, entry, and residence, family reunion, the conditions of residence of TCNs, and citizenship and political rights. Network 2 is composed of ENAR, MPG, and the Immigration Law Practitioners' Association which developed six legislative proposals in the areas of asylum and immigration in 2000 titled the 'Amsterdam Proposals' (Niessen and Rowlands 2000; Peers 2000). One of these proposals explicitly introduced provisions for long-term resident third-country nationals. From the introduction of Network 1 and 2, it becomes obvious that ENAR and MPG chose to get organised in both networks. In 2001, as a response to the Commission's proposal for a directive, ILPA published its 'Comments, Amendments and Alternative Scoreboard' (ILPA 2001) and, thus, tried to exert influence during the decision-making process too. Finally, the Churches' Commission for Migrants in Europe is another umbrella group that responded to the Commission's proposal for the LTR Directive (CCME 2001). It is composed of Roman Catholic, Orthodox, Protestant, Anglican, and Quaker churches as well as church agencies throughout Europe.

How influential these groups were as regards the outcome of the directive is evaluated by assessing their preference attainment and through an attributed influence assessment. As a second step, it is analysed which variables might have affected the influence of the groups by comparing their profile to outline which group was best suited to provide expert knowledge,



support, and legitimacy. The results of this analysis are then compared with their actual influence. Finally, it is evaluated which hypothesis about the effect of the policy-making procedure on the overall influence is confirmed by the empirical findings.

## **5.2 Influence Assessment**

For the influence assessment, first of all, the recommendations of the pro-migrant groups forwarded to the Commission, Council General Secretariat or Permanent Representations, and national ministries are compared with the proposal for the directive drafted by the Commission and the final directive that was adopted by the Council. Even though the Parliament also responded to the Commission draft, its position is not taken into consideration for this analysis because at that time the Council was only obliged to consult the Parliament and not to consider its position for the final decision on the directive. Regarding the LTR Directive, interviewees working with the Parliament and the Commission emphasised that the consultation procedure was rather ‘an academic discipline’ (Interview 5) for the Parliament because the Council did not follow the recommendations of the Parliament and, thus, the Parliament had no say in the final decision (Interview 34). Political scientists share this view by stressing that the influence of the Parliament under negotiation procedure was very weak (Guiraudon 2000; Kaunert 2009; Papagianni 2006; Stetter 2000). In fact, comparing the position of the Parliament (2001) with the final LTR Directive reveals that out of the 54 amendments tabled by the LIBE Committee only five, and only in a similar wording, are considered in the Council directive (Council 2003; Parliament 2001). Another Administrator in the Secretariat of the LIBE Committee further pointed out that due to the limited authority in asylum and migration affairs at that time, MEPs did not consult NGOs working in these fields (Interview 48). Hence, the recommendations of the pro-migrant groups are solely compared with the draft proposal of the Commission and the directive that was finally adopted. As similarities between those documents do not automatically mean that pro-migrant groups have been influential in lobbying the Commission and the Council, EU officials were also asked to assess the importance of the groups for their own work. Finally, the interest representatives were asked to comment on their performance and satisfaction with the policy outcome. The results of this comprehensive analysis are illustrated in the subsequent subsections.

### ***5.2.1 Preference attainment towards the Commission***

For the assessment of the preference attainment of the pro-migrant groups during the drafting stage, the recommendations of the Starting Line Group and the two networks that actively tried to influence the work of the Commission are compared with the Commission's proposal for the directive (Commission 2001). In the following, commonalities and disparities concerning the general provisions, the long-term resident status in a member state, and the right of residence in member states other than the one that granted long-term resident status are investigated.

The recommendations of the pro-migrant groups and the Commission's proposal resemble each other in a number of issues in the general provisions. Concerning the definition of TCNs and family members of long-term residents, the Starting Line Group and Network 2 referred to all non-EU citizens, their spouses, unmarried partners, children aged under 21 years, and dependents (Chopin and Niessen 1998: 38 und 43; Niessen and Rowlands 2000: 30; Peers 2000: 145). Their suggestions are reflected in the definition of the Commission proposed in Article 2 of the draft directive. The Commission's non-discrimination clause of Article 4 widely concurs with the recommendations of the Starting Line Group and the networks. However, their approach to non-discrimination went further, asking for the implementation without discriminating on the basis of 'nationality' (Chopin and Niessen 1998: 39; Chopin et al. 1999: 23; Niessen and Rowlands 2000: 32; Peers 2000: 145).

The results gained from this comparison are illustrated in the table below. This and the following tables list the recommendations of the different pro-migrant groups that have been compared with the positions of the EU institutions. A '+' before the recommendation indicates agreement between a pro-migrant group and the lobbied EU institution; a '-' before the recommendation stand for disagreement between a pro-migrant group and the lobbied EU institution. The tables help visualise the preference attainment that the groups achieved at drafting and decision-making stage.

<b>Commission proposal</b>	<b>Starting Line Group</b>	<b>Network 1</b>	<b>Network 2</b>
Art. 2 Definitions	+ definition: TCNs, family members		+ definition: TCNs, family members

Commission proposal	Starting Line Group	Network 1	Network 2
Art. 4 Non-discrimination clause	– include nationality as non-discrimination criterion + consider all other criteria		– include nationality as non-discrimination criterion + consider all other criteria

**Table 2: Comparison of recommendations of pro-migrant groups and Chapter 1 of Commission proposal<sup>8</sup>**

With regard to the provisions determining the long-term resident status in a member state, the Commission and the pro-migrant groups agreed on a range of points. This is regarding a list of reasons that allow for short periods of absence from the territory of the member state (Niessen and Rowlands 2000: 30). This also applies to the automatic renewability of long-term residence permits on expiry (Chopin and Niessen 1998: 44; Chopin et al. 1999: 23; Niessen and Rowlands 2000: 21). With regards to the validity of the permits, the Commission even doubled the suggestions of the pro-migrant groups to ten years. Network 2 and the Commission also agreed on procedural guarantees to be granted to long-term residents (Peers 2000: 149). Remarkable similarities between the recommendations of the pro-migrant groups and the Commission's proposal (Art. 12) can also be seen concerning the rights granted to long-term residents (Chopin and Niessen 1998: 45-46; Chopin et al. 1999: 23; Peers 2000: 146). However, despite the efforts of the pro-migrant groups, the Commission did not include the right to vote and stand in municipal and European elections (Chopin and Niessen 1998: 46; Chopin et al. 1999: 31) and the promotion of social and cultural advancement (Peers 2000: 148) in its proposal. Moreover, concerning the duration of residence required to obtain long-term resident status, the Commission (Art. 5) decided on legal and continuous residence of five years, whereas Network 2 had asked for either 'three years' legal employment in a Member State; or three years' registered self-employment in a Member State; or five years' habitual residence in a Member State' (Niessen and Rowlands 2000: 29). The Commission also did not comply with the demands of the Starting Line Group and Network 2 (Chopin and Niessen 1998: 45; Niessen and Rowlands 2000: 31) whereupon TCNs should lose long-term resident status in the event of absence from the territory for a period exceeding three consecutive years but committed itself to two consecutive years instead. The analysis of the preference attainment of the pro-migrant groups is illustrated in the following table.

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<sup>8</sup> + refers to recommendations of the pro-migrant groups that are reflected in the Commission's proposal. - refers to recommendations of the pro-migrant groups that are not reflected in the Commission's proposal.

Commission proposal	Starting Line Group	Network 1	Network 2
Art. 5 Duration of residence			+ list of reasons for short absences – three years’ legal employment, or three years’ registered self-employment, or five years’ habitual residence in member state
Art. 9 Long-term resident’s EC permit	+ automatically renewable on expiry + valid for five years		
Art. 10 Withdrawal of status	– in the event of absence from the territory for a period of three consecutive years		– in the event of absence from the territory for a period of three consecutive years
Art. 11 and 22 Procedural guarantees			+ access to redress procedures
Art. 12 Equal treatment	+ access to: employment and self-employed activity, education and vocational training; social protection; goods and services and the supply of goods and services made available to the public; freedom of association – promote social and cultural advancement – right to vote and stand as a candidate in municipal European elections	+ access to: employment and self-employed activity, education and vocational training; social protection; social assistance; social and tax benefits; goods and services; freedom of association – right to vote in municipal and European elections	+ access to: employment and self-employed activity; social and tax benefits; education; services; freedom of association – promote social and cultural advancement – same rights for family members

**Table 3: Comparison of recommendations of pro-migrant groups and Chapter 2 of Commission proposal**

Finally, the recommendations of the pro-migrant groups and the Commission’s proposal partly concur regarding the right of residence in the other member states. Above all, this applies to the right of free movement of long-term residents as recommended by the pro-migrant groups (Chopin and Niessen 1998: 39; Chopin et al. 1999: 39; Peers 2000: 148). Network 2 (Peers 2000: 149) and the Commission (Art. 19, 20, 25) further agreed on the reasons for refusing or withdrawing the right to reside in another member state. On the contrary, the Commission (Art. 15, 18, 27) and the pro-migrant groups differed in opinion on the requirements for obtaining the right of residence in the second member state (Chopin and Niessen 1998: 39; Chopin et al. 1999: 23), the immediate right to family reunion without any qualifying period (Niessen and Rowlands 2000: 30), and requirements for acquiring long-term

resident status in the second member state (Peers 2000: 148). The results of this analysis are illustrated in the table below.

Commission proposal	Starting Line Group	Network 1	Network 2
Art. 15 Right of residence in the other member states	+ free movement of TCNs		
	– after three years of paid employment or self-employment: free access to labour market in any member state		
Art. 18 Family members			– immediate right to family reunion without any qualifying period
Art. 19 Public policy and domestic security; Art. 20 Public health			+ refuse application in case the person concerned constitutes an actual threat to public order, domestic security, or public health
Art. 25 Withdrawal of residence permit			+ if long-term resident does not exercise an economic activity and is not in possession of adequate resources + if long-term resident constitutes an actual threat to public order or domestic security
Art. 27 Acquisition of long-term resident status in the second member state			– after three years' legal residence in second Member State and while losing status in first Member State

**Table 4: Comparison of recommendations of pro-migrant groups and Chapter 3 of Commission proposal**

Comparing the recommendations of the pro-migrant groups with the Commission's proposal has demonstrated that they coincide in a multitude of clauses regarding general provisions, the long-term resident status in a member state, and the right of residence in other member states. Notable concordance of the recommendations and the Commission's proposal could be demonstrated regarding the definition of TCNs and family members of long-term residents, validity of residence permits, rights granted to long-term residents (amongst others access to labour market, education, goods, and services), free movement, and the reasons for refusing or withdrawing the status in a second member state. Nevertheless, their lobbying attempts seem to have been less successful concerning the non-discrimination clause, period of legal residence required to obtain the status, reasons for withdrawing the status in the first member

state, further benefits such as the right to vote and the promotion of social and cultural advancement, and the requirements for obtaining long-term resident status in the second member state. Out of eleven recommendations the Starting Line Group forwarded to the Commission, six are reflected in the Commission's proposal for the directive. Out of six provisions recommended by Network 1, four are considered in the proposal for the directive. Network 2, finally, suggested 18 provisions out of which 11 correspond markedly with the Commission's proposal for the LTR Directive. On average, the groups achieved 60 per cent of their preferences.

### ***5.2.2 Preference attainment towards the Council***

Subsequent to the assessment of the preference attainment of the pro-migrant groups during the drafting stage, a similar analysis is conducted for the decision-making stage. Therefore, the recommendations of Network 2 and the responses of ILPA and CCME are compared with the final directive adopted by the Council (2003). On its website, Network 2 states that it forwarded its 'Amsterdam Proposals' to the Commission and the Council. In addition, ILPA and CCME commented on the Commission's proposal and, thus, were clearly involved in the decision-making stage. As in the previous subsection, the focus of the analysis is on the general provisions of the directive, the long-term resident status in a member state, and the right of residence in other member states than the one that granted long-term residence.

Concerning the general provisions of the final directive, concordance between the definitions set in Article 2 of the Council directive and the recommendations of Network 2 can be attested (Niessen and Rowlands 2000: 30; Peers 2000: 145). With a view to the scope of the directive, on the contrary, ILPA asked for the inclusion of persons with temporary or subsidiary protection or who are asylum-seekers (ILPA 2001). CCME, in turn, while accepting the exclusion of beneficiaries of temporary protection, favoured the inclusion of beneficiaries of subsidiary protection and asylum-seekers within the scope of the directive (CCME 2001: 2). These recommendations notwithstanding, the Council excluded all three target groups from the scope of the directive (Art. 3). To avoid discrimination between TCNs from different third countries, Network 2 and ILPA recommended the inclusion of nationality as an additional criterion in the non-discrimination clause (ILPA 2001). The Council, just like the Commission, rejected to comply with this recommendation (Recital 17). The analysis of how the general provisions recommended by the pro-migrant groups are reflected in the Council directive is visualised in the following table.

Council directive	Network 2	ILPA	CCME
Recital 17 Non-discrimination clause	– consider nationality as non-discrimination criterion		
Art. 2 Definitions	+ definition: TCNs, family members		
Art. 3 Scope		– include beneficiaries of temporary or subsidiary protection or asylum-seekers	+ exclude beneficiaries of temporary protection – include beneficiaries of subsidiary protection or asylum-seekers

**Table 5: Comparison of recommendations of pro-migrant groups and Chapter 1 of Council directive**

With a view to long-term resident status in a member state, many of the recommendations of the pro-migrant groups are reflected in the Council directive. As regards the conditions for acquiring long-term resident status, both ILPA's (2001) and CCME's (2001: 3) suggestions are reflected in the Council directive (Art. 5). Network 2's call to include redress procedures has also been answered by the Council (Art. 10 and 20). Moreover, most of the pro-migrant groups' recommendations on the rights linked to long-term resident status are concordant with the provisions approved by the Council. On many other provisions, in contrast, the pro-migrant groups and the Council had opposing views. Concerning the duration of residence required for obtaining long-term resident status, the Council followed the Commission's proposal and not the recommendations of Network 2 and ILPA (Niessen and Rowlands 2000: 29). CCME's recommendations, in turn, are in line with the adopted provision (CCME 2001: 3). The Council did not include an extensive list of exemptions allowing for absences from the member state longer than six months as suggested by ILPA (2001) in its final directive (Art. 4). Nor was its demand for exempting TCNs and refugees born in the EU from material requirements acceded to by the Council (CCME 2001: 3). Furthermore, the Council reduced the validity of the long-term residence permit from ten years, as suggested by the Commission, to 5 years (Art. 8) which was not in the interest of Network 2 (Chopin and Niessen 1998: 44; Niessen and Rowlands 2000: 21). Concerning the withdrawal of the status in the first member state, the Council (Art. 9) reduced the originally proposed period of absence that causes withdrawal by half and, thus, did not comply with the recommendations of the pro-migrant groups (Chopin and Niessen 1998: 45; CCME 2001: 3; ILPA 2001; Niessen and Rowlands 2000: 31). Neither has a list of reasons for exemption, as suggested by CCME (2001) been considered by the Council. Just like the Commission, the Council did not include the promotion of social and cultural advancement and the introduction of the right to

vote and stand as a candidate in local and European elections in the directive (Chopin and Niessen 1998: 46; CCME 2001: 4; ILPA 2001; Peers 2000: 148). Finally, the demands for recognising diplomas and qualifications obtained in another member state (ILPA 2001) and for deleting the absolute prohibition to exercise public authority (CCME 2001: 4) have not been considered in the directive either. A detailed overview of this preference attainment analysis is illustrated in the table below.

Council directive	Network 2	ILPA	CCME
Art. 4 Duration of residence	– three years' legal employment, or three years' registered self-employment, or five years' habitual residence in member state	– three years' economic activity or five years' non-economic activity – list of exemptions for longer absences	+ five years' legal residence + certain periods of residence from territory shall not interrupt period of legal and continuous residence
Art. 5 Conditions for acquiring long-term resident status		+ required resources must level minimum wages and pensions in Member State	+ sickness insurance comparable to the one of EU citizens that covers all normal risks – exempt TCNs and refugees born in the EU from material conditions
Art. 8 Long-term resident's EC permit	+ automatically renewable on expiry – valid for five years		
Art. 9 Withdrawal of status	– in the event of absence from the territory for a period of three consecutive years		
			– concrete list of reasons for exemption
Art. 10 and 20 Procedural guarantees	+ access to redress procedures		
Art. 11 Equal treatment	+ access to: employment and self-employed activity; social and tax benefits; education; services; freedom of association – promote social and cultural advancement – family members have the same rights	+ Member States shall not introduce new restrictions on the conditions of access to the labour market – recognise diplomas and qualifications obtained in another member state – promote social and cultural advancement	– equal treatment as proposed by COM – no absolute exclusion from the right to exercise public authority – right to vote and stand as a candidate in local and European elections

**Table 6: Comparison of recommendations of pro-migrant groups and Chapter 2 of Council directive**

The groups achieved their goals for long-term residents in the second member state on the following provisions: the right to free movement, a list of identity documents required for the exercise of free movement (Chopin and Niessen 1998: 39; ILPA 2001; Peers 2000: 148), and



grounds for refusing and withdrawing long-term resident status (Peers 2000: 149). Network 2's recommendation concerning an immediate right to family reunion (Niessen and Rowlands 2000: 30), however, remained unconsidered by the Council (Art. 16). In terms of the conditions required to obtain long-term resident status in a second member state, Network 2's claim to regard three years' legal residence in the second member state sufficient (Peers 2000: 148), was not considered by the Council (Art. 23) either.

Council directive	Network 2	ILPA
Art. 15 Conditions for residence in the other member states	+ free movement of TCNs	
		+ include list of documents necessary for application
Art. 16 Family members	– immediate right to family reunion without any qualifying period	
Art. 17 Public policy and domestic security; Art. 18 Public health	+ refuse application in case the person concerned constitutes an actual threat to public order, domestic security, or public health	
Art. 22 Withdrawal of residence permit	+ if long-term resident does not exercise an economic activity and is not in possession of adequate resources + if long-term resident constitutes an actual threat to public order or domestic security	
Art. 23 Acquisition of long-term resident status in the second member state	– after three years' legal residence in second Member State and while losing status in first Member State	

**Table 7: Comparison of recommendations of pro-migrant groups and Chapter 3 of Council directive**

The above comparison of the Council directive with the recommendations of the pro-migrant groups has illustrated that they concur in only few provisions concerning the directive's general provisions, the long-term resident status in a member state, and the right of residence in other member states. As far as the definition of TCNs and family members, the right of free movement and conditions for acquiring long-term resident status are concerned, similarities between the Council directive and the recommendations of the pro-migrant groups could be observed. Moreover, their recommendations regarding the rights granted to long-term residents and provisions concerning public policy, domestic security, and public health, are also reflected in the Council directive. But in terms of the directive's scope, its non-discrimination clause, the duration of residence necessary to acquire long-term resident status,

and the list of exemptions allowing for absences from the member state, the pro-migrant groups appear to have been less influential. Their suggestions concerning the validity of the long-term residence permit, grounds for withdrawing status in the first member state, the right to vote and promote social and cultural advancement as well as requirements to obtain long-term resident status in a second member state have not been taken into account by the Council either. Out of 16 provisions recommended by Network 2, eight are reflected in the Council directive. ILPA and CCME, in turn, both suggested eleven amendments to the Council, out of which four have been adopted. On average, the pro-migrant groups achieved 42 per cent of their preferences towards the Council.

The preference attainment of the pro-migrant groups towards the Commission and the Council, however, do not directly reflect the actual influence of the groups. In fact, they need to be interpreted against the background of the amendments that the UNHCR tabled, as the UNHCR ‘has a supervisory responsibility’ regarding the establishment of the Common European Asylum System (UNHCR 2012) and because the EU asylum and migration policy ‘must be in accordance with the Geneva Convention’ (TFEU Art. 78). Furthermore, they should be interpreted in the light of conventions and recommendations of the International Labour Organization (ILO) that address the rights of migrant workers and the ‘Convention on the Participation of Foreigners in Public Life at Local Level’ which the EU institutions are bound to. Finally, the preference attainment of the pro-migrant groups could also be interpreted against the background of the provisions determined in the ‘International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families’, even though the EU member states are not signatory parties to this convention.

Comparing these observations, conventions, and recommendations with the recommendations of the pro-migrant groups illustrates that they refer to similar issues with regards to long-term residents in particular or migrant workers in general. This applies to general provisions such as the inclusion of nationality as a non-discrimination criterion and the inclusion of persons with temporary or subsidiary protection or who are asylum-seekers within the scope of the directive (ILO 1949: Art. 17 (2)). But they also are concordant about more detailed provisions like the immediate right to family reunion without any qualifying period (UNHCR 2001b: 1), the promotion of social and cultural advancement (ILO 1975: Art. 13), and the right to vote and stand as a candidate in local and European elections (ILO 1975: Art. 10). The right to free movement (Council of Europe 1992: Art. 6) as well as access to employment and self-

employed activity, social and tax benefits, education, services, and the freedom of association (UNHCR 1990: Art. 15-28, 30, 43) are provisions that the pro-migrant groups supported too. Nevertheless, it is only those latter recommendations of the UNHCR that were agreed upon by the Commission and the Council.

### ***5.2.3 Attributed influence assessment***

The comparison of the recommendations forwarded to the EU institutions with the positions adopted by the institutions has illustrated that about 60 per cent of the suggestions of the pro-migrant groups are reflected in the positions of the Commission and 42 per cent in the Council directive. As the similarities between the recommendations of the pro-migrant groups and the positions of the EU institutions do not necessarily mean that the groups have been influential in convincing EU policy-makers of their ideas, this section focuses on assessing the satisfaction of the groups with their own performance. For this purpose, interviews have been conducted with interest representatives of the Starting Line Group, ENAR, CCME, and MPG. To complement the self-assessment of the interest representatives, EU officials that were engaged in the formulation of the LTR Directive have been asked to peer assess the influence of the pro-migrant groups. As the LTR Directive was adopted in 2003, only few persons could be identified as having been involved in the formulation of the directive. This is due to the high turnover of staff within the EU institutions and the interest groups. Some of the persons that were responsible for the LTR Directive have changed their position in the meantime and cannot be retraced or are retired now. One Commission desk officer, one assistant to a MEP, and one JHA Counsellor commented on the influence of pro-migrant groups on the LTR Directive.

But before the responses of the EU officials are depicted, the following paragraphs allow space for the self-assessment of the influence of the groups. Although the former Director of the Starting Line Group did not go into detail about the influence of the group on particular provisions of the LTR Directive, she was extremely satisfied with the advocacy work. ‘That was the first time that there was a concrete proposal. And it was drafted exactly the same way as the directive was drafted,’ she said. She put particular emphasis on the influence of the group on the Commission: ‘if you look at the first proposal from the Commission and at the Starting Line proposal, it is very similar.’ With a view to the Council, the former Director of the group attested the Starting Line Group less influence. She said that the Starting Line Group did not consider the Council General Secretariat or Permanent Representations in its

lobbying attempts. To limit the opposition of the Council to the Starting Line Group, however, in its recommendations for the Commission it only asked for equal treatment among TCNs and not between EU citizens and TCNs because the group knew that member states would not have been willing to expand EU citizenship to non-nationals (Interview 42).

A representative of CCME pointed out that at the time the LTR Directive was negotiated, there were few NGOs working in the area of migration in Brussels. As CCME followed the negotiation process very intensively, the interviewee characterised CCME's advocacy work as outstanding. Nevertheless, the interest representative remained critical regarding the material conditions an applicant needs to fulfil to qualify for long-term residence. She particularly regretted that people on supplementary benefit were excluded from the scope of the directive. Moreover, she regretted that beneficiaries of subsidiary protection and asylum-seekers did not qualify for long-term residence under the 2003 LTR Directive. According to her, their legal status should not have an impact on the right to long-term residence. To her, a person who has resided in a country for five years gets accustomed to this country and, therefore, knows best where he or she wants to reside in the long term (Interview 18).

A former Director of ENAR acknowledged the work of all interest groups in the field of migration at the beginning of the 21<sup>st</sup> century. She referred to ENAR's advocacy work as 'Sisyphean but very good work'. According to her, this is due to the fact that the LTR Directive was one of the first directives that had been negotiated after the inclusion of the asylum and migration policy in the *acquis communautaire*. As a consequence, negotiations were difficult because the member states wanted to maintain as much sovereignty as possible. Nevertheless, interest groups such as ENAR could exert influence on the policy outcome by approaching the Commission. The Commission seems to have been an adequate lobbying partner because it was eager to foster migration policies at EU level. According to the interviewee, it was also thanks to the political situation in Europe at that time that, more than nowadays, welcomed the integration of migrants into the receiving society and that enabled ENAR to reach about one third of its political objectives (Interview 39).

The Director of MPG was at first rather sceptical about MPG's influence on the LTR Directive. 'They always believed in a rights-based approach but only because the Commission now also promotes a rights-based approach does not prove that it is because of MPG,' he said. But in the course of the interview it became more and more obvious that MPG officials had close contact to Commission desk officers working on the LTR Directive. He

further revealed that he thinks that MPG has exerted influence on the Commission's proposal for the directive. With a twinkle in his eye he said, 'I have seen copies, by the way, of the Amsterdam Proposals at the time we published them, and I saw them on their [i.e. Commission desk officers] bookshelves'. In this way, he implied that the Commission officials responsible for the LTR Directive consulted the Amsterdam Proposals when formulating the Commission's proposal. Nevertheless, he was not totally satisfied with the Commission's proposal and the adopted directive. He particularly regretted that applicants need to demonstrate five years of residence before they can apply for long-term residence, whereas MPG had recommended three years as the sufficient time period (Interview 16).

In its annual reports, ECRE presented its advocacy work as 'an exercise in damage limitation – the importance of which cannot be underestimated' (ECRE 2004b: 3). The umbrella group particularly regretted that refugees and beneficiaries of subsidiary protection had not been included in the LTR Directive. According to ECRE, access to the labour market, vocational training, education, and political participation are key to successful integration (ECRE 2005a: 5). ILPA (ILPA 2004: 28) also considered itself unsatisfied with the final Council directive as 'it sets out many hurdles in the way of obtaining status, excludes some important groups (particularly refugees and persons with subsidiary protection) from its scope, and contains significant exceptions from the principle of non-discrimination'.

The Commission desk officer in charge of the LTR Directive only reluctantly acknowledged the importance of pro-migrant groups for the formulation of the proposal. In the beginning he neglected having had contact with NGOs at all. 'In all fairness, I don't remember us having any contact with any NGO of whatever sort on the Long-term Residents Directive,' he said. Only after the interviewer pointed out to him that she noticed a remarkable congruence between the recommendations of the pro-migrant groups and the Commission proposal – not only regarding the structure but the formulation of several provisions – he admitted that the Commission closely worked together with NGOs and think tanks. He said that, at the time the proposal was formulated, the information NGOs offered to the Commission was 'extremely helpful taking into account the very limited amount of knowledge that we had [...]. We had to rely on external input from that point of view and therefore contribution was certainly welcomed' (Interview 34). What is more, in a letter to the former General Secretary of ECRE, Antonio Vittorino (European Commissioner for Justice and Home Affairs 1999-2004)

thanked ECRE on its ‘constructive and informed input’ that the umbrella group provided for him (ECRE 2004b: 3).

Being questioned on the influence of pro-migrant groups on the Council, an assistant to a MEP explained that some of their recommendations are not feasible for member states. According to him, ‘NGOs have the best intentions in the world [...] and if you have a bit of a human element in you, you cannot disagree with what is on paper’. But, still, member states have to disagree with proposals such as full social rights like ‘carte blanche to the employment market, carte blanche to social benefits such as housing’ because they do not have adequate resources for that (Interview 27).

To summarise, the direct comparison of the recommendations of the pro-migrant groups with the positions of the Commission and the Council has illustrated that they bear a remarkable resemblance in structure and concrete formulation. While 60 per cent of the recommendations of the pro-migrant groups are reflected in the draft proposal, only 42 per cent are reflected in the Council directive. The result of this comparison is confirmed by the responses the interest representatives gave regarding their satisfaction with the outcome of the directive. None of the interviewees claimed that they reached all their political objectives. Nevertheless, they pointed to the notable resemblance of their recommendations and the proposal drafted by the Commission. They, however, were less satisfied with the adopted LTR Directive. Thus, they appear to have been more influential during the drafting stage than during the further negotiations. Their importance has also been acknowledged by the Commission desk officer responsible for the LTR Directive and the former European Commissioner for Justice and Home Affairs. Finally, an assistant to a MEP explained that pro-migrant groups can exert influence on migration legislation but only if their demands are feasible for the member states.

After having analysed the preference attainment of pro-migrant groups, the self-assessment of the groups, and the peer assessment on the part of the EU officials, the subsequent section analyses which factors affected their ability to exert influence on the respective EU institutions.

### **5.3 Which factors affected the influence of pro-migrant groups?**

In the theoretical framework preceding the empirical analysis, it has been posited that the Commission is dependent on expert knowledge because it lacks sufficient personnel to cover

all policy areas in depth. Moreover, it was expected to depend on support, as it needs to justify its opinion in the negotiations with the Council. Finally, the Commission was assumed to rely on further legitimacy that can only be guaranteed by extensive consultations. On the contrary, it was hypothesised that the Council is solely dependent on expert knowledge and only in addition to the information it obtains from national experts and ministries. On the part of the pro-migrant groups, it was expected that only those groups that are able to provide expert knowledge, support, and legitimacy can exert influence on the EU institutions. For the provision of expert knowledge, it was assumed that sufficient funding and personnel, an efficient organisation structure, and on the ground expertise are required. Moreover, it was supposed that only those groups that share the same political ideas with one EU institution and are able to access those policy-makers that oppose these common ideas could provide support. Finally, solely groups which can legitimise their own advocacy work by demonstrating sufficient representativeness, participation structures, efficiency, and a strong argumentation were assumed to be capable of providing legitimacy to the EU institutions.

In the following, these assumptions are tested empirically to see what factors affected the performance of the pro-migrant groups. For this examination, empirical findings gathered in interviews with EU officials and interest representatives are utilised. To start with, they are analysed regarding their ability to provide expert knowledge.

### ***5.3.1 Empirical assessment of the ability of the pro-migrant groups to provide expert knowledge***

Firstly, as funding and personnel capacity of the groups seem to be essential for the provision of expert knowledge, the following figures have been collected: annual budget, personnel capacity, liaison office. Hereby, it is expected that groups that are well-endowed, that have sufficient staff and run a liaison office in Brussels are better equipped to provide tailored expert knowledge for the EU institutions than those that lack thereof. To begin with, the Starting Line Group did not have its own office in Brussels but could use office space in the liaison office of CCME. There was only one person employed in Brussels and its total funding was limited to about 100,000 Belgian Francs (about € 2,500<sup>9</sup>) (Interview 42). ILPA's annual turnover, amounted to approximately € 520,000 (ILPA 2010: 9). Its advocacy work

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<sup>9</sup> 1 euro equaled 40 Belgian francs on 1 January 2002.

was supported by eleven staff members in the Secretariat in London (ILPA 2003: 20). For its advocacy work in Brussels, CCME had about € 690,000 available in 2003 with which amongst others it covered the personnel expenditures for the four employees of the liaison office (CCME 2005b: 11). At ENAR's office in Brussels, there were 10 persons employed in 2003 (Interview 39). For the maintenance of the work of the liaison office, ENAR received approximately € 922,000 in 2004 (ENAR 2004: 14). ECRE's budget added up to € 1,270,000 in 2003. In support of its advocacy work, 15 persons were employed at the London office at that time (ECRE 2004b: 13-14). ECRE did not have a liaison office in Brussels until the beginning of 2008 (Interview 49). MPG, in turn, was present in Brussels when the LTR was negotiated. Its advocacy work was supported by 12 staff members (MPG 2011b). Even though MPG wants its budget to remain confidential, it can be assumed that it is comparable to the budget of ECRE given the similar number of staff employed at the offices (Interview 16).

Secondly, to provide the EU institutions with expert knowledge, pro-migrant groups need to ensure that they can offer technical information and on the ground expertise about the conditions of long-term residents in the various member states that the EU institutions cannot gather themselves. Due to its scarce capacities, CCME joined forces with Caritas Europa which allowed CCME to solely focus on detention, legal migration, and irregular migration. While the Brussels office monitored the EU decision-making process, its national members were responsible for the collection of on the ground information. Nevertheless, the interviewee admitted that CCME was not able to provide information on all EU member states (Interview 18). ECRE applied a similar division of labour between the London Secretariat and its member organisations. In addition to the support of the member organisations, the European Legal Network on Asylum, a platform of 2,000 legal practitioners, advised the Secretariat on its policy recommendations (Interview 24). ENAR, too, could refer to the information provided by its national members that helped the staff in Brussels to put emphasis on the political demands of ENAR (Interview 39). ILPA's advocacy work is organised in various subcommittees. Thus, depending on their own specialisation, members of ILPA can join a subcommittee and contribute to the advocacy work of the Secretariat. However, it needs to be kept in mind, that the information collected by its members is solely related to the migration system of the United Kingdom (ILPA 2011). For the generation of on the ground information, MPG cooperates with project partners throughout Europe. This allows MPG to base its advocacy work on comparative pan-



European studies (MPG 2010: 5). The advocacy work of the Starting Line Group was assisted by the core group of its member organisations; namely, the Commissioner for Foreigners of the Berlin Senate, the Belgian Centre for Equal Opportunities and against Racism, Caritas Europa, the European Jewish Information Centre, Migrants Forum, and the European Anti-Poverty Network, as well as lawyers. With their help, the Starting Line Group was able to compare national legislation and to identify the problems regarding the treatment of migrants in the various member states (Interview 42). Even though all groups seem to have been able to refer to persons working on the ground for specific information, some interviewees pointed out that they find it difficult to provide timely reports and case studies because the requests of EU officials are set in tight time frameworks (Interviews 18, 24, 39).

Thirdly, the distribution of information to the policy-makers is crucial to the ability of pro-migrant groups to provide expert knowledge. At the time the LTR Directive was negotiated, the Brussels office of CCME alone was responsible for providing the respective EU institutions with expert knowledge, whereas its members did not approach policy-makers, neither at national nor at EU level (Interview 18). ENAR, on the contrary, already divided labour between its Brussels office and its member organisations for the lobbying of European and national policy-makers (Interview 39). The Starting Line Group, too, divided labour between the Brussels Secretariat that approached EU officials and its member organisations, which were responsible for lobbying national ministries. EU lobbying, however, was not systematic because there was only one person employed in Brussels and only few member groups had the financial means to send staff to Brussels to support that person (Interview 42). MPG describes its dissemination of information as ‘accurate, timely and relevant’. Although it needs to be considered that MPG limited its lobbying to the Commission (MPG 2010: 10). ECRE emphasised in its annual report that the umbrella group divides labour between its ‘active membership and a strong secretariat’. Thus, it was the London Secretariat that liaised with the EU officials and the member agencies of ECRE that approached their national governments and parliaments (ECRE 2004b: 2 and 4). ILPA’s advocacy work was clearly focussed on national institutions – ‘Select Committees of Parliament, primarily in the House of Lords’. Only ‘[w]here it [was] possible [they] participate[d] in EU related policy meetings with EU institutions and the Home Office’ (ILPA 2003: 32). Nevertheless, together with ENAR and MPG, ILPA formulated lobbying guidelines on how to lobby on asylum and migration issues at national and EU level (Niessen and Rowlands 2000: 53-62).

Deducing from the financial and personnel capacities of the groups, it can be expected that for all groups it has been difficult to follow the negotiations on the LTR Directive closely and to liaise constantly with EU policy-makers. However, ENAR and MPG might have encountered fewer difficulties as they were comparatively well-endowed. For ILPA and ECRE, the liaison with EU officials must have been difficult due to their absence from Brussels. To overcome funding and personnel deficiencies, all groups cooperated with persons working on the ground for the collection of specific information. However, ILPA's ability to gather expert knowledge was limited to information related to the British migration system. Finally, ENAR, ECRE, and the Starting Line Group also applied an efficient organisation structure for the lobbying of policy-makers at EU and national level. Nevertheless, only MPG described its provision of information as timely, whereas the others experienced difficulties in liaising systematically with policy-makers. In the following table, the categorisation of the pro-migrant groups regarding their ability to provide expert knowledge is summarised.

<b>Ability to provide expert knowledge</b>	<b>Pro-migrant groups</b>
<b>Annual budget</b>	
> € 1,000,000	ECRE (London Office)
€ 500,000 - 999,999	CCME, ENAR, ILPA (London Office)
< 5,000	Starting Line Group
<b>Staff</b>	
15	ECRE (London Office)
10 – 14	MPG, ENAR, ILPA (London Office)
< 10	CCME, Starting Line Group
<b>Organisational structure</b>	
Liaison office in Brussels	CCME, ENAR, MPG, Starting Line Group (office space)
Division of labour: Brussels office monitors EU policy-making processes and member organisations collect on the ground information	CCME, ECRE ENAR, MPG (project partners), Starting Line Group
	For ILPA, London office is responsible for monitoring and members solely collect UK related information
	At EU level CCME, ECRE, ENAR found it difficult to provide timely information

Ability to provide expert knowledge	Pro-migrant groups
Division of labour: Brussels office lobbies at EU level and member organisations at national level	ECRE (London Office), ENAR, Starting Line Group

**Table 8: Categorisation of pro-migrant groups regarding their ability to provide expert knowledge**

In the interviews with EU officials, the dependence of the Commission and the Council on expert knowledge has been confirmed. The ability to provide the demanded information, thus, forms a pre-condition for the exertion of influence on these policy-makers. On the part of the Commission, the desk officer of the LTR Directive explained the following:

[we] had been making the best possible use of their contribution simply because, you have to bear in mind that going back ten years in time or even more than that the Commission's teams dealing with immigration and asylum were extremely small and were desperately lacking expertise because these were brand new areas for the Commission (Interview 34).

One of the officials that discussed the LTR Directive in the JHA Council also confirmed the importance of pro-migrant groups as providers of expert knowledge. However, she said external expert knowledge seems to be more important to national ministries because technical issues are discussed at working group level. In addition, she stressed that the information provided by pro-migrant groups needs to be treated carefully because 'they look through NGO glasses and provide info [information] on certain notions that might be difficult to implement' (Interview 7).

### ***5.3.2 Empirical assessment of the ability of the pro-migrant groups to provide support***

Regarding the ability of pro-migrant groups to provide the EU institutions with support their positioning must, first of all, be compared to the positions of the Commission and the Council. As the position of the Parliament on the LTR Directive was not part of the analysis, its positioning is not compared with the recommendations of the pro-migrant groups. From the preceding assessment of the preference attainment of the pro-migrant groups it has become evident that some of the provisions adopted by the Council are more restrictive than what the Commission had suggested; for example, the period of absence allowed from the territory of the EU, the validity of EC long-term residence permit, and social rights granted to long-term residents. With these provisions, the recommendations of the pro-migrant groups have always been closer to the proposal of the Commission than to the directive adopted by the Council.

To provide support for one institution, secondly, pro-migrant groups need to access those policy-makers that oppose the ideas of the institution that is supported. In the case of CCME, one of its employees mentioned that the Commission did pass information about the negotiations on to CCME so that it could increase the political pressure on the Council. Within the Council General Secretariat, the Brussels staff had one contact person that disseminated its recommendations among the persons who worked at the LTR Directive. Nevertheless, it seems to have been difficult to identify the opinion-makers in the Council working groups. Moreover, CCME did not cooperate with its member organisations in the EU member states in order to lobby national ministries before 2004. Permanent Representations, in turn, were not regarded as useful access points to exert influence on Council decisions because they are bound to instructions by their respective governments. Thus, although CCME received information about internal Council negotiations, it did not use all the channels available to approach the Council and could not convince it effectively of its recommendations (Interview 18). Even though one interest representative of ENAR stated that the Commission was always very open towards the group, she has never experienced being used as an external ally for the Commission. But even if ENAR had tried to provide the Commission with external support, ENAR would not have been able to access the Council. The group only occasionally met with staff of Permanent Representations (Interview 29). One of the Board members of MPG depicted its relation to the Commission as frequent and close. Yet, allying with the Commission in order to convince the other EU institutions of the common objectives was never part of MPG's lobbying strategy that focussed on the Commission exclusively. The interviewee explained,

[w]hat we were trying to do is to stimulate [national organisations] to link their national situation with the European situation and to help them to assess the situation. National governments need to feel the pressure at home (Interview 16).

The former representative of the Starting Line Group, on the contrary, indicated that the group received information from the Commission about the internal decisions of the Council. Thus, the group knew which member states opposed their views and needed to be contacted. However, the interviewee explained that they were not able to access the Council General Secretariat or the Permanent Representations but were briefed by their national member organisations on how to approach national ministries (Interview 42). ECRE appears to have applied the most versatile lobbying strategy of all the groups. It met with the Presidencies of Italy, Ireland, and the Netherlands, approached the respective Council working groups, and 'ensured that its position was known to the European Parliament and Commission'.

Furthermore, its member organisations lobbied the governments and parliaments at national level (ECRE 2004b: 4). Finally, ILPA's ability to access the EU institutions was limited to occasional meetings with the Parliament and the UK Home Office (ILPA 2003: 32).

Interestingly, CCME and ENAR, referred to the Parliament as the most receptive EU institution. According to them, at that time, the Parliament was very liberal and pursued progressive ideas that were similar to the ones propagated by pro-migrant groups. In particular, the LIBE Secretariat, the rapporteurs, and shadow rapporteurs seem to have been crucial access points (Interviews 18, 39, 42). However, as the Parliament did not have the right to co-decide at the time the LTR Directive was negotiated, the pro-migrant groups and dedicated MEPs were not successful in increasing the pressure on the Council.

The results of the above analysis are illustrated in the subsequent table.

<b>Ability to provide support</b>	<b>Pro-migrant groups</b>
<b>Positioning</b>	
Close to COM	CCME, ECRE, ENAR, ILPA, MPG, Starting Line Group
<b>Ability to access EU institution</b>	
Access to COM	CCME, ECRE, ENAR, MPG, Starting Line Group
Access to EP	CCME, ENAR, ILPA, Starting Line Group
Access to Council	CCME, ECRE
Access to Permanent Representations/national authorities	ECRE, ENAR, ILPA, Starting Line Group
<b>Alliance building</b>	
Allied with COM	CCME, Starting Line Group

**Table 9: Categorisation of pro-migrant groups regarding their ability to provide support**

Thus, given the positioning of the pro-migrant groups, it can be said that all groups were closer to the proposal of the Commission than to the directive adopted by the Council. In principle, they could have served as external allies for the Commissions. However, none of the groups was able to approach the Council effectively. On the one hand, this was due to the limited capacities and experiences of the pro-migrant groups. CCME, for instance, did not try to approach national ministries when the LTR Directive was being negotiated in the Council. Neither did CCME approach Permanent Representations because it did not regard them as being influential. ENAR, in turn, did regard Permanent Representations as crucial access

points to the Council but did not have the capacities to approach them regularly. The Starting Line Group, too, referred to the Council General Secretariat and the Permanent Representations as important actors in the intergovernmental negotiations. However, the group lacked sufficient resources to contact these bodies. ECRE, which considered the Council General Secretariat in its strategy, reported that this was not always possible due to time constraints. On the other hand, the non-transparent spheres of competence and decision structures within the Council limited the ability of the groups to convince the Council members of their ideas. Nevertheless, the inability of the pro-migrant groups to provide the Commission with external support might not have affected the overall influence of the groups significantly. This is because the Commission did not regard itself as being dependent on support. The Commission desk officer who was in charge of the LTR Directive pointed out that getting support from pro-migrant groups was not the purpose of the consultations. While the Commission desk officer acknowledged the Commission's dependence on expert knowledge, he did not confirm its need for external support (Interview 34). Thus, the ability of the groups of providing expert knowledge appears to have had a greater effect on their overall influence than their ability of providing external support.

### ***5.3.3 Empirical assessment of ability of the pro-migrant groups to provide legitimacy***

For the analysis of the ability to provide legitimacy it needs to be assessed how pro-migrant groups legitimised their own advocacy work. First, this is done by looking into their representativeness. Groups with a great representativeness at that time were CCME that had member organisations in 12 member states (CCME 2005a: 20-21) as well as ECRE (2004b: 1), ENAR (2004: 3), and the Starting Line Group (Chopin 1999a: 111) that were represented in all 15 EU member states. ILPA, even though it assembled 1225 members in 2003, faced severe representativeness issues because it is only active in the UK (ILPA 2003: 16). MPG, which does not have a membership-based structure, also lacks representativeness (MPG 2011a). However, while one of the Board members of MPG acknowledged that membership-based associations, such as church organisations, speak with more authority, for MPG the credibility of its work is of greater importance than whether it is legitimised by members (Interview 16).

A second way of assessing the legitimacy of the pro-migrant groups is by means of its participation structures. Firstly, it is important to note that none of the groups includes migrants among their members. Thus, people who are affected by EU migration policies are

not involved in the work of the pro-migrant groups. However, CCME, ECRE, and ENAR claim to let their member organisations, at least indirectly, partake in the writing of the recommendations. This means that member organisations are normally involved in the formulation of general work plans and objectives that form the guidance for concrete policy recommendations. Furthermore, these three groups indirectly involve their member organisations in the recruitment of the staff that represents their concerns to the EU institutions. This is done through elected bodies. In addition, the member organisations of ECRE and ENAR were also involved in the lobbying strategy at national level (Interviews 18, 24, 39). For the formulation of ILPA's position on the LTR Directive and for its advocacy work, the members of its European Sub-Committee were responsible (ILPA 2004: 25). Moreover, ILPA's Board of the Directors is elected by and from its members (ILPA 2012a). As for the Starting Line Group, only its Director, the core group, and lawyers were involved in the drafting process of the policy recommendations, whereas all other supporting organisations, for time reasons, were excluded from participating in drafting the recommendations. However, the supporting organisations were involved in lobbying national policy-makers (Interview 42).

Thirdly, it is analysed how effective they have been on lobbying on the LTR Directive and whether their general mission was reflected in their policy recommendations to assess the legitimacy of the groups. As for the former, it has already been pointed out that 60 per cent of the provisions suggested by the groups are reflected in the position of the Commission and 42 per cent in the Council directive. In their attempt to promote the rights of long-term residents, all groups complied with their general mission of promoting legal measures to fight racism, discrimination, and xenophobia (Chopin 1999: 1; CCME 2011b; ENAR 2011), including migrants and asylum-seekers socially (ECRE 2011), promoting immigration, asylum and nationality law (ILPA 2011c), as well as removing integration obstacles and promoting active citizenship (MPG 2011c).

Fourthly, pro-migrant groups add more substance to their political demands by referring to international legal standards or conventions. In the shaping of the LTR Directive, CCME, for instance, based its advocacy work on fundamental rights outlined in the Charter of Fundamental Rights of the European Union (CCME 2001: 1) and its commitment to the Bible 'which insists on the dignity of every human being' (CCME 2011a). ILPA referred to the shared belief of its members that immigration, asylum, and nationality law should be anti-

racist and anti-sexist (ILPA 2011b). In addition, policy recommendations of ILPA and MPG are based on the European Convention on Human Rights, the United Nations Convention on Migrant Workers, the European Convention on Establishment, and the Conventions of the International Labour Organisation (Peers 2000: 141). ECRE justified its claims through the 1990 Convention on the Protection of all Migrant Workers and Members of their Families, the European Convention on the Legal Status of Migrant Workers, and the Anti-discrimination Article of the Amsterdam Treaty (Chopin et seqq. 1999: 19). To strengthen its arguments, the Starting Line Group alluded to significant inequalities in treatment of migrants. It identified the EU association agreement with Turkey as containing the most favourable treatment of migrants. By referring to this agreement, the group argued that all other migrants in the EU should be entitled to the same rights as Turks because this is what the Anti-discrimination Article of the Amsterdam Treaty asks for (Interview 42). The findings of the previous analysis are recapitulated in the table below.

<b>Ability to provide legitimacy</b>	<b>Pro-migrant groups</b>
<b>Participation</b>	
Involvement of people affected by EU asylum and migration policies	None
Involvement of members in appointing representatives	ILPA, Starting Line Group indirect involvement through Board (elected by members): CCME, ECRE, ENAR
Involvement of members in positioning process	CCME, ECRE, ILPA, Starting Line Group (only members of core group)
Involvement of members in lobbying campaigns	ECRE, ENAR, ILPA, Starting Line Group
<b>Representativeness</b>	
Represented in 15 EU MS	ECRE, ENAR, Starting Line Group
Represented in 10 - 14 EU MS	CCME
Represented in < 9 EU MS	ILPA, MPG
<b>Effectiveness</b>	
Reflection of the mission of the groups in policy recommendations	CCME, ECRE, ENAR, ILPA, MPG, Starting Line Group
Reflection of policy recommendations in policy output	Partially: CCME, ECRE, ENAR, ILPA, MPG, Starting Line Group
<b>Basis of argumentation</b>	



Ability to provide legitimacy	Pro-migrant groups
Legal conventions and standards	CCME, ECRE, ENAR, ILPA, MPG, Starting Line Group
Biblical mandate	CCME

**Table 10: Categorisation of pro-migrant groups regarding their ability to provide legitimacy**

Following the analysis above, it needs to be stressed that none of the groups appears to have let migrants take part to a sufficient degree. It is assumed that such participation structures are crucial to the legitimacy of interest groups. Ideally, groups should be able to demonstrate that they act in the best interest of the persons that they represent. From where did they obtain the mandate to represent migrants if migrants are not directly involved in formulating the recommendations that are forwarded to the EU institutions? They partly obtained that mandate from the practitioners that worked for the groups with migrants in the different EU member states. Yet, the views of those practitioners were only included in the general objectives and mission of the groups. To make internal decisions more efficient, the groups decided to leave the formulation of policy recommendations to their staff in Brussels or a core group of their members. The analysis of the recommendations of the groups, however, has shown that they are all in line with the missions of the groups and, thus, the expertise of the practitioners appears to have guided the formulation of the policy recommendations. As a further balance to the lack of direct participation structures, it needs to be acknowledged that the majority of the groups are sufficiently representative. The fact that most of them had member organisations in various EU member states that supported the advocacy work in Brussels implies that they spoke with great authority. Furthermore, in their recommendations, all of them referred to existing European and international legislation to support their arguments for higher long-term residence standards and more comprehensive rights for long-term residents. Thus, considering the lack of direct participation of migrants in the groups that represented their interest to the EU institutions and considering that on the ground practitioners were only indirectly involved in the formulation of the policy recommendations, it is concluded that the analysed groups were not well-suited to provide the EU institutions with legitimacy.

But how severely did the lack of legitimacy on the part of the pro-migrant groups affect their actual influence on the LTR Directive? Equally important for this assessment is the dependence of the EU institutions on additional legitimacy. According to the desk officer responsible for the LTR Directive, the Commission did not lack legitimacy itself and, therefore, did not put too much weight on the legitimisation of pro-migrant groups. Hence,

even though the Commission is not a directly elected body, the interviewed Commission official did not question the legitimacy of the Commission's legislative power. According to him, the Commission solely appears to have consulted pro-migrants groups to obtain additional expert knowledge (Interview 34). For the Council, legitimacy did not appear to be an issue either. As one Counsellor said, consultations at Council level hardly ever take place and should they take place, they are not driven by legitimacy concerns. However, the purpose of consultations can differ at national level. In the member state that the interviewed Counsellor represents, for instance, extensive consultation takes place at national level before decisions on certain files are taken to demonstrate the state's commitment to democracy (Interview 7). As a conclusion, it needs to be emphasised that legitimisation through the pro-migrant groups does not seem to have been an important aspect of stakeholder consultations during the discussions of the LTR Directive. Therefore, the lack of legitimacy on the part of the pro-migrant groups has not significantly hampered their lobbying success. Rather than legitimacy, the EU institutions sought expert knowledge from the groups.

## 5.4 Conclusion

This chapter has sought to assess the influence of pro-migrant groups in the case of the LTR Directive. For this assessment, six pro-migrant groups that tried to exert influence on the outcome of the LTR Directive have been analysed. While the Starting Line Group and MPG limited its lobbying strategy to the drafting stage, CCME focused its advocacy work on the decision-making stage. ECRE, ENAR, and ILPA, in turn, applied a versatile strategy – lobbying at Commission and Council level. On average, 60 per cent of the provisions that the groups proposed are reflected in the Commission proposal. On the adopted directive, however, the groups achieved only 42 per cent of their preferences.

Pro-migrant groups	Preference attainment towards Commission	Preference attainment towards Council
Starting Line Group	6 out of 11	
Network 1	4 out of 6	
Network 2	11 out of 18	8 out of 16
ILPA		4 out of 11
CCME		4 out of 11
<b>Total average</b>	<b>60%</b>	<b>42%</b>

Table 11: Summary of preference attainment

Moreover, the attributed influence assessment has produced similar findings. Even though, none of the interest representatives claimed to have reached all their political objectives, they pointed to the notable resemblance of their recommendations and the proposal drafted by the Commission. On the influence on the adopted directive, both interest representatives and EU officials remained rather sceptical.

With regard to the hypotheses that were formulated before the empirical analysis has been conducted, the following statements can be made. Both the findings from the assessment of the preference attainment and the attributed influence clearly indicate that the pro-migrant groups exerted less than medium influence on the LTR Directive. Therefore, the results support the alternative hypothesis whereupon the influence of pro-migrant groups on policy proposals that are discussed under consultation procedure is less than medium or low. As such, the empirical findings support the assertion that because of the dominance of the Council during the consultation procedure, the influence of pro-migrant groups is rendered marginal. Because the Parliament did not have the right to veto the position of the Council, the influence of the pro-migrant groups on the LTR Directive remained low.

The dependence structures of the Commission and Council at the time the LTR Directive was negotiated provide further explanation for the limited influence of the pro-migrant groups. In interviews with Commission and Council officials, it became clear that the Commission more than the Council relied on the provision of expert knowledge. If at all, it was the national ministries that needed additional information. While most of the groups attested having had close contact with the Commission to provide them with the needed expertise, only CCME and ECRE had occasional contact with the Council and ENAR, ILPA, and the Starting Line Group were occasionally able to access Permanent Representations or national ministries. As outlined above, this limited access is due to the lack of dependence of the Council on expert knowledge as well as its obscure internal structure and decision procedures. In addition, however, financial and personnel capacities as well as the organisational structure of the groups appear to have been crucial factors that decided their ability to provide expertise and, thus, their influence. Even though budget and staff varied immensely among the groups, none of the groups was sufficiently endowed to effectively approach the Council General Secretariat and Permanent Representations. Furthermore, the groups were not well-experienced in advising their members on how to approach national policy-makers. Thus, while the pro-migrant groups seem to have been capable of accessing and exerting influence

on the Commission because it relied on external expert knowledge, their influence on the Council remained marginal because the Council did not need additional information and because the groups experienced difficulties in accessing the Council.

The ability to provide support and legitimacy to the institutions, on the contrary, appears to have had little effect on the influence of pro-migrant groups. While the Commission does not seem to have been dependent on support, pro-migrant groups could not have served as allies for the Council because their political objectives differed too much from the ones of the Council. Legitimation through pro-migrant groups does not appear to have been the purpose of consultations either. Neither the interviewed Commission official nor the JHA Counsellors that were responsible for the LTR Directive affirmed the need for further legitimacy. Hence, rather than the ability to provide support and legitimacy for the EU institutions, the capability of providing expert knowledge has affected the influence of pro-migrant groups.

As the LTR Directive was one of the first directives that were negotiated in the areas of asylum and migration, the Commission lacked both expertise and experience when it comes to the different practices at place and issues prevalent in the different member states. Its dependence on expert information enabled the pro-migrant groups to influence the content of the LTR Directive early in the policy-shaping process. Moreover, the congruence of the recommendations of the UNHCR, the official advisory body of the EU institutions, and the pro-migrant groups also facilitated their influence. Rather than ascribing the lobbying success to the pro-migrant groups alone, however, the groups and the UNHCR are treated as an ally. Hence, even though the Parliament, known as the natural ally of NGOs, lacked legislative responsibility at that time, the pro-migrant groups were able to exert influence on the LTR Directive – albeit less than medium.

## **6. Assessment of the political influence of pro-migrant groups on the Qualification Directive**

### **6.1 Introduction – Background to the Qualification Directive**

This chapter aims to assess the influence of pro-migrant groups that lobbied at the Qualification Directive. The basis for the Qualification Directive was laid at the 1999 Council summit in Tampere when the heads of the EU member states agreed on the creation of a Common European Asylum System that complies fully and inclusively with the 1951 Geneva Convention. The creation of a common European legislation was to determine:

the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee status [and subsidiary protection status] (Parliament 1999a).

As a response to these Council resolutions, the Commission compiled a communication for the Parliament and the Council in which it discussed the reasonableness of single versus multiple forms of international protection. While multiple forms of protection were regarded as a means of guaranteeing that the needs of persons fleeing situations of widespread violence are met individually, a single protection status was believed to be a solution that would simplify the asylum system and, thus, limit the administrative costs (COM 2000b: 12). In 2001 the Commission (2001a) published its proposal for the Qualification Directive that differentiates between refugee status and subsidiary protection status. In drafting the proposal, the Commission was guided by the Geneva Convention and the ‘Handbook on procedures and criteria for determining refugee status’ (UN handbook) of the office of the UNHCR. The provisions for beneficiaries of subsidiary protection, however, do not originate from the UN but are adapted to the refugee status accordingly. In October 2002, the rapporteur responsible for the Qualification Directive, presented her report to the plenary of the Parliament (2002). In March 2004, the member states reached an agreement on the directive, which was adopted the following month (Council 2004).

Today, the directive concerns approximately 257,815 persons who applied for asylum in the EU out of which 27,045 were granted refugee status and 20,400 subsidiary protection status (Eurostat 2011: 2 and 10). Given the severe discrepancy between the figures of asylum applicants and numbers of persons who are actually granted protection that even today still exists, it is not surprising that pro-migrant groups have been actively involved in advocating

the Qualification Directive. Three groups were identified out of which one, ECRE, addressed the Commission and the Council and two, AI Europe and the Churches and Christian Organisations in Europe on Migration and Asylum, lobbied the Council exclusively. In a first attempt, ECRE informed the Commission about a comprehensive interpretation of Article 1 of the Geneva Convention and outlined how this interpretation affects the content of the Qualification Directive (ECRE 2000b). Moreover, ECRE explained its position on complementary protection to the Commission (ECRE 2000a). As a second step, ECRE forwarded its comments on the proposal for a Qualification Directive to the Council intending to convince the Council of its recommendations (ECRE 2001). AI Europe pursued a versatile strategy towards the Council. It took the Laeken Council meeting as an opportunity to brief the heads of the EU member states on Amnesty's ideas about a fair EU asylum system (AI Europe 2001a; Khan 2001). Furthermore, AI Europe commented on the relationship between safeguarding internal security and complying with international protection obligations and instruments that the Commission examined for the Council (AI Europe 2001b). In addition, AI Europe presented its concerns about recognition rates of refugees and persons in need of protection in Member States at the 2002 JHA Council meeting in Copenhagen (AI Europe 2002b). Finally, article by article, AI Europe commented on the Commission's proposal for a Qualification Directive and forwarded its recommendation to the Council (AI Europe 2002a; AI Europe 2003). Under the umbrella of the CCOEMA, Caritas Europa, CCME, Commission of the Bishops' Conferences of the European Community, International Catholic Migration Commission, Jesuit Refugee Service Europe, and the Quaker Council for European Affairs jointly commented on the Commission's proposal for the Qualification Directive (CCOEMA 2002).

In this chapter, the influence of these pro-migrant groups on the outcome of the directive is assessed. This is done by examining to what extent they achieved their goals and by asking the interest representatives themselves but also EU officials to comment on the performance of the groups. Subsequent to the influence assessment, it is explored which variables might have affected the influence of the groups. In this context, special attention is paid to each group's ability to provide expert knowledge, support, and legitimacy. Finally, the results of this analysis are confronted with the hypotheses that have been formulated in the course of the theoretical framework.

## 6.2 Influence Assessment

To assess the influence of the pro-migrant groups, first of all, their recommendations are compared with the positions of the EU institutions that they addressed – the Commission and the Council. The report of the Parliament is not included in this analysis, as none of the groups seem to have approached the MEPs actively. In addition, it needs to be noted that the amendments that the Parliament tabled ‘were all subsequently completely ignored’ by the Council due to the consultation procedure under which the Qualification Directive was negotiated (Menz 2010: 13). EU officials responsible for the Qualification Directive confirmed the image of a Parliament that at that time factually did not have any legislative power (Interviews 5 and 34). Thus, the recommendations of the groups are solely compared with the proposal of the Commission and the Council directive. As similarities between those documents do not automatically mean that it was the pro-migrant groups that were the opinion leaders in the negotiations, the analysis of the preference attainment is complemented by an attributed influence assessment. For this purpose, the opinions of interest representatives and EU officials on the influence of the groups are looked at.

### 6.2.1 Preference attainment towards the Commission

As ECRE is the only group that had tabled its recommendations before the Commission had drafted the proposal for the Qualification Directive, in this section it is going to be assessed to what extent ECRE achieved its political objectives towards the Commission. Comparing the first chapter of the draft directive with the recommendations of ECRE, demonstrates that they concur on some general provisions that underlie the directive. Just as suggested by ECRE (2000b: 6), the Commission (Art. 2 (g)) determined that rather than applying for refugee status or beneficiary protection status, an application for international protection is sufficient. A central authority will then decide upon the application.

Commission proposal	ECRE
Art. 2 Definitions	+ central authority decides on the application + no need for applicants to state whether they are applying for refugee status or subsidiary protection

**Table 12: Comparison of recommendations of pro-migrant groups and Chapter 1 of Commission proposal<sup>10</sup>**

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<sup>10</sup> + refers to recommendations of the pro-migrant groups that are reflected in the Commission’s proposal. - refers to recommendations of the pro-migrant groups that are not reflected in the Commission’s proposal.

With regards to the provisions on the qualification for international protection, further correspondences between the recommendations of ECRE and the Commission's proposal for the directive could be identified. This includes the inclusion of the well-founded fear of being persecuted as an element of international protection (ECRE 2000b: 10; Art. 5 (1)) and the requirement that risk assessment needs to be forward-looking (ECRE 2000b: 4; Art. 7 (a)). Moreover, the Commission and ECRE concur with regard to the ideas that international protection needs arising sur place (ECRE 2000b: 7; Art. 8 (1)) and that non-state actors should be considered as sources of harm (ECRE 2000b: 4; Art. 9 (1)). On the exclusion of non-state actors from sources of protection, however, ECRE (2000b: 5) remained non-influential (Art. 9 (3)). The following table summarises the results of this analysis.

<b>Commission proposal</b>	<b>ECRE</b>
Art. 5 The elements of international protection	+ consider inability or unwillingness to return to the country of origin or habitual residence
Art. 7 Assessment of applications for international protection	+ assessment of risk must always be forward-looking (assessment of facts at the time of taking a decision on the application)
Art. 8 International protection needs arising sur place	+ well-founded fear of persecution may be based on the fact that the situation in the country of origin has changed since departure
Art. 9 Sources of harm and protection	+ include non-state actors as sources of harm – exclude non-state actors from sources of protection

**Table 13: Comparison of recommendations of pro-migrant groups and Chapter 2 of Commission proposal**

Concerning the provisions that determine who can qualify for refugee status, too, the recommendations of ECRE and the Commission's proposal resemble each other remarkably. On the definition of persecution, the Commission (Art. 11 (1) (a), 11 (1) (c) (i)) and ECRE (2000b: 7-8) were accordant that the nature and repetition of an act need to be assessed and that disproportionate and discriminatory acts of prosecution have to be included as well. Furthermore, they agreed that people who fear persecution because they object military service for ethical, moral, or philosophical reasons can also qualify for refugee status as defined in Article 11 (d) (ECRE 2000b: 10). Disproportionate punishment of deserters and evaders and the persecution of children who object to military service have not been included in the Commission's proposal for the directive (ECRE 2000b: 10). The Commission (Art. 12 (a-c)) did, however, follow the recommendations of ECRE (2000b: 8) to broadly interpret the reasons for persecution with regards to race, religion, and nationality. Regarding the definition of a social group and political opinion, on the contrary, the Commission did not consider ECRE's (2000b: 9) differentiation between the actual characteristics and the perception of a person. Its call for the inclusion of people fleeing from war or armed conflicts



as people who qualify for refugee status was not considered either (ECRE 2000b: 6; Art. 15 (c)). With the cessation and exclusion clauses, the Commission (Art. 13 (1) (a), (e) and 14) agreed on all the recommendations made by ECRE (2000b: 11-14) except its request for the inclusion of clauses that clarify the severity of a crime that justifies exclusion.

Commission proposal	ECRE
Art. 11 Nature of persecution	<ul style="list-style-type: none"> <li>+ define harm by nature or repetition of an act</li> <li>+ disproportionate and discriminatory prosecution</li> <li>+ ethical, moral or philosophical objections to military service</li> <li>– conscription, prosecution, or punishment for evasion or desertion are biased</li> <li>– fundamental illegitimacy or unlawfulness of the form of military action</li> <li>– children who fear conscription as child soldiers</li> </ul>
Art. 12 Reasons for persecution	<ul style="list-style-type: none"> <li>+ race: include membership to ethnic group</li> <li>+ religion: theistic, non-theistic and atheistic beliefs</li> <li>+ nationality: citizenship plus cultural or linguistic identity, traditions or customs, common roots or its relationship with the population of another State</li> <li>+ belonging to a social group is sufficient for asylum claim</li> <li>– indicative if society perceives group in a certain way and persecutes it because of this perception</li> <li>– include de facto political attribution by the persecutor in the state of origin</li> <li>– include persons fleeing from war or armed conflict</li> </ul>
Art. 13 Cessation of refugee status	<ul style="list-style-type: none"> <li>+ persons who voluntarily re-avail of protection of country of nationality</li> <li>+ if changes in country of origin are fundamental and durable</li> </ul>
Art. 14 Exclusion from refugee status	<ul style="list-style-type: none"> <li>+ MS are bound to international law (non-refoulement applies to persons excluded from refugee status)</li> <li>+ if applicant has committed a crime against peace, a war crime, a crime against humanity, or a serious non-political crime or has been guilty of acts contrary to the purposes and principles of the United Nations</li> <li>– include clauses that clarify the severity of a crime that justifies exclusion</li> </ul>

**Table 14: Comparison of recommendations of pro-migrant groups and Chapter 3 of Commission proposal**

Regarding the qualification for subsidiary protection, the Commission (Art. 15) and ECRE (2000a: 3) concurred on the following flight reasons: threat to lives, safety, or freedom caused by violence, armed conflict, or violation of human rights; torture, inhuman or degrading treatment or punishment. The Commission, however, did not include special protection clauses for children in its proposal for the directive, as had been recommended by ECRE (2000a: 4). Moreover, ECRE (2000a: 4) had asked for the application of cessation clauses that are consistent with Article 1C of the Geneva Convention which the Commission (Art. 16) did not comply with. ECRE (2000a: 4) and the Commission (Art. 16 (2)) were concordant on the validity of subsidiary protection that shall last as long as circumstances in the country of origin do not change profoundly and durably. The subsequent table provides the results of this comparison.

Commission proposal	ECRE
Art. 15 Grounds of subsidiary protection	<ul style="list-style-type: none"> <li>+ positively define protected persons</li> <li>+ include persons fleeing from: threat to lives, safety, or freedom caused by violence, armed conflict, or violation of human rights; torture, inhuman or</li> </ul>

	degrading treatment or punishment – include children whose age or vulnerability give rise to human rights concerns – include persons whose health condition does not allow expulsion
Art. 16 Cessation of subsidiary protection status	– if person obtains complementary protection status + subsidiary protection lasts until it is established that protection is no longer required due to a change in circumstances in country of origin

**Table 15: Comparison of recommendations of pro-migrant groups and Chapter 4 of Commission proposal**

With regards to the provisions on the content of refugee and subsidiary protection status, the Commission's proposal and the recommendations of ECRE concur in a variety of issues. This includes the equal treatment of refugees and beneficiaries of subsidiary protection concerning the right/access to: non-refoulement, long-term residence, education, social welfare, health and psychological care, appropriate accommodation, freedom of movement, and voluntary return programs (ECRE 2000a: 3 and 5). On the contrary, the Commission did not follow the suggestions of ECRE (2000a: 5) on the equal treatment concerning the validity of residence permits as well as the access to travel documents, employment, and integration facilities. The following table summarises the findings of the documentary comparison.

<b>Commission proposal for directive</b>	<b>ECRE</b>
Art. 19 Protection from refoulement and expulsion	+ include right to non-refoulement for beneficiaries of subsidiary protection
Art. 21 Residence permit	– equal validity of residence permits for refugees and beneficiaries of subsidiary protection
Art. 22 Long-term residence status	+ equal access to long-term residence status
Art. 23 Travel documents	– equal access to travel documents
Art. 24 Access to employment	– equal access to employment
Art. 25 Access to education	+ equal access to education
Art. 26 Social welfare	+ equal access to social welfare
Art. 27 Health and psychological care	+ equal access to health care
Art. 29 Access to appropriate accommodation	+ equal access to housing
Art. 30 Freedom of movement within the Member State	+ freedom of movement for refugees and beneficiaries of subsidiary protection
Art. 31 Access to integration facilities	– equal access to integration programmes
Art. 32 Voluntary return	+ equal access to voluntary return programmes

**Table 16: Comparison of recommendations of pro-migrant groups and Chapter 5 of Commission proposal**

The comparison of the recommendations of ECRE with the proposal for the Qualification Directive drafted by the Commission has illustrated that they concur in a great number of provisions. For a better illustration of ECRE's preference attainment regarding the

Qualification Directive, all recommendations are ascribed the same value and its overall success rate is calculated. In total, ECRE achieved over 65 per cent of all its goals. The umbrella group was most successful with the general provisions of the directive, and least successful regarding the eligibility criteria for subsidiary protection status, where only half of its recommendations are reflected in the Commission's proposal.

### ***6.2.2 Preference attainment towards the Council***

Contrary to the limited lobbying engagement of pro-migrant groups at the drafting stage, during the decision-making stage three groups actively lobbied at the Council. This subsection, therefore, investigates the preference attainment of ECRE, AI Europe, and CCOEMA towards the Council. For this analysis, the various recommendations, letters, and comments of the pro-migrant groups are compared with the Qualification Directive that has been adopted by the Council.

On the general provisions of the directive, all three pro-migrant groups provided suggestions. While all of them (AI Europe 2002a: 2; CCOEMA 2002: 2; ECRE 2001: 4) failed in convincing the Council to include EU citizens within the scope of the Council directive (Art. 1), the request of AI Europe (2002a: 1) for the inclusion of beneficiaries of subsidiary protection has been met. Moreover, ECRE (2001: 9), AI Europe (2002a: 2), and the Council (Art. 2 (g)) concurred that the member states are obliged to examine any application for asylum under the Geneva Convention first. The recommendations to include in the scope of the directive those who are unable or unwilling to avail themselves of the protection of their country of origin (CCOEMA 2002: 3), unmarried partners and children of unmarried partners (AI Europe 2002a: 3; CCOEMA 2002: 3) are also reflected in the Council directive (Art. 2 (e), (h)). Their request to consider any children regardless their age and any direct line relatives, however, was not met by the Council (AI Europe 2002a: 3; CCOEMA 2002: 3). The results of the documentary comparison are merged in the following table.

<b>Council Directive</b>	<b>ECRE</b>	<b>AI Europe</b>	<b>CCOEMA</b>
Art. 1 Subject matter	– include EU citizens		
		+ include refugees and beneficiaries of subsidiary protection	
Art. 2 Definitions	+ examine asylum claim under Geneva Convention before examining if the person is eligible to subsidiary protection		
		+ refugee status: 'recognition' by	– include direct line relatives of the

		member state – include children regardless their age + include unmarried partners	applicant + include children of the applicant's spouse or stable partner + persons eligible for subsidiary protection if risk to suffer serious harm in country of origin
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**Table 17: Comparison of recommendations of pro-migrant groups and Chapter 1 of Council Directive**

On Chapter 2 of the directive, assessment of applications for international protection, the three pro-migrant groups provided detailed advice. The following recommendations of the pro-migrant groups are reflected in the Qualification Directive: the benefit of the doubt principle (AI Europe 2002a: 3; ECRE 2001: 4), the concept of burden sharing (AI Europe 2002a: 3; ECRE 2001: 4), the inclusion of non-state actors among sources of persecution (AI Europe 2002a: 2; ECRE 2001: 5), the requirement of assessing the effectiveness of state protection measures (ECRE 2001: 5), and the obligation to examine the reasonableness of internal protection (ECRE 2001: 2). In contrast, the groups failed in convincing the Council of abolishing the ipso facto refusal of the right to engage in politics for the sake of refuge sur place (AI Europe 2002a: 3; CCOEMA 2002: 4; ECRE 2001: 5), of the exclusion of non-state actors from sources of protection (AI Europe 2002a: 5; CCOEMA 2002: 4; ECRE 2001: 6), of the requirement to provide effective access to internal protection areas (AI Europe 2002a: 5; ECRE 2001: 6), and of a detailed list of how to assess the effectiveness of internal protection (CCOEMA 2002: 4; ECRE 2001: 6-7). The following table summarises these findings.

Council Directive	ECRE	AI Europe	CCOEMA
Art. 4 Assessment of facts and circumstances	+ benefit of the doubt		
		+ burden-sharing: applicant and MS	
Art. 5 International protection needs arising sur place	– applicant should not ipso facto be refused the right to engage into politics		
Art. 6 Actors of persecution or serious harm	+ include non-state actors as actors of persecution		
Art. 7 Actors of protection	– exclude international organisations and quasi-state authorities from actors of protection		
	+ effectiveness of state protection measures needs to be assessed		
Art. 8 Internal protection	further criteria for reasonableness: – protection by de jure authority – internal protection area	– internal protection: if access to protection area	– internal protection: if effective and well-established

	needs to be safely, legally, dignifiedly accessible – area needs to be free from conditions that force claimant back to where he risks serious harm – in this area core human rights enshrined in Geneva Convention need to be guaranteed + examine present situation there and personal conditions		
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**Table 18: Comparison of recommendations of pro-migrant groups and Chapter 2 of Council Directive**

With regards to the provisions that define how asylum-seekers qualify for refugee status, the recommendations of the pro-migrant groups and the Council directive resemble each other in few clauses. This applies to the definition of persecution as well-founded fear of ‘serious’ harm (AI Europe 2002a: 6) and the characterisation of a social group by its innate characteristics such as gender related characteristics and sexual orientation (AI Europe 2002a: 6). It also regards the inclusion of a de facto political attribution by the persecutor in the definition of political opinion (ECRE 2001: 8) as well as concretisation of the circumstances under which refugee status ceases (AI Europe 2001a: 5; Khan 2001: 2). The reference to any human rights abuses as stipulated by the Bill of Human Rights (ECRE 2001: 7) and the inclusion of numerous provisions that shall clarify the cessation of and exclusion from refugee status, however, are not reflected in the Qualification Directive (CCOEMA 2002: 5; ECRE 2001: 8-9). A more detailed analysis is entailed in the following table.

<b>Council Directive</b>	<b>ECRE</b>	<b>AI Europe</b>	<b>CCOEMA</b>
Art. 9 Acts of persecution	– refer to core human rights enshrined in Bill of Human Rights	+ persecution: well-founded fear of ‘serious’ harm not unjustified harm	
Art. 10 Reasons for persecution	– broad and inclusive definition of social group + include de facto attribution by the persecutor	+ social group: defined by an innate characteristic	
Art. 11 Cessation	– consider strong family, social, and economic links in reception country – concretise significant and non-temporary change of circumstances	+ change of circumstances must be of such a significant and non-temporary nature that the person does not face serious harm	
Art. 12 Exclusion from		+ only criminal offences	– delete clause

refugee status		falling within the scope of Article 1F Geneva Convention shall lead to exclusion – no automatic exclusion of family members	concerning the exclusion of applicants who receive protection or assistance from organs or agencies of the UN other than the UNHCR
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**Table 19: Comparison of recommendations of pro-migrant groups and Chapter 3 of Council Directive**

With Chapter 5, CCOEMA (2002: 5) was successful in convincing the Council (Art. 15 (a)) of including death penalty among the forms of serious harm that qualify for subsidiary protection. On the contrary, CCOEMA (2002: 5) remained unsuccessful in its efforts of applying similar cessation clauses to refugees and beneficiaries of subsidiary protection to guarantee the stability of the latter status.

<b>Council Directive</b>	<b>CCOEMA</b>
Art. 15 Serious harm	+ include death penalty as one of the reasons for serious harm
Art. 16 Cessation	– apply similar cessation clauses as those that apply to refugees to guarantee stability of the subsidiary protection status

**Table 20: Comparison of recommendations of pro-migrant groups and Chapter 5 of Council Directive**

Concerning the provisions on subsidiary protection status, AI Europe (2002a: 7) recommended the inclusion of an express obligation that ensures subsidiary protection for persons who do not fall within the scope of the Geneva Convention but, nevertheless, are in need of international protection. In addition, ECRE (2001: 10) asked for a clause that clarifies that it is the duty of the member state which has granted protection status to demonstrate that the person concerned has ceased to be in need of protection. Both of these requests have been met by the Council.

<b>Council Directive</b>	<b>ECRE</b>	<b>AI Europe</b>
Art. 18 Granting of subsidiary protection status		+ express obligation to provide subsidiary protection
Art. 19 Revocation of, ending of, or refusal to renew subsidiary protection status	+ MS bear the burden of proof to establish cessation of subsidiary protection	

**Table 21: Comparison of recommendations of pro-migrant groups and Chapter 6 of Council Directive**

On Chapter 7 of the Qualification Directive, content of international protection, the pro-migrant groups provided very detailed comments. The groups, however, were successful on only few provisions; namely, the extension of the principle of non-refoulement to beneficiaries of subsidiary protection (AI Europe 2002a: 9; CCOEMA 2002: 5) as well as equal treatment of beneficiaries enjoying international protection such as, access to health care and recognition of diplomas, qualifications, and other certificates (AI Europe 2003: 5). In

contrast, the requests for loosening the non-refoulement clause and referring to international conventions in this regard have not been met by the Council (AI Europe 2002a: 10; CCOEMA 2002: 5). Moreover, ECRE (2001: 4) and AI Europe (2003: 2) failed in convincing the Council of automatically granting international protection to accompanying family members. The three groups (AI Europe 2003: 1-6; CCOEMA 2002: 5-6; ECRE 2001: 9-10) also remained unsuccessful in lobbying for equal rights/access to residence permits, travel documents, employment, housing, and integration facilities. Finally, AI Europe (2003: 5) and ECRE (2001: 10) have failed in convincing the Council of having unaccompanied minors exclusively represented by legal guardians. A detailed overview of this analysis is presented in the subsequent table.

Council Directive	ECRE	AI Europe	CCOEMA
Art. 21 Protection from refoulement		+ non-refoulement also applies to beneficiaries of subsidiary protection	
		– refer to international law as regards absolute character of non-refoulement principle	– delete ‘in accordance with their international obligations’
Art. 23 Maintaining family unity	– international protection status is granted automatically to the accompanying family members		
		– inclusion of close relatives shall not be left to discretion of MS	
Art. 24 Residence permit	– equal validity of residence permits for refugees and beneficiaries of subsidiary protection		
		– automatically renewable	
Art. 25 Travel documents		– equal access to travel documents	
Art. 26 Access to employment	– equal access to the labour market, employment-related education opportunities and vocational training		
		– under equivalent conditions as nationals	
Art. 27 Access to education		+ equal access to procedures for recognition of qualifications	
Art. 29 Health Care		+ equal access to health care under the same conditions as nationals	
Art. 30 Unaccompanied minors	– represent unaccompanied minors by legal guardian only		
	– refer to Convention of the Rights of the Child		
Art. 31 Access to accommodation		– equal access to appropriate housing under the same conditions as nationals	
Art. 33 Access to integration facilities	– equal access to integration programmes		

**Table 22: Comparison of recommendations of pro-migrant groups and Chapter 7 of Council Directive**

This comprehensive comparison of the recommendations tabled by ECRE, AI Europe, and CCOEMA and the final directive adopted by the Council has revealed that they reached a rather low preference attainment rate. AI Europe, by comparison, forwarded the highest number of recommendations to the Council and achieved about 44 per cent of its goals. ECRE and CCOEMA, on the contrary, achieved less than one third of their political goals. Recapitulating, at drafting stage, the overall preference attainment rate was 65 per cent. On the final directive, the average preference attainment rate of all three groups is much lower; namely, about 34 per cent. Towards the Council, the groups have been especially unsuccessful with the chapter on the content of international protection, which is the most comprehensive chapter of the directive. Again, putting the results of the documentary comparison into numbers exclusively serves the purpose of a clear illustration. This arithmetic approach does not take into consideration diverging weightings between the different provisions but treats each provision equally.

As the recommendations of the pro-migrant groups are of non-binding nature, their preference attainment rate needs to be viewed in light of the content of the Geneva Convention (UN General Assembly 1951) which the EU member states as state parties are bound to as well as the UN Handbook (UNHCR 1992) and recommendations of the UNHCR (2001a; 2002a; 2002b) that were to guide the EU member states.

Since the UNHCR has long been dedicated to promoting respect for international protection norms in EU asylum policies, it does not come as a surprise that ECRE and the UNHCR were concordant on a great number of provisions (more than 94 per cent). The following itemisation lists those provisions on which not only ECRE and the UNHCR but also the Commission agreed:

- **central authority** decides about asylum applications (Guideline 192 (iii));
- **inability or unwillingness to return** to country of origin is required to apply for refugee status (Guidelines 97-101);
- **international protection needs arising sur place** (Guidelines 94-96);
- **non-state actors** are included among **sources of harm** (Guideline 65);
- **nature of persecution**: disproportionate and discriminatory prosecution (Guidelines 54, 55, 59); ethical, moral, or philosophical objections to military service (Guideline 170);
- **reasons for persecution**: broad interpretation of race, nationality, and social group (Guidelines 68, 74, 79);



- **reasons for cessation of refugee status:** voluntary return to country of origin (Guideline 118); fundamental and durable changes in country of origin (Guideline 135);
- **reasons for exclusion from refugee status:** commitment of war crimes, crimes against humanity, serious non-political crimes, and acts that contradict the principles of the UN (Guidelines 146 and 162);
- **principle of non-refoulement** (Geneva Convention Art. 33).

Provisions regarding persecution on grounds of objecting to serve in military actions that are illegitimate in international law (Guideline 171) and persecution based on the attribution of a certain political opinion to a person (Guideline 80) as well as guidelines that help clarify the severity of crime (Guidelines 150, 152), as recommended by ECRE and the UNHCR, have not been considered by the Commission.

The recommendations of the pro-migrant groups that addressed the Council, again, were widely in line with the comments and observations of the UNHCR. They concur in 90 per cent of the cases. On the subsequent provisions the groups, the UNHCR, and the Council were accordant:

- obligation to **examine asylum claim under Geneva Convention** (UNHCR 2002a: 2);
- **family definition:** include unmarried partners, children of the applicant's spouse or stable partner (UNHCR 2001a: 5; 2002a: 3);
- **subsidiary protection:** if risk of serious harm in country of origin (UNHCR 2001a: 6);
- **assessment of facts:** burden-sharing and benefit of the doubt (UNHCR 2001a: 7; 2002a: 6);
- **sources of harm:** include non-state actors (UNHCR 2001a: 8);
- **sources of protection:** effectiveness of state protection measures needs to be assessed (UNHCR 2001a: 4);
- **persecution:** well-founded fear of 'serious' harm not unjustified harm (UNHCR 2001a: 8);
- **social group:** defined by innate characteristic and attribution by persecutor (UNHCR 2002b: 4; 2002a: 10);
- **reasons for cessation of refugee status:** fundamental and durable changes in country of origin (Guideline 135);
- **reasons for exclusion from refugee status:** criminal offences falling within the scope of Article 1F Geneva Convention (UNHCR 2001a: 8);
- **principle of non-refoulement** (Geneva Convention Art. 33).

However, despite the tremendous support on the part of the UNHCR, the pro-migrant groups remained widely unsuccessful. This applies to the following provisions: the inclusion of

further close relatives as family members (UNHCR 2002a: 3), the right of the applicant to engage into politics when being outside their country of origin (UNHCR 2002a: 6), the exclusion of international organisations and quasi-state authorities from actors of protection (UNHCR 2001a: 9), and further criteria for assessing the reasonableness of an internal protection alternative (UNHCR 2002a: 8). This also holds for the equal validity of residence permits (UNHCR 2001a: 11) and equal access to employment (UNHCR 2001a: 12).

### ***6.2.3 Attributed influence assessment***

Comparing the recommendations tabled by the pro-migrant groups with the positions adopted by the institutions has illustrated that the similarity between the documents diverges widely – with a great resemblance of the recommendations of ECRE and the Commission’s proposal and very little consistency between the recommendations forwarded by CCOEMA and ECRE and the Council directive. As outlined in the course of the documentary comparison that precedes this section, the degree to which the recommendations of the interest groups are reflected in the Commission’s proposal for the directive and in the Council directive needs to be assessed against the background of the binding international obligations established in the Geneva Convention and the guidelines of the UNHCR on the Qualification Directive. Furthermore, it needs to be understood that similarities between the recommendations of the pro-migrant groups and the positions of the EU institutions do not automatically prove the influence of these groups. To further approach the actual influence of the pro-migrant groups, interest representatives of ECRE, AI Europe, and CCOEMA have been asked to self-assess their impact on the Qualification Directive. As CCOEMA is an umbrella group that represents six churches and Christian organisations, they have all been asked to comment on the performance of CCOEMA. Out of the six groups, three agreed to participate in an interview: Caritas Europa, CCME, and JRS. In addition, internal documents in which the outcome of the directive is assessed provide further information about the satisfaction of the groups with the policy results. To complement the self-assessment of the interest representatives, EU officials that were engaged in the formulation of the Qualification Directive have been asked to peer assess the influence of the pro-migrant groups.

The representative of AI Europe who was responsible for the Qualification Directive reported that she always felt taken seriously in the meetings with the EU officials and did not experience the consultations as mere means to demonstrate a democratic will. Nevertheless, she remained widely reserved as regards the actual influence of AI Europe. She does not

believe that NGOs can be proactively influential but rather pursue a strategy of limiting damage. 'If we weren't here, things would look much worse. But beyond that I can't really say how much we have been able to change things,' she said (Interview 28). The 2003 annual report of AI Europe, confirms the reserved self-assessment of the interviewed interest representative.

In the face of member states' determination to seek the lowest common denominator or, as was increasingly the case, to leave matters open completely to national discretion, the effect was inevitably only limited (AI Europe 2004a: 2).

In its assessment of the Tampere Agenda, AI Europe stressed its satisfaction with the fact that the directive does not only interpret the Geneva Convention properly but also goes beyond international law standards by obliging member states to grant subsidiary protection to persons who do not qualify for refugee protection. Furthermore, AI Europe (2004b: 8) was especially content with the inclusion of non-state actors as sources of harm. It, on the contrary, disapproved of the inclusion of non-governmental actors as sources of protection and regretted the vagueness of the exclusion and cessation clauses. Finally, AI Europe (2004b: 10) showed itself very disappointed about the unequal treatment of refugees and beneficiaries of subsidiary protection.

The interest representatives that were interviewed on CCOEMA's performance presented themselves as rather diffident about their capacity to co-shape decisions at EU level. One representative of JRS emphasised that it would be presumptuous to ascribe NGOs working in the asylum sector the capability of setting the political agenda. He, nevertheless, stressed that the strength of these NGOs is their ability to gather and distribute information and facts and mobilise the public at national level (Interview 14). The actual influence of NGOs, according to one representative of Caritas Europa, is difficult to assess, though. He explained that the most significant counterparts of NGOs are the member states, which, at the same time, are the most powerful decision-makers at EU level. As a consequence, the interviewee observed that nothing of the recommendations of CCOEMA was literally copied in the adopted Council directive. But 'sometimes [...] you find something that in one or another way refers to something said in the recommendations' (Interview 1). In an interview with CCME, the representative alluded to all those core elements of the Qualification Directive that reflect the objectives of CCME. The interviewee especially pointed to gender related reasons for persecution and to the fact that the Geneva Convention is now integrated in EU law, therefore, binding at national level. Before the adoption of the Qualification Directive, as the

interviewee claimed, German-speaking EU member states in particular appear to have treated the Geneva Convention as inferior to national law. The representative of CCME, however, regretted the unequal treatment of refugees and beneficiaries of subsidiary protection that has not been overcome despite the approximation efforts on the part of the Commission. According to her, it is the family life and the prospect to work that are essential for the life of all beneficiaries of international protection in the receiving country (Interview 18).

With a view to the impact assessment of ECRE, one of its former legal officers emphasised that one has to differentiate its impact on the Commission from the impact on the Council. On the one hand, he revealed that they knew ‘that the Commission desk officers read everything we [employees working with ECRE] write as soon as we write it’ and that they ‘were able to see a lot of our work actually come out of the Commission proposal’. On the other hand, he admitted that ‘when it came to the Council, it all came crashing down’ (Interview 40). In its 2004 information note, ECRE assessed the outcome of the Qualification Directive from its perspective. ECRE (2004a: 7, 9, 13, 16) expressed its satisfaction with, firstly, the inclusion of non-governmental actors as actors of persecution; secondly, the inclusion of gender- and child-specific criminal acts as acts of persecution; thirdly, the inclusion of an express obligation to grant subsidiary protection; and fourthly, the equal treatment of refugees and beneficiaries of subsidiary protection with regards to social welfare and health care. The provisions, however, that contradict the recommendations tabled by ECRE outweigh those provision that are in line with what ECRE had suggested. ECRE presented itself particularly disappointed about the following provisions: close and restrictive family definition, definition of actors of protection (ECRE 2004a: 5 and 7), vague internal protection alternative, vague exclusion clauses (ECRE 2004a: 10), unequal treatment of refugees and beneficiaries of subsidiary protection (ECRE 2004a: 13-17), and the clause on the legal guardianship in regards to the representation of unaccompanied children (ECRE 2004a: 17).

To complement the self-assessment of the influence of the pro-migrant groups, members of the Commission, Parliament, and Council staff have been asked to assess the impact of the interest groups on the Qualification Directive. The Commission official responsible for the Qualification Directive spoke of the directive as a ‘ground-breaking approach [that merges] into one single instrument the qualification of refugees, on the one hand, and the approximation of subsidiary protection status, on the other hand’ (Interview 34). Controversial questions in the negotiations, according to the Commission official, were the

following: firstly, does serious harm need to be indiscriminate; secondly, does a general threat that is not aimed at an individual justify international protection? For the mediation between the Commission and the member states, the Commission sought help from the UNHCR. The interviewee stressed the importance of the UNHCR as a fully-fledged international organisation, whose advice the EU institutions have to consider when it comes to the interpretation of the Geneva Convention. As such, the Commission official regarded the input on the part of the UNHCR as balanced because it has to pay attention to the national situation in the constituency of its member states. With regards to the contributions by pro-migrant groups, however, the interviewee questioned their balance and reasonableness, since such groups are not bound to national constituencies and, hence, might act more freely. Nevertheless, he did not neglect having consulted pro-migrant groups when the proposal for the Qualification Directive was drafted. 'I am more than willing to acknowledge that we benefited from the expertise and input of these kind of think tanks because they were badly needed,' he concluded. He particularly referred to ECRE praising it as an 'extremely influential, powerful, well-equipped, and reliable lobby in the area of asylum' (Interview 34). A member of the staff of the Secretariat of the LIBE Committee for the European People's Party (EPP) assessed the pro-migrant groups to be very influential towards the Commission. As he stated, this arises from the circumstances that many Commission officials started their career paths as interest representatives and continued their career as EU officials. As such, they are open to the claims of NGOs (Interview 5).

The impact of pro-migrant groups on the Council, according to the rapporteur of the Qualification Directive, however, was far more limited. At the time the Qualification Directive was being negotiated, most NGOs were represented by EU umbrella groups that lobbied at EU level but did not necessarily transmit back to their national member organisation, which, therefore, did not lobby national ministries. The cooperation between both levels, she is convinced, is essential because effective lobbying requires that national organisations are constantly informed about the state of the negotiations in Brussels (Interview 23). A member of the Council staff confirmed that idea, explaining that it is more likely that NGOs are able to influence national administrations than the members of the Council General Secretariat (Interview 3).

As the UNHCR assisted the EU institutions in formulating the Qualification Directive, the assessment of the influence of pro-migrant groups on this policy-making process on the part

of the UNHCR should not be omitted. One of the policy officers at the UNHCR Bureau for Europe who had followed the negotiations on the Qualification Directive revealed that the UNHCR works closely with those pro-migrant groups that are present in Brussels. It even co-chairs a NGO platform on asylum and migration, which meets four times a year and serves the purpose of sharing knowledge and information. This cooperation sometimes also leads to the coordination of research and advocacy work. Even though the interviewee acknowledged the contributions by the pro-migrant groups as vital input for the decision-making process, she refrained from evaluating the overall influence of these groups on the outcome of the Qualification Directive (Interview 45). The fact that the UNHCR and the pro-migrant groups seem to have been in frequent contact with each other, however, encourages the conclusion that the impact of the UNHCR and the pro-migrant groups should not be dissociated from one another.

Concluding from the different opinions raised during the interviews, it can be noted that the influence of the pro-migrant groups on the EU institutions varies. While the interviewed EU officials confirmed that the Commission was very responsive towards the groups, they doubted that the groups were capable of exerting influence on national ministries or the Council General Secretary – either because they did not try to approach these bodies or because the bodies refrained from cooperating with the interest representatives. The interest groups confirmed the limited influence that they had on the Council. In the interviews and in their written documentation on the Qualification Directive, they all presented themselves disappointed about numerous provisions in the final directive. The responsive Commission could not countervail the strong opposition of the Council, since it could not rely on the Parliament as an ally in the negotiations with the Council because the Qualification Directive was discussed under consultation procedure. Nevertheless, the interest representatives showed themselves satisfied with many of the provisions achieved under the Qualification Directive. But they did not present themselves as opinion-makers in the negotiations. This reserved self-assessment also acknowledges the role of the UNHCR as the official institution that guided the EU in appropriately interpreting the Geneva Convention.

After having examined the preference attainment and the attributed influence of the pro-migrant groups, in the following section the assumptions about the factors that determine their ability to exert influence are tested.

### **6.3 Which factors affected the influence of pro-migrant groups?**

Just as in the previous case study, the section on the factors that affect the influence capacity of pro-migrant groups serves the purpose of testing the assumptions on the resource dependencies of the EU institutions and the interest groups that had been suggested in the theoretical framework. Recapitulating, it was assumed that the Commission is dependent on expert knowledge, political support, and legitimacy. The Council, on the contrary, was expected to be reliant on expert knowledge that complements the information that Council members can get from their national ministries. Hence, in order to exert influence on the EU institutions, it was assumed that pro-migrant groups need to access them which, in turn, seems only possible if they are capable of providing them with the resources the institutions require; namely, expert knowledge, support, and legitimacy.

In the following, the assumptions about the resource interdependencies are tested empirically to reveal what factors affected the influence of the pro-migrant groups on the Qualification Directive. For this examination, empirical findings gathered in interviews with EU officials and interest representatives as well as information from the web presences of the interest groups are utilised.

#### ***6.3.1 Empirical assessment of the ability of the pro-migrant groups to provide expert knowledge***

For the provision of expert knowledge, it is presumed that sufficient funding and personnel, an efficient organisation structure, and on the ground expertise are required. Thus, first, the groups are examined for these characteristics to see whether they had the capacities to provide the EU institutions with expert knowledge. Then the actual dependence of the EU institutions on expert knowledge is evaluated taking into account assessments on the part of EU officials and interest representatives. In so doing, a final conclusion on the interdependency on expert knowledge between EU institutions and pro-migrant groups can be drawn.

Sufficient financial and personnel capacities as well as on the ground expertise are required to monitor EU decision processes closely and flexibly provide the EU institutions with the expert knowledge that they need. In 2013, the total budget of ECRE (2004b: 13-14) amounted to € 1,270,000 and its advocacy work at the Brussels office was supported by 15 persons at that time. For the collection of on the ground information, ECRE seems to have been appropriately organised. It did not only benefit from its national member organisations that provided its secretariat with on the ground information but could also rely on the European

Legal Network on Asylum that assembles 2,000 legal practitioners and advised the Secretariat on its policy recommendations (Interview 24). As CCOEMA is not a self-contained group but rather a consortium of different Christian groups, it does not have own funding and personnel. From the interview with one representative of CCME, it can be implied that the funding that was invested in the advocacy work was only a fraction of the average funding of the signatory members which amounted to approximately € 400,000 in 2004/2005 (CCME 2005b: 11; JSR 2004: 43; Quaker Council 2004: 18). Moreover, an interviewee illustrated that one reason for jointly lobbying on the Qualification Directive was to share personnel capacities. It is, therefore, assumed that the number of personnel involved in the advocacy work equals the average number of persons employed with the member organisations in Brussels; namely, six (CCME 2005b: 11; JSR 2004: 5; Quaker Council 2004: 21). To further divide labour between the different organisations, the offices in Brussels fetched expertise from the members at national level to compile the information needed for the joint position (Interview 46). The budget of the office of AI Europe amounted to € 593,300 and the office was supported by seven members of staff (Interview 50). Because of the limited personnel capacity of the office of AI Europe, the staff members in Brussels were grateful that they could rely on the national sections. To strengthen their argumentation in the recommendations that they wrote, they used information on the asylum procedures in the different EU member states (Interview 28).

For the distribution of expert knowledge, it is of advantage to have a liaison office in Brussels and close cooperation with the national member groups which allows the groups to divide labour in order to lobby at EU level and national level simultaneously. While AI Europe had its own liaison office in Brussels, CCOEMA was mainly represented by the offices of CCME, JSR, and Caritas Europa (Interview 46). This means that AI Europe and CCOEMA were able to follow the negotiations between the EU institutions closely and could adapt their information to the changing requirements of the EU officials. In its annual report, AI Europe described its advocacy work as ‘a joint effort with the national sections in the member states, reflecting AI’s strategic objective to influence EU decision-making also through the capitals’ (AI Europe 2004a: 8). As guidance for the national sections, the Brussels office sent them updates on policy developments and asked them to work on the national ministries in a way that their European strategy is supported (Interview 28). ECRE too emphasised in its annual report that its achievements are the results of the ‘commitment of an active membership and a strong secretariat’ (ECRE 2004b: 2). However, a former member of ECRE staff elucidated that ECRE did not move its secretariat from London to Brussels until early 2008 (Interview



49). Thus, it was the London secretariat that liaised with the EU officials, while the member agencies of ECRE (2004b: 2 and 4) approached their national governments and parliaments. A representative of CCME elaborated that starting with the negotiations of the Qualification Directive the group began to cooperate with national member organisation to complement the lobbying of EU institutions with advocacy work at national level. On this occasion, for instance, different NGOs jointly approached the German government in a letter (Interview 46).

Deducing from the financial and personnel capacities of the groups, it can be assumed that all groups appear to have encountered difficulties in following the negotiations on the Qualification Directive closely and in liaising constantly with EU policy-makers. By comparison, ECRE seems to have been the group that was better endowed than the two other groups. Yet, its absence from Brussels is expected to have hampered the monitoring of inter-institutional negotiations and adapting flexible lobbying strategies. CCOEMA and AI Europe, which were present in Brussels, might have experienced difficulties in flexibly and timely responding to the negotiations as they lacked sufficient financial and personnel capacities. To overcome these shortcomings, all three groups cooperated with their national member organisations in order to get on the ground information and to address national politicians. In the following table, the classification of the pro-migrant groups regarding their ability to provide expert knowledge is summarised.

Ability to provide expert knowledge	Pro-migrant groups
<b>Annual budget</b>	
> € 1,000,000	ECRE
€ 500,000 - 999,999	AI Europe
< € 500,000	CCOEMA
<b>Staff</b>	
15	ECRE
< 10	CCOEMA, AI Europe
<b>Organisational structure</b>	
Liaison office in Brussels	AI Europe, CCOEMA (leading offices: Caritas Europa, CCME, JRS)

Ability to provide expert knowledge	Pro-migrant groups
Division of labour: Brussels office monitors EU policy-making processes and member organisations collect on the ground information	AI Europe, CCOEMA, ECRE (London office)
Division of labour: Brussels office lobbies at EU level and member organisations at national level	AI Europe, CCOEMA, ECRE (London office)

**Table 23: Categorisation of pro-migrant groups regarding their ability to provide expert knowledge**

In addition to the categorisation of the pro-migrant groups regarding their ability to provide expert knowledge, EU officials were asked to comment on their actual dependence on further expertise. In so doing, the supply and the demand side of the resource dependence are interlinked for the comprehensive testing of the theoretical expectation.

The desk officer responsible for the Qualification Directive acknowledged that the Commission, at the time of drafting and negotiating the proposal, was dependent on pro-migrant groups as regards expert knowledge. As reason for this reliance, the Commission official referred to the unqualified staff at the Commission who had just started familiarising themselves with asylum policies after the entry into force of the Amsterdam Treaty in 1999. In addition, he listed the very limited personnel capacity of the asylum unit as a reason that made the consultation of pro-migrant groups an absolute requirement (Interview 34). Finally, the rapporteur of the Qualification Directive assessed the Council's dependence on additional expert knowledge as modest because the 'Council has enormous resources that it can draw on' which facilitates its internal decision-making (Interview 23).

As a result of the previous analysis, it can be summarised that, despite the limited financial and personnel capacities of the pro-migrant groups, they appear to have been capable of offering expert knowledge to the EU institutions. While the Commission acknowledged its dependence on information about asylum legislation and practices, it is highly doubtful that the Council required further information from the pro-migrant groups to decide about the Qualification Directive. As such, it was the expert knowledge that the groups gathered from their national practitioners that opened the doors to the Commission. At a time when asylum matters had just been communitarised, the Commission appears to have been responsive to asylum practitioners and lawyers as its staff clearly lacked this kind of expertise.

### ***6.3.2 Empirical assessment of the ability of the pro-migrant groups to provide support***

With a view to the provision of support, it was expected that only those groups that share the same political ideas with one EU institution and are able to access those policy-makers that oppose these common ideas are able to provide support. As such, their positioning compared to the positions of the Commission and the Council are to be assessed. The preceding assessment of the preference attainment of the pro-migrant groups has demonstrated that some of the provisions adopted by the Council are more restrictive than what the Commission had suggested. This applies to the treatment of refugees and beneficiaries of subsidiary protection concerning the maintenance of the family unity, issuance of residence permits and travel documents, access to employment and integration facilities as well as to the criteria of reasonableness to be assessed when deciding about internal protection. On all these provisions, the proposal of the Commission reflected the recommendations of the pro-migrant groups better than the directive adopted by the Council.

For the assessment of whether the pro-migrant groups could provide the Commission with support, it is examined whether they had access to the EU officials and, consequently, were able to serve as an external ally. In the case of AI Europe, the interest representatives focused their advocacy work on the Permanent Representations and the Presidencies of the European Union. They also targeted JHA Council meetings in Brussels and national ministries through their national sections (AI Europe 2004a: 6). One of the representatives of AI Europe also reported that they maintained close contact to the Commission during the inter-institutional negotiations because the Commission was present in all meetings and informed the interest representatives about obstacles in the discussion and about the actors that opposed their position (Interview 28).

A former member of ECRE staff stressed that the Commission was very open towards the group. Especially the asylum unit responsible for the Dublin Regulation and the Reception, Qualification, and Procedures Directives was easily accessible because a former ECRE intern and a number of UNHCR lawyers used to work there (Interview 40). With regards to the Council, ECRE confirmed that it 'met with the Presidencies of Italy, Ireland and the Netherlands to further promote its position'. It also distributed its written comments on key issues among all Council working groups (ECRE 2004b: 4). Nevertheless, ECRE experienced difficulties in liaising personally with the members of the Council in general and the COREPER in particular. As consequence, ECRE rather approached national politicians.

Finally, the interviewee confirmed that ECRE, at times, received information from the Commission about the negotiations in the Council. But according to him, this is a very subtle process rather than obvious alliance building (Interview 40).

As CCOEMA is an alliance that represents different churches and Christian organisations, in assessing its ability of accessing the different EU institutions, the lobbying strategies of its members need to be taken into consideration. CCME, for instance, focused its lobbying strategy on the Council. It was able to access the Council General Secretariat because it had one contact person there that distributed its recommendations among the persons responsible for the Qualification Directive. Nevertheless, the group seems to have had difficulties in personally accessing the opinion-makers in the Council working groups. Moreover, CCME did not lobby Permanent Representations. The lobbying channels of Caritas Europa seem to have been limited too. One of its representatives reported that the group was only in contact with few Permanent Representations such as the German and Portuguese one. Furthermore, it is Caritas Europa's policy to visit the country of the current EU Presidency and talk to ministers and administrative staff. The interviewee, however, stressed that talking to the Presidency does not equal influence because the Presidency rather serves as a mediator between opposing parties in the Council (Interview 1). A representative of the JRS explained that meetings with EU officials are usually held together with other NGOs because the JRS does not have enough personnel to liaise with the EU institutions separately. From all the EU institutions, the interviewee regarded the Council the most closed one – the 'black hole' or the 'Bermuda triangle' (Interview 14).

On the question of the practice of allying, one of the members of CCME staff revealed that the Commission did pass information about the negotiations in the Council on to her so that CCME could increase the political pressure on particular Council members. Despite this information advantage, CCME was not successful in convincing the Council of the views that it shared with the Commission because it did not use all available lobbying channels (Interview 18). A representative of the JCR, experienced that the Commission used the criticism of NGOs regarding the Commission's proposals for appealing to the Council to not further water down the proposal, as this will increase the opposition on the part of the NGOs (Interview 14).

The following table presents the results of the analysis of the ability of the pro-migrant groups to provide support to the EU institutions.

Ability to provide support	Pro-migrant groups
<b>Positioning</b>	
Close to COM	AI Europe, ECRE, CCOEMA
<b>Ability to access EU institution</b>	
Access to COM	AI Europe, ECRE, CCOEMA
Access to Council	Written correspondence: AI Europe, CCOEMA, ECRE
Access to Permanent Representations/national ministries	AI Europe, CCOEMA, ECRE
<b>Alliance building</b>	
Allied with COM	AI Europe, ECRE, CCOEMA

**Table 24: Categorisation of pro-migrant groups regarding their ability to provide support**

The analysis above has illustrated that all three pro-migrant have been used by the Commission as an external ally – either in the form of receiving information about the internal Council negotiations or as leverage that the Commission tried to use when talking to Council representatives. Contrary to the depiction on the part of the interest representatives, the Commission desk officer responsible for the Qualification Directive emphasised that obtaining political support from NGOs was never the purpose of the consultations (Interview 34). The Council is expected to have been even less open towards pro-migrant groups as external allies. According to a MEP, the staff of the Permanent Representations prefers to contact MEPs personally and try to persuade them of their opinion (Interview 23).

Summing up, the statements of the interest representative, according to whom they have been used by the Commission as an external ally, have not been confirmed by the EU officials. The truth about the Commission's dependence on support probably lies in between those opposing statements. What can be deduced from the comment of the Commission desk officer is that more than the ability to provide support it is the ability to provide expert knowledge that decides about access to the Commission. As a consequence, the failure of the pro-migrant groups in convincing the Council of the views that they shared with the Commission do not seem to have affected their overall influence significantly.

### ***6.3.3 Empirical assessment of ability of the pro-migrant groups to provide legitimacy***

In order to provide the EU institutions with legitimacy, it is assumed that pro-migrant groups need to justify their own advocacy work by demonstrating sufficient representativeness,

participation structures, efficiency, and a strong argumentation structure. In this subsection, the groups are therefore examined for these attributes. For the assessment of the representativeness, it is explored in how many EU member states the groups had members or member organisations when the Qualification Directive was being negotiated. Without exception, all three groups (AI Europe 2005: 8; CCOEMA 2004b: 1, 4, 7, 10, 13, 15; ECRE 2004b: 1) were represented in each of the 15 member states.

Another way of assessing the legitimacy of the pro-migrant groups is by means of its participation structures. What has to be stressed in this context is that none of the groups embodied migrants among their members. Thus, people who are affected by EU asylum policies are not involved in the work of the pro-migrant groups. However, ECRE claims to involve its member organisations in the formulation of general work plans and objectives that guide the Brussels Secretariat in formulating concrete policy recommendations (Interview 24). AI Europe also only allows its national sections indirect participation in the advocacy work in Brussels. In its annual report it alleges that 'EU work is by its nature (complexity, unpredictability) not very conducive to broader involvement of AI membership' (AI Europe 2004a: 6). CCOEMA, in turn, seems to have let its national members partake from the very beginning in the formulation of the joint statement on the Commission's proposal for a directive (Interview 46). Furthermore, through elected bodies, all three groups let their member organisations partake in the recruitment of the staff that represents their concerns to the EU institutions (Interviews 24, 28, 46). In addition, the member organisations of AI Europe (2004a: 6) and ECRE were also involved in the lobbying strategy at national level (Interviews 24 and 46).

Furthermore, it is analysed whether the effectiveness of the groups is sufficient to legitimise their advocacy work. As for the preference attainment, it has already been pointed out that AI Europe achieved a success rate of approximately 46 per cent, whereas CCOEMA and ECRE achieved less than one third of their goals. However, the groups are able to demonstrate that their general mission was at all times reflected in their policy recommendations. In their attempts to promote the rights of refugees and beneficiaries of subsidiary protection, AI Europe (2012c) and ECRE (2012c) complied with their general mission of 'prevent[ing] and end[ing] grave abuses of human rights and demand[ing] justice for those whose rights have been violated' as well as 'counteracting racism, xenophobia and social exclusion that undermine the institution of asylum'. This also applies to CCOEMA whose members in

general promote the awareness-raising on the conditions migrants, refugees, and ethnic minorities face in Europe, provide solutions to the immediate needs of forced migrants in their countries of origin and in the receiving country, and help facilitating the integration processes for beneficiaries of internal protection (CCOEMA 2004b: 1, 4, 10, 14, 17).

Finally, the pro-migrant groups sought to legitimise their political demands by referring to international legal standards or conventions. What all three groups have in common is the strong reference to the Geneva Convention and the UN Handbook that, in their opinion, should guide the member states in creating EU asylum legislation (AI Europe 2002a: 1-3; CCOEMA 2002: 1-3; ECRE 2000b: 1-3). In addition, AI Europe based its requests on higher standards for persons seeking international protection on the conviction that ‘every person [shall] enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards’ (AI Europe 2012d). ECRE (2000b: 3), too, referred in its recommendations to the Universal Declaration on Human Rights. CCOEMA (2002: 5) chose the European Convention of Human Rights as legislative basis for its political demands. Through its biblical mandate, CCOEMA can put additional substance to its requests. In its recommendations to the Council it, therefore, describes its ‘conception of asylum [as] based on human dignity and the rights inherent to that dignity’ – values that form the common heritage of the people in Europe (CCOEMA 2002: 1).

The following table comprises the results obtained from the examination of the ability of the pro-migrant groups to provide legitimacy to the EU institutions.

Ability to provide legitimacy	Pro-migrant groups
<b>Participation</b>	
Involvement of people affected by EU asylum and migration policies	None
Involvement of members in appointing representatives	Indirect involvement through Board (elected by members): AI Europe, CCOEMA, ECRE
Involvement of members in positioning process	CCOEMA Indirectly: AI Europe, ECRE
Involvement of members in lobbying campaigns	AI Europe, CCOEMA, ECRE
<b>Representativeness</b>	

<b>Ability to provide legitimacy</b>	<b>Pro-migrant groups</b>
Represented in 15 EU MS	AI Europe, CCOEMA, ECRE
<b>Effectiveness</b>	
Reflection of the mission of the groups in policy recommendations	AI Europe, CCOEMA, ECRE
Reflection of policy recommendations in policy output	Partially: AI Europe, CCOEMA, ECRE
<b>Basis of argumentation</b>	
Legal conventions and standards	AI Europe, CCOEMA, ECRE
Biblical mandate	CCOEMA

**Table 25: Categorisation of pro-migrant groups regarding their ability to provide legitimacy**

Subsequent to the assessment of the ability of pro-migrant groups to provide legitimacy for the EU institutions, it is now analysed to what extent the EU institutions were actually in need of further legitimacy from the groups. On this question, a former representative of ECRE responded that it does not matter whether an institution is directly elected or not; the role of civil society is important to all EU institutions (Interview 40). Members of CCME and Caritas Europa staff, in turn, took a more differentiated view. According to them, NGOs are a vital counter pole to economic interests and, therefore cannot be ignored by the Commission (Interviews 1 and 18). At the same time, the representative of Caritas Europa questioned that the Council is as dependent on further legitimacy as the Commission is (Interview 1). A representative of AI Europe doubted altogether that the consultation of NGOs could increase the legitimacy of the EU institutions. She believes this can only be achieved by means of bringing Europe closer to the citizens at national level (Interview 28). On the part of the Commission and the Council, again, the Commission desk officer and a member of Council General Secretariat staff who were responsible for the Qualification Directive stressed that none of the institutions cooperated with pro-migrant groups to legitimise their legislative decisions (Interviews 3 and 34).

Concluding from these statements, it needs to be noted that neither the Commission nor the Council appear to have been dependent on additional legitimacy. The lack of legitimacy on the part of the pro-migrant groups, hence, does not seem to have hampered their lobbying success significantly. Rather than legitimacy, the EU institutions appear to have required expert knowledge from the groups. Thus, the ability to provide this expert knowledge was a



crucial pre-requirement that pro-migrant groups had to meet in order to access the EU officials that were involved in the drafting of and negotiations on the Qualification Directive and, consequently, to exert influence on its policy outcome. It cannot be stressed enough, though, that the Commission, more than the Council, relied on additional expert knowledge from the pro-migrant groups at the time the Qualification Directive was shaped.

## 6.4 Conclusion

The purpose of this chapter was to assess the influence of those pro-migrant groups that actively lobbied at the Qualification Directive. In total, three umbrella groups were identified as predominant lobbying actors. While ECRE applied a versatile advocacy strategy – lobbying the Commission and the Council – AI Europe and CCOEMA focused their advocacy on the Council only. Considering both their advocacy work during the drafting and the decision-making stage, it needs to be stressed that the groups, on average, attained about 46 per cent of their preferences – albeit less so towards the Council (34 per cent) than towards the Commission (65 per cent).

Pro-migrant groups	Preference attainment towards Commission	Preference attainment towards Council
ECRE	28 out of 43	6 out of 24
AI Europe		14 out of 32
CCOEMA		4 out of 14
<b>Total average</b>	<b>65%</b>	<b>34%</b>

Table 26: Summary of preference attainment

The self-assessment of the influence of pro-migrant groups turned out to be very divergent. It varied from very moderate comments on damage control to self-confident responses that emphasised the close contact to EU officials and the concordance between their recommendations and the positions of the EU institutions. Both the interviewed interest representatives and EU officials, however, differentiated between the different levels of influence during the drafting and the decision-making stage and, thus, confirm the findings of the document analysis.

With regards to the hypotheses on the effect of the decision-making procedure on influence, the empirical data on the Qualification Directive revealed similar results as the data on the LTR Directive. Firstly, both the assessment of the preference attainment and the attributed

influence has demonstrated that the influence of the pro-migrant groups on the adopted Qualification Directive, on average, was below medium. As such, the results support the alternative hypothesis that was formulated in the course of the theoretical framework: the influence of pro-migrant groups on policy proposals that are discussed under consultation procedure is less than medium or low. Thus, because of the undeniable dominance of the Council during the negotiations of the Qualification Directive, the pro-migrant groups were not able to get their views across – despite the Commission’s receptiveness towards the recommendations of the groups.

Furthermore, the overall influence of the pro-migrant groups needs to be seen in the light of the role of the UNHCR which is the official advisory body of the EU institutions in asylum matters and the role of the Geneva Convention which the EU member states as state parties are bound to. As the majority of the recommendations tabled by the pro-migrant groups remarkably concur with the guidelines of the UNHCR, their preference attainment cannot be dissociated from one another. On provisions that do not lie in the realm of authority of the UNHCR, in contrast, the pro-migrant groups remained widely unsuccessful. This particularly applies to the chapter on the content of international protection. Here, the pro-migrant groups had demanded the equal treatment of refugees and beneficiaries of subsidiary protection. But the member states did not consider that request. It is safe to assume that the failure of the interest groups on this chapter is due to the fact that subsidiary protection status is not enshrined in the Geneva Convention and the UNHCR, thus, does not have binding power on the formulation of that protection status.

Further reasons for the different levels of influence at drafting and decision-making stage were found in the dependence structures between the EU institutions and the pro-migrant groups. The interviews uncovered that the Commission officials, to a greater extent than the Council members, relied on the provision with expert knowledge because of their limited expert staff. Looking at the supply side of that interdependence, interest representatives reported that they experienced difficulties in getting access to the decision-makers within the Council General Secretariat, which consequently narrowed their overall influence on the Council. The failure in accessing the Council members, moreover, is partly the result of their limited financial and personnel resources or as in the case of ECRE the absence from Brussels. Even though the groups endeavoured to divide labour between their secretariats and their national member organisation, they were not able to approach the Council effectively.

Furthermore, none of the interviewed EU officials confirmed the dependence of the Commission or the Council on support. For the pro-migrant groups, this means that their inability to effectively access the Council did not impair their influence on the Commission whose political positioning on asylum matters is naturally closer to the groups than the Council. Finally, the groups' inability of legitimising their own advocacy work caused by the insufficient participation structures for members and those that are affected by asylum legislation does not seem to have significantly hampered their influence either. The interviewed Commission desk officer responsible for the Qualification Directive at any rate denied having been in need of further legitimacy from the pro-migrant groups to justify his policy proposal. According to the interest representatives, the Council has not been reliant on further legitimisation either. As a consequence, it can be deduced that the ability of the pro-migrant groups to provide expert knowledge affected their effectiveness more strongly than their ability to provide support and legitimacy.

## **7. Assessment of the political influence of pro-migrant groups on the extension of the Long-term Residents Directive**

### **7.1 Introduction – Background to the extension of the Long-term Residents Directive**

The aim of this chapter is to assess the influence of those pro-migrant groups that lobbied at the extension of the Long-term Residents Directive. In the proposal for the original LTR Directive the Commission foresaw the inclusion of refugees within the scope of TCN who are eligible to long-term residence. At the JHA Council meeting on 6 May 2003, however, the member states decided to exclude refugees from the scope of the directive. Asking the Commission to elaborate a separate instrument that shall determine the conditions for and rights attached to long-term residence status for refugees as well as beneficiaries of subsidiary protection, the member states suspended their inclusion for another eight years. It was not until May 2011 that the Tampere Council conclusions whereupon fair treatment of all TCNs who reside legally on the territory of the EU shall be ensured were met by the EU institutions that finally agreed on the inclusion of refugees and beneficiaries of subsidiary protection in the extension of the LTR Directive.

Before the new proposal for the extension of the LTR Directive was drafted, the Commission entrusted the Danish Refugee Council, the Migration Policy Institute, and the Institute for Migration and Ethnic Studies with a study on the feasibility of the transfer of the protection status (ECRE 2008a: 1). This study revealed that although all contracting parties to the 1951 Geneva Convention are to guarantee protection for refugees irrespective of which country initially granted protection, only a few countries took on full responsibility for the refugee, whereas others solely issued travel permits. As only ten countries had ratified the European Agreement on Transfer of Responsibility for Refugees at that time, the study further uncovered that the total number of annually accepted transfers is negligible. As reasons why refugees move to another member state, the authors referred to the cultural and linguistic backgrounds of refugees and their wish to study or work in a country in which their qualifications are acknowledged. Furthermore, in the study it is highlighted that the actual number of refugees moving between EU member states are expected to be low, while the contribution that they could make to the welfare system is significant. For the inclusion of refugees and beneficiaries of subsidiary protection into the LTR Directive that automatically grants them the right to free movement, the authors analysed two scenarios: one, the

responsibility for issuing travel documents; two, the responsibility of the second member state for upholding all Convention rights (DRC & MPI & IMES 2004: ix, x, 6).

In consultations with the member states as well as with ECRE and CCME, the Commission raised the issue of the transfer of protection status in the EU. Most of the consulted parties argued that before a community mechanism on transfer of protection can be introduced, asylum procedures need to be harmonised among the member states. The proposal of the Commission for the extension of the LTR Directive, therefore, did not entail such a community mechanism (Commission 2007b: 3). The drafting of the new proposal was followed by two negotiation rounds: a first before the entry into force of the Lisbon Treaty; and a second post-Lisbon round. While the first negotiation round failed due to the pre-Lisbon requirement of reaching an agreement unanimously, in the second negotiation round the Parliament and the Council reached a compromise on the extension of the LTR Directive that came into force in May 2011.

In the negotiations on the extension of the LTR Directive to refugees and beneficiaries of subsidiary protection, fewer pro-migrant groups were engaged than during the debates on the original LTR Directive. In total, three groups were identified as having lobbied on the content of the directive – CCOEMA, ECRE, and AI Europe. To assess their influence on the outcome of the directive, the groups are analysed for their political objectives and the lobbying strategies that they applied. To learn more about the consultation mechanisms and political opportunity structures for pro-migrant groups during the negotiations of the directive, the EU institutions are scrutinised for their dependence on expert knowledge, political support, and legitimacy. In addition, the ability of the pro-migrant groups to provide the EU institutions with the required resources is examined. In so doing, the demand and the supply side of the dependence structures are taken into account. This detailed analysis, finally, allows the hypotheses on the effect of the decision-making procedure on the influence of the pro-migrant groups to be tested.

## **7.2 Influence assessment**

The influence assessment of the pro-migrant groups on the extension of the LTR Directive follows the outline of the assessment of the previous case studies. Firstly, the preference attainment of the groups is examined by confronting their recommendations with the positions of the EU institutions. Secondly, interview results from the self- and peer assessment on the influence of the groups on the extension of the LTR Directive are compiled

as part of the attributed influence assessment. For the preference attainment analysis, first of all, the recommendations of CCOME and ECRE, which lobbied during the drafting stage are compared with the proposal for the directive. During the further course of the negotiations AI Europe, CCOEMA, and ECRE approached the Parliament and the Council. As they raised the same issues in their recommendations to the Parliament and the Council, the negotiation stage is analysed in one single subsection. However, it cannot be overlooked that the negotiations had to be terminated the first time around because no unanimous agreement could be reached. Therefore, the influence of the pro-migrant groups on the final directive adopted by the Parliament and the Council is juxtaposed with amendments that the Parliament had tabled before the Lisbon Treaty. Moreover, the influence of all groups is put into perspective with the recommendations provided by the UNHCR – the official advisory body of the institutions in asylum and migration affairs.

### ***7.2.1 Preference attainment towards the Commission***

As the main purpose of reopening the negotiations on the LTR Directive was to extend its scope to refugees and beneficiaries of subsidiary protection, the principal objective of CCOME (2004a: 2; 2006: 2) and ECRE (2005b: 6) has been met by the Commission. Beyond that, ECRE (2005b: 25) had advocated for the exemption of beneficiaries of international protection from any economic requirements as part of the requirements for acquiring long-term resident status. The Commission, however, did not comply with this request. The following table contains these first results of the preference attainment analysis.

<b>Commission proposal</b>	<b>CCOEMA</b>	<b>ECRE</b>
Art. 3 Scope	+ include beneficiaries of international protection within the scope of the directive	
Art. 5 Conditions for acquiring long-term resident status		– exempt beneficiaries of international protection from economic requirement

**Table 27: Comparison of recommendations of pro-migrant groups and Chapter 1 of Commission proposal<sup>11</sup>**

Concerning the long-term resident status in a member state, CCOEMA (2006: 3-4) and ECRE (2005b: 6) suggested to grant beneficiaries of international protection equal access to the labour market, health care, and education. These recommendations are reflected in the

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<sup>11</sup> + refers to recommendations of the pro-migrant groups that are reflected in the Commission's proposal. - refers to recommendations of the pro-migrant groups that are not reflected in the Commission's proposal.

proposal of the Commission (Art. 11). Furthermore, their recommendations regarding equal rights to free movement within the EU and the facilitation of recognition of qualifications are also covered by Article 11 (CCOEMA 2006: 3; ECRE 2005b: 5). Programmes that assist beneficiaries of international protection in acquiring basic knowledge of the receiving society, on the contrary, are not part of the directive (CCOEMA 2006: 3-4; ECRE 2005b: 7-8). Finally, ECRE's demand for complying with the right of non-refoulement by ensuring that no beneficiary of international protection is directly expelled to her country of origin is considered in Articles 12 and 22 (ECRE 2005b: 2). The table below presents the results of the preference attainment of CCOEMA and ECRE regarding Chapter 2 of the Commission proposal.

Commission proposal	CCOEMA	ECRE
Art. 11 Equal treatment	+ grant beneficiaries of international protection equal access to labour market, health care, education and free movement within the EU + facilitate recognition of qualifications – provide introduction programmes	
Art. 12 Protection against expulsion		+ safeguard principle of non-refoulement

**Table 28: Comparison of recommendations of pro-migrant groups and Chapter 2 of Commission proposal**

The analysis of the preference attainment at the drafting stage has not only revealed that it was solely two groups that lobbied the Commission on the extension of the LTR Directive, it also revealed that their catalogue of recommendations to the Commission was very limited. Out of the limited number of recommendations, nevertheless, the majority – between two thirds and 75 per cent – is reflected in the proposal of the Commission for the directive.

### ***7.2.2 Preference attainment towards the Parliament and the Council***

During the decision-making stage, three pro-migrant groups actively tried to seek influence on the Parliament and the Council – CCOEMA, ECRE, and AI Europe. As regards the general provisions, CCOEMA (2007: 9), ECRE (2008b, 2008c, 2008d), and AI Europe (2007: 30; 2008: 13; 2009: 10) were mainly concerned with the inclusion of refugees and beneficiaries of subsidiary protection within the scope of the directive – a concern that was met by the Parliament and the Council (Art. 3). Their proposals for amendment concerning the duration of residence required to acquire long-term residence status, however, was less successful. In early policy papers, CCOEMA (2007: 10) and ECRE (2007: 21; 2008d: 3) had argued that three years of legal residence are sufficient to grant beneficiaries of international protection long-term residence status. Moreover, ECRE (2008a: 3) demanded the admission

of periods of temporary protection, if followed by international protection, for the calculation of the duration of residence. The Parliament and the Council (Art. 4), on the contrary, determined a five-year minimum period of legal residence as the requirement for long-term residence and refrained from considering periods of temporary protection for the calculation of the duration of residence. In later policy papers, ECRE (2008b: 4; 2010f: 5) recommended to take into account the full duration of the asylum procedure when calculating the duration of residence. Again, the Parliament and the Council did not completely accept that request. Article 4 (b) establishes that the ‘whole of that period’ is only taken into account if the asylum procedure ‘exceeds 18 months’. With a view to the conditions for acquiring long-term residence status, CCOEMA (2007: 10) and ECRE (2008a: 3; 2008d: 3; 2010f: 6) had lobbied for the exemption of beneficiaries of international protection from the requirement of having stable and regular resources that are sufficient to maintain herself and her family members without recourse to the social system of the member states. The Parliament and the Council, though, did not take this exemption clause on board (Art. 5 (1) (a)). Furthermore, ECRE (2008a: 4; 2010f: 6) had asked for the exemption of vulnerable beneficiaries of international protection from further integration requirements. Again, these recommendations are not reflected in final directive. The results of this preference attainment assessment are summarised in the following table.

Directive	CCOEMA	AI Europe	ECRE
Art. 3 Scope	+ include beneficiaries of international protection within the scope of the directive		
Art. 4 Duration of Residence	– grant beneficiaries of international protection long-term residence after 3 years of legal residence		– grant beneficiaries of international protection long-term residence after 3 years of legal residence – take into consideration period of temporary protection if followed by international protection in calculation of duration of residence – take into account the full duration of the asylum procedure in calculation of duration of residence
Art. 5 Conditions for acquiring long-term resident status	– exempt beneficiaries of international protection from economic requirements		– exempt beneficiaries of international protection from economic requirements – exempt vulnerable refugees and beneficiaries of subsidiary protection from integration requirement



			– assess whether the beneficiary of international protection can reasonably be expected to meet integration requirements
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**Table 29: Comparison of recommendations of pro-migrant groups and Chapter 1 of Directive**

Just as the analysis of the Commission proposal has shown, due to the extension of the directive to beneficiaries of international protection, they are entitled to the same benefits listed in Article 11 as all other TCNs who hold long-term residence. Therefore, the recommendations of AI Europe (2007: 32; 2008: 13; 2009: 10) and ECRE (2007: 21; 2008d: 3; 2010f: 5) concerning the access to social and economic rights, recognition of professional qualifications, and freedom of movement within the EU have been complied with. Again, introduction programmes that would help beneficiaries to familiarise with the host society, as requested by ECRE (2008c: 6), were not incorporated in the directive. With regards to the Article on protection against expulsion, ECRE (2007: 21; 2010f: 5) successfully lobbied for the obligation of member states to comply with the principle of non-refoulement (Art. 12 (3) (c)). Moreover, its request for specifying a time limit for the assessment of whether a long-term resident still obtains international protection status (ECRE 2008a: 5) has also been met by the Parliament and the Council (Art. 12 (3) (a)). The directive (Art. 12 (4)) also includes the right to redress procedures to challenge expulsion decisions as requested by ECRE (2007: 21; 2010f: 6). Despite the efforts of ECRE (ECRE 2008a: 5), the consultation between the member state that granted international protection and the second member state was not standardised. The following table highlights the comparison of the recommendations of AI Europe and ECRE with Chapter 2 of the directive.

Directive	AI Europe	ECRE
Art. 11 Equal treatment	+ grant beneficiaries of international protection social and economic rights, freedom of movement within EU; recognise professional qualifications; access to employment on equal terms to other TCNs	– introduce programmes that enable beneficiaries of international protection to acquire knowledge of the host society's language, history, and institutions
		– standardise consultation procedure in writing + specify time limit for consultation + access to redress procedures and legal aid for LTRs that lack adequate resources + ensure compliance with non-refoulement principle
Art. 12 Protection against expulsion		

**Table 30: Comparison of recommendations of pro-migrant groups and Chapter 2 of Directive**

For residence in a member state other than the one that granted long-term residence status, the only provision that AI Europe (2007: 35; 2009: 10) and ECRE (2007: 21) wanted to have incorporated is the mutual recognition of all individual decisions on granting protection status that are taken in the EU. The Parliament and the Council, however, did not approve of that automatism.

Directive	AI Europe	ECRE
Art 19 Amendments of long-term resident's EU residence permits	– mutually recognise all individual decisions on granting protection status taken in the EU	

**Table 31: Comparison of recommendations of pro-migrant groups and Chapter 3 of Directive**

The recommendations of the pro-migrant groups on the LTR Directive widely reflect the concerns and suggestions brought forward by the UNHCR. The success and the failure of these recommendations, therefore, need to be interpreted in the light of their consistence with the UNHCR. The UN Refugee Agency compiled two advisory opinions on the LTR Directives whose core concerns comprised the following issues. First of all, referring to Art. 7 (1) Geneva Convention which provides for the same treatment of refugees as is accorded to aliens generally, the UNHCR (2008a: 4; 2010: 3) pushed the EU institutions to include refugees and beneficiaries of a complementary form of international protection within the scope of the directive. For the calculation of the duration of residence required to acquire long-term residence status, the UNHCR (2008a: 3; 2010: 10), in compliance with the principle of non-discrimination (Art. 21 Charter on Fundamental Rights; Art. 3 Geneva Convention), insisted on commencing the ‘calculation of the requisite 5-year period from the date of an application for asylum’ and including ‘any period under temporary protection’. With a view to the conditions for acquiring long-term residence status, the UNHCR (2008a: 4-5; 2010: 11) urged the EU institutions to exempt beneficiaries of international protection from the economic means requirement and, on an individual basis, from the integration requirement. The UN Refugee Agency justified its requests by referring to the particular circumstances of persons who fled from persecution or serious harm that put them into a more difficult situation than other TCNs. On Article 12, protection against expulsion, the UNHCR (2008a: 6; 2010: 7-8) strongly recommended that a beneficiary of international protection can only be expelled from a second member state to the one that granted protection status to ensure the principle of non-refoulement. To assess whether international protection status is to be withdrawn, the member state that granted protection has to be consulted. This consultation

procedure, in the opinion of the UNHCR, should ideally follow a standardised written verification and be set a time limit. Finally, the UNHCR (2008a: 5-6; 2010: 5-6) urged the EU institutions to elaborate rules that clarify under which circumstances responsibility is to be transferred from one member state to another as provided for in Paragraph 11 of the Schedule to the 1951 Refugee Convention and in the European Agreement on Transfer of Responsibility for Refugees.

The brief outline of the concerns and suggestions regarding the LTR Directive on the part of the UNHCR has illustrated that it widely resembles the recommendations of the pro-migrant groups. 73 per cent of all the amendments tabled by the pro-migrant groups are reflected in the recommendations of the UNHCR. However, only four of all recommendations on which the UNHCR and the pro-migrant groups had agreed were adopted in the final directive. That means that even though the groups could trust in the support of the UNHCR, this alliance was not powerful enough to convince the EU decision-makers of their shared objectives.

Some of the ideas that the UNHCR and the pro-migrant groups shared, however, are comprised in the Commission proposal and draft reports of the Parliament. The Commission proposal (Art. 4 (2)) and earlier reports of the rapporteur (Interview 25) had suggested taking into account the full duration of the asylum procedure for the calculation of the duration of legal residence. Moreover, the Parliament, before the entry into force of the Lisbon Treaty, insisted on the exemption of beneficiaries of international protection from economic and integration requirements. Even after it was granted the right to co-decide, it supported the UNHCR and the pro-migrant groups in their ideas of a mutual recognition of protection statuses, the consideration of periods of temporary protection for the calculation of the duration of legal residence, and the introduction of integration programmes (EP 2010b: 10, 13, 15).

Thus, while the proposal for the directive by the Commission and earlier positions of the Parliament entailed various provisions as recommended by the pro-migrant groups and the UNHCR, the influence of the groups on the final directive was only marginal. In this context, it needs to be noted that the recommendations forwarded to the Council were much more detailed than the issues raised at Commission level. Nevertheless, the failure in getting their demands considered in the final directive is not to be undervalued. Assumed that all recommendations are ascribed the same value, the preference attainment rate of ECRE has shrunk from two-thirds during the drafting stage to approximately 36 per cent during the

decision-making stage. Similarly, while three-fourths of CCOEMA's recommendations were reflected in the Commission proposal, only one-third made it in the final directive. AI Europe, which exclusively lobbied the Parliament and the Council, only tabled a few and very general provisions. As a consequence, two-thirds of its recommendations got adopted. In the following subsection, the preference attainment assessment is complemented by the self- and peer assessment of the influence of the pro-migrant groups.

### ***7.2.3 Attributed influence assessment***

As the analysis of the preference attainment has shown, the success rate of the pro-migrant groups towards the Parliament and the Council remained limited. Not even the remarkable congruence of the guidelines of the UNHCR and the recommendations of the pro-migrant groups regarding the extension of the LTR Directive helped augmenting the influence of the groups. In addition to the preference attainment analysis, this subsection assesses the attributed influence of the pro-migrant groups. To do so, the interest representatives of AI Europe, ECRE, CCME, Caritas Europa, and JRS were asked to describe their satisfaction with the outcome of the extension of the LTR Directive. Moreover, this section reflects on the views of relevant EU decision-makers concerning the influence of the pro-migrant groups.

On the influence of the pro-migrant groups, it was a representative of AI Europe who gave the most pessimistic answer. According to the advocacy officer that was responsible for lobbying at the extension of the LTR Directive, despite the fact that AI Europe is a large member-based and renowned organisation, its ability to actually exert influence on policy outcomes was very low. All she was willing to confirm is 'if we weren't here, things would look much worse'. Thus, she regards it as the responsibility of AI Europe to limit damage. In some meetings with representatives of the member states, as she explained however, her argumentation on the extension of the LTR Directive was well received (Interview 28).

With regards to the influence of CCOEMA, a representative of JRS also remained rather modest. He said, 'I think it is presumptuous to believe that NGOs set the agenda in asylum and migration matters'. Nevertheless, he explains that pro-migrant groups can exert influence on policy-makers by means of informing them of on the ground issues (Interview 14). His colleague who works with Caritas Europa, in addition, alluded to the sheer impossibility of convincing every single person involved in the decision-making process of the beliefs of CCOEMA. As an example, he refers to the Parliament and the difficulty of finding majorities in intra-parliamentary voting. In general, both interest representatives believe that more

influence can be exerted when approaching national policy-makers, as they seem to be the driving forces (Interviews 1 and 14). An official of CCME, on the one hand, was very satisfied with the inclusion of refugees and beneficiaries of subsidiary protection in the scope of the LTR Directive. On the other hand, she anticipates problems during the transfer of the new provisions into national law. Especially in countries that differentiate in more categories than refugees and beneficiaries of subsidiary protection, as at the time of the interview was the case in Germany and Austria, this could lead to situations where not all beneficiaries of international protection are covered by the directive (Interview 18).

A former member of ECRE staff also presented herself as very content with the extension of the scope of the directive to beneficiaries of international protection. About the actual influence of ECRE, however, she voiced restrained remarks.

We have always been advocating for ‘please, please Commission please come with a proposal to include refugees also in the LTR Directive’. [But] [i]t is very difficult to pinpoint results. [...] I wouldn't dare to say that the Commission proposed it because ECRE lobbied for the inclusion of refugees in the LTR Directive but it was kind of a momentum created (Interview 49).

But in general she always felt taken seriously in the meetings with the policy-makers. ‘They were very willing to listen to comments, to criticism, to other ideas as long as they are constructive and as long as they can use them in their work’. What seems to have undermined the overall influence of ECRE, though, is ‘that the power still lies with the Council usually and at the same time they [the member states] are least easy to lobby’. Therefore, she is certain that there are numerous things that ECRE would have liked to see differently but, nevertheless, ‘overall ECRE can be very happy with the results’ (Interview 49).

On the part of the policy-makers, one Commission official acknowledged that ‘NGOs can definitely influence me [her] as a policy-maker’. But that does not mean that what the Commission has taken on board is eventually reflected in the directive adopted by the Parliament and the Council. According to her, that has mostly to do with the different cultures of interest representation in the member states. ‘In Finland, in Sweden they even have scheduled monthly meeting with NGOs. [...] So it's part of the agenda of the ministry, whereas in other member states they never meet them’. Another problem that the interviewee saw in terms of the LTR Directive is that there was only one major amendment proposed by the Commission – the extension of the scope of the directive to beneficiaries of international

protection. In her opinion, this modification is not enough to reflect on the influence of pro-migrant groups (Interview 12).

With a view to the Parliament, the opinions of the interviewed MEPs on the influence of the pro-migrant groups remained rather discreet too. While one of the interviewees did not question the influence on the part of NGOs, he also explained that it is impossible to exert influence on all MEPs due to the comprehensive internal decision-making process.

NGOs might introduce some new ideas. They might try to influence in one way or another a rapporteur to their philosophy and what they would like to see in the report. But this is only one small part of the whole process. Because during a debate you hear all pros and cons of an argument and you end up with a consensus, which usually is not the ideal proposal [...]. You have to find that proposal which will satisfy everybody to some extent to make them vote for it (Interview 9).

Another MEP listed the current political climate and the way immigration to Europe is being portrayed in the media as further factors that limited the influence of pro-migrant groups on the extension of the LTR Directive (Interview 10). Finally, while the assistant to the rapporteur of the LTR Directive acknowledged that some of the concerns raised by NGOs were finally reflected in the position of the EPP that mainly guided the opinion of the Parliament, another MEP appeared to regret the final outcome of the directive. She presented herself furious about the outcome saying ‘it’s not to my liking and most NGOs also plea for a more liberal way of dealing with migration and asylum. So they didn’t get what they want and neither did I’ (Interviews 2 and 25). From the interviews with MEPs from different political groups it became clear that the Socialists and Democrats, the Greens, the Liberals, and the European United Left/Nordic Green Left, even though they had preferred a more liberal interpretation of the Geneva Convention, were not able to establish their opinion in the internal positioning process.

Despite the noncommittal assessment of Commission officials and MEPs with regards to the influence of pro-migrant groups, members of the Council General Secretariat staff and officials working with the Permanent Representations did not dispute their influence on the Commission and the Parliament. They based their assessment on the wide resemblance of the positions of these institutions and the contributions of the pro-migrant groups (Interviews 19, 20, 36). The impact of pro-migrant groups on the Commission and the Parliament, however, needs to be regarded in the light of the recommendations tabled by the UNHCR, as one JHA Counsellor emphasised (Interview 22). Moreover, the majority of the interviewed JHA Counsellors denied that pro-migrant groups could exert influence on the decisions of the

Permanent Representations. As reason for that they argued that Permanent Representations are bound by instructions from the governments that, rather than being responsive to pro-migrant groups, are committed to the workability and feasibility of new instruments. (Interview 3, 21, 22, 31, 35, 36, 38). Finally, a Finnish representative acknowledged that countries such as Finland that already granted beneficiaries of international protection long-term residence permits are potential cooperation partners for pro-migrant groups that lobbied for the extension of these standards to all EU member states. Given this initial condition, however, there was nothing at stake for the Finnish government on this matter and, thus, Finland did not get much engaged in the negotiations (Interview 7). Hence, sometimes even those countries that support the requests of pro-migrant groups are not responsive to them because they prefer to limit their involvement in debates to issues that are of national priority.

The self-assessment of the influence of the pro-migrant groups on the LTR Directive portrays the results of the preference attainment to the extent that the interest representatives expressed their contentment with the extension of the scope of the directive to beneficiaries of international protection. Beyond that, however, only few recommendations tabled by the groups are reflected in the directive. Even though some of the interest representatives emphasised that they had lobbied on the extension of the LTR Directive long before the Commission drafted its new proposal, they distanced themselves from taking the credit for it. The policy-makers that were involved in the negotiations on the directive, while acknowledging that pro-migrant groups can in principle exert influence on the Commission and the Parliament, also doubted that the groups' impact on the LTR Directive was significant. As such, the analyses of the preference attainment and the attributed influence have produced similar results; namely, that the overall influence of the pro-migrant groups on the content of the final LTR Directive remained limited.

### **7. 3 Which factors affected the influence of pro-migrant groups?**

#### ***7.3.1 Empirical assessment of the ability of the pro-migrant groups to provide expert knowledge***

For the analysis of the ability of the pro-migrant groups to provide expert knowledge, their funding and personnel, organisational structures, and expertise are analysed. In order to not exclusively focus on the supply side, it is then investigated to what extent the different EU institutions were actually dependent on the further expert knowledge from the interest groups. To do so, interviews with EU officials on the dependence on expert knowledge are evaluated.

Funding and personnel are expected to strongly affect the ability of pro-migrant groups to provide expert knowledge. Based on this assumption, ECRE appears to be well equipped for the provision with expertise. In 2010, its annual budget amounted to € 1,853,305 and its personnel capacity in Brussels added up to 19 members of staff (Commission 2012g; ECRE 2012a). The capacities of AI Europe were similar. It had an annual budget of € 1,431,692 in 2010 and employed 19 persons at the liaison office in Brussels (AI Europe 2012e; Commission 2012h). For CCOEMA the figures are assumed based on the average budget available for advocacy and the personnel capacity of its members. Thus, the funding of CCOEMA is not expected to have exceeded € 220,000 in 2010 and its advocacy work should not have been supported by more than six staff members (Caritas 2012; CCME 2012; Commission 2012i; 2012a; JRS 2012b: 27; 2012a).

Furthermore, the organisational structure of a group is assumed to be crucial for the overall ability to provide expert knowledge. In this context, it is expected that the division of labour between the liaison office in Brussels and the member organisations in the member states facilitate the provision with readymade expertise. All analysed pro-migrant groups were in principle able to divide labour because they maintain offices in Brussels and in the member states. As CCOEMA was mainly represented by the liaison offices of its leading members CCME, Caritas Europa, and JRS, the ad hoc group could divide labour between the Secretariats in Brussels. Moreover, responsibility and work was divided between those Secretariats, which monitored the negotiations on the extension of the LTR Directive, and the national member organisations that collected on the ground information (Interview 14 and 18). AI Europe (2012a) also states on its website that its Secretariat in Brussels closely cooperates with its member sections for the provision with background studies and analyses on national migration practices. The Secretariat in Brussels, in turn, informs the national sections about the state of the art in the negotiations. Nevertheless, in one interview it was revealed that the limited number of staff at the Brussels office also affects the ability of AI Europe to distribute information among the different EU policy-makers timely and flexibly (Interview 28). For the extension of the LTR Directive, a former employee of ECRE reported that the liaison office formulated the respective recommendations. During that positioning process, she informed the member organisations about the lobbying objectives of ECRE and the implication that the extension of the LTR Directive would have at national level. However, due to the highly technical nature of the dossier and the lack of familiarity with



these issues on the part of the member organisations, the interviewee stressed having received hardly any input from them (Interview 49).

Concerning parallel lobbying at EU and national level, the members of CCOEMA confirmed that while the Secretariats in Brussels focussed on the EU institutions, their member churches approached national policy-makers – in particular the officials of the member states that held the EU Presidency at that time (Interviews 1, 18, 46). A Representative of AI Europe (Interview 28) explained that the liaison office in Brussels developed guidelines for their national branches to facilitate their lobbying efforts. In so doing, the overall objectives of the group were integrated in the different lobbying strategies and adapted to the national context. ECRE, on the contrary, did not pursue a parallel lobbying strategy on the extension of the LTR Directive. The liaison office did not mobilise its national member organisation because, to the umbrella group, the directive was not of core interest. As a consequence, the Brussels office was not successful in raising the awareness of the member organisation to the implications the directive could have at national level (Interview 49).

With regards to the dependence of the Commission on expert knowledge, two officials (Interviews 6 and 12) that were responsible for the extension of the LTR Directive agreed that, above all, they consulted pro-migrant groups to get information about the transposition of the original directive to see what needed to be taken into consideration for the extension of the directive. They pointed out that it is difficult for the Commission to monitor the transposition of directives and pinpoint those member states that do not transpose a directive in the way that the Commission meant it to be transposed. The interviewees described themselves as open to complaints and suggestions. They tried to get information about the transposition of the LTR Directive from pro-migrant groups because they

[...] are our eyes at member states level. We don't have any other means of monitoring what's happening. We don't go to a lot of nations to see what's happening on the ground. We really base ourselves on what NGOs working on the ground tell us (Interview 12).

MEPs from different political groups confirmed the dependence of the Parliament on expert knowledge. They all admitted having consulted pro-migrant groups on the technical details and implications of the extension of the LTR Directive. As reasons for consulting them, the interviewees listed their excellent field studies and analyses. MEPs, according to the interviewees, could never conduct such extensive research on each dossier because of the Parliament's limited personnel capacity and the high workload (Interviews 2, 9, 10, 25).

Stressing the problem of limited personnel, one of the assistants to the rapporteur complained 'it is totally unfair; compared to the Council we are so outnumbered'. He further elaborated that the Parliament only conducts studies itself 'every now and then' and only on 'particular issues'. Moreover, the information that MEPs get from the Commission as part of the impact assessment 'is often quite narrow'. Therefore, 'the Parliament definitely relies on the kind of work that NGOs do'. He particularly referred to ECRE as a group that he frequently consulted (Interview 25). Finally, another MEP saw the added value of NGOs in their extensive knowledge on migration issues. 'When you have NGOs that specialise on a specific point, they are in the position to point out various aspects of the problem. This is good information for a MEP to help him make up his mind' (Interview 9).

With a view to the Council, only a small minority of JHA Counsellors and one member of the Council General Secretariat staff acknowledged that pro-migrant groups could add useful information to what the Permanent Representations got from their national ministries when the extension of the LTR Directive was discussed. In particular, these interviewees referred to on the ground expertise and to judicial advice that was considered in the preparation of the file (Interviews 4, 7, 21, 38). The majority of the interviewees, however, questioned the dependence of the Council on expert knowledge. They were convinced that none of the information provided by NGOs could add to the expertise that they receive from their national ministries or the UNHCR (Interviews 3, 11, 19, 20, 22, 35, 36). Moreover, as some interviewees argued, information provided by NGOs is often in conflict with the general political orientation of national governments and thus with the instructions that they receive from the ministries (Interviews 20, 22, 36). Contrary to the independence of the Council on further expert knowledge, JHA Counsellors described the Commission and the Parliament as institutions that rely on further expert input because of their high workload and time constraints (Interviews 11, 22, 35).

The analysis of the ability to provide expert knowledge has revealed that despite limited financial and personnel resources, most of the pro-migrant groups applied an effective internal organisation that allowed them to share lobbying costs between the liaison offices in Brussels and the member organisations at national level. To the members of the best-endowed umbrella group, however, the extension of the LTR Directive does not seem to have been important enough. But even though the member organisations of ECRE did not contribute much to the advocacy work of the liaison office, it appears to have been capable of providing

expertise to the EU institutions. The analysis also demonstrated that the Commission and the Parliament were reliant on the provision with expert knowledge, whereas most of the JHA Counsellors referred to their national ministries and the UNHCR whenever they needed further information for their positioning on the proposal of the Commission. As such, the influence of the pro-migrant groups on the different opinions is expected to have been affected by the diverging levels of dependence on expert knowledge. The results of this investigation are highlighted in the following table.

Ability to provide expert knowledge	Pro-migrant groups
<b>Annual budget</b>	
> € 1,400,000	AI Europe, ECRE
< € 400,000	CCOEMA
<b>Staff</b>	
19	AI Europe, ECRE
< 10	CCOEMA
<b>Organisational structure</b>	
Liaison office in Brussels	AI Europe, ECRE, CCOEMA (leading offices: Caritas Europa, CCME, JRS)
Division of labour: Brussels office monitors EU policy-making processes and member organisations collect on the ground information	AI Europe, CCOEMA
	Partially: ECRE
Division of labour: Brussels office lobbies at EU level and member organisations at national level	AI Europe, CCOEMA

**Table 32: Categorisation of pro-migrant groups regarding their ability to provide expert knowledge**

### ***7.3.2 Empirical assessment of the ability of the pro-migrant groups to provide support***

As it has been suggested in the theoretical framework, the ability to provide political support to the EU institutions requires congruent political objectives of the pro-migrant groups and the institution that is to be supported on the extension of the LTR Directive. Moreover, it necessitates access to those policy-makers that need to be convinced of these shared objectives. For the analysis of these requirements, the recommendations of the pro-migrant groups are compared with the positions of the Commission, Parliament, and Council. Furthermore, through interviews it is tested to which EU institutions the groups had access.

Finally, interest representatives and EU officials are asked to comment on their experience of allying with each other.

As the first section of this chapter has illustrated, the proposal of the Commission and earlier positions of the Parliament on the extension of the LTR Directive have reflected the recommendations of the pro-migrant groups better than the directive that was finally adopted by the Parliament and the Council. Especially on the calculation of the time period required to acquire long-term residence status, the exemption of beneficiaries of international protection from economic and integration requirements, and the mutual recognition of protection statuses the pro-migrant groups, the Commission, and the Parliament agreed. However, as the assistant to the rapporteur pointed out, the power still lies with the member states. During the negotiations, the Council urged the Parliament to give in on these matters, which it did in order to not put to entire directive at risk (Interview 25).

Providing EU institutions with support also premises that the pro-migrant groups have access to policy-makers that are to be supported and those that are to be convinced. The advocacy work of AI Europe on the extension of the LTR Directive, however, was limited to approaching the Parliament and the Council during the trilogues. The group responded to the Commission's online consultation on the future CEAS, it commented on the Stockholm Programme and addressed the Slovenian Presidency (Interview 28). Representatives of the member organisations of CCOEMA, in turn, reported that they were formally and informally involved in the drafting process of the extension of the LTR Directive. Moreover, they tried to exert influence on the decisions of the Parliament and the Council by disseminating their comments and meeting with relevant officials of the LIBE Committee, Permanent Representations, and national ministries (Interviews 1, 14, 18). A former member of ECRE staff alluded to the fact that ECRE, after their failure to convince the institutions to include beneficiaries of international protection within the scope of the original LTR Directive, never stopped lobbying the Commission on that matter. To achieve that goal, her predecessors and she met with the person responsible for the LTR Directive in the Commission. She also confirmed having talked to the rapporteur and shadow rapporteurs once. With regards to the Council, ECRE is reported having mainly lobbied the EU Presidencies and Permanent Representations. However, the interviewee admitted that ECRE did not have enough resources to meet with all JHA Counsellors. Therefore, they focussed on ECRE friendly member states and big players such as Austria and Poland that are crucial in Council voting.

The interviewee further stressed that it was not only ECRE that approached the EU institutions. Indeed, ECRE was frequently invited, by the Commission and the Parliament, to hearings and team-to-team meetings at which unsolved issues were discussed (Interview 49).

What is more, some of the interest representatives confirmed having allied with EU officials. Member organisations of CCOEMA, for instance, explained that the Commission provided them with information about the issues that had come up during the trilogue negotiations. According to them, the Commission sought to use them as external allies in order to raise the pressure on those member states that opposed its proposal the most. The Commission is reported to have done so by means of referring to the resentment of the civil society against the attempts of the Council to water down the ambitious proposal of the Commission (Interviews 14 and 18). A former member of ECRE staff also admitted having experienced allying with the Commission. During the negotiations, she was in close contact with the person responsible for the extension of the LTR Directive and she ‘got quite a bit of information from her about the trilogues’. Moreover, to her own surprise, she had good contact with an Austrian JHA Counsellor. ‘It was a bit funny because Austria would not be the natural partner that I expected a lot of information from. [...] But he gave me a lot of information,’ she said (Interview 49). A representative of AI Europe, on the contrary, did not experience having been used as external allies by any of the EU institutions (Interview 28).

The Commission official responsible for the extension of the LTR Directive confirmed having informed NGOs about what they were going to propose as well as about what stumbling blocks occurred during the negotiations. However, she stressed that this form of cooperation ‘is not so secret in a way’. According to her, ‘we don’t even have to ask them [to speak to potential opponents] because it’s also for their benefit. They would like to make sure that at least one of the two co-legislators are on board’ (Interview 12). Regarding the Parliament, however, neither the rapporteur nor the shadow rapporteurs acknowledged having allied with pro-migrant groups during the negotiation of the directive. While two MEPs argued that they never experienced such a kind of cooperation, another MEP admitted having allied with NGOs before but not on the extension of the LTR Directive. What the three MEPs had in common is their conviction that allying with NGOs could potentially help them convince reluctant parliamentarians of their shared beliefs (Interviews 2, 9, 10). The assistant to the rapporteur, in turn, pointed out that he exclusively referred to the UNHCR in meetings with the Council, as this is the official advisory body of the EU institutions in migration matters.

He further doubted that the member states are very interested in knowing what groups support the position of the Parliament. He believes that all the Council is interested in is achieving a compromise that is as close to its original position as possible (Interview 25). The Council official responsible for the LTR Directive as well as few JHA Counsellors denied that pro-migrant groups could become allies for the Council. Rather than using interest representatives in the attempt of convincing MEPs of their views, they prefer talking to them personally. Furthermore, they are convinced that it is the Commission and the Parliament that has sought support from those groups (Interviews 4, 7, 19, 20). As further reason for not allying with pro-migrant groups some interviewees referred to the political orientations and national interests of the governments that render such cooperation impossible (Interview 4 and 11). Other JHA Counsellors, on the contrary, confirmed that they passed on information about the issues that had arisen during the negotiations to interest representatives so that they could proceed in trying to convince opponents of their ideas (Interviews 22 and 35). Yet others admitted that they used the argumentation of pro-migrant groups in intergovernmental negotiations either to make their own point or to mediate between conflicting parties (Interviews 21, 30, 38). The results of this analysis are summarised in the subsequent table.

<b>Ability to provide support</b>	<b>Pro-migrant groups</b>
<b>Positioning</b>	
Close to COM	CCOEMA, ECRE
Close to EP	AI Europe, CCOEMA, ECRE
<b>Ability to access EU institution</b>	
Access to COM	CCOEMA, ECRE
Access to EP	AI Europe, CCOEMA, ECRE
Access to Permanent Representations/national ministries	AI Europe, CCOEMA, ECRE
<b>Alliance building</b>	
Allied with COM	CCOEMA, ECRE
Allied with Permanent Representations	ECRE

**Table 33: Categorisation of pro-migrant groups regarding their ability to provide support**

The analysis of the ability of the pro-migrant groups to provide the EU institutions with support confirms the assumptions of a higher congruence between the recommendations of

the pro-migrant groups and the positions of the Commission and the Parliament. The final directive that was adopted by the Parliament and the Council, however, differs widely from what the groups had lobbied for during the negotiations. MEPs attributed that deviance to the dominance of more conservative member states in the negotiations. The investigation of the lobbying channels of the pro-migrant groups has shown that CCOEMA and ECRE approached all three EU institutions, while AI Europe focussed exclusively on the Parliament and the Council. Instead of approaching the Council General Secretariat, all three groups met with JHA Counsellors or national policy-makers. On the experience of external allying with EU officials, representatives of CCOEMA and ECRE confirmed that they have received information about the trilogues from Commission officials and few JHA Counsellors. The Commission official responsible for the extension of the LTR Directive and a minority of JHA Counsellors have acknowledged this practice. The rapporteur and shadow rapporteurs, on the contrary, did not collaborate with interest groups for political support on this file. With regards to the resource dependence structures, it can be summarised that the Commission appeared to have been dependent on support from the pro-migrant groups. On the contrary, the Council was only partly reported to have been reliant on support, whereas the Parliament did not seek any cooperation with pro-migrant groups for support purposes. As a consequence, the resource interdependence on support is supposed to have only marginally affected the overall influence of the groups on the outcome of the extension of the LTR Directive.

### ***7.3.3 Empirical assessment of the ability of the pro-migrant groups to provide legitimacy***

On the provision of the EU institutions with legitimacy, the theoretical framework envisaged that only those groups that can demonstrate that their own advocacy work is legitimised are able to add to the legitimacy of the EU institutions. Against that background, their representativeness, participation structures, effectiveness, and basis for argumentation are analysed. In addition, interest representatives and EU officials have been asked to assess the dependence of the EU institutions on further legitimacy. In so doing, the supply and demand side of this resource dependence are investigated.

With a view to the representativeness of the groups, it can be affirmed that the coverage of the groups does not differ immensely. While ECRE (Commission 2012g) is present in 22 EU member states, AI Europe (Commission 2012h) is active in 20 member states and CCOEMA (Commission 2012i; 2012a; JRS 2012b) has members in 16 EU member states. Thus, none of

the groups can claim absolute representativeness in the EU, which weakens their entitlement to lobby on EU migration policies.

Concerning the participation structures of the pro-migrant groups, firstly, it is important to note that none of them assembles asylum-seekers or refugees among their members. As such, people who are affected by EU asylum policies are not involved in the work of the pro-migrant groups. However, AI Europe (Interview 28) and CCOEMA (Interview 46) claim to let their member organisations partake, at least indirectly, in the writing of the recommendations. This means that member organisations are normally involved in the formulation of general work plans and objectives that form the guidance for concrete policy recommendations. A former member of ECRE staff, on the contrary, revealed that the recommendations on the extension of the LTR Directives were drafted by the Brussels office and then sent to the members of its core group on integration for approval. Despite her effort to include the member organisations, she did not receive a lot of feedback. According to her, this is due to the low experience the member organisations had in these technical matters. As a consequence, the Brussels office had difficulties in raising the awareness of their members to this directive (Interview 49). The involvement of the member organisations in the recruitment of the staff, in turn, is undisputed. They all installed elected bodies that decide about personnel issues related to the liaison offices in Brussels (Interviews 28, 46, 49). In addition, the member organisations of CCOEMA and AI Europe were also involved in the lobbying strategy at national level (Interviews 28 and 46).

For the analysis of the effectiveness of the groups, their goal achievement is once more summarised and compared with the general mission of the groups. In its advocacy work towards the Parliament and the Council, AI Europe achieved two thirds of its objectives and its recommendations reflect its general mission of promoting ‘human rights in EU [...] member states, [...] asylum and refugee protection, [...] [and] economic, cultural and social rights’ (AI Europe 2012a). CCOEMA that saw one-third of its recommendations being adopted in the final directive remained loyal to its conviction of promoting ‘a society that welcomes strangers’ to ‘improve their living conditions’ (CCOEMA 2006: 1). ECRE, despite its low success rate of 36 per cent, never deviated in its advocacy work from the overall objective of counteracting ‘racism, xenophobia and social exclusion that undermine the institution of asylum’ (ECRE 2012c).



With regards to the basis of argumentation, it can be established that all pro-migrant groups in their call for more liberal and rights-based asylum provisions referred to European and international legal conventions and standards. The work of AI Europe (2012a), in general, is led by the conviction that ‘every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights’. ECRE, first of all, based its demand for including beneficiaries of international protection on the rights comprised in the Geneva Convention (ECRE 2005b: 22). Secondly, ECRE (2008a: 4) referred its request for the introduction of a transfer of protection status to the European Agreement on Transfer of Responsibility for Refugees which foresees such a mechanism. Thirdly, in its effort to convince EU policy-makers of the necessity of introduction programmes, ECRE (2008c: 6) alluded to the EU Common Basic Principles on Integration that the Commission compiled in 2005. CCOEMA, finally, did not only base its demands on legal programmes and conventions such as the Hague Programme and the EU Common Basic Principles on Integration but, in addition, holds a biblical mandate because it represents European churches and Christian organisations (CCOEMA 2006: 2).

The verdict of the interest representatives on the dependency of the EU institutions on legitimacy remained rather diverse. A former member of ECRE staff stressed that the consultation of civil society is a crucial source of legitimacy for all policy-makers. She is convinced that it does not matter whether a policy-maker is directly elected by EU citizens or not. They all need to further justify their decisions and therefore need to consult stakeholders and listen to their arguments as a means of a reality check (Interview 49). Members of CCOEMA questioned that universal dependence of policy-makers on legitimacy. They believe that above all it is Commission officials and to certain extents MEPs that need to legitimise their policy decisions. The decisions of the Council, on the contrary, appear to be legitimised through national interests (Interviews 1, 18, 33). An official of AI Europe, on the contrary, left the question on the level of the EU institutions’ dependence on legitimacy open. In fact, what she questioned was the ability of the pro-migrant groups to represent the European civil society adequately and, consequently, doubted that they could contribute to the legitimisation of EU decisions (Interviews 28).

The views of the EU officials on their actual dependence on further legitimacy from pro-migrant groups were also divergent. Officials of the Commission, for instance, split over their reliance on legitimacy from the civil society. While one interviewee stressed that it is

necessary to consult NGOs on their views on a file, another Commission official argued that the Commission does not need further legitimacy from said NGOs (Interviews 6 and 12).

On the part of the Parliament, the majority of interviewed MEPs acknowledged that they are reliant on further legitimacy from the civil society (Interviews 9, 10, 25). As one MEP put it,

[s]o far the European citizens are quite far a way from what is happening in Brussels, generally speaking. And the voice of the European citizens is not very loudly heard sometimes. So by having this direct contact with NGOs, it helps shortening the distance between the Parliament and the citizens. [...] It is not enough that the Parliament is directly elected by the EU citizens; it has to be accountable to the citizens (Interview 9).

A more conservative MEP, on the contrary, adduced that the views of civil society and the general public are of primary consideration to the work of the Parliament. Nevertheless, according to the interviewee, the different views need to be balanced out by the implication a policy will have for the member states (Interview 43). Yet another MEP denied the reliance of the Parliament on further legitimacy completely. She argued that the ‘Parliament is elected by the European people, so I don’t think we need that for legitimacy’ (Interview 2)

With a view to the Council, a member of the Council General Secretariat staff was convinced that the Council does not need to consult interest groups for further legitimacy (Interview 4). This view was shared by JHA Counsellors from Poland and Greece (Interview 31 and 38). A JHA Counsellor representing the UK believed that the issue of legitimacy is taken care of at national level where stakeholder consultations are frequently held before policy decisions are made. The Permanent Representation, in her opinion, is therefore sufficiently legitimised (Interview 11). Yet other representatives believe that even though national governments are elected they should justify their decisions to the wider public. In this context, the consultation of the wider society is regarded as a source of legitimisation (Interviews 7, 19, 35).

Ability to provide legitimacy	Pro-migrant groups
<b>Participation</b>	
Involvement of people affected by EU asylum and migration policies	None
Involvement of members in appointing representatives	Indirect involvement through Board (elected by members): AI Europe, CCOEMA, ECRE
Involvement of members in positioning process	AI Europe, CCOEMA

<b>Ability to provide legitimacy</b>	<b>Pro-migrant groups</b>
Involvement of members in lobbying campaigns	AI Europe, CCOEMA
<b>Representativeness</b>	
Represented in 20 - 26 EU MS	AI Europe, CCOEMA, ECRE
<b>Effectiveness</b>	
Reflection of the mission of the groups in policy recommendation	AI Europe, CCOEMA, ECRE
Reflection of policy recommendations in policy output	Partially: AI Europe, CCOEMA, ECRE
<b>Basis of argumentation</b>	
Legal conventions and standards	AI Europe, CCOEMA, ECRE
Biblical mandate	CCOEMA

**Table 34: Categorisation of pro-migrant groups regarding their ability to provide legitimacy**

These findings reveal that neither all EU officials seem to have been dependent on further legitimacy from the pro-migrant groups nor does it appear that the groups have been able to provide the institutions with legitimacy. As for the EU institutions, it is in particular MEPs that acknowledged having consulted pro-migrant groups for legitimacy reasons. However, this attitude varies between MEPs from different political groups. While more left-wing MEPs confirmed the dependence on legitimacy, more conservative MEPs tended to deny that. The reliance of the Commission and the Council on further legitimacy from pro-migrant groups was mainly negated by the interviewees. Nevertheless, few of them admitted that NGOs could form an additional source of legitimacy. Despite the partial dependence of the EU institutions on further legitimacy, the pro-migrant groups continue to have difficulties in providing that resource. Since the groups do not let beneficiaries of international protection or other migrants partake in their advocacy work and since the participation structures of other members are limited as well, they appear to experience difficulties in justifying their work that way. They cannot base their legitimacy on representativeness either, as they do not have member organisations in all EU member states. Moreover, their recommendations are only in parts reflected in the final extension of the LTR Directive, which clearly discloses an insufficient effectiveness. Instead, the groups try to justify their advocacy work through the reference to international legislation and, in the case of CCOEMA, through its biblical mandate. Whether this is enough for claiming to be a source of legitimacy for the EU institutions, however, is highly questionable. As most of the EU officials explained that they

did not consult pro-migrant groups for the purpose of legitimising their positions, their difficulties in providing sufficient legitimacy appears to have little weight on their overall influence.

## 7.4 Conclusion

This chapter aimed to assess the political influence of AI Europe, ECRE, and CCOEMA on the extension of the LTR Directive. In the course of the analysis it became clear that both the total number of groups active in lobbying on the directive and the number of provisions recommended by the groups were low. This can certainly be explained by the nature of the policy-making process that served the pure purpose of extending the LTR Directive to beneficiaries of international protection. It is, therefore, not surprising that the final directive did not contain any of the recommendations that went beyond that purpose. Most of the suggestions forwarded to the Commission by CCOEMA and ECRE addressed general issues and found their way in the proposal for the directive. For the Parliament and the Council, in turn, the two groups formulated more detailed recommendations, most of which are not reflected in the adopted directive. In total, 50 per cent of the recommendations tabled by the groups were taken on board at some point of the policy-making process – even if the preference attainment rate at Commission stage was far higher (70 per cent) than towards the Parliament and the Council (40 per cent).

Pro-migrant groups	Preference attainment towards Commission	Preference attainment towards Parliament and Council
CCOEMA	3 out of 4	1 out of 3
ECRE	4 out of 6	2 out of 3
AI Europe		5 out of 14
<b>Total average</b>	<b>70%</b>	<b>40%</b>

**Table 35: Summary of preference attainment**

Even the fact that the recommendations of the pro-migrant groups and advisory opinions of the UNHCR were on the whole consistent did not enable the groups to score preference attainment rates above medium. The analysis of the opinions of the UNHCR illustrated that 11 out of 15 recommendations of the pro-migrant groups were addressed by the UNHCR too. However, only four of the suggestions made by the groups and the official advisory body of the EU institutions got considered in the final directive.

This difference in the levels of influence has been confirmed by representatives of the interest groups and the EU institutions. The self-assessment of the influence of the pro-migrant groups turned out to be rather moderate or even self-critical. None of the interest representatives took direct credit for the adoption of a concrete provision. EU officials, too, queried that pro-migrant groups played a significant role in the policy-shaping process of the directive – whose purpose, after all, was limited to the extension of the scope to beneficiaries of international protection. They were accordant that it is easier to exert influence on the Commission and the Parliament. Concerning the Parliament, however, both sides pointed out that in times where the political climate is as averse towards migration as it is today, pro-migrant groups can only convince a limited number of MEPs of their views. Regarding the Council, interest representatives and EU officials again agreed that pro-migrant groups can hardly exert any influence on the member states because factors such as the workability and feasibility of new instruments outweigh recommendations driven by humanitarian convictions that are often too costly.

The hypotheses on the direct effect of the decision-making procedure on the overall influence of the pro-migrant groups, has not been confirmed by the empirical findings. In the theoretical framework, it has been assumed that under ordinary legislative procedure pro-migrant groups can exert more influence than under consultation procedure, because the Parliament – as a natural ally of the groups – plays a more powerful role in the decisions. The preference attainment analysis and the attributed influence assessment revealed that the influence of the pro-migrant groups remained low or below medium – confirming the null hypothesis. Thus, what needs to be said, is that despite the empowerment of the Parliament, the pro-migrant groups were not able to exert more influence on the extension of the LTR Directive than on the original directive. On average, the groups achieved 42 per cent of their preference on the original LTR Directive and 40 per cent on the extension of the LTR Directive. Rather than the decision-making procedure, the narrow purpose of the second policy-making process and the EU institutions' lack of experience in migration affairs during the negotiations of the original LTR Directive appear to have affected the overall influence of the pro-migrant groups.

To find out more about the factors that affected the groups' influence and the reasons for the high success rates at Commission level and the predominantly poor results during the further course of the negotiations, both interest representatives and EU officials were asked about the dependence structures on expert knowledge, political support, and legitimacy. The interviews

revealed that the Commission and the Parliament consider themselves reliant on additional expertise. The Council, on the contrary, is reported to be widely independent from pro-migrant groups as an additional source of information. The analysis of the internal organisation and endowment of the groups, in turn, has shown that despite limited financial and personnel resources, at least CCOME and ECRE were able to collect and disseminate expert knowledge effectively. Hence the Commission's dependence on expert knowledge, on the one hand, and the ability of providing that information, on the other hand, helped the groups exerting influence during the drafting stage. On the contrary, the Council's independence from expertise impeded the lobbying efforts of the pro-migrant groups during the further course of the negotiations between the Parliament and the Council. In contradistinction to what had been assumed about the dependence of the EU institutions on support, only few EU officials explained that they cooperated with pro-migrant groups for allying purposes. At the same time, the recommendations of pro-migrant groups appear to have been more in accordance with the proposal of the Commission and earlier opinions of the Parliament than with the finally adopted directive. In principle, the groups could have provided political support for the Commission and the Parliament. Their self-acclaimed independence from support, however, suggests that the ability to provide support has not significantly affected the overall influence of the groups. Surprisingly, the theoretical assumptions on the dependence on legitimacy have not been confirmed by the empirical findings either. According to the EU officials, only some MEPs regarded themselves as being dependent on further legitimacy from pro-migrant groups, whereas Commission and Council officials as well as JHA Counsellors denied such dependence. Due to the limited reliance on legitimacy, the difficulties that the groups experienced in legitimising their advocacy work at EU level is supposed to have affected their overall influence only marginally.

Summing up, the ability to provide expert knowledge seems to have outweighed problems with the provision of support and legitimacy. Despite the capability of providing expertise, the groups did not achieve more than 40 per cent of their preferences because the negotiations were mostly driven by feasibility concerns.

## **8. Assessment of the political influence of pro-migrant groups on the recast Qualification Directive**

### **8.1 Introduction – Background to the recast Qualification Directive**

The aim of this chapter is to assess the influence of the pro-migrant groups that lobbied at the recast Qualification Directive. The recast Qualification Directive is the follow-up of the original directive that had been adopted in 2004. After its implementation, the Commission published a ‘Green Paper on the future Common European Asylum System’ in June 2007 that was meant to guide the EU institutions in shaping the second phase of the CEAS. It presented six different options for the reorganisation of the international protection status. Option 1 envisaged the approximation of the eligibility criteria required for the individual protection statuses, whereas Option 2 aimed to approximate the rights attached to the statuses. With Option 3 the Commission considered one single uniform protection status that would provide the same rights irrespective of the grounds for protection. In Option 4, in turn, the consequences of the harmonisation of the status granted to persons who are not removable due to ill health grounds and to unaccompanied minors who are not eligible for international protection were considered. With Option 5, the obligation of the member states to mutually recognise national asylum decisions was put up for discussion. Finally, the transfer of protection responsibilities to whichever member state the beneficiary of protection takes up residence was discussed in Option 6 (Commission 2007a: 5-6).

The options were opened for discussion in an online consultation to which 89 state and non-state authorities contributed. In addition to the online consultation, the Commission compared the results of its own studies on the transposition of the original Qualification Directive with studies on the implementation produced by the UNHCR and NGOs. In preparation of the impact assessment, the Commission also organised one meeting with judges, academics, the UNHCR and a selected number of experts from the member states in 2008 and two meetings with NGOs at the beginning of 2009 (Commission 2009: 2-3). In its report on the application of the Qualification Directive, the Commission revealed that

vagueness and ambiguity surrounding several concepts in the Directive left room for widely divergent interpretations by EU States. It also appeared that a significant share of decisions taken at first instance on individual cases were overturned on appeal, as they were based on criteria which were insufficiently clear or precise (Commission 2012b).

Not only the Commission but also the member states and the civil society wished to amend the directive to overcome these issues – albeit to varying extents.

There was general consensus amongst Member States on the need to approximate the rights attached to the refugee status and subsidiary protection, while maintaining two separate statuses. In contrast, UNHCR and civil society favo[u]r[ed] the establishment of a single uniform status (Commission 2009: 5).

Based on the broad stakeholder consultations and in compliance with the overall targets suggested in the Hague Programme, the Commission opened a recast process on the Qualification Directive in October 2009. With its recast, the Commission intended to ‘simplify decision-making procedures’, prevent abuse of the asylum system, improve ‘the efficiency of the asylum process’, and ‘ensure coherence with the jurisprudences of the [...] ECJ and the European Court of Human Rights’ (Commission 2009: 3-4).

The scope and techniques of a recast procedures are determined in a common agreement of the Commission, Parliament, and the Council (2001). Recasts can contain two types of amendments: firstly, substantive amendments to the earlier act; secondly, codifications of the earlier act (Art. 4). The proposal of the Commission for recasting the Qualification Directive contained both types of amendments. The grey shaded substantive amendments (additions and deletions) are subject to discussion and amendment during the ordinary legislative procedure; whereas codifications (adaptations and minor changes) are of an editorial nature and usually do not require any discussion or amendment. The discussions on the recast directive were completed with its adoption in December 2011.

The number of groups that sought to influence the recast of the Qualification Directive is notably higher than the number of groups that lobbied during the shaping process of the original Qualification Directive. In total, eight groups have been identified as the major advocates of people who seek international protection. During the drafting stage, five pro-migrant groups tried to exert influence on the proposal of the Commission (2009) – AI Europe (2007), CCOEMA (2007), ECRE (2007), EWL (2007a), and the Red Cross (2007). Furthermore, it was ECRE (2009, 2010c, 2010b, 2010f, 2010a, 2011), EWL, ILGA, and Asylum Aid (ILGA 2011; EWL & ILGA & Asylum Aid 2010), CCOEMA (2010), TdH (2009), and the Red Cross (2010) that tabled their amendments on the proposal of the Commission and lobbied for their consideration in the adopted recast Qualification Directive (Parliament & Council 2011).



The influence of these groups on the recast Qualification Directive is assessed by means of examining to what extent they attained their preferences and by interviewing the interest representatives and EU officials on the success and influence of the groups. In order to shed light on the factors that affected their performances, their ability to provide expert knowledge, support, and legitimacy is scrutinised. Finally, the results of this analysis are confronted with the hypotheses that were raised in the course of the theoretical framework.

## **8.2 Influence Assessment**

For the assessment of the influence of the pro-migrant groups, first of all, their recommendations are compared with the positions of the EU institutions that they addressed – the Commission, the Parliament, and the Council. The Parliament is included in the examination, as its legislative power has increased significantly through the Lisbon Treaty that introduced the ordinary legislative procedure for asylum matters.

### ***8.2.1 Preference attainment towards the Commission***

During the drafting stage, five pro-migrant groups sought to exert influence on the proposal of the Commission (2009) – AI Europe, CCOEMA, ECRE, EWL, and the Red Cross. They all participated in the online consultation of the Commission on the ‘Future of the Common European Asylum System’ (Commission 2007a). Their recommendations are contrasted with the proposal for the directive in this subsection.

On the general provisions of the directive, the pro-migrant groups suggested a multitude of amendments especially concerning its purpose and definitions. First of all, ECRE (2007: 19), AI Europe (2007: 32), and the Red Cross (2007: 4) lobbied for one single status for refugees and beneficiaries of subsidiary protection which the Commission (Art. 1) complied with by using the umbrella term ‘beneficiaries of international protection’. Most of their requests (AI Europe 2007: 25; ECRE 2007: 23) regarding the widening of the family definition, on the contrary, were not met by the Commission (Art. 2 (j)). In fact, only ECRE (2007: 23) was successful in advocating for the inclusion of dependent siblings and adopted children. The following table presents the results of the preference attainment of the pro-migrant groups.

Commission Proposal	ECRE	AI Europe	Red Cross
Art. 1 Purpose	+ one single protection status		
Art. 2 Definitions	– include EU citizens		
	<ul style="list-style-type: none"> <li>– include dependent ascending relatives of legally married or cohabitating partners</li> <li>– include relatives on whom the principal applicant is dependent due to health, age, disability or other reasons</li> <li>+ include dependent siblings</li> <li>+ include adopted/fostered children</li> </ul>	<ul style="list-style-type: none"> <li>– include other dependents living in the same household</li> <li>– consider families formed during flight or upon arrival in the host state</li> </ul>	

**Table 36: Comparison of recommendations of pro-migrant groups and Chapter 1 of Commission proposal<sup>12</sup>**

The pro-migrant groups also provided detailed recommendations on the assessment of applications for international protection. While EWL (2007a: 6-7) seems to have been successful in lobbying for consideration of the position of women before the law for the assessment of applications, it failed in convincing the Commission (Art. 4) of explicitly exempting women from the obligation to give a full account of their persecution experience. The request of AI Europe (2007: 25) to generously interpret the article on international protection that arises sur place has not been met by the Commission (Art. 5) either. Neither did the Commission (Art. 6) follow the request of excluding parties and international organisations from the actors of protection (AI Europe 2007: 25; ECRE 2007: 17). Their demands for specifying the feasibility and reasonableness criteria of internal protection (AI Europe 2007: 25; ECRE 2007: 18), in turn, are reflected in the Commission proposal (Art. 8). The findings of this comparison are summarised in the subsequent table.

Commission Proposal	EWL	AI Europe	ECRE
Art. 4 Assessment of facts and circumstances	<ul style="list-style-type: none"> <li>+ assess position of women before the law</li> <li>– do not sanction women who do not submit an application on arrival or do whose initial account is incomplete</li> </ul>		

<sup>12</sup> + refers to recommendations of the pro-migrant groups that are reflected in the Commission's proposal. - refers to recommendations of the pro-migrant groups that are not reflected in the Commission's proposal.

Art. 5 International protection needs arising sur place		– consider each application irrespective whether the person deliberately risks persecution or serious harm after leaving country of origin	
Art. 7 Actors of protection		– exclude parties and international organisations from actors of protection	
Art. 8 Internal protection		+ assess reasonableness of internal protection more comprehensively	
		+ delete the option of internal protection despite technical obstacles	

**Table 37: Comparison of recommendations of pro-migrant groups and Chapter 2 of Commission proposal**

Regarding the qualification for refugee status, EWL (2007a: 6), successfully argued for the recognition of gender-specific as well as sexual, physical, and mental violence as acts of persecution (Art. 9). AI Europe (2007: 26) and ECRE (2007: 18), on the contrary, were less influential in lobbying for the generous interpretation of the concept of the social group (Art. 10). Finally, the request of adding an exclusion clause to the cessation articles (Art. 11 and 16) on the part of AI Europe (2007: 27) has been successful. The following table provides the results of this preference attainment analysis.

Commission Proposal	EWL	AI Europe	ECRE
Art. 9 Acts of persecution	+ recognise acts of gender-specific nature + recognise sexual, physical, and mental violence		
Art. 10 Reasons for persecution		– social group: applicant either shares an innate characteristic with a social group or this group is perceived by the society as having a distinct identity	
Art. 11 and 16 Cessation		+ consider compelling reasons arising out of previous persecution as exclusion from cessation clause	

**Table 38: Comparison of recommendations of pro-migrant groups and Chapter 3 of Commission proposal**

Looking to the qualification for subsidiary protection, the pro-migrant groups argued for the widening of the scope of the directive. While the Red Cross (2007: 4) wanted to include persons fleeing from environmental crises, ECRE (2007: 20) and AI Europe (2007: 27) asked for the inclusion of all people entitled to the right of non-return. AI Europe (2007: 27), in addition, wanted people who cannot be removed due to ill health to be considered in the directive. The Commission, however, did not take into consideration any of these recommendations. This analysis is presented in the subsequent table.

Commission Proposal	Red Cross	AI Europe	ECRE
Art. 15 Serious harm	– extend scope of subsidiary protection to persons who cannot be removed due to environmental crises	– extend scope of subsidiary protection to all situations where any individual is entitled right of non-return under international human rights and humanitarian law	
		– extend scope of subsidiary protection to persons who cannot be removed due to ill health grounds	

**Table 39: Comparison of recommendations of pro-migrant groups and Chapter 5 of Commission proposal**

Following the objective of establishing one single protection status, the groups advocated for equal rights that accrue to refugees and beneficiaries of subsidiary protection. All their requests are reflected in the Commission proposal. A more detailed overview on the preference attainment is provided in the table below.

Commission Proposal	ECRE	AI Europe	Red Cross	CCOEMA
Art. 23 Maintaining family unity	+ equal rights for refugees and beneficiaries of subsidiary protection			
Art. 24 Residence permit	+ equal validity of residence permits			
Art. 25 Travel documents	+ equal access to travel documents			
Art. 26 Access to employment	+ equal access to labour market, employment-related education opportunities, and vocational training			
Art. 27 Access to education	+ equal access to education			
Art. 28 Access to procedures for recognition of qualifications	+ equal access to procedures for recognition of qualifications			
Art. 29 Social welfare	+ equal access to social welfare			
Art. 30 Health care	+ equal access to health care			
Art. 31 Unaccompanied minors	+ special attention for unaccompanied minors irrespective their protection status			
Art. 32 Access to accommodation	+ equal access to housing			
Art. 33 Freedom of movement within the Member State	+ freedom of movement for refugees and beneficiaries of subsidiary protection			
Art. 34 Access to integration facilities	+ equal access to integration programmes			

**Table 40: Comparison of recommendations of pro-migrant groups and Chapter 7 of Commission proposal**

The comparison of the recommendations of the pro-migrant groups and the Commission's proposal for the recast Qualification Directive has revealed that all five groups achieved a high success rate. Provided that all recommendations have the same weight, the highest success rates have been reached by CCOEMA (100 per cent), the Red Cross (92 per cent), and EWL (75 per cent). It needs to be noted though, that these are the groups that, by comparison, tabled the least recommendations in absolute numbers. AI Europe and ECRE,

which provided more detailed suggestions on the Commission's proposal for the directive, achieved about 70 per cent of their objectives. It was the chapter on the content of international protection, which the pro-migrant groups and the Commission agreed on the most. On average, 78 per cent of the groups' preferences are reflected in the proposal. As the Commission is only one of three institutions involved in the legislative process at EU level, in the following subsection, the extent to which the pro-migrant groups achieved their goals towards the Parliament and the Council is examined.

### ***8.2.2 Preference attainment towards the Parliament and the Council***

Seven groups – CCOEMA, ECRE, TdH, EWL, ILGA, Asylum Aid, and the Red Cross – approached the Parliament and the Council to exert influence on the recast Qualification Directive. In the course of this subsection, their position papers and responses to the proposal of the Commission are compared with the directive that has finally been adopted. In so doing, their preference attainment towards the Parliament and the Council is assessed.

Starting with the general provisions of the directive, CCOEMA (2010: 3) and ECRE (2010f: 3; 2011: 4) successfully advocated for one single protection status for refugees and beneficiaries of subsidiary protection. Furthermore, all pro-migrant groups argued for the widening of the family definition. While TdH (2007: 2) and the Red Cross (2010: 4) demanded the inclusion of family members who have joined the family during flight or upon arrival in the host country, CCOEMA (2010: 4) asked for the inclusion of married minors. Finally, ILGA (2011: 10) called for the inclusion of same-sex couples living in a stable partnership irrespective of the present law and practices of the member states. Despite their lobbying efforts, the Parliament and the Council did not consider these recommendations (Art. 2). The following table presents the results of the preference attainment analysis.

Directive	CCOEMA	ECRE	Red Cross	TdH	EWL/ILGA/Asylum Aid
Art. 1 Purpose	+ one single protection status for refugees and beneficiaries of subsidiary protection				
Art. 2 Definitions	– include married minors	– include family formed during flight or in the asylum country		– include married children in family definition	– include same-sex couples irrespective present law – refer to UN Convention on the Rights of the Child
		– include EU citizens			

**Table 41: Comparison of recommendations of pro-migrant groups and Chapter 1 of Directive**

Regarding the chapter on the assessment of applications for international protection, ECRE (2010b: 14) recommended that the principle of the benefit of the doubt be applied and asked for a fair assessment even if supporting documents are sent in late or are missing. TdH (2007: 2), in addition, advocated for a special treatment of children during the assessment. While the recommendations of ECRE are reflected in the final directive, the suggestions of TdH have not been taken on board. Concerning Article 5 of the directive, ECRE (2010b: 15) lobbied for the assessment of whether the applicant is expected to be persecuted in her country of origin and not whether the risk of being persecuted solely results from deliberate behaviour in the host country. This provision has not been amended accordingly. Moreover, ECRE (2010b: 8; 2010f: 3; 2011: 4), TdH (2007: 3) as well as EWL, ILGA, and Asylum Aid (2010: 7) asked for the limitation of actors of protection to state actors exclusively but the Parliament and the Council (Art. 7) did not consider that demand. The requests of CCOEMA (2010: 3) and EWL, ILGA, and Asylum Aid (2010: 9) to add further criteria to the actors of protection, on the contrary, are reflected in the final directive. Furthermore, the groups (CCOEMA 2010: 3; ECRE 2010f: 3; 2011: 4; TdH 2007: 3) have successfully lobbied for the deletion of the application of internal protection despite technical obstacles. Their suggestions for considering further reasonableness criteria when assessing the possibility of internal protection was also adopted (CCOEMA 2010: 3; ECRE 2010b: 9; 2010f: 3). On the contrary, the member states did not give in to the requested interdiction of internal protection when state or state-like agents are actors of persecution and regarding the consideration of further personal circumstances (EWL & ILGA & Asylum Aid 2010: 9). In the subsequent table, the findings of this analysis are summarised.

Directive	CCOEMA	ECRE	TdH	EWL/ILGA/Asylum Aid
Art. 4 Assessment of facts and circumstances		+ fair treatment of applications that lack documents or are submitted late + benefit of the doubt	– allow minimum period of six months to children for presenting their statements	
Art. 5 International protection needs arising in place		– decisive criteria: well-founded fear of being persecuted in the country of origin		
Art. 7 Actors of protection	+ exhaustive list + refer to the willingness to provide effective and durable protection	– consider only state authorities as actors of protection		+ protection against persecution must be effective and durable

Art. 8 Internal protection	+ delete the option of internal protection despite technical obstacles			
	+ include country reports – not applicable when state or state-like agents are actors of persecution	+ include personal circumstances		– include personal circumstances (sexual orientation and gender identity, family connections, dependents)

**Table 42: Comparison of recommendations of pro-migrant groups and Chapter 2 of Directive**

On the provisions determining the qualification for being a refugee, the pro-migrant groups had asked to consider child- and gender-specific persecution (EWL & ILGA & Asylum Aid 2010: 10; TdH 2009: 1), prosecution because of conscientious objection to military service (CCOEMA 2010: 3), and personal circumstances (ECRE 2010b: 10) when assessing acts of persecution. However, only the former recommendations are reflected in the adopted directive (Art. 9). Concerning the definition of the social group as reason for protection, CCOEMA (2010: 3) and ECRE (2010b: 10) failed in convincing the Parliament and the Council to limit the requirements to either the criterion of innate characteristic or the perception criterion. The request of TdH (2009: 3) to include further forms of persecution was not considered either. Furthermore, while ILGA (2011: 5-7) was not successful in making its point on the significance of sexual orientation for the assessment of reasons of persecution, its recommendation of including gender identity among the persecution grounds is reflected in the final directive. Finally, the suggestions of CCOEMA (2010: 4) and ECRE (2010f: 3; 2011: 4) concerning exceptions from the exclusion clause have also been adopted.

Directive	CCOEMA	ECRE	TdH	EWL/ILGA/Asylum Aid
Art. 9 Acts of persecution	– include persecution stemming from conscientious objection to military service	– consider personal circumstances (possibility for economic survival in the area)	+ recognise acts of child-specific nature	+ recognise acts of gender-specific nature
Art. 10 Reasons for persecution	– social group: applicant either shares an innate characteristic with a social group or this group is perceived by the society as having a distinct identity		– include recruitment as child soldiers, victims of child trade and exploitative child labour, sexual exploitation of minors, severe maltreatment (including within family)	– social group ‘shall’ include sexual orientation – delete ‘sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law’ + include gender identity
Art. 11 and 16 Cessation	+ exclude from cessation persons who are able to invoke compelling reasons arising out of previous serious harm for refusing to			

	avail of protection of the country of nationality		
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**Table 43: Comparison of recommendations of pro-migrant groups and Chapter 3 of Directive**

With regards to the chapter on granting refugee status, ECRE (2009: 6; 2010b: 17) failed in convincing the Parliament and the Council (Art. 14) of excluding security concerns from the reasons that might lead to revocation of, ending of, and refusal to renew refugee status.

Directive	ECRE
Art. 14 Revocation of, ending of or refusal to renew refugee status	– do not base on security grounds

**Table 44: Comparison of recommendations of pro-migrant groups and Chapter 4 of Directive**

With a view to the qualification for subsidiary protection, ECRE (2010b: 16), TdH (2009: 4), and the Red Cross (2010: 3) argued for the broad interpretation of the clauses that determine the eligibility criteria. However, none of their recommendations are reflected in the final directive.

Directive	Red Cross	ECRE	TdH
Art. 15 Serious harm	– delete wording ‘in situations of international or internal armed conflict’	– delete ‘and individual’ threat – include anybody entitled to non-return under international human rights or humanitarian law	

**Table 45: Comparison of recommendations of pro-migrant groups and Chapter 5 of Directive**

Just as with the advocacy work towards the Commission, the recommendations on the content of the international protection status that have been forwarded to the Parliament and the Council are very comprehensive. Regarding the inclusion of further groups of persons who require special treatment, most of the pro-migrant groups (CCOEMA 2010: 4; Red Cross 2010: 4; TdH 2009: 4) were successful in their lobbying efforts (Art. 20). Moreover, their advocacy work was fruitful regarding provisions determining the maintenance of family unity as well as access to employment, education, health care, and accommodation. Their requests concerning the recognition of qualifications and the treatment of unaccompanied minors are also reflected in the final directive (CCOEMA 2010: 4; ECRE 2010a: 1-2; EWL & ILGA & Asylum Aid 2010: 1 and 15; Red Cross 2010: 4; TdH 2009: 2 and 4). On the contrary, the groups failed in persuading the member states of harmonising the rights of refugees and beneficiaries of subsidiary protection relating to the validity of residence permits and access to social welfare and integration facilities (CCOEMA 2010: 4; ECRE 2010a: 2; EWL & ILGA & Asylum Aid 2010: 1-2; Red Cross 2010: 4; TdH 2009: 4). A more in-depth



comparison of the recommendations of the pro-migrant groups and the provisions of chapter 7 of the directive are provided in the subsequent table.

Directive	CCOEMA	Red Cross	ECRE	TdH	EWL/ILGA/A sylum Aid
Art. 20 General rules	+ include trafficked persons, people with mental problems, and unaccompanied minors among people with special needs	+ include traumatised persons, victims of torture, ill treatment, and human trafficking, unaccompanied minors, disabled people, pregnant women, elderly persons among people with special needs		+ include traumatised persons, unaccompanied minors, pregnant women, and single parents with minor children among people with special needs	– include women among vulnerable persons and gender- based persecution
Art. 23 Maintainin g family unity	+ equal rights for refugees and beneficiaries of subsidiary protection			+ equal rights for refugees and beneficiaries of subsidiary protection	
Art. 24 Residence permit			– equal validity of residence permits		– equal validity of residence permits
Art. 26 Access to employment	+ equal access to labour market, employment-related education opportunities, and vocational training				
Art. 27 Access to education		+ equal access to education			
Art. 28 Access to procedures for recog- nition of qualificatio ns			+ equal access to proce- dures for recognition of qualifica- tions		+ equal access to proce- dures for recognition of qualifica- tions
Art. 29 Social Welfare	– equal access to social welfare				– equal access to social welfare
Art. 30 Health Care	+ equal access to health care				+ equal access to health care
Art. 31 Unaccompa nied minors				+ special attention for unaccompanied minors irrespective their protection status	
Art. 32 Access to accommoda		+ equal access to housing			+ equal access to housing

tion				
Art. 34 Access to integration facilities	– equal access to integration programmes			– equal access to integration programmes

**Table 46: Comparison of recommendations of pro-migrant groups and Chapter 7 of Directive**

Contrary to the high success rates of the pro-migrant groups at drafting stage, the lobbying success of the groups towards the Parliament and the Council remained lower. While 67 per cent of the recommendations of CCOEMA and the Red Cross have been considered in the final directive, Terre des Hommes achieved about 54 per cent of its goals. The preference attainment rates of EWL, ILGA, Asylum Aid and ECRE range from 47 to 50 per cent. Again, for this calculation, all recommendations were ascribed the same weight to clarify the result of the preference attainment assessment. On average, the groups achieved 55 per cent of their goals towards the Parliament and the Council. Just as the comparison of the position papers with the Commission's proposal has shown, the preferences of the pro-migrant groups concerning the content of international protection are best reflected in the recast Qualification Directive. Nevertheless, it needs to be stressed that more concurrence could be detected between the pro-migrant groups and the Commission than between the groups and the final directive.

Earlier documents of the Parliament reveal that the MEPs and the pro-migrant groups (ECRE 2010a: 3; EWL & ILGA & Asylum Aid 2010: 9) agreed on a few more provisions that, however, were not considered in the final recast Qualification Directive. This applies to the request for further criteria to be introduced to assess the reasonableness of internal protection (Parliament 2011: Art. 8 (1)). This is also true for the demand to check the ability and willingness of both state and non-state actors when deciding upon the existence of adequate protection (Parliament 2011: Art. 7 (1)). The groups (CCOEMA 2010: 3; CCME 2010b: 10; ECRE 2010a: 2) and the Parliament (2009: Art. 2 (j) and 10 (1) (d)) also shared similar opinions about the extension of the family definition to family ties formed during flight or in the asylum country and concerning the wide interpretation of the definition of a social group.

Just as it has been done in the course of the assessment of the preference attainment of the pro-migrant group during the original Qualification Directive, the results of the analysis concerning the recast Qualification Directive need to be put into perspective by means of balancing the success rates of the interest groups with other external factors. Therefore, the following external factors that might have had an impact on the outcome of the directive have

been identified: firstly, the guidelines, notes, and assessments of the UNHCR on the directive; secondly, case law of the European Court of Human Rights (ECHR) and the CJEU; and thirdly, a resolution of the Council of Europe (CoE).

Many of the recommendations tabled by the pro-migrant groups are in line with what the UNHCR and international resolutions suggested and with recent case law. Thus, in many cases these external factors need to be regarded as strong allies of those groups that presented their objectives to the EU institutions. The following list entails those provisions on which the pro-migrant groups supported by the external factors were successful in getting their ideas across to the EU decision-makers:

- **scope:** one status for refugees and beneficiaries of subsidiary protection (ECHR 2006: 5);
- **assessment of facts:** recognise position of women before the law when assessing a claim (UNHCR 2008b: 7);
- **assessment of facts:** benefit of the doubt (UNHCR 2008b: 16);
- **actors of protection:** necessity of effective and durable protection against persecution (UNHCR 2007: 17);
- **internal protection:** more comprehensive assessment of reasonableness (UNHCR 2008b: 16);
- interdiction of applying **internal protection** despite technical obstacles (ECHR 2007: 43; UNHCR 2007: 15);
- **acts of/reasons for persecution:** recognise gender-specific persecution, persecution based on gender identity, and absence of law protecting from human rights abuses as persecution ground (Baker & McKenzie 2006: 10; UNHCR 2008b: 14);
- **exclusion from cessation:** if person is able to invoke compelling reasons arising out of previous serious harm (UNHCR Guideline 136).

However, in other cases the support by the UNHCR and the Council of Europe as well as recent case law did not lead to positive influence on the EU policy-makers. The following itemisation lists the provisions on which the pro-migrant groups and the above named external actors agreed but which are not reflected in the adopted directive:

- **family definition:** unmarried partner living in a stable relationship with beneficiary of international protection irrespective the current legislation or practice in the member state (ECHR 2010a: 28; ECHR 2010b: 26; UNHCR 2008b: 10);
- **family definition:** other dependents living in the same household (UNHCR Guideline 185);
- **international protection needs arising sur place:** right to engage in politics (UNHCR 2002b: 6) ;
- **actors of protection:** exclude parties and international organisations (UNHCR 2007: 16);
- **actors of protection:** delete wording ‘reasonable steps’ to prevent persecution (UNHCR 2007: 17);
- **internal protection:** include personal circumstances of the applicant (sexual orientation, gender identity, family connections, dependents) (UNHCR 2002b: 6);

- **internal protection**: not applicable when state or state-like agents are persecutors (UNHCR 2008b: 16);
- **acts of persecution**: persecution stemming from conscientious objection to military service (UNHCR Guideline 170);
- **social group**: applicant either shares an innate characteristic with a social group or this group is perceived by the society as having a distinct identity (UNHCR 2002b: 3);
- **social group**: ‘shall’ (instead of might) include sexual orientation (Baker & McKenzie 2006: 10; CoE 2010: 3);
- **reasons for persecution**: examined in a gender-sensitive manner (UNHCR 2008b: 14);
- **revocation of, ending of, or refusal to renew refugee status**: not based on security grounds (UNHCR 2007: 15);
- **serious harm**: delete wording ‘in situations of international or internal armed conflict’ (UNHCR 2007: 15);
- **equal validity of residence permits** for refugees and beneficiaries of subsidiary protection (UNHCR 2001a: 11);
- **equal access to integration programmes** for refugees and beneficiaries of subsidiary protection (UNHCR 2001a: 12).

The analysis of the preference attainment of the pro-migrant groups has revealed that their advocacy work at drafting stage was more successful than their lobbying efforts during the further decision-making process. Moreover, the examination has illustrated that the preference attainment rates towards the Parliament and the Council did not vary significantly. In only a few respects, did the Parliament take into consideration further provisions that went beyond the recast character of the policy-shaping process. Even though the UNHCR, the CoE, and recent case law supported many of the requests of the pro-migrant groups, the recast procedure has limited the influence that this ally was able to exert. As a consequence, recommendations that deviated significantly from the purpose of aligning the right of refugees and beneficiaries of subsidiary protection were not considered in the recast Qualification Directive.

### ***8.2.3 Attributed influence assessment***

Preference attainment rates alone, however, are not an adequate measure to describe the influence of the pro-migrant groups. Despite the varying preference attainment rates, the overall influence of the pro-migrant groups is not to be underestimated. In fact, the groups are said to have established tight networks with decision-makers in Brussels and in the European capitals. It is, therefore, necessary to factor in the satisfaction of the interest representatives with their lobbying performance towards the recast Qualification Directive and the views of the relevant decision-makers on the influence of the pro-migrant groups. For the self-assessment of the influence of the groups, representatives of Asylum Aid, ILGA, EWL,

ECRE, Terre des Hommes, the Red Cross as well as of CCME and Caritas Europa that form members of the ad-hoc organisation of CCOEMA were interviewed.

To start with, AI Europe is the group whose ability to actually exert influence on policy outcomes was questioned by the representative who led the advocacy work on the recast Qualification Directive in Brussels. Even though she confirmed having always felt that she was being taken seriously in the discussions with desk officers of the Commission, she does not believe that even a big and renowned NGO like Amnesty International is able to pro-actively influence EU legislation. Rather, she regards it her duty to limit damage (Interview 28). Another interviewee presented the performance of the Red Cross similarly. The representative said it is impossible to assess the influence of a single interest group because in her discussions with EU officials, for instance, she did not always feel that her ideas were received well. In particular, the Red Cross regretted that further groups of vulnerable people were not included in the scope of the recast directive and that the EU institutions failed to fully harmonise the content of refugee status and subsidiary protection (Interview 15).

An employee of Asylum Aid, that together with EWL and ILGA focused its advocacy work on the Parliament, in turn, was more positive about the impact of the joint recommendations. She reported that she was happy to see that the rapporteur has taken many of their provisions on board. ‘We could definitely see that she picked up something from our briefings,’ she confirmed. Having said that, she explained that the extent of influence that can be exerted on the Parliament in particular depends on the receptiveness of the rapporteur. However, in the further course of the negotiations with the Council, from her perspective, especially gender-focussed provisions have been watered down again (Interview 41). A representative of ILGA sees the recast Qualification Directive as an ‘important breakthrough’ because it is the first EU directive that mentions the concept of gender identity. As such, the directive sets new standards and since its adoption, gender identity has appeared in other commitments of the member states as well. He, however, regretted that they did not succeed in convincing the member states of a more liberal family definition. Nevertheless, in most of the meetings with Commission officials and MEPs but also representatives of the member states he felt he was taken seriously (Interview 33). A representative of EWL acknowledged the work of ILGA too. According to her, without its ‘strong push’ for the recognition of gender identity, this persecution ground would not have made it in the category of the social group – even though EWL had wished for its inclusion in all the Convention grounds. As a self-reflection, she

commented that EWL could have achieved more if they had tabled their recommendations earlier. 'It's what the Commission had proposed from the very beginning – we wanted much more,' she lamented. She continued, 'politically speaking we would have preferred to have women recognised as a vulnerable group; but practically speaking I think the impact on the ground in terms of recognition of status for women as asylum-seekers and victims of gender-based persecution will be important'. Thus, in her opinion the advocacy work of EWL was successful because at a practical level the new provision will make a difference (Interview 17).

As regards the influence of CCOEMA, a representative of Caritas Europa remained rather modest. He affirmed that some of the recommendations 'in one or another way' are reflected in the final directive but whether this is due to advocacy work of CCOEMA is hard to tell. Moreover, he pointed out that it is impossible to convince every single decision-maker. As an example, he referred to the Parliament. In his opinion, it is not enough to have one shadow rapporteur on your side because this is no guarantee of winning the intra-parliamentary debates and voting. In general, he believes that more influence can be exerted on national decision-makers when issues are being nationalised. In doing so, issues can be presented as the concerns of the direct constituency and this increases the pressure on the policy-makers (Interview 1). An official of CCME, in turn, presented herself very satisfied with the outcome of the recast Qualification Directive. Especially the recognition of gender-specific grounds for persecution and the fact that the Geneva Convention is now officially the European benchmark for the recognition of refugee status, according to her, is a tremendous success. On the contrary, she felt very disappointed that through the recast the harmonisation of refugee status and subsidiary protection status could not be fully realised (Interview 18).

A representative of ECRE alluded to another issue that should be considered in the assessment of political influence. She stressed that comparing the Commission's proposal with the final text might lead to a negative assessment of the influence of pro-migrant groups, whereas the comparison of the first position of COREPER and the final text shows 'substantial improvement'. She stressed that it was difficult to exert influence on the recast Qualification Directive 'because I do seem to see that there is no political willingness within the states at the moment for this legislation'. A third way of approaching the assessment of political influence is by looking at it from a long-term perspective.

[If] you actually look at, say, recommendations that we would have had from our report on the implementation of the first Qualification Directive, we have been really quite influential. Well, I wouldn't say totally as much as we would have liked. But if you look at it from that perspective and you see what the Commission put in the recast proposal, you can see, yes, it's been good (Interview 24).

More precisely, she regretted that while the rapporteur supported the idea of ECRE to include family members who have joined the family during flight in the scope of the directive, the Council did not accept this amendment. On the contrary, she believes that 'we've been quite influential on the approximation of rights for example. Because it really is only in two areas where they distinguish: in residence and social welfare'. She also thinks that recommendations that were put into the recitals count as successes too because they are meant to make member states aware of the intended interpretation of a provision. However, as member states do not always go through all the recitals to see how a provision needs to be implemented, some cases need to get to litigation to ensure that the provisions are implemented properly (Interview 24).

As for the influence of Terre des Hommes, one representative stated that sometimes 'in the end, you are able to see, ok, that was an idea that we promoted; it's there'. To what extent TdH contributed to the formulation of a certain provision, however, is not assessable according to the interviewee.

And it's not so important to us to know if we did or did not influence. For us the most important thing is the result. If the result [...] is acceptable and good – fine. [...] Then it's a question of implementation of the law etc. So we work more on the practical implementation. If the result is bad, we continue [with our advocacy] (Interview 8).

A former representative of TdH added that he was very satisfied with the Commission's proposal and thought that most of its content reflected what TdH had wished for. Unfortunately, the Parliament and the Council have watered down the ambitious ideas of the Commission. Nevertheless, he felt that he was taken seriously in all his meetings with EU officials even though he cannot say how many of the persons he had talked to actually considered the recommendations of TdH in their decision (Interview 13).

To ensure the objectivity of the attributed influence assessment, EU officials of the Commission, the Parliament, the Council, and Permanent Representations have been interviewed on the impact of the pro-migrant groups on the negotiations of the recast Qualification Directive too.

One official confirmed that the Commission consulted pro-migrant groups when drafting the proposal for the recast Qualification Directive. ‘Some things for sure were integrated after discussions with NGOs but also filtered in order to fit the logic of the whole text. They are influential in the sense that they expose problems and they explain; “here we consider that there is a protection gap”,’ she said. Furthermore, the Commission is said to aim at limiting the protection gaps of asylum instruments. The interviewee, however, emphasised that pro-migrant groups should also monitor the implementation of the recast Qualification Directive and the daily application in asylum practices because even if ‘everything on paper looks nice [...], case handlers need to be trained properly’ (Interview 26).

The rapporteur of the directive, acknowledged the pro-migrant groups as a source of information and guidance for finding adequate argumentation. As the groups are able to provide these resources, they can exert influence on the Parliament. She particularly referred to ILGA and its success in convincing the relevant decision-makers of including the concept of gender identity in the directive. According to her, the other groups should follow the strategy of ILGA and approach government ministers at national level to increase their chances of exerting influence (Interview 23). An assistant to a MEP of the EPP remained rather sceptical about the influence of pro-migrant groups. As the final directive is very different from what the Commission and the groups had intended, she is convinced that the overall impact of the groups was marginal – especially with regard to the limitation of the scope to the nuclear family and the differentiation between refugees and beneficiaries of subsidiary protection. On the other hand, she named ILGA and Terre des Hommes as the groups that appear to have been responsible for the consideration of gender identity and the best interest of the child in the directive. To her, the exertion of influence is a long process and it starts with a reference in the recitals of one directive followed by the inclusion in the articles of other instruments (Interview 32). A shadow rapporteur, when asked about the influence of pro-migrant groups, stressed that some political groups in the Parliament seem to be more reliant on such interest groups than others whose broader focus it is to run governments. But he did not neglect the importance of pro-migrant groups entirely and said, ‘the role of NGOs is important to all, and is always a point of view which is taken into valued consideration’ (Interview 43).

The interviewed representatives of the Council General Secretariat and the Permanent Representation, without exception, confirmed the influence of the pro-migrant groups on the



Commission and the Parliament. Some JHA Counsellors for instance pointed out that the positions of the Commission and the Parliament tend to concur significantly with the contributions of the pro-migrant groups (Interviews 19, 20, 36). More precisely, a representative of the UK referred to provision on the rights of refugees and beneficiaries of subsidiary protection and on the rights of their family members, which the pro-migrant groups seem to have exerted the most influence on during the early negotiations (Interview 11). Nevertheless, a Belgian JHA Counsellor noted that the achievements of the interest groups during the drafting stage and early negotiations could not be regarded separately from the efforts of the UNHCR. The impact of pro-migrant groups on the Council, however, is perceived as rather limited. Even though the Belgian representative regarded the recommendations of the groups as ‘useful input’ and ‘useful technical arguments’, he is convinced that their overall influence is limited due to the responsibility of member states to create workable and feasible asylum systems (Interview 22). A Greek JHA Counsellor agreed with him (Interview 31). A Dutch representative, in addition, listed the opacity of the Council and the limited resources of the interest groups as factors that limit their overall influence. If the groups had pursued a more targeted, pertinent, and more person-linked approach, according to him, they would have achieved more of their political objectives (Interview 35). A representative of Hungary, in turn, confirmed that she met with pro-migrant groups to discuss the recast Qualification Directive. However, since Hungary held the EU Presidency at that time it had to remain neutral in the debates in the Council and could not convince the other member states of the ideas of the interest groups (Interview 21). While few interviewees doubted entirely that interest groups can exert influence on the Council and suggested that they should approach national ministries instead (Interviews 3 and 31), a JHA Counsellor from Poland affirmed that he and his colleagues from the Czech Republic, Bulgaria, and Slovakia were receptive towards the demands of the pro-migrant groups concerning the harmonisation of the two protection statuses (Interview 38).

The results of the attributed influence assessment resemble the findings of the preference attainment analysis inasmuch as the different influence levels are concerned. Both interest representatives and EU officials confirmed that the lobbying efforts of the pro-migrant groups were more successful towards the Commission than during the decision-making stage. Overall, the interest representatives remained modest about their influence on the recast Qualification Directive with two exceptions –the alignment of the right of refugees and beneficiaries of subsidiary protection and the introduction of the concept of gender identity –

for which the majority of the interviewed interest representatives took credit. Their influence on these issues has also been acknowledged by MEPs and many JHA Counsellors.

### **8.3 Which factors affected the influence of pro-migrant groups?**

In the previous sections, the influence of the pro-migrant groups was assessed by means of examining their preference attainment and attributed influence at the different stages of the decision-making process. To understand why pro-migrant groups were more successful in exerting influence on the Commission in contrast to the impact they had on the Parliament and the Council, in the remainder of this chapter the resource dependencies between the groups and the EU institutions are analysed. Recapitulating, in the theoretical framework, it was assumed that the pro-migrant groups need to provide the EU institutions with expert knowledge, support, and legitimacy to access the decision-makers and, consequently, exert influence on them. Moreover, it was further presupposed that the extent to which the EU institutions rely on these resources differs. While the Commission and the Parliament were expected to be dependent on all three resources, the Council was assumed to only partly depend on expert knowledge. Whether these assumptions hold true in practice and whether the resource interdependence explains the different levels of influence is tested in the following subsections.

#### ***8.3.1 Empirical assessment of the ability of the pro-migrant groups to provide expert knowledge***

For the analysis of the ability of the pro-migrant groups to provide expert knowledge, the groups are, firstly, categorised according to their funding and personnel, organisational structures, and the expertise they have. Secondly, the results of the interviews concerning the dependence of the EU institutions on expert knowledge are summarised. In so doing, not only the supply side but also the demand side of this resource dependence structure is investigated.

Funding and personnel are crucial for the provision of expert knowledge because the groups need to monitor the negotiations on a policy draft closely. ECRE appears to be the best endowed group with an annual budget of € 1,853,305 and 19 members of staff employed with its Brussels office (Commission 2012g; ECRE 2012a). It is followed by AI Europe whose budget in 2010 amounted to € 1,431,692 and whose personnel comprised 19 persons (AI Europe 2012e; Commission 2012h). ILGA employed ten persons and had an annual budget of € 1,235,700 in 2010 closely followed by EWL that employed 16 persons and whose funding added up to € 1,097,094 (Commission 2012f; 2012e; ILGA 2012a). The Red Cross,

in turn, had an annual budget of € 978.261 in 2010 and employed 14 staff members at its liaison office in Brussels (Interview 15). The budget of Asylum Aid (2012a: 16 and 19) was € 894,610 in 2010 and its personnel comprised 19 persons. For CCOEMA the figures are assumed based on the average budget available for advocacy and the average personnel capacity of its members. Hence, the funding of CCOEMA supposedly did not exceed € 220,000 in 2010 and its advocacy work should not have been supported by more than six staff members (Caritas 2012; CCME 2012; Commission 2012i; 2012a; JRS 2012b: 27; 2012a). TdH, finally, had € 123,096 at its disposal in 2009 and employed 3 members of staff at its Brussels office (Commission 2012c).

Furthermore, the organisational structure of a group is a decisive criterion for the overall ability to provide expert knowledge. In this context, it is assumed that the division of labour between the liaison office in Brussels and the subdivisions in the member states facilitates the provision with tailored expert knowledge. Thus, all of the analysed pro-migrant groups except Asylum Aid were in principle able to divide labour because they maintain offices in Brussels and in the member states. The ad hoc group CCOEMA was mainly represented by the liaison offices of its leading members CCME, Caritas Europa, and JRS. This allowed the groups to divide labour not only between the Secretariats in Brussels that worked on different thematic core areas, but also to rely on the national member organisations for the collection of on the ground information (Interview 14 and 18). AI Europe (2012a) also states on its website that its Secretariat in Brussels benefits from its member sections for the provision of comments, background studies, and analyses on national practices, while colleagues in Brussels report back any decisions made by the EU institutions that are relevant for the work in the member states. Nevertheless, one representative of AI Europe revealed that she is the only person in the Brussels office dealing with asylum issues and, therefore, her ability to distribute that information among the different EU policy-makers is clearly limited (Interview 28). A similar division of work was applied by ECRE (2010e: 7) that was provided with ‘expertise, experience and solidarity’ by its membership and legal practitioners working with the European Legal Network on Asylum which, in turn, are given full account on EU decision-making (Interview 24). The Red Cross (Interview 15), EWL (2012b), ILGA (Interview 33) and TdH (Interview 13) also have pursued the strategy of integrating their member organisations in the gathering of on the ground information to ensure that policy papers are applicable in reality. Representatives of ILGA and TdH, nevertheless, stress that division of labour alone does not guarantee effective provision with expert knowledge. According to

them, especially small members that are less well-endowed might experience difficulties in gathering the information needed by their colleagues in Brussels and, thus, a timely provision with expertise is not always possible (Interviews 13 and 33). Asylum Aid – the only group without a liaison office in Brussels – decided to collaborate with EWL and ILGA to benefit from their infrastructure and experience in monitoring EU decisions. In return, Asylum Aid provided them with on the ground information about the UK asylum system (Interview 41).

As regards parallel lobbying at EU and national level, the members of CCOEMA confirmed that while the Secretariats in Brussels focussed on the EU institutions, their member churches approached national policy-makers – in particular the officials of the member state that held the EU Presidency (Interviews 1, 18, 46). Representatives of AI Europe (Interview 28), ECRE (2010e: 7), EWL (Interview 17), and ILGA (Interview 33) reported that the liaison offices in Brussels developed lobbying kits or template lobby letters together with or for their national branches to facilitate their lobbying efforts. In so doing, the overall objectives of the groups were integrated in the different lobbying strategies and adapted to the national context. These lobbying guidelines notwithstanding, a member of EWL staff gave voice to her concern that because

directives that are [...] discussed in Brussels are not of priority to national member organisation because they are implemented in two or more years. It is difficult to make them [national members] aware that they should use their limited capacities to try to make a difference on these issues that are not as tangible as directives that have already been adopted and now need to be implemented (Interview 17).

The Red Cross also included its national societies in its lobbying strategy. To ensure that all members advocate on the same issue, every four years they adopt a common agenda that determines the political objectives that are to be pursued at national, EU, and international level (Interview 15). A former representative of TdH particularly referred to parallel lobbying efforts in Germany and Malta that comprised press releases about visits in reception camps and subsequent meetings with national parliamentarians and officials of the relevant ministries. Despite these successful parallel-lobbying campaigns, he regretted that other cooperative projects failed because the member groups function independent from the office in Brussels and, as a consequence, do not always pursue the same strategy (Interview 13). Asylum Aid, on the contrary, could not pursue parallel lobbying strategies at EU and national level because it solely operates in the UK. Neither could Asylum Aid actively contribute to the lobbying efforts of EWL and ILGA because of the missing responsiveness of the British politicians towards the claims of the groups. The attitude of the coalition government towards

asylum issues is reflected in a memorandum which stresses that the UK does not have any intention of opting in to the new asylum instruments – a statement that impeded the lobbying attempts of Asylum Aid severely (Interview 41).

This analysis demonstrates that even though limited financial and personnel resources restrained the advocacy work of most of the pro-migrant groups, the majority of the groups sought to balance that disadvantage out through effective internal organisation. The cooperation and consultation between the Brussels Secretariats and national member organisations allowed the groups in the majority of cases to divide labour and share the lobbying costs. Nevertheless some interest representatives pointed to the engagement of the member organisations that is required for such a strategy but not always guaranteed due to limited resources and diverging policy focuses.

With regards to the dependence of the EU institutions on additional expert knowledge, the Commission official who was responsible for the recast Qualification Directive acknowledged the importance of pro-migrant groups as information providers. As she explained, pro-migrant groups ‘can collect on the ground information much better because the Commission cannot go into the member states and inspect administrations’. The groups can suggest solutions to protection gaps because

they are in touch with the practical side, with the persons concerned by this text. So they see what happens to them in real life. And this is very important for us to know because again we cannot be everywhere. We can go around Brussels, Belgium but this is not representative for the whole EU. [...] That's why discussing with NGOs all the time is very important (Interview 26).

According to the interviewee, the Commission consulted NGOs ‘quite extensively’ by organising a consultation forum and an online consultation to which different stakeholders were invited and by meeting bilaterally with the groups (Interview 26).

On the part of MEPs that were involved in the positioning of the Parliament on the recast Qualification Directive, the dependence of the Parliament on additional expert knowledge has also been confirmed (Interviews 23, 32, 47). MEPs of the Greens and the EPP acknowledged that the resources and information of the Parliament are significantly less extensive than those of the Council with all its ministries of the interior and determining authorities. As the Council, however, is the direct opponent of the Parliament in the ordinary legislative procedure, the MEPs argued that they need to ensure that they get the information that is required to decide about a policy file from other sources such as NGOs. Only then, according

to the MEPs, is it possible to discuss controversial provisions on a par with representatives of the Council (Interviews 23 and 32). The rapporteur of the recast Qualification Directive, in addition, referred to the high personnel turnover within the Parliament and the general enormous workload of the parliamentarians as factors that restrain their ability to collect the information they need to build up adequate expertise in order to decide on technical dossiers like the Qualification Directive (Interview 23).

The vast majority of the national representatives and Council members that have been interviewed on the dependence of the Council specified that they did not rely on pro-migrant groups for the provision of additional expertise. Rather than referring to NGOs, they consulted their colleagues in the national ministries or experts of the UNHCR. They are convinced that there is not any information that NGOs could add to the extensive expertise that they can gather from those authorities. What is of interest to them, are refugee statistics, country reports, and the exchange of best practices between the member states (Interviews 3, 11, 19, 20, 22, 35, 36). Furthermore, some interviewees believe that information provided by NGOs is not useful for their positioning because the general political orientation of the national governments predetermines the positioning on policy instruments (Interviews 20, 22, 36). A Belgian JHA Counsellor put it as follows: 'member states have the interest to defend their own systems and try to keep their own systems existent and just make them compatible with the European legislation. They are not so much ready to accept lessons from NGOs' (Interview 22). Instead, the interviewees referred to the Commission and the Parliament as institutions that, due to their lack of practitioners and experts compared to their high workload, are dependent on NGOs as providers of additional information (Interviews 11, 22, 35). A small minority of JHA Counsellors, on the contrary, thought that pro-migrant groups have been a vital source of information during the negotiations of the recast Qualification Directive. They, in particular, referred to the expertise of the situation on the spot that pro-migrant groups offer and to judicial advice that they can give in preparation of legislation. The interviewees, however, expect this information to be of more value to national politicians and bureaucrats than to officials of the Permanent Representations because they are bound by their ministries (Interviews 7, 21, 38).

The analysis of the interview responses on the dependence of the EU institutions on expert knowledge has revealed that both the interest representatives and EU officials are concordant that, more than the Council, the Commission and the Parliament were reliant on pro-migrant

groups for the provision with additional expertise. Above all, it appears to be on the ground information on national asylum practices and information about the implementation of EU legislation at national level that these EU institutions are interested in. The investigation has further illustrated that most of the pro-migrant groups, despite their limited capacities, have found an efficient strategy to collect on the ground data, transfer it into position papers that suit the needs of the institutions, and circulate them among the relevant decision-makers. Thereby, umbrella groups such as ECRE, EWL, and ILGA seem to have encountered fewer problems in providing expert knowledge than CCOEMA, TdH, and Asylum Aid. The results of the categorisation of the groups regarding their ability to provide expert knowledge are summarised in the table below.

Ability to provide expert knowledge	Pro-migrant groups
<b>Annual budget</b>	
> € 1,400,000	AI Europe, ECRE
€ 700,000 – 1,399,999	Asylum Aid, EWL, ILGA, Red Cross
< € 400,000	CCOEMA, TdH
<b>Staff</b>	
19	AI Europe, Asylum Aid, ECRE
10 – 18	EWL, ILGA, Red Cross
5 – 9	CCOEMA
< 5	TdH
<b>Organisational structure</b>	
Liaison office in Brussels	AI Europe, ECRE, EWL, ILGA, Red Cross, TdH, CCOEMA (leading offices: Caritas Europa, CCME, JRS)
Division of labour: Brussels office monitors EU policy-making processes and member organisations collect on the ground information	AI Europe, CCOEMA, ECRE, EWL, ILGA, Red Cross, TdH Asylum Aid cooperated with European umbrella groups
Division of labour: Brussels office lobbies at EU level and member organisations at national level	AI Europe, CCOEMA, ECRE, EWL, ILGA, Red Cross, TdH

**Table 47: Categorisation of pro-migrant groups regarding their ability to provide expert knowledge**

### ***8.3.2 Empirical assessment of the ability of the pro-migrant groups to provide support***

Regarding the provision of the EU institutions with support, in the theoretical framework it was suggested that this kind of allying can only take place if a group shares the same political

ideas with the EU institution that is to be supported and if the said group has access to those policy-makers that need to be convinced of these shared views. To assess the ability of the groups to provide support, therefore, their positions are compared with the opinions of the Commission, the Parliament, and the Council. Secondly, it is examined to which EU institutions the groups had access during the negotiations of the recast Qualification Directive. Thirdly, it is investigated to what extent the EU officials involved in the discussions on the directive have actively sought allies with pro-migrant groups.

The comparison of the recommendations of the pro-migrant groups with the positions of the EU institutions at the beginning of this chapter has illustrated that the groups can generally be allocated closer to the Commission. The closeness of the groups to the Commission was outstanding. The preference attainment rates of AI Europe, ECRE, EWL, CCOEMA, and the Red Cross ranged from 70 per cent to 100 per cent. In particular, it was the chapters on the qualification for refugee status and on the content of international protection on which the pro-migrant groups and the Commission agreed most. The assessment of the closeness of the pro-migrant groups to the Parliament and the Council revealed lower preference attainment rates. Between 44 and 60 per cent of the recommendations of ILGA, ECRE, TdH, CCOEMA, and the Red Cross are reflected in the recast Qualification Directive.

Concerning the ability to access the EU institutions, the following details were provided on the part of the interest representatives. AI Europe started its advocacy work early in the policy-making process – responding to the Commission’s online consultation on the future CEAS and meeting with the desk officer who was responsible for the file (Interview 28). Asylum Aid was the least active group – solely involved in the formulation of the joint recommendations with EWL and ILGA (Interview 41). EWL and ILGA, on the contrary, extensively lobbied the EU institutions. A representative of EWL confirmed that the group was in close contact with the Commission, again, responding to the Commission’s online consultation on the future CEAS and approaching the desk officers responsible. In the Parliament, EWL closely cooperated with the rapporteur of the directive. Other MEPs were only approached by means of distributing the position papers electronically. ILGA Europe, in turn, met with the rapporteur, shadow rapporteurs, MEPs of the Socialists, Democrats, and the Lefts, as well as with the ‘Lesbian, Gay, Bisexual, and Transgender (LGBT) Intergroup’. Moreover, ILGA has been in contact with Permanent Representations (Interviews 17 and 33). Both groups (ILGA 2005; EWL 2007b) provided their members with guidelines on how to



lobby national governments, parliaments, and migration authorities. For the illustration of the advocacy strategy of CCOEMA, again, the results of the interviews with representatives of its member organisations are compiled. Caritas Europa and CCME reported that they engaged in the drafting process before the Commission issued its proposal both informally and formally (Interviews 1 and 18). Instead of approaching the Council General Secretariat, however, the groups focussed on Permanent Representations and national civil servants or bureaucrats of the countries that held the EU Presidency at the time the recast was negotiated (Interviews 1 and 14).

The lobbying strategy of ECRE towards the recast Qualification Directive was very complex. At the drafting stage, the Commission invited ECRE to stakeholder meetings to collect information from its national member organisation for the purpose of scrutinising the concerns raised by certain member states. Moreover, ECRE provided the Commission with a report on the implementation of the original Qualification Directive that they had produced for 20 member states. Regarding the Parliament, ECRE met with the rapporteur, the shadow rapporteurs, the secretariat of the LIBE committee, and the secretariats of the political groups. ECRE also distributed a briefing paper among various MEPs via the national member organisations just before the LIBE committee was going to do its orientation vote. Regarding the Council, ECRE approached those member states that strongly opposed a provision that was of the group's interest and tried to explain to them the necessity of certain provisions. In Brussels, they focussed on the Presidencies and Permanent Representations. The group also organised informal seminars to which officials from the Commission, the Parliament, and a few member states as well as relevant NGOs and academics were invited to establish a mutual understanding between the different views. Lastly, ECRE approached national decision-makers via its member organisations (Interview 24).

A representative of the Red Cross declared that the group circulated its recommendations among the Commission and Permanent Representations. The Red Cross (2007) contributed to the Commission's online consultation on the CEAS; key access points were Heads of Units and in rare cases the Director of a DG. Furthermore, the group was invited to conferences and meetings organised by the Commission or invited EU officials to events in order to promote the ideas of the Red Cross and find out about different positions. Beyond that, the Red Cross contacted the Permanent Representations of the respective EU Presidencies but, for instance, failed to set up a meeting with the Belgium representatives (Interview 15). A former

representative of TdH reported that he met with a few MEPs when the recast Qualification Directive was being negotiated (Interview 13). Another member of TdH staff stressed that they particularly approached those ‘swinging MEPs’ who did not clearly support the position of TdH but at the same time were not totally against it. In addition, TdH organised conferences and roundtables to which EU officials, professionals, and NGOs were invited to ‘provoke the debate [and] provide a forum for different actors’ (Interview 8). Lastly, TdH approached national bureaucrats working with the ministries and politicians (Interview 13).

Asking the interest representatives whether they have experienced allying between EU institutions and pro-migrant groups, their responses varied. A representative of AI Europe reported that the group maintained contact to Commission officials in charge of the file in the course of the negotiations in order to stay informed about the different positions of the various stakeholders. With that information, AI Europe tried to address those actors that opposed the position of the Commission and the group (Interview 28). Member organisations of CCOEMA also confirmed that the Commission provided them with information about stumbling blocks in the negotiations between the Parliament and Council. According to them, the Commission sought to use interest groups as external allies in order to raise the pressure on those actors who were least satisfied with the proposal for the directive. Moreover, they believe that the Commission, during the negotiations, referred to the resistance of the civil society that would increase if opposing parties continued watering-down the minimum standards (Interviews 14 and 18). To find out about the different national positions that were hardly traceable due to the early agreement, ILGA called on the ‘LGBT Intergroup’ of the Parliament for information about what was going on in the intergovernmental debates. In addition, the group approached the Hungarian Presidency to find out about those countries that opposed the objectives of ILGA. Nevertheless, allying in order to identify opponents and stumbling blocks was impeded by the short timeframe in which the directive was adopted (Interview 33). A member of ECRE staff explained that the group received information about opposing MEPs from the rapporteur and information about the different national positions when meeting with officials of certain Permanent Representations. Beyond that, however, ECRE was disappointed by the lack of support from the Parliament, which they had expected to be more liberal (Interview 24). Representatives of the Red Cross, EWL, and TdH, finally, did not witness any allying attempts by the EU institutions (Interviews 13, 17, 15).

On the part of the EU officials, one Commission official responsible for the recast Qualification Directive acknowledged that allying between the Commission and the pro-migrant groups took place – albeit only with groups that have ‘knowledge in the field’ or an ‘elaborate legal argumentation’ (Interview 26). The rapporteur of the recast Qualification Directive confirmed the statements of the interest representatives according to which she has informed the groups about the Council position that had evolved during the negotiations and about issues raised by certain member states. Thus, she provided the interest groups with the information that they needed to lobby opponents systematically (Interview 23). An assistant to a MEP of the EPP emphasised that the EPP is not ‘left-wing and liberal’ enough to serve as an ally for pro-migrant groups. Instead, she is convinced that the Greens and the Social Democrats were the ones that acted as external allies for pro-migrant groups (Interview 32). One member of the Council General Secretariat staff denied the possibility of allying between the Council and pro-migrant groups emphatically. According to him, ‘NGOs rather see a better friend in the COM and the EP [Parliament]’ (Interview 3). JHA Counsellors of Germany, Finland, and Latvia also denied having cooperated with pro-migrant groups in that form. Rather than Permanent Representations, they think it is the Commission that has used those interest groups as external allies to support its proposal. The Finnish representative further admitted that she prefers contacting MEPs personally in order to influence their voting behaviour instead of asking third parties for help (Interviews 7, 19, 20). A representative of the UK pointed out that ‘that does not work from our perspective because I think the NGOs have a different agenda from the UK government on asylum often times. So I think we don’t use NGOs in that way’ (Interview 11). Other JHA Counsellors, on the contrary, confirmed that they passed on information about the issues at stake in the working group to interest representatives so that they can proceed in trying to convince opponents of their ideas (Interviews 22 and 35). Yet others revealed that they used the argumentation of pro-migrant groups in intergovernmental negotiations either to make their own point or to mediate between conflicting parties (Interviews 21, 30, 38).

The analysis of the ability of the pro-migrant groups to provide the EU institutions with support has demonstrated that, despite the theoretical considerations made in preparation of the empirical investigation, not all groups can be exclusively categorised as being politically closer to the Commission and the Parliament than to the Council. Due to the growing reluctance of the Commission and the Parliament to propose more liberal provisions that would risk being rejected by the member states, it seems that the positions of the three EU

institutions on the recast Qualification Directive did not differ as substantially as they had when the original Qualification Directive was negotiated. As a consequence, the comparison of the recommendations of the pro-migrant groups with the positions of the EU institutions has revealed that few groups were politically close to both the Commission and the Council. Furthermore, the investigation has shown that the pro-migrant groups, with the exception of Asylum Aid, applied very versatile lobbying strategies. In their effort to exert influence on the Council, the majority of the groups sought access to Permanent Representations, national governments, parliaments, ministries, and migration authorities. Regarding alliance building with EU officials, AI Europe and CCOEMA reported having cooperated with the Commission, while ECRE and ILGA have allied with the Parliament and Permanent Representations. A Commission official, the rapporteur, and a few JHA Counsellors have acknowledged the practice of allying with pro-migrant groups for further political support. In general, this type of cooperation is dependent on the political affiliation of the MEPs and the political orientation of the government that the JHA Counsellors represent. Thus, the dependence on support was only confirmed by few EU officials and pro-migrant groups. The results of the analysis are summarised in the following table.

<b>Ability to provide support</b>	<b>Pro-migrant groups</b>
<b>Positioning</b>	
Close to COM	AI Europe, CCOEMA ECRE, EWL, Red Cross
Close to EP	Asylum Aid, EWL, CCOEMA, ILGA
Close to Council	CCOEMA, Red Cross
<b>Ability to access EU institution</b>	
Access to COM	AI Europe, CCOEMA, ECRE, EWL, Red Cross
Access to EP	ECRE, EWL, ILGA, TdH
Access to Permanent Representations	CCOEMA, ECRE, ILGA, Red Cross
Access to national authorities	AI Europe, CCOEMA, ECRE, EWL, ILGA, Red Cross, TdH
<b>Alliance building</b>	
Allied with COM	AI Europe, CCOEMA
Allied with EP	ECRE, ILGA
Allied with Permanent Representations	ECRE, ILGA

**Table 48: Categorisation of pro-migrant groups regarding their ability to provide support**

### ***8.3.3 Empirical assessment of the ability of the pro-migrant groups to provide legitimacy***

For the description of the resource interdependence on legitimacy first of all the ability of pro-migrant groups to provide the EU institutions with legitimacy needs to be investigated. Therefore, their representativeness, participation structures, effectiveness, and basis for argumentation are analysed. In the theoretical framework it was assumed that only groups that are well-represented throughout the EU, that let their members partake in their advocacy work, whose lobbying efforts are effective, and whose recommendations are based on a sound argumentation are able to provide the EU officials with legitimacy. Furthermore, it is examined to what extent the EU officials believe that they were dependent on further legitimacy when the recast Qualification Directive was discussed.

With a view to the representativeness of the groups, it needs to be stressed that the coverage of the groups diverges immensely. While EWL (Commission 2012f) and ILGA (Commission 2012e) are represented in all EU member states, TdH (Commission 2012c) that is represented in seven member states and Asylum Aid (2012a) that exclusively operates in the UK are located at the bottom of this ranking. The mid-range is led by the Red Cross (2012d), represented in 26 EU member states, and ECRE (Commission 2012g) which is present in 22 EU member states. They are followed by AI Europe (Commission 2012h) that is active in 20 member states and CCOEMA (Commission 2012i; 2012a; JRS 2012b) whose members cover 16 EU member states averagely. Thus, less representative groups such as TdH and Asylum Aid on first sight appear to be less capable of providing additional legitimacy to the EU institutions.

Concerning the participation structures of the pro-migrant groups. Firstly, it is important to note that only a minority of them employs asylum-seekers or refugees. It was not before the end of 2010 that ECRE

launched a Refugee Alliance made up of community and migrant group representatives from different European Countries [...] to have more direct input from refugees into ECRE's advocacy and policy work [and to] strengthen refugees' participation in EU political debates on issues of interest to them (ECRE 2010e: 13).

As such, people who are affected by EU asylum policies are not involved in the work of most of the pro-migrant groups. However, all groups claim (Interview 13, 15, 24, 28, 33, 41, 46, 47) to let their member organisations partake, at least indirectly, in the formulation of the recommendations. This means that member organisations are normally involved in the formulation of general work plans and objectives that form the basis of concrete policy

recommendations. As the resources of some of its members are very scarce, ECRE, for instance, points out that its Brussels Secretariat ‘has a mandate to conduct legal research, to produce policy papers and to engage EU institutions on their behalf’ (ECRE 2010e: 7). Furthermore, the groups indirectly involve their member organisations in the recruitment of the staff that represents their concerns to the EU institutions. This is done through elected bodies (TdH 2012b; Interviews 24, 28, 33, 41, 46, 47). The National Societies of the Red Cross are more directly involved in the recruitment process, as they delegate their experts to the liaison office in Brussels for a certain time (Red Cross 2012b). In addition, the member organisations of the pro-migrant groups were also involved in the lobbying strategy at national level (Interviews 13, 15, 17, 24, 28, 33, 46).

For the application of the effectiveness of the groups, their preference attainment is once more summarised and it is analysed whether their general mission is reflected in the policy recommendation that have been circulated among the policy-makers. As outlined above, in its advocacy work towards the Commission, AI Europe achieved 70 per cent of its objectives and its recommendations complied with its general mission of ‘prevent[ing] and end[ing] grave abuses of human rights and demand[ing] justice for those whose rights have been violated’ (AI Europe 2012c). CCOEMA, even though it lost influence in the course of the negotiations, always stuck to its conviction of ‘a society that welcomes strangers’ to ‘achieve both, a higher common standard of protection and greater equality in protection across the EU’ (CCOEMA 2010: 1). ECRE, whose preference attainment rate had shrunk too, nevertheless, remained loyal to its overall objective of ‘counteracting racism, xenophobia and social exclusion that undermine the institution of asylum’ (ECRE 2012c). Of the joint recommendations of EWL, Asylum Aid, and ILGA only 50 per cent are reflected in the final Directive. And even though the recommendations are a compromise of the common positioning of three groups that have different scopes, they comply with their individual values which are the following: unconditional human rights, justice, equality between men and women, and equality for LGBT people (Asylum Aid 2012c; ILGA 2012c; EWL 2012c). The preference attainment rates of the Red Cross (60 per cent) and TdH (53 per cent) were medium and their recommendations always followed their objectives of ‘safeguard[ing] humanitarian principles and the dignity of refugees and migrants’ as well as providing ‘active support to children, without racial, religious, political, cultural or gender-based discrimination’ (Red Cross 2012c; TdH 2012c). Thus, although many of the recommendations of the pro-migrant groups

remained unconsidered in the final directive, the groups could demonstrate effectiveness through their loyalty to their overall objectives.

Regarding the basis of argumentation, it can be established that all pro-migrant groups in their call for more liberal and rights-based asylum provisions referred to European and international legal conventions and standards. The work of AI Europe (2012a), in general, is led by the conviction that ‘every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights’. Its advocacy work on the recast Qualification Directive, in particular, was guided by the Geneva Convention and the UNHCR Handbook as concerns the refugee and family definition and the application of international protection sur place, internal protection, and the cessation clauses (AI Europe 2007: 25, 26, 29). In addition to the latter two, ECRE (2010b: 3, 5, 8, 11) based its recommendations on the European Convention of Human Rights, the Charter of Fundamental Rights of the European Union, the Treaty on the Functioning of the European Union as well as on the UN Convention on the Rights of the Child. In their joint position paper on the recast Qualification Directive, EWL, Asylum Aid, and ILGA (2010: 2-7) allude to the Charter of Fundamental Rights of the European Union, the Convention on the Elimination of all forms of discrimination of Women, and the UNHCR gender guidelines to direct the attention to gender-sensitive issues. The Red Cross (2010: 2) referred to the Stockholm Programme, the European Pact on Immigration and Asylum, the Charter of Fundamental Rights of the European Union, and the Geneva Convention in its efforts to ensure higher and harmonised protection standards. For TdH (2012c), in turn, the UN Convention on the Rights of the Child forms the conceptual framework that guides the group in promoting the best interest of the child. CCOEMA, finally, did not only base its demands on legal programmes and conventions such as the Stockholm Programme, Geneva Convention, and the UN Convention on the Rights of the Child but, in addition, holds a biblical mandate as it represents European churches and Christian organisations (CCOEMA 2010: 1 and 4).

When it comes to the EU institutions’ dependence on additional legitimacy, the opinions of the EU officials diverge. The rapporteur of the recast Qualification Directive, for instance, revealed that she indeed consulted pro-migrant groups for legitimacy purposes. According to her, it is important to include the views of those who are going to be affected by new legislation when shaping those instruments. However, she also admitted that ‘there is always the risk that you will end up with a policy that neglects the interests of certain migrants

although you are trying to develop a policy that is good for all of them because you cannot speak to everybody'. Due to time constraints, for instance, she usually meets with umbrella groups such as ECRE or EWL that represent the interest of various national groups (Interview 23). For the same reasons, the assistant of a MEP also regards the consultation of pro-migrant groups as crucial. Nevertheless, she pointed out that MEPs are committed to their electorates and, therefore, also need to take into consideration national concerns (Interview 32). Another MEP suggested that 'as democratically elected representatives, the views of civil society and the general public are always a primary consideration for the work of MEPs'. However, the extent to which the views of civil society can be integrated in policy decisions is limited because of other practical implications such as 'costs, implementation, and the impact the legislation has [...] on member states and Europe as a whole' (Interview 43).

A member of the Secretariat staff, on the contrary, is convinced that the Council is not in need of further legitimacy from pro-migrant groups. According to him, the newly established EASO takes care of stakeholder consultations and, thus, the Council focussed on the interests of the member states that provide it with the legitimacy it needs as a legislative body. The Commission, in his eyes however, uses interest groups as a source of legitimisation because it is not directly elected by the EU citizens (Interview 3). JHA Counsellors from Poland and Greece share this opinion. They doubt that the Council is dependent on further legitimacy from interest groups and one official even prioritised productivity over stakeholder consultations (Interview 31 and 38). A JHA Counsellor of the UK believes that the legitimacy gap at EU level is not as big as it is depicted by the civil society. In her opinion, in the UK for example, extensive stakeholder consultations are held with pro-migrant groups before a decision is made. Hence, the Permanent Representation is sufficiently legitimised as co-legislator (Interview 11). Representatives of Finland, Germany, and the Netherlands acknowledged that the consultation of interest groups is important before a directive is adopted. They believe that national governments should justify their decisions to the wider public. The extent to which opinions of the civil society are taken into consideration by the governments, however, is assessed to be limited. The Commission, in turn, is reported to take its liability towards the civil society more seriously, as it had consulted the wider public long before it drafted the proposal for the recast directive (Interviews 7, 19, 35).

The above investigation has illustrated that the EU officials are not accordant on their dependence on legitimacy. While some MEPs acknowledged that stakeholder consultations



are essential for the positioning of decision-makers, none of the interviewees confirmed that the EU institution that they work with is in need of further legitimacy and that this demand can be met by consulting pro-migrant groups. As such, the insufficiency of the pro-migrant groups to provide the EU policy-makers with further legitimacy does not carry too much weight. Recapitulating, ECRE is the only group that just recently opened its work to those that are directly affected by EU asylum policies. All other groups try to demonstrate their status as advocacy groups by pointing to the involvement of their members in the recruitment process, positioning, and campaigning. As regards representativeness, apart from Asylum Aid and TdH, the groups appear to embody sufficient national organisations that justify their work at EU level. While the groups over the years have remained loyal to their general values and missions, their recommendations are only in parts reflected in the final recast Qualification Directive, which clearly discloses problems of effectiveness. The argumentation on which their policy recommendations are based, in turn, is very sound as they referred to specific provisions and wording in European and international legislation and conventions when arguing for higher protection standards. In the light of the limited dependence of the EU institutions on further legitimacy, the apparent legitimacy problem of pro-migrant groups does not seem to have severely affected their overall influence.

Ability to provide legitimacy	Pro-migrant groups
<b>Participation</b>	
Involvement of people affected by EU asylum and migration policies	Partially: ECRE
Involvement of members in appointing representatives	Direct involvement: Red Cross Indirect involvement through Board (elected by members): AI Europe, Asylum Aid, CCOEMA, ECRE, EWL, ILGA, TdH
Involvement of members in positioning process	AI Europe, Asylum Aid, CCOEMA, ECRE, EWL, ILGA, TdH
Involvement of members in lobbying campaigns	AI Europe, CCOEMA, ECRE, EWL, ILGA, Red Cross, TdH
<b>Representativeness</b>	
Represented in 27 EU MS	EWL, ILGA
Represented in 20 - 26 EU MS	AI Europe, CCOEMA, ECRE, Red Cross
Represented in < 10 EU MS	Asylum Aid, TdH
<b>Effectiveness</b>	

Ability to provide legitimacy	Pro-migrant groups
Reflection of the mission of the groups in policy recommendations	AI Europe, Asylum Aid, CCOEMA, ECRE, EWL, ILGA, Red Cross, TdH
Reflection of policy recommendations in policy output	Partially: AI Europe, Asylum Aid, CCOEMA, ECRE, EWL, ILGA, Red Cross, TdH
Basis of argumentation	
Legal conventions and standards	AI Europe, Asylum Aid, CCOEMA, ECRE, EWL, ILGA, Red Cross, TdH
Biblical mandate	CCOEMA

**Table 49: Categorisation of pro-migrant groups regarding their ability to provide legitimacy**

## 8.4 Conclusion

The purpose of this chapter was to assess the influence of those pro-migrant groups that lobbied at the EU institutions for consideration of their recommendations in the recast Qualification Directive. In total, eight groups actively tried to exert influence on the directive; their lobbying strategy, however, diverged. During the drafting stage, it was AI Europe, CCOEMA, ECRE, EWL, and the Red Cross that lobbied the Commission. During the further negotiations, CCOEMA, ECRE, EWL, Asylum Aid, ILGA, TdH, and the Red Cross sought to influence the positions of the Parliament and the Council. The groups that lobbied the Commission reached the highest preference attainment rates: CCOEMA (100 per cent), the Red Cross (92 per cent), EWL (75 per cent), ECRE (73 per cent), and AI Europe (67 per cent). It has to be pointed out, though, that CCOEMA and the Red Cross could only achieve such positive results because their recommendations were the least detailed. The influence of the groups on the Parliament and the Council, on the contrary, was lower. Two groups – CCOEMA and the Red Cross – were able to score preference attainment rates of over 60 per cent followed by TdH with a success rate of 53 per cent. Of the recommendations of EWL, ILGA, and Asylum Aid as well as ECRE, 47 to 50 per cent were taken on board by the Parliament and the Council. Taking into consideration all the recommendations tabled by the pro-migrant groups, the groups reached an average preference attainment rate of 78 per cent at drafting stage and 55 per cent towards the final directive.

Pro-migrant groups	Preference attainment towards Commission	Preference attainment towards Parliament and Council
ECRE	16 out of 22	9 out of 19
AI Europe	16 out of 24	

<b>Pro-migrant groups</b>	<b>Preference attainment towards Commission</b>	<b>Preference attainment towards Parliament and Council</b>
Red Cross	12 out of 13	6 out of 9
EWL	3 out of 4	
CCOEMA	10 out of 10	10 out of 15
TdH		7 out of 13
EWL, ILGA, Asylum Aid		10 out of 20
<b>Total average</b>	<b>78%</b>	<b>55%</b>

**Table 50: Summary of preference attainment**

The results of the preference attainment analysis have been confirmed by the interviews that were conducted for the attributed influence assessment. Both interest representatives and EU officials ascribed the groups more influence at drafting stage than towards the Parliament and the Council. Overall, the interest representatives remained modest about their influence on adopted directive – ranging from assessments such as the exclusive ability to limit damage to having been quite influential on a few provisions.

Looking at the effect of the decision-making procedure on the overall influence of the pro-migrant groups, the empirical data on the recast Qualification Directive uncovered the following results. While the preference attainment analysis has revealed that the groups achieved influence rates that are just above medium, the attributed influence assessment has shown that the overall influence of the groups on the recast Qualification Directive has been less than medium. Hence, the empirical findings do not clearly confirm the assumption made in the theoretical framework whereupon the influence of pro-migrant groups on policy proposals that are discussed under ordinary legislative procedure is medium or higher than medium. The introduction of the ordinary legislative procedure, apparently, has not only led to the empowerment of the Parliament but has also caused MEPs to favour feasible and cost-effective solutions that are acceptable for the member states. While the Parliament during the discussions on the original Qualification Directive, which was negotiated under consultation procedure, had tabled more liberal and rights-based amendments, its position on the recast Qualification Directive did not differ much from the position of the Council. Looking at the recast Qualification Directive individually, the results of the influence assessment do not clearly confirm the assumption that the ordinary legislative procedure has opened up an

additional policy venue that is responsive to the claims of the pro-migrant groups. Comparing the results gained from analysing the original directive with the recast directive, however, there is no denying that the overall influence on the part of the pro-migrant groups has increased.

Just as with the previous case studies, the overall influence of the pro-migrant groups needs to be seen in the light of the amendments of the UNHCR, the official consultative body of the EU institutions, recent case law of the ECHR and CJEU as well as resolutions of the Council of Europe concerning the recast Qualification Directive. None of the recommendations of the pro-migrant groups contrast the suggestions and rulings of the above authorities. They should rather be seen as allies in the effort to raise the protection standards within the EU. On many issues that went beyond the purpose of the recast procedure such as the extension of the family definition, more detailed provisions on actors of protection, tighter requirements for internal protection, broader interpretation of the Convention grounds, and the equal treatment of refugees and beneficiaries of subsidiary protection, this ally has remained unsuccessful.

As reasons for the different levels of influence during the drafting and the decision-making stage, the empirical data confirmed the different resource interdependences between the pro-migrant groups and the EU institutions. Both the interest representatives and EU officials were accordant that rather than the Council whose members of staff cooperate closely with national ministries and experts, it is the Commission and the Parliament that is dependent on further expert knowledge from the pro-migrant groups. According to the interviewees, this dependence is caused by the time constraints, high workload, and personnel turnover within the Commission and the Parliament. On the part of the interest representatives, it was reported that their limited funding and personnel did not allow them to monitor EU decision-making and react on the negotiations as closely and flexibly as they had wished to. They especially experienced difficulties in accessing the Council General Secretariat. But also Permanent Representations and national authorities were less accessible than they had hoped for.

Contrary to the results of the original Qualification Directive, during the recast some pro-migrant groups have served as allies to the Commission, the Parliament, and even some Permanent Representations. This cooperation for support has not only been affirmed by the interest representatives but also by EU officials – albeit only those who have a more liberal political opinion or represent national governments that are more liberally oriented. Nevertheless, only half of the pro-migrant groups, AI Europe, CCOEMA, ECRE, and ILGA,

and a minority of the interviewed EU officials explained that this cooperation for external support took place during the negotiations of the recast Qualification Directive. Thus, the dependence on external support appears to be relatively weak compared to the dependence on expert knowledge. The ability of the pro-migrant groups to provide the EU institutions with support, therefore, virtually has not had any consequence for their overall influence. The same applies to the limited ability of the pro-migrant groups to provide legitimacy for the EU institutions. Even though they all seem to have difficulties in legitimising their work as advocacy groups because most of them do not let refugees or their members directly partake in the positioning and lobbying strategies of the groups, this cannot have severely affected their overall influence on the recast Qualification Directive because none of the EU officials acknowledged that the institutions were in need of further legitimacy for their decisions. Thus, it is suggested that rather than the dependence on support and legitimacy, it is the dependence on expert knowledge and, hence, the ability of the groups to provide the EU institutions with expertise that has affected their influence.

## **9. Conclusion**

### **9.1 Purpose of the doctoral research**

The main purpose of this thesis was to give an insight into the political influence that pro-migrant groups can exert on EU asylum and migration legislation. This research question is interesting, as NGOs have become a vital part of the EU policy-making process. The growing numbers of incoming migrants have not only caused intensified political cooperation at EU level but have also drawn numerous NGOs to the political arena in Brussels. Since those pro-migrant groups regard themselves as advocates of migrants and refugees, it is necessary to raise the question of how successful they are in representing their constituency.

Overall, the EU asylum and migration policy has been thoroughly researched. Scholars have engaged with, firstly, the necessity for a common EU asylum and migration policy; secondly, the development of said policy; and thirdly, the involvement of pro-migrant groups in asylum and migration affairs. In particular, studies deal with the change in migration patterns that directed the attention of national policy-makers to asylum and migration issues. Moreover, academic contributions examine the successive steps that have been taken to harmonise EU asylum and migration affairs and discuss the decision-making processes, the content, and effectiveness of the various measures. Finally, another research strand engages with the emergence of pro-migrant groups and scrutinises the lobbying repertoire that groups need to apply in order to make themselves heard in Brussels. The majority of works regard EU asylum and migration policies as a result of multi-level negotiations and more and more scholars include pro-migrant groups in their examinations.

As such, this PhD thesis has not only drawn on the rich literature that exists on asylum and migration affairs but has taken the academic analysis one step further. Classifying the harmonisation of the EU asylum and migration policy as a process in which both governmental and non-governmental actors at various levels get involved has solely descriptive power. What has been the purpose of this thesis, however, is to identify those forces that drive the policy-shaping process. Examining to what extent the EU institutions and pro-migrant groups have affected the policy outcomes of the four selected case studies, it is possible to trace back how EU asylum and migration legislation has evolved.

For this undertaking, the resource dependence theory has been adapted to the political system of the EU. Scrutinising the resources that the EU institutions rely on and the capability of the

pro-migrant groups to provide them with the relevant resources, this theory does not only ascribe NGOs the ability to co-shape asylum and migration policies but allows assessment of their influence by tracking where policy outcomes originate from. In the course of the theoretical framework it has been assumed that the EU institutions to varying extents are dependent on expert knowledge (to develop or decide about very technical instruments), political support (to convince less like-minded actors of their ideas), and legitimacy (to justify legislative authority). It was further inferred that while the Commission and the Parliament are dependent on the provision of expert knowledge, support, and legitimacy, the Council only requires additional expert knowledge from pro-migrant groups to a certain extent. Thus, only those groups that effectively respond to the requests of the policy-makers, providing them with expert knowledge, support, and legitimacy, were assumed to be able to access the EU institutions and exert influence on their decisions. Based on these assumptions, hypotheses about the effect of the decision-making procedure on the influence that pro-migrant groups can exert on policy outcomes have been formulated. As the original LTR and Qualification Directives were negotiated under consultation procedure, that widely curtailed the legislative power of the Parliament, the lobbying success of the pro-migrant groups was expected to be less than medium or low. By the time the extension of the LTR Directive and the recast of the Qualification Directive were discussed, however, the Parliament had been granted the right to co-decide on asylum and migration policies. Consequently, it was suggested that the influence of the pro-migrant groups must have been at least medium, since now two EU institutions, the Commission and the Parliament, were regarded to be dependent on pro-migrant groups.

The resource interdependence between the EU institutions and the pro-migrant groups as well as the groups' influence have been analysed from different angles. Firstly, the lobbying strategies of the groups and their preference attainment towards the institutions that they approached were examined. Their recommendations were compared with the positions of the EU institutions, with guidelines of the UNHCR, international and European legislation, and case law for congruence and differences. Since preference attainment does not automatically reflect influence, the documentary analysis has been triangulated with the self- and peer assessment of the perceived influence. In expert interviews, interest representatives and EU officials were asked to assess the influence of the pro-migrant groups on the four directives. Moreover, EU officials were interviewed on their dependence on pro-migrant groups during the negotiations of the directives. To assess the ability of the groups to provide expert

knowledge, support, and legitimacy, they were analysed for their capacities, organisation, possession of on the ground information, political positioning, participation structures, representativeness, and argumentation basis.

To draw a more comprehensive conclusion on the influence of the pro-migrant groups, in the remainder of this chapter, the findings of the four different case studies are compared. This cross-case study comparison helps derive conclusions about different levels of influence. More precisely, it allows singling out those dependence structures and factors that have markedly affected the lobbying success of the pro-migrant groups at EU level. What is more, comparing the findings of the different case studies against the background of the different decision-making procedures helps to better understand the processes that shape EU asylum and migration policies.

## **9.2 The influence of pro-migrant groups – Results from the four case studies**

In the previous four chapters the influence that pro-migrant groups sought to exert on the LTR Directive, the extension of the LTR Directive, the Qualification Directive, and the recast Qualification Directive has been assessed. To allow for an encompassing overview, the results of each case study as regards the preference attainment of the groups, the attributed influence, and resource dependence structures are recapitulated. Following this recapitulation, the results of the influence assessment are examined across the cases.

### ***9.2.1 Results from the LTR Directive***

The LTR Directive was one of the first directives that were adopted in the context of the Common European Asylum System. Stimulated by the study on the different long-term residence statuses in the EU commissioned by the University of Nijmegen, the Commission drafted its proposal for the LTR Directive in 2000. After consulting the Parliament about its position on the EC long-term residence, the Council adopted the directive in 2003. Even though the decision-making process on the LTR Directive was initiated just shortly after migration matters had been communitarised through the 1999 Amsterdam Treaty, six pro-migrant groups quickly adapted to the change in authority and lobbied the EU institutions. To divide work and benefit from each other's contacts, ECRE, ENAR, and MPG cooperated in Network 1 and ENAR, MPG, and ILPA cooperated in Network 2; both Networks sought to influence the Commission. Another group that lobbied the Commission was the Starting Line Group. The Parliament, on the contrary, was not approached by the groups. The groups did,



however, consider the Council in their advocacy strategy. It was again Network 2 that approached the Council as well as ILPA and CCME.

The assessment of the preference attainment of the pro-migrant groups has revealed that the average success rate at Commission stage was higher, 60 per cent, than at Council stage where the groups achieved only 42 per cent of their goals. In particular, the groups had been more successful in lobbying on the Commission than on the Council regarding the following issues: the overall validity of the EC long-term residence permit, social rights granted to long-term residents, and absences allowed from the territory of the EU. What also needs to be noted is that those provisions, on which the pro-migrant groups had failed to convince the Commission, did not make their way into the Council directive either. This applies to the inclusion of nationality among the non-discrimination criteria, the duration of residence of only three years as requirement criteria, the duration of absence allowed from the territory of the EU, the right to vote and stand in local and European elections, the promotion of social and cultural advancement, and the immediate right to family reunion. These results have been confirmed by the interest representatives that were interviewed on their satisfaction with the lobbying performance. They explained that the groups were more successful in lobbying the Commission than the Council – a fact that has been confirmed by those EU officials that were involved in the policy-making process too.

The analysis of the resource dependence structures, in addition, has produced explanations for the different levels in influence. Interviews with interest representatives and EU officials have shown that the Commission has been more dependent on expert knowledge than the Council. While Commission officials had to familiarise with the newly gained area of responsibility, Council officials such as JHA Counsellors reported to have drawn on the long experience of national ministries in migration affairs. Limited financial and personnel capacities on the part of the pro-migrant groups seem to have impeded the provision of the Commission and the Council with expert knowledge. The groups, however, sought to compensate these shortcomings by dividing work and cooperating with their member organisations for the generation of expertise. Overall, however, only MPG was reported to have been able to provide timely information. Moreover, all groups had difficulties in accessing the Council and only few groups approached national politicians as an alternative to the Council General Secretariat and the Permanent Representations. The analysis of the ability of the groups to provide support to the institutions revealed that by far their recommendations were closer to

the proposal of the Commission than to the directive adopted by the Council. As such, the groups could in principle only serve as allies to the Commission. In reality, they were not effectively capable of accessing the Council and, therefore, could not provide the Commission with political support. Since the Commission desk officer responsible for the LTR Directive neglected any dependence on further support, the inability of the groups to provide that very resource does not seem to have affected their overall influence. The same applies to the effect that dependence on legitimacy has on influence. All the groups lacked respective participation structures that do include migrants in their work. Member organisations, in turn, had a share in personnel decisions, positioning, and lobbying. Moreover, only the minority of groups were represented in all EU member states at that time and they were only partially effective regarding the final outcome of the LTR Directive. Instead, the groups tried to justify their own legitimacy through the sound basis of their argumentation. Their inability to provide the EU institutions with legitimacy, however, should not have affected their overall influence much, as neither the Commission nor the Council reported to have been reliant on further legitimacy from the groups.

### ***9.2.2 Results from the extension of the LTR Directive***

Refugees and beneficiaries of subsidiary protection had not been included in the scope of the original LTR Directive. In fact, it was not until May 2011 that those two groups were granted EC long-term residence with the adoption of the extension of the LTR Directive. As a consequence of the new decision-making procedures introduced by the Lisbon Treaty, the extension of the LTR Directive was negotiated under ordinary legislative procedure between the Parliament and the Council.

In total, three groups were identified as having lobbied on the content of the directive – CCOEMA, ECRE, and AI Europe. While only CCOEMA and ECRE lobbied the Commission during the drafting stage, all three groups approached the Parliament and the Council during the further course of the negotiations. Not only the number of groups that got involved in the discussion on the new LTR Directive was limited; the catalogue of recommendations tabled by the pro-migrant groups was also narrow. This circumstance can certainly be reduced to the nature of the renegotiations whose exclusive purpose it was to extend the LTR Directive to beneficiaries of international protection. On average, the groups achieved 70 per cent of their preference towards the Commission and 40 per cent of their preference towards the Parliament and the Council. The analysis of the recommendations of the pro-migrant groups

also uncovered that not even the great concordance between their ideas and the suggestions and guidelines of the UNHCR helped the groups to get more recommendations considered in the provisions of the extension of the LTR Directive.

The interviews conducted with the interest representatives drew a similar picture. While the interviewees expressed themselves content with the extension of the LTR Directive to beneficiaries of international protection, they regretted that none of the recommendations that went beyond the purpose of extending the scope of the directive was considered in the final version. They were also critical about their actual influence on the directive because, according to them, the major driving forces in the negotiations were the member states. The Commission officials responsible for the new LTR Directive also questioned the influence of the groups on the Commission, since the amendments proposed by the institution strictly followed the objectives of the Tampere Council conclusions. MEPs also queried that pro-migrant groups had an actual influence on the directive because even like-minded MEPs who supported the ideas of the groups could not prevail over more restrictive opinions. On the part of JHA Counsellors, the influence of pro-migrant groups on the Council was also regarded as marginal.

Concerning the resource dependence structures prevalent at the time the extension of the LTR Directive was being negotiated, the following results need to be emphasised. First, interest representatives and EU officials characterised the Commission and the Parliament as dependent on expert knowledge. Second, Commission officials and a few JHA Counsellors confirmed having had allied with pro-migrant groups to increase their support in the inter-institutional debates. Third, the dependence on further legitimacy from the pro-migrant groups was only affirmed by a few MEPs. Despite their limited financial and personnel capacities, the pro-migrant groups were able to gather expert knowledge on the extension of the LTR Directive. Thus, the expertise that the groups possessed certainly opened doors to the Commission and the Parliament. As the inter-institutional negotiations were dominated by the member states, which did not require further expertise, however, the overall influence of the groups remained less than medium. Regarding the provision of support, the analysis of the recommendation of the groups has illustrated that their objectives were preponderantly closer to the positions of the Commission and the Parliament than to the standpoint of the Council. The support that the groups could have provided to those EU officials who were in need of allies, again, foundered on the opposition of powerful member states. Even though all the

groups met with officials of the Permanent Representations as well as with national politicians, they failed to convince the member states of more liberal ideas. Just as at the time the original LTR Directive was negotiated, the second time around, the pro-migrant groups had difficulties demonstrating that their demands are sufficiently legitimised. Neither their participation structures nor their representativeness justified their advocacy work at EU level. Having said that, their recommendations reflected their overall objectives and missions and were based on international convention and standards or a biblical mandate and as such their effectiveness and basis of argumentation, at least to some extent, legitimised their advocacy work. But just as it has been demonstrated above, during the negotiations of the extension of the LTR Directive, the majority of the EU institutions have not been in need of further legitimacy and, therefore, the inability of the groups to provide them with said resource did not have any noticeable effect on the overall influence of the groups.

### ***9.2.3 Results from the Qualification Directive***

Just like the original LTR Directive, the negotiations on the Qualification Directive were launched soon after the Tampere Council meeting in order to fulfil the objectives of fully and inclusively complying with the Geneva Convention and determining common rules on the recognition and content of refugee status. Guided by the Geneva Convention and the ‘UNHCR Handbook on procedures and criteria for determining refugee status’, the Commission drafted a proposal for the directive that differentiated between refugee status and subsidiary protection status. After consulting the Parliament on the content of the proposal, the member states adopted the Qualification Directive in March 2004.

In the attempt to exert influence on the substance of the directive, ECRE, AI Europe, and CCOEMA tabled their recommendations, circulated them among the EU institutions, and met with decision-makers that were involved in the negotiations. Thereby, ECRE addressed the Commission and the Council, while AI Europe and CCOEMA solely focussed on the member states. On average, the groups attained 65 per cent of their preferences towards the Commission but only 34 per cent towards the adopted directive. Both the recommendations tabled during the drafting stage and those tabled during the decision-making stage were predominantly in line with guidelines of the UNHCR and the Geneva Convention. Even though the UNHCR is the official advisory body to the EU institutions in asylum matters, the member states only accepted a minority of the recommendations on which the pro-migrant groups and the UNHCR agreed.

The interest representatives perceived the comparably low rate of congruence between the recommendations of the pro-migrant groups and the provisions of the adopted directive as a failure in convincing the member states of their ideas. They particularly regretted the unequal treatment of refugees and beneficiaries of subsidiary protection that is consolidated through the adoption of the Qualification Directive. In the case of ECRE, however, one interviewee differentiated between the influence that the group exerted on the Commission and its failure of influencing the final decision of the Council. EU officials who were involved in the policy-shaping process also estimated that the influence of the groups on the outcome of the Qualification Directive was marginal and that the interest representatives had hardly any chance of exerting influence on the member states. The desk officer in charge of the file perceived their influence on the Commission as medium.

The interviews on the Qualification Directive further uncovered that the Commission officials, to a greater extent than the Council members, relied on the provision of expertise because of their limited expert staff. Through the division of labour between the secretariats of the interest groups and the member organisations, the groups sought to provide the Commission with on the ground information. Nevertheless, due to the limited financial and personnel capacities of all groups and the absence of ECRE from Brussels, the groups must have encountered difficulties in following the negotiations on the Qualification Directive closely and in liaising constantly with EU policy-makers. As for the provision of support, the analysis on the Qualification Directive has demonstrated that, again, the pro-migrant groups were in principle able to support the Commission. Their political opinion, on the contrary, differed too much from the position of the Council, which rendered the support of the Council impossible. Despite the assurance on the part of the interest representatives that the Commission allied with them in the course of the negotiations, the desk officer responsible for the Qualification Directive denied having been reliant on further political support. According to the official, with the consultations of NGOs, the Commission never intended to gather political support. Further EU officials who were responsible for the Qualification Directive also disavowed that the Commission and the Council were dependent on pro-migrant groups for further legitimacy to justify their decisions. Therefore, again, the inability of the groups to demonstrate open participation structures that allow those parties that are mostly affected by asylum policies to partake in personnel decisions, positioning, and lobbying work is expected to have had little effect on their overall political influence.

#### ***9.2.4 Results from Recast Qualification Directive***

In addition to the extension of the LTR Directive, the Commission launched a recast procedure for the Qualification Directive. Prior to the drafting of the proposal for the recast directive, the Commission undertook an online consultation in which stakeholders were asked to send in their ideas about the 2007 ‘Green Paper on the future Common European Asylum System’. Based on the stakeholder contributions that the Commission collected and studies about the transposition of the original Qualification undertaken by the UNHCR, NGOs, and the Commission, a proposal for a recast Qualification Directive was drafted in October 2009. With this proposal, the Commission envisaged the creation of equal rights for refugees and beneficiaries of subsidiary protection in order to simplify and improve the efficiency of the asylum process. The recast proposal contained both substantive amendments to the original text of the Qualification Directive and minor editorial changes. In the following two years, the Parliament and the Council discussed the recast directive under ordinary legislative procedure.

Due to the Commission’s online consultation that facilitated the participation of non-governmental actors in the policy-shaping process, eight pro-migrant groups lobbied on the recast Qualification Directive. Five groups, AI Europe, CCOEMA, ECRE, EWL, and the Red Cross, participated in the online consultation. In addition, CCOEMA, ECRE, EWL, Asylum Aid, ILGA, TdH, and the Red Cross tabled their amendments on the proposal of the Commission for consideration in the final directive. On average, the groups attained 78 per cent of their preferences towards the Commission and 55 per cent of their preferences towards the Parliament and the Council. The preference attainment analysis also revealed that the majority of the recommendations tabled by the pro-migrant groups were inline with the guidelines of the UNHCR, case law on the status and rights of beneficiaries of international protection as well as resolutions of the Council of Europe. Despite this remarkable concordance, though, a multitude of provisions remained unconsidered by the Parliament and the Council.

The preference attainment rates of the groups towards the Parliament and Council, that were only slightly above average, led some interest representatives to believe that even representative and well-known groups such as Amnesty International, the Red Cross, and Caritas Europa cannot pro-actively shape the content of policy initiatives. Representatives of ECRE, EWL, ILGA, and Asylum Aid, in turn, distinguished between the influence that a

group can exert on the Commission and the Parliament and the virtual impossibility of convincing the member states of more liberal asylum standards. The EU officials confirmed the different levels in influence. They explained that the pro-migrant groups were quite successful in convincing the Commission and the Parliament of their ideas. As this was not the case with the member states, according to the EU officials, the overall influence of the groups during the decision-making stage remained just above average.

Just as the previous cases have revealed, when the recast Qualification Directive was adopted, the level of resource dependence varied considerably. While members of the Commission staff and MEPs admitted having been reliant on further expert knowledge from the pro-migrant groups, this dependence could not be confirmed for the Council. As reasons for this difference in dependence levels, the interviewees named time constraints and understaffed Commission units and parliamentary committees. Even though the pro-migrant groups that lobbied on the recast Qualification Directive experienced similar capacity issues, the majority of the groups applied a strategy that enabled them to efficiently collect and distribute expertise among the EU officials. Nevertheless, the groups were not always successful in convincing their member organisations of the relevance and importance of the recast directive and, thus, parallel lobbying at EU and national level was not always as effective as it could have been. Regarding the dependence on political support and further legitimacy, the analysis of the recast Qualification Directive provides similar results as the analyses of the other case studies. According to the interviewees, only a minority of rather liberal politicians declared themselves to have been dependent on the support of the interest groups. Moreover, none of the EU officials acknowledged having been dependent on further legitimacy to justify their legislative decisions. Hence, the legitimacy problem that the pro-migrant groups have, resulting from insufficient participation structures, cannot have severely affected their overall influence on the recast Qualification Directive.

#### ***9.2.5 Results gained from the cross-case study comparison***

Comparing the results of the preference attainment analysis of all four case studies, what has been found is that the groups on average were more influential at drafting stage than during the further course of the negotiations. In all four cases, the preference attainment rates at drafting stage were significantly higher than during decision-making stage. The attributed influence assessment arrives at the same result: in most of the cases, both interest

representatives and EU officials perceived the influence of the pro-migrant groups to be higher at drafting stage than during the further discussions.

The results gained from the influence assessment across the case studies is summarised in the subsequent table.

Influence	LTR Directive	Extension of LTR Directive	Qualification Directive	Recast Qualification Directive
<b>Drafting stage</b>				
Preference attainment	60 %	70 %	65 %	78 %
Attributed influence	Interest groups: significant influence EU officials: significant influence	Interest groups: < medium influence EU officials: low influence	Interest groups: significant influence EU officials: medium influence	Interest groups: medium influence EU officials: medium influence
<b>Decision-making stage</b>				
Preference attainment	42 %	40 %	34 %	55 %
Attributed influence	Interest groups: low influence EU officials: low influence	Interest groups: low influence EU officials: low influence	Interest groups: low influence EU officials: low influence	Interest groups: < medium influence EU officials: low influence

**Table 51: Cross-case study comparison of influence of pro-migrant groups (preference attainment rate and attributed influence)**

With regards to the effect of the decision-making procedure on the influence that the interest groups could exert on the respective directives, no clear conclusions can be drawn from the cross-case study analysis. The results of the preference attainment at drafting stage indicate that the Commission was more receptive towards the ideas of the pro-migrant groups under ordinary legislative procedure than under negotiation procedure. The findings of the attributed influence assessment, on the contrary, draw a completely different picture – ascribing pro-migrant groups only low to less than medium influence under ordinary legislative procedure. The results on the preference attainment of the groups during the further course of the negotiations are also puzzling. While the figures on the two LTR Directives indicate that the change in the decision-making procedure did not have a significant effect on the influence of the groups, the figures on the two Qualification Directives suggest that with the introduction of the ordinary legislative procedure the influence of the groups increased. Interest representatives and EU officials, by the majority, attested the groups low influence during the decision-making process of all four directives. The comparison of the influence results for the LTR Directive and its extension reveals that for the former the alternative hypothesis can be



confirmed. For the latter, however, the empirical data supports the null hypothesis. Hence, both under negotiation and ordinary legislative procedure the influence of the pro-migrant groups on the two LTR Directives remained less than medium. Comparing the influence results of the Qualification Directive and its recast, in turn, in both cases the empirical data proves the alternative hypotheses. While under consultation procedure the influence of the pro-migrant groups remained low, under ordinary legislative procedure the groups were able to exert more influence – albeit only slightly higher than medium. As the cross-case study results do not allow for clear-cut judgements about the effect of the decision-making procedure on the influence of the pro-migrant groups, further factors that might affected the influence of the pro-migrant groups need to be examined.

What explains the different levels in influence? Why have the pro-migrant groups been more influential at drafting stage than during decision-making stage? The confrontation of the assumptions made about the resource dependence structures with the empirical data that has been gathered in interviews with interest representatives and EU officials has revealed that not all assumptions apply to the observed reality. First, with a view to legitimacy, it was expected that both the Commission and the Parliament are dependent on this type of resource. The majority of the interviewees, however, denied such dependence. While the Commission officials solely explained their independence by emphasising that the collection of expertise is the exclusive purpose of stakeholder consultations, the majority of the interviewed MEPs referred to their mandate as directly elected politicians, which sufficiently legitimises their legislative authority. In contrast, the empirical findings confirmed the Council's independence from further legitimacy provided by pro-migrant groups, just as expected in the theoretical framework.

Regarding the dependence on support, the assumptions that were made, again, could only be proven for the Council. Just as it had been predicted, the pro-migrant groups tended to position themselves closer to the Commission and the Parliament. As a consequence, the JHA Counsellors and members of the Council General Secretariat staff denied having been dependent on support from the groups. But so did the Commission officials and MEPs – despite the assumption that the Commission and the Parliament would be reliant on allies that help them convincing their opponents of their ideas. Interestingly, though, some interest representatives confirmed that this kind of allying took place – especially when the latest two directives were negotiated.

With regard to the dependence on expert knowledge, in turn, the empirical data proves the assumptions made in the theoretical framework. While Commission officials and MEPs acknowledged having consulted pro-migrant groups to gain further information because of their limited personnel and expertise and due to time-constraints, the JHA Counsellors presented themselves as being less dependent on NGOs. Instead, they referred to the expertise of their colleagues in the member states. As such, what appears to have affected the influence of the pro-migrant groups on the four directives most is their ability to provide the EU institutions with expert knowledge. Thereby, it is undisputed that the groups were in possession of expertise that the EU institutions could not acquire themselves. All groups cooperated with national organisations that work on the ground and therefore know about the needs and problems of migrants and beneficiaries of international protection and are familiar with problems in national asylum and integration practices. What all of them lacked, however, were sufficient financial and personnel capacities to monitor the inter-institutional negotiations closely and provide information whenever the EU decision-makers needed it. Furthermore, some of the groups did not have liaison offices in Brussels – a disadvantage that further hampered a close contact with the EU officials. Not even the division of labour between the Brussels secretariats and their member organisations, as the interest representatives explained, could always make up for their limited resources. As a consequence, they were not always capable of providing expert knowledge timely and flexibly enough to exert influence on the decisions of the various policy makers. The following table summarises the resource dependence structures.

Dependence on	LTR Directive	Extension of LTR Directive	Qualification Directive	Recast Qualification Directive
<b>Expert knowledge</b>				
Commission	Yes	Yes	Yes	Yes
Parliament		Yes		Yes
Council	Marginal	No	Marginal	No
<b>Support</b>				
Commission	No	No dependence but allied with groups	No	No
Parliament		No		No
Council	No	No dependence but few JHA Counsellors allied with groups	No	No dependence but few JHA Counsellors allied with groups
<b>Legitimacy</b>				
Commission	No	No	No	No
Parliament		Marginal		No
Council	No	No	No	No

**Table 52: Cross-case study comparison of dependence structures of EU institutions**

What can we learn about resource dependence theory from the findings of the four case studies? Firstly, the relevance of expert knowledge as a crucial access good to exert influence on the EU institutions has been confirmed by the empirical data. Secondly, legitimacy and support do not seem to be resources that the EU institutions perceive themselves being dependent on. With a view to legitimacy, one reason for the relative non-importance of this resource could be that pro-migrant groups represent migrants and asylum-seekers that, in turn, only form a comparably small portion of European society. Thus, the EU institutions might be dependent on further legitimacy but do not consider pro-migrant groups to be a relevant source of legitimisation. Another explanation for denying being dependent on legitimacy might be that the EU institutions do not want to appear insufficiently legitimised as this would weaken their entitlement to legislative authority. The same might apply to the unwillingness of EU officials to acknowledge their dependence on support. Doing this might degrade their appearance as authoritative legislators. However, before legitimacy and support are to be rejected as access good, further cases should be studied.

### **9.3 How do the findings of this analysis speak to the wider literature on the EU asylum and migration policy?**

For the assessment of the influence of pro-migrant groups on the EU asylum and migration policy, the policy-shaping processes of four directives have been thoroughly traced. As such, the output of this research project speaks to the wider literature on the EU asylum and migration policy inasmuch as the aims, contents, and effectiveness of policy measures are concerned.

Previous works criticised early forms of intergovernmental cooperation on asylum and migration matters for having produced lowest common denominator decisions and, therefore, having for a long time impeded substantial integration efforts in this policy area. Moreover, this phase is said to have precluded any parliamentary and judiciary scrutiny. Intergovernmentalism, it was decided by scholars, allowed for minimalist cooperation to compensate for the abolition of internal border controls. Beyond that, however, the member states sought to protect their national sovereignty. Through successive treaty changes the institutional proceedings in asylum and migration affairs were reformed. Most political scientists welcomed the gradual empowerment of the Commission, the Parliament, and the ECJ that supposedly put an end to the dominance of the member states and made the policy-making processes accessible for NGOs. On whether previous policy measures have helped

build a fortress Europe or in fact pursued a truly humanitarian intention, the scholarly opinions differ. While some authors argue that the harmonisation efforts in asylum and migration affairs are purely driven by security concerns and aim at reducing immigration numbers, others regard the harmonisation efforts as having prevented some member states from upholding or introducing more restrictive measures. Even those countries that already had in place more liberal legislation, as some authors seem to observe, have not lowered their asylum and migration standards in the course of the integration process.

The research at hand features the ideal case study design to examine whether the entry into force of the Lisbon Treaty and the relevant institutional reforms in asylum and migration matters have made the policy venues at EU level available to pro-migrant groups and have resulted in higher integration and protection standards. Thus, this research can add to the above discussion about the building of a fortress Europe versus the creation of an asylum and migration system that pursues humanitarian intentions.

At first sight, all four directives have improved the living conditions of TCNs, refugees, and beneficiaries of subsidiary protection. The 2003 LTR Directive granted TCNs, who have lived legally in a EU member state for an uninterrupted period of five years and have a stable and regular source of income and health insurance, long-term resident status. Furthermore, through the LTR Directive, long-term residents are treated like EU citizens in the following areas: access to employment, self-employed activity, education and vocational training, core social protection and assistance, and to goods and services. With the adoption of the 2011 LTR Directive, beneficiaries of international protection were also considered for long-term resident status and can now profit from the extensive list of rights. Based on the Geneva Convention, the 2004 Qualification Directive is to ensure that all assessments of applications for international protection follow the same criteria. Moreover, the directive guarantees a series of rights for those persons that qualify for refugee status. The 2012 recast Qualification Directive extends its scope to beneficiaries of subsidiary protection and aligns the rights attached to both protection statuses. This regards the following: right of non-refoulement, access to the labour market, education, procedures for recognition of qualifications, health care, and appropriate accommodation. As such, the comparison of the original directives and their latest versions has revealed that they led to better protection standards by opening those rights to beneficiaries of international protection.

But looking at the content of the directives exclusively is not enough to judge who are the policy-makers that promote higher integration and protection standards in the EU and which actors try to impede these efforts. The review of the literature on the EU asylum and migration policy has illustrated that the majority of scholars regard the Commission and the Parliament as institutions that pursue a rights based approach, whereas decisions by the Council are driven by cost-benefit calculations. The following recapitulation of the results from interviews with interest representatives and EU officials allows further insights into this matter.

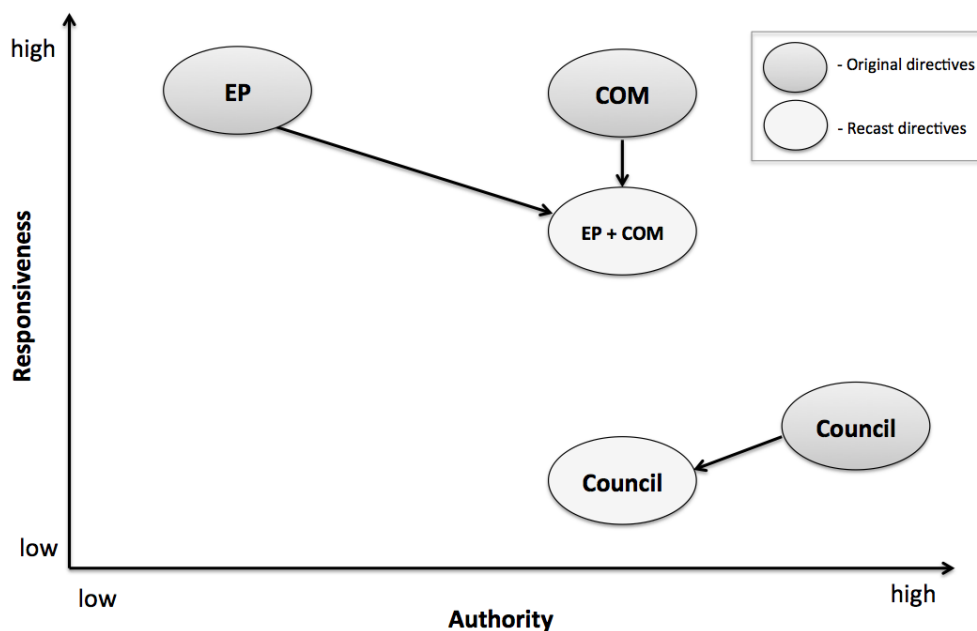
For the Commission, the introduction of the ordinary legislative procedure did not bring about a change in authority. The institution retained its right of initiative and the right to observe and mediate the further negotiations. Rather than that, it was the institutionalisation of stakeholder consultations, amongst others through online consultations on the future of the Common European Asylum System, which facilitated access to the Commission. Nevertheless, the interviewed interest representatives reported that during the negotiations of the extension of the LTR Directive and the recast Qualification Directive the EU officials were not as responsive towards the pro-migrant groups as they were the first time around. While the interviewees still ascribed to the Commission a genuine rights-based approach towards asylum and migration matters, they also observed that the Commission was more and more considering the opinion of rather conservative member states in its proposals and prefers abandoning a provision instead of risking that a directive is rejected altogether.

Unlike the Commission, the Parliament underwent a significant change in authority that led to the right to co-decide on asylum and migration matters. With a view to its accessibility, the interest groups have always considered the Parliament a transparent and open institution. Furthermore, both under negotiation and ordinary legislative procedure the reports of the Parliament are known as following a human rights-based approach. Yet, the Parliament is also reported to take its new responsibility seriously and increasingly weighs feasibility against more liberal standards. As a consequence of the modified decision-making that granted the Parliament the same legislative competences as the Council has, the institution's responsiveness towards the political objectives of the interest groups has decreased by some degree. In addition to that correlation, some interviewees emphasised that with the general political climate in Europe becoming more conservative, it has also become more difficult to

convince MEPs of instruments that would grant migrants and asylum-seekers further rights because their national governments more and more predetermine their voting behaviour.

Regarding the Council, both interest representatives and EU officials have revealed that the political opportunity structures at Council level are very limited. Opaque organisation and proceedings have impeded the lobbying attempts of the pro-migrant groups at EU level and in the member states. To bypass the Council General Secretariat and national ministries, the pro-migrant groups sought to access the Permanent Representations, which, however, lack authority, as they are bound by instructions from the national governments. Furthermore, EU officials themselves represented the Council as the advocate of national interests that has to consider implementation costs in its final decision and, therefore, is the least responsive EU institution regarding the concerns of pro-migrant groups. According to interest representatives, the reluctance of the Council and the member states to accept the recommendations of pro-migrant groups has even grown in recent years against the background of a generally more conservative political atmosphere in Europe.

For a better understanding of the changes in authority and responsiveness of the three EU institutions, the following figure summarises the empirical findings.



**Figure 1: Changes in authority and responsiveness of EU institutions during negotiation and ordinary legislative procedure**

What can be learnt from this doctoral thesis about the processes that shape the EU asylum and migration policy is that, with the Parliament becoming an equal co-decision maker in asylum and migration matters, policy outcomes have not automatically become more liberal. This

development may come as a surprise, given that the reports of the Parliament on the original LTR and Qualification Directives fully supported the proposal drafted by the Commission or even went beyond the range of rights that the Commission had asked for. During the negotiations of those two directives, it was the Commission and the Parliament on which the pro-migrant groups could count, whereas the Council clearly presented the counter-part in the decision-making process. From these insights into the attitudes and positioning of the EU institutions, one could have expected that with the introduction of the ordinary legislative procedure the Commission and the Parliament might overrule the Council in the negotiations of the new LTR and recast Qualification Directives. On the contrary, the genuinely conservative political atmosphere towards immigration to the EU and the increased responsibility towards the constituency that the MEPs experience today have created a situation in which the two liberal institutions fear to ask for too much so as not to risk that new asylum and migration instruments are refused by the member states altogether. As a consequence, the proposals of the Commission for the extension of the LTR Directive and the recast Qualification Directive present compromises that the Commission expected to be acceptable for the member states. Moreover, rather than going through a first and second reading, the two directives were adopted in early agreements leaving the Parliament little room to insist on certain provisions. The comparison of earlier draft reports that the Parliament compiled before the introduction of the ordinary legislative procedure and the final reports that were voted on just a few weeks before the adoption of the directives has revealed that the Parliament dropped a number of provisions that better reflected the concerns of the pro-migrant groups. As such, both the empowerment of the Parliament and the associated growing responsibility to their constituency as well as a prevalent reluctant attitude towards further immigration to Europe have shaped the outcome of the analysed directives.<sup>13</sup>

#### **9.4 Limitations of the study**

The purpose of this study was to assess the influence of pro-migrant groups on the selected case studies. Influence assessment in itself presents a difficult undertaking, as it is a phenomenon that is not directly observable. The possibilities of modifying the decisions of

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<sup>13</sup> Generalisations from the findings of the case studies in the area of asylum and migration to other policy areas however, cannot be made because, as Lowi (1964) put it, policy drives politics. Thus, the character of a policy – regulatory, distributive, redistributive – affects political decision-making processes and opportunity structures.

policy-makers, and as such exerting influence, are endless. They range from direct lobbying over trying to affect the selection of policy-makers to influencing public opinion. This research is limited to assessing the influence of direct lobbying attempts and only considers pro-migrant groups that tabled recommendations on the selected directives. For this study, it was sought to make influence observable by triangulating different measures: preference attainment analysis and attributed influence assessment. Both measures have their shortcomings but combined together they allow reality to be captured more accurately. Analysing the preference attainment of the pro-migrant groups provides the basis of the influence assessment. In doing so, the recommendations of the groups are directly contrasted with the positions of the EU institutions that they lobbied. The fact that some recommendations are reflected in the positions of the policy-makers, however, does not automatically mean that the pro-migrant groups are responsible for them. Therefore, the recommendations of the groups were also compared with the positions and guidelines of the UNHCR as well as with international conventions and case law to see whether the groups were the only ones that lobbied for a certain provision or whether they were supported by other external actors. Furthermore, the preference attainment analysis was triangulated with the attributed influence assessment. As drawing on the self-assessment of the groups exclusively could have distorted the results by overstating their actual influence, EU officials have also been interviewed on the performance and influence of the pro-migrant groups. Applying these measures, it was sought to approach the phenomenon of influence from different angles and to arrive at results that are as objective as possible. However, the application of these measures, at the same time, excludes any type of influence exertion other than direct lobbying. One limitation of this study, therefore, is that other types of influence are excluded from the analysis, as selected operationalisation would not work for them.

Moreover, in the course of this analysis, it has been illustrated that the decision-making processes in asylum and migration policies are complex. They are not always accessible at first sight and certainly cannot be revealed in all their facets. What is safe to say, however, is that alongside the EU institutions, it is advisory bodies such as the UNHCR, international conventions, European resolutions, case law and last but not least non-governmental actors like pro-migrant groups that form the puzzle pieces of the decision-making process and undoubtedly have an effect on the outcome of new legislation. Due to the complexity of the political system of the EU, however, the exact influence that pro-migrant groups can exert on policy outcomes is difficult to conceive. The variety of actors and channels of influence



impede the assessment of a single actor's influence, as its performance always needs to be seen in relation to the performance of other actors. A second limitation of this study therefore is the impossibility of assessing the influence of each pro-migrant group individually. Rather than that, for this conclusion the influence results of the different pro-migrant groups have been merged for each case study. As the groups have cooperated with each other during the negotiations of the four directives and because their recommendations did not differ significantly from each other, treating them as allies in their attempt of exerting influence on the outcome of the directives appears plausible.

### **9.5 Avenues for future research based on this work**

A further limitation of this study is that it is limited to only four case studies. However, this opens avenues for future research. Due to the time and effort that it takes to collect and process the empirical data needed to assess the influence of the pro-migrant groups and to analyse the resource dependence structures between the groups and the EU institutions in order to learn about the factors that affect political influence, this work was limited to four case studies. Moreover, only those four case studies were selected because it was foreseeable that they would all be adopted within the timeframe that was set for the doctoral research.

This research aimed at testing and refining the theoretical assumptions about the policy-making process of the four case studies. As such the study only meets analytical generalisability. To meet statistical generalisability and, thus, arrive at a conclusion that can be generalised to the wider population – the EU asylum and migration policy in general – further cases would need to be studied. This is particularly recommended regarding the analysis as to what extent the decision-making procedures affect the influence of the pro-migrant groups. The analysis of the two LTR Directives and the two Qualification Directives did not produce clear-cut results on the effect of the decision-making procedure on influence. While for the LTR Directives no said effect could be found, the examination of the Qualification Directives has revealed that the introduction of the ordinary legislative procedure resulted in more influence on the part of the pro-migrant groups. As this result is contradictory to the findings of the LTR Directive, no generalisation about the effect of the decision-making procedure and influence can be made. Moreover, even though all four case studies revealed that the influence of the groups was higher at drafting stage than during the further negotiations, there is no absolute evidence that this is also true for further case studies.

Therefore, to get a better understanding of the general effects of the decision-making procedure on the influence of pro-migrant groups and to arrive at more generalisable conclusions about the responsiveness of the different EU institutions towards the interest groups, future research should include further case studies. For this extended analysis the following six texts should be considered, as they are all currently subject to a recast exercise: the Receptions Directives<sup>14</sup>, the Dublin Regulations<sup>15</sup>, and the Procedures Directives<sup>16</sup>. As such, those directives meet the same criteria as the LTR Directive and the Qualification Directive: the original texts were negotiated under consultation procedure, whereas their recasts are currently discussed under ordinary legislative procedure. Hence, the analysis of those directives allows examination of whether and how the decision-making procedure affects the responsiveness of the EU institutions towards the pro-migrant groups and, therefore, their overall influence. Including these measures, finally, the core portfolio of the Common European Asylum System will be covered by the analysis and will allow for generalisation from the multiple cases to the EU asylum and migration policy.

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<sup>14</sup> Council Directive of 27 January 2003 Laying down Minimum Standards for the Reception of Asylum Seekers (2003/9/EC) and its recast currently under negotiation

<sup>15</sup> Council Regulation of 18 February 2003 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Asylum Application Lodged in One of the Member States by a Third-Country National (343/2003/EC) and its recast currently under negotiation

<sup>16</sup> Council Directive of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status (2005/85/EC) and its recast currently under negotiation

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## **11. List of Interviews**

Interview 1 conducted with a representative of Caritas Europa on 7 June 2011 in Brussels.

Interview 2 conducted with a Member of the European Parliament on 9 June 2011 on the phone.

Interview 3 conducted with a staff member of the Council General Secretariat on 14 June 2011 in Brussels.

Interview 4 conducted with a staff member of the Council General Secretariat on 14 June 2011 in Brussels.

Interview 5 conducted with a staff member of the Secretariat of the LIBE Committee on 20 June 2011 in Brussels.

Interview 6 conducted with a Commission official on 21 June 2011 in Brussels.

Interview 7 conducted with a representative of the Permanent Representation of Finland to the EU on 21 June 2011 in Brussels.

Interview 8 conducted with a representative of Terre des Hommes on 27 June 2011 in Brussels.

Interview 9 conducted with a Member of the European Parliament on 28 June 2011 in Brussels.

Interview 10 conducted with a Member of the European Parliament on 29 June 2011 in Brussels.

Interview 11 conducted with a representative of the Permanent Representation of the United Kingdom to the EU on 30 June 2011 in Brussels.

Interview 12 conducted with a Commission official on 4 July 2011 on the phone.

Interview 13 conducted with a former representative of Terre des Hommes on 4 July 2011 in Berlin.

Interview 14 conducted with a representative of the Jesuit Refugee Service Europe on 5 July 2011 in Brussels.

Interview 15 conducted with a representative of the Red Cross on 5 July 2011 in Brussels.

Interview 16 conducted with a representative of the Migration Policy Group on 6 July 2011 in Brussels.

Interview 17 conducted with a representative of the European Women's Lobby on 6 July 2011 in Brussels.

Interview 18 conducted with a representative of the Churches' Commission for Migrants in Europe on 7 July 2011 in Brussels.

Interview 19 conducted with a representative of the Permanent Representation of Germany to the EU on 8 July 2011 in Brussels.



Interview 20 conducted with a representative of the Permanent Representation of Latvia to the EU on 11 July 2011 in Brussels.

Interview 21 conducted with a representative of the Permanent Representation of Hungary to the EU on 12 July 2011 in Brussels.

Interview 22 conducted with a representative of the Permanent Representation of Belgium to the EU on 13 July 2011 in Brussels.

Interview 23 conducted with a Member of the European Parliament on 13 July 2011 in Brussels.

Interview 24 conducted with a representative of the European Council on Refugees and Exiles on 14 July 2011 in Brussels.

Interview 25 conducted with an Assistant to a Member of the European Parliament on 14 July 2011 in Brussels.

Interview 26 conducted with a Commission official on 15 July 2011 in Brussels.

Interview 27 conducted with an Assistant to a Member of the European Parliament on 15 July 2011 in Brussels.

Interview 28 conducted with a representative of AI Europe on 16 July 2011 in Brussels.

Interview 29 conducted with a representative of Solidar on 19 July 2011 in Brussels.

Interview 30 conducted with a representative of the Permanent Representation of Greece to the EU on 19 July 2011 in Brussels.

Interview 31 conducted with a representative of the Permanent Representation of Greece to the EU on 19 July 2011 in Brussels.

Interview 32 conducted with a Member of the European Parliament on 20 July 2011 in Brussels.

Interview 33 conducted with a representative of the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association on 20 July 2011 in Brussels.

Interview 34 conducted with a Commission official on 25 July 2011 in Brussels.

Interview 35 conducted with a representative of the Permanent Representation of the Netherlands to the EU on 26 July 2011 in Brussels.

Interview 36 conducted with a representative of the Permanent Representation of Austria to the EU on 27 July 2011 in Brussels.

Interview 37 conducted with an Assistant to a Member of the European Parliament on 28 July 2011 in Brussels.

Interview 38 conducted with a representative of the Permanent Representation of Poland to the EU on 29 July 2011 on the phone.

Interview 39 conducted with a former representative of the European Network Against Racism on 8 August 2011 on the phone.

Interview 40 conducted with a former representative of the European Council on Refugees and Exiles on 15 August 2011 on the phone.

Interview 41 conducted with a representative of Asylum Aid on 1 September 2011 on the phone.

Interview 42 conducted with a former representative of the Starting Line Group on 25 October 2011 on the phone.

Interview 43 conducted with a Member of the European Parliament on 9 December 2011 via email.

Interview 44 conducted with a former representative of the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association on 16 December 2011 on the phone.

Interview 45 conducted with a representative of the UNHCR Bureau of Europe on 17 January 2012 on the phone.

Interview 46 conducted with a representative of the Churches' Commission for Migrants in Europe on 6 March 2012 on the phone.

Interview 47 conducted with a representative of the European Women's Lobby on 7 March 2012 on the phone.

Interview 48 conducted with a former Administrator in the Secretariat of the LIBE Committee on 4 May 2013 on the phone.

Interview 49 conducted with a former representative of the European Council on Refugees and Exiles on 24 May 2012 on the phone

Interview 50 conducted with a representative of Amnesty International European Institutions Office on 24 May 2012 on the phone.