

Lobbying for the Rights of Refugees: An Analysis of the Lobbying Strategies of Pro-migrant Groups on the Qualification Directive and its Recast

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Abstract

At the 1999 Tampere Council Summit, the Heads of the European Union (EU) Member States agreed to create common standards for refugees and persons in need of subsidiary protection by 2012. In 2004, as part of the Common European Asylum System, a first version of the Qualification Directive was adopted. In its effort to further approximate the rights of refugees and beneficiaries of subsidiary protection, the Commission opened a recast process on the Qualification Directive in 2009. The negotiations of both 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 emergence of such groups and the variety of their missions. This article, in turn, firstly, identifies those pro-migrant groups active in lobbying on both Qualification Directives; secondly, explores their lobbying strategies; and thirdly, assesses to what extent political opportunity structures affected the lobbying choice of the pro-migrant groups. Analysing the lobbying efforts of the pro-migrant groups on the original Qualification Directive and its post-Lisbon recast allows for an evaluation of whether the groups have benefited from the modified decision-making procedures. The study is based on a documentary analysis of the strategy papers and recommendations of the groups, as well as on 28 in-depth expert interviews with EU officials and interest representatives.

Keywords

EU asylum policy; Interest representation; Lobbying strategy; Political opportunity structures

THE DEVELOPMENT OF THE EUROPEAN UNION (EU) ASYLUM AND MIGRATION POLICY has come a long way and has only recently born fruits. First integration efforts resulted in the signing of the 1993 Maastricht Treaty that, however, only represents a compromise solution. The Treaty introduced the following reforms: co-operation by agreement between national sovereigns, shared right of initiative between the Council of the European Union (Council) and the Commission of the European Communities (Commission), unanimous acting on initiatives by the Council, the right of the European Parliament (Parliament) to be informed and consulted, and jurisdiction by the European Court of Justice (ECJ) as far as international conventions are concerned (Geddes 2008; Ter Steeg 2006). It has widely been criticised for producing non-binding and lowest common denominator recommendations or agreements (Geddes 2001; Mester 2000). Critics further disapproved of the lacking parliamentary and judiciary control that hindered the

development of a coherent policy (Lindstrøm 2005; Niessen and Rowlands 2000). This criticism was supported by the Commission, Parliament, and ECJ that called for more participation rights and the communitarisation of the asylum and migration policy (Geddes 2008). With the coming into force of the Amsterdam Treaty in 1999, migration and asylum matters were integrated into the first pillar; qualified majority voting (QMV) and the consultation of the Parliament was introduced for visa affairs, the co-decision procedure with QMV was introduced for asylum issues, and the consultation procedure with unanimity voting was adopted for migration issues. Moreover, the Commission was granted the exclusive right for initiatives and the ECJ was provided with the right of preliminary ruling (Geddes 2008; Brinkmann 2004). With the 2004 Nice Treaty, QMV was established for legal migration, visa policy, and the integration of third country nationals. Under the 2009 Lisbon Treaty, all provisions pertaining to Justice and Home Affairs (JHA) were pooled in Title V 'Area of Freedom, Security and Justice'. Article 77 (2) and Article 294 TFEU determine that the Parliament and the Council share the right to legislate on border, asylum, and migration policies under QMV.

As the competences of the different EU institutions have expanded, so did their ambitions to harmonise the national legislations in the areas of asylum and migration. At the 1999 Council summit in Tampere, 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 'Convention and Protocol relating to the Status of Refugees' (Geneva Convention). As part of that ambitious programme, the Commission (2001) published its proposal for the Qualification Directive¹ that differentiates between refugee status and subsidiary protection status in 2001. In October 2002, the rapporteur responsible for the Qualification Directive, Jean Lambert, 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). As the comprehensive impact assessment of the implementation of the Qualification Directive had shown that there is further need for approximating the grounds and the content of international protection, the Commission opened the recast of the original directive² in October 2009 (Commission 2009: 5). After negotiations in the Parliament and the Council, both institutions adopted the recast Qualification Directive under ordinary legislative procedure in December 2011 (Parliament and Council 2011).

This historical outline has illustrated that the recently adopted instruments that harmonise asylum policies at EU level are the results of inter-institutional power struggles that have been fought over the past two decades. In addition to the EU institutions, the paper introduces another type of stakeholders that is supposed to have co-shaped the policy outcomes of the Qualification Directive and its recast – interest groups that advocate for the concerns of people who seek international protection in the EU (hereinafter pro-migrant groups). In the paper, it is argued that pro-migrant groups have adapted their lobbying venues and strategies to the changing political opportunity structures at EU level. The two Qualification Directives have been chosen as case studies because, since they are both located in asylum policies, the same groups that had lobbied on the original Directive also lobbied on the recast. However, both directives differ in the decision-making procedure under which they were adopted. While the original Qualification Directive had been negotiated under consultation procedure, its recast was adopted under ordinary legislative procedure and, thus, by the Parliament and the Council. Hence, the comparison

¹ Council directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection.

² Directive 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).

of the two case studies allows to test whether the change in the political opportunity structures has affected the lobbying channels chosen by the pro-migrant groups.

For this analysis, eight groups that actively tried to exert influence on both directives have been identified and their lobbying strategies as regards the original and the recast Qualification Directive are compared. The pro-migrant groups that lobbied on the two directives are the following: Amnesty International Europe (AI Europe), Asylum Aid, the Churches and Christian Organisations in Europe on Migration and Asylum (CCOEMA), the European Council on Refugees and Exiles (ECRE), the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA Europe), the European Women's Lobby (EWL), the Red Cross, and Terre des Hommes (TdH). The analysis is based on a documentary analysis of the strategy papers and recommendations of the pro-migrant groups as well as on 28 expert interviews with the representatives of the groups and EU officials conducted in 2011 and 2012.

Theoretical embedding

To analyse the reason for using certain lobbying channels in the attempt of the groups to exert influence on the two Qualification Directives, the political opportunity structures prevalent at that time need to be considered as theoretical framework. The opportunities of these groups to participate in political decision-making processes have widely been discussed in the literature. Schrover and Vermeulen (2005) assume that pro-migrant groups, just as any other civil society representative, are dependent on the attitude of political actors towards them. They distinguish between different societies: one, societies that treat immigrants as undesirable foreigners and, thus, impede organised interest representations; and two, liberal societies that encourage and stimulate the advocacy work of interest groups. Ireland (2006) and Guiraudon (1997) concretise the political opportunity structures as legal and political bureaucrats, political parties, and trade unions that act as gatekeepers and control access to political participation. If the political opportunity structures at national level are blocked, Tarrow (2010) and Keck and Sikkink (1998) suggest that the affected interest groups seek allies and access points at another level – e.g the EU institutions – or might also switch between the different policy venues (Risse and Sikkink 1999). According to Guiraudon (2003), the EU institutions appear to be more receptive towards weak societal actors who aim at promoting subjects like anti-discrimination and social inclusion. Geddes (2000: 635), in turn, differentiates between the attitudes of the EU institutions towards pro-migrant groups. He argues that it is the Commission and the Parliament in particular that use interest groups as allies to expand their authority in the areas of asylum and migration and find European solutions for Europe-wide issues. Beyond that, the case law of the ECJ does not only strengthen the rights of third-country nationals but also facilitates the advocacy work of pro-migrant groups (Geddes 1998: 709). The Council, on the contrary, is expected to be less receptive towards the demands of the pro-migrant groups (Westlake and Galloway 2004).

As the Member States have had the exclusive right to decide about pre-Lisbon asylum matters and since they still play a crucial legislative role today, national institutions must not be neglected in the lobbying strategies. Proponents of the multi-level governance approach (Ansell 2000; Beyers 2002; Blatter 2001; Greenwood et al. 1992; Hooghe 1996; Kohler-Koch and Eising 1999; Marks 1996; Pollack 1997), therefore, stress that European policies are negotiated at subnational, national, and EU level which offers interest groups a multitude of access points. As a consequence of this multi-levelled decision-making, Eising (2004) suggests that interest groups seek to divide labour between the Secretariats in Brussels whose task it is to liaise with EU policy-makers and national members that are supposed to lobby decision-makers at Member State level.

Deducing from these theoretical considerations, it is expected that pro-migrant groups 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 target. 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, the lobbying of 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.

The assumptions on the correlation of authority and responsiveness on the part of the EU institutions and lobbying choices to be made by the pro-migrant groups is summarised in Figure 1.

Figure 1: Correlation between authority and responsiveness of the EU institutions and lobbying conditions for pro-migrant groups

		Responsiveness	
		High	Low
Authority	High	Ideal lobbying conditions	Elaborate lobbying conditions
	Low	Unfeasible lobbying conditions	Hopeless lobbying conditions

To what extent the authority and responsiveness of the EU institutions had an actual effect on the lobbying strategies of the pro-migrant groups is tested in the remainder of the article. Therefore, the strategies of the pro-migrant groups that actively lobbied on the outcomes of the two Qualification Directives are juxtaposed and linked with one another.

Analysis of the lobbying strategies

As outlined above, eight groups have been identified that were active in lobbying on the two Qualification Directives by screening those stakeholders that contributed to the Commission's online consultation on the 2007 'Green Paper on the future Common European Asylum System'. As this Green Paper reflects on those directives that had already been adopted in the area of asylum and migration, it appears to be an expedient starting point for sampling. Moreover, in interviews with interest representatives further pro-migrant groups could be singled out. While only three of them sought to exert influence on the original Qualification Directive, all eight of them were involved in lobbying on the recast. In the following sections, it is illustrated what lobbying strategies the individual groups applied in order to influence the policy outcome of the two directives.

How did the pro-migrant groups lobby on the original Qualification Directive?

Starting with the original Qualification Directive, it is now being elaborated which actors the pro-migrant groups included in their lobbying strategy. ECRE was the only one of the three groups that addressed the Commission. As regards the Parliament, none of the interest groups appear to have considered that institution in their lobbying strategies. The Council or national civil servants, in turn, were approached by all three of the groups. Their lobbying strategies are further elaborated below.

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). Then ECRE explained its position on complementary protection to the Commission (ECRE 2000a). The group also ascribed the Council a crucial role in the decision-making process and as such approached national civil servants in various ways. Its Brussels office forwarded comments on the proposal for a Qualification Directive to the Council intending to convince the Member States of its recommendations (ECRE 2001). ECRE also confirmed that it "met with the Presidencies of Italy (and) Ireland [...] to further promote its position". It also distributed its written comments on key issues among all Council working groups (ECRE 2005: 4). In addition, ECRE approached national politicians and asked its member organizations to lobby national ministries and parliaments. A former member of ECRE staff reported that, at times, the liaison office received information from the Commission about the negotiations in the Council which helped ECRE addressing those Member States that opposed its position (Interview 40).

AI Europe solely approached national civil servants but it did this pursuing a versatile strategy. 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 2001b; 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 2001a). 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). 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). AI Europe also targeted national ministries through their national sections. In its annual report, the Brussels offices emphasised how important it is "to influence EU decision-making also through the capitals" (AI Europe 2004: 6, 8). As guidance for the national sections, the Brussels office sent them updates on policy developments and advised them on how to pursue a joint strategy. Even though AI Europe did not approach the Commission during the drafting stage, it sought contact to Commission

officials during the inter-institutional negotiations to find out about the obstacles in the discussion and about the actors that opposed the position of AI Europe (Interview 19).

Under the umbrella of the Churches and Christian Organisations in Europe on Migration and Asylum, 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 addition to the joint comments, the strategies of its members are taken into consideration. The then person responsible for the advocacy work of CCME on the Qualification Directive confirmed that the groups was able to access Council General Secretariat but, nevertheless, had difficulties in developing personal contacts to opinion-makers in the Council working groups. The interviewee further pointed out that, as a form of compensation for the limited effectiveness on the Council General Secretariat, CCME began to cooperate with its national member organizations to complement the lobbying of EU institutions with advocacy work at national level. On this occasion, for instance, a number of its members got together to approach the German government in a joint letter (Interview 28). Caritas Europa, in turn, was in contact with few Permanent Representations such as the German and Portuguese one and sent representatives to the countries that held the EU Presidency when the directive was being negotiated to present its ideas (Interview 1). A representative of the JRS explained that the group did not pursue an individual strategy but either held meetings with other NGOs and EU officials or was represented by other groups in such meetings.

How did the pro-migrant groups lobby on the recast Qualification Directive?

The lobbying strategies of the pro-migrant groups on the recast Qualification Directive appear to have been much more comprehensive than their advocacy attempts on the original directive.

As regards the recast Qualification Directive, AI Europe started its advocacy work earlier in the policy-making process. The group (AI Europe 2007) first responded to the Commission's online consultation on the 'Future Common European Asylum System (CEAS)' and then met with the desk officer who was responsible for the file. The contact to Commission officials in charge of the file was maintained during the further course of the negotiations in order to stay informed about the different positions of the various stakeholders. What is more, AI Europe also frequently addressed the Parliament – more precisely the rapporteur, shadow rapporteurs, and further MEPs. As such, the group tried to approach as many opinion-makers in the Parliament as possible – like-minders and opponents – to ensure that its position was well-presented among the different political groups (Interview 19).

As EWL, Asylum Aid, and ILGA Europe cooperated with each other in their attempt to influence the outcome of the recast Qualification Directive, their lobbying strategies are jointly presented. Asylum Aid is the group that was least active in this joint advocacy work. It was solely involved in the formulation of the joint recommendations (EWL, Asylum Aid, ILGA Europe 2010) and not in the direct advocacy work (Interview 26). EWL and ILGA Europe, on the contrary, intensively lobbied the EU institutions. Their representatives confirmed that both groups were in close contact with the Commission. EWL (2007) responded to the Commission's online consultation on the CEAS and was invited by the Commission to inform the desk officers responsible for the dossier about issues that occurred in the course of the implementation of the original Qualification Directive. ILGA Europe had contacted the relevant Commission officials to ensure that their views on the sensitive treatment of lesbian, gay, bisexual, and transsexual (LGBT) people who are

persecuted on gender-specific grounds were taken into consideration from the very beginning of the recast process. Access points in the Commission, according to one interviewee, are the Directorate General for Home Affairs (DG Home) and the relevant persons in the cabinet of the Commissioner. In the Parliament, EWL exclusively met with Jean Lambert, the rapporteur of the directive. This contact was described as close and as a vital source of information as regards the inter-institutional discussions. Even though EWL did not approach other MEPs personally, it distributed its recommendation throughout the Parliament. ILGA Europe, in turn, met with the rapporteur, shadow rapporteurs, MEPs of the Socialists, Democrats, and the Lefts, as well as with the 'LGBT Intergroup'. From the information they received from these sources they could assess which MEPs are going to vote LGBT-friendly and who needs to be convinced of the demands of ILGA Europe. As regards the lobbying at Council stage, a representative of EWL attested that the group was not actively involved in advocacy work, whereas ILGA Europe appears to have been in contact with Permanent Representations (Interviews 11 and 22).

For the illustration of the advocacy strategy of CCOEMA, again, the results of the interviews with representatives of its member organizations are compiled. Concerning the lobbying of the Commission, Caritas Europa and CCME reported that they engaged in the drafting process before the Commission issued its proposal either by informal or formal consultations such as the online consultation on the 'Green Paper on the future CEAS' (CCOEMA 2007). After the issuance of the Commission's proposal for the directive, the groups forwarded their common position paper to the Parliament and the Council (CCOEMA 2010). Within the Parliament, Caritas Europa and CCME focussed on the rapporteur, shadow rapporteurs, and further MEPs affiliated to the LIBE committee in general (Interviews 1 and 12). An official of JRS explained that he attended hearings organised by the Parliament on the relevant file to find out about potential stumbling blocks and present the ideas of JRS. In general, he believes what Commission officials and MEPs are interested in is how asylum instruments affect the persons' concerns and, therefore, he always brings along stories about what his colleagues experienced on the ground to those meetings (Interview 9). Instead of approaching the Council General Secretariat, the groups reported that they focussed on Permanent Representations and ministers or administrative staff of the countries that held the EU Presidency at the time the recast was being negotiated (Interviews 1 and 9).

The lobbying strategy of ECRE towards the recast Qualification Directive was very comprehensive. At the drafting stage, the Commission invited ECRE to a stakeholder meeting before it issued its proposal after the group had responded to the Commission's online consultation (ECRE 2007). Moreover, ECRE (2008) provided the Commission with a report on the implementation of the original Qualification Directive, that they had produced for 20 Member States with the help of their European Legal Network on Asylum. In so doing, they pointed out to the ambiguity in wording where MS chose an interpretation that was not intended by the Commission. In further meetings with Commission officials, ECRE was asked to collect information from its national member organizations for the purpose of scrutinising the concerns raised by certain Member States. As regards the Parliament, ECRE pursued a versatile strategy too. They met with the rapporteur, the shadow rapporteurs, the secretariat of the LIBE committee, and the secretariats of the political groups. Furthermore, they were informed about those MEPs and political groups that seem to have opposed certain provisions in order to discuss their concerns. ECRE (2010a) also tabled a briefing paper for the EP just before the LIBE committee was going to do its orientation vote. The briefing paper was distributed to the various MEPs via the national member organizations. Finally, ECRE used resolutions and parliamentary questions to raise issues in the Parliament. 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. Again, in support of their demands, they referred to their findings of the implementation of the original Qualification Directive. For instance, ECRE confronted those MS that had already harmonised the different statuses at national level but still opposed a harmonisation at EU level with the actual situation in the Member States and argued that harmonising these standards between the Member States would not cause additional costs. The information they needed on the different national positions they got from their member organizations that are in frequent contact with the relevant ministries. Finally, ECRE also organised informal seminars to which officials from the Commission, the Parliament, and few Member States as well as relevant NGOs and academics were invited with the purpose of giving ECRE an understanding of the different views of the stakeholders (Interview 18).

A representative of the Red Cross declared that the group circulated its recommendations among the Commission, the Parliament, and Permanent Representations. Regarding the Commission, the Red Cross (2007) contributed to its online consultation on the CEAS in which the group advocated for the introduction of a single protection status and widening of the scope of the directive with special attention paid to vulnerable people. Key access points in the Commission were Heads of Units and in rare cases the Director of a DG. In the Parliament, the Red Cross (2010) focussed on the MEPs allocated to the LIBE committee and in particular on the rapporteur. They first met with the assistants to MEPs and then sometimes with the MEPs in a follow-up meeting. Furthermore, they were invited to conferences and meetings organised by the Commission and the Parliament or organised events themselves to which they invited EU officials to promote the ideas of the Red Cross and find out about the EU officials' positions. Beyond that, the Red Cross contacted the Permanent Representations of the respective EU Presidencies but, for instance, failed setting up a meeting with the Belgium representatives (Interview 10).

TdH (2007) first replied to the Commission's online consultation and then had a meeting with one of the commission officials involved in the drafting of the proposal for the recast. Furthermore, the former representative of TdH met with few MEPs who, according to him, were not familiar with the realities of the asylum system in the different Member States. In addition to presenting the position of TDH (2009), he used those meetings and coffee breaks during hearings to tell stories about what he experienced in his daily work with juveniles who applied for international protection (Interview 8). Another member of TdH staff stressed that it is particularly important to approach those 'swinging MEPs' who do not clearly support the position of TdH but at the same time are 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 5).

Beyond the lobbying attempts in Brussels, most of the interviewees also confirmed having tried to contact national decision-makers. In this context, the members of CCOEMA reported that their member churches focussed in particular on the officials of the Member State that held the EU Presidency (Interviews 1, 12, 28). Representatives of AI Europe (Interview 19), ECRE (2010: 7), EWL (Interview 11), ILGA (Interview 22) 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. 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 10). The same lobbying strategy was applied by TdH. One of its former representatives 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 (Interview 8). Asylum Aid as a UK based group, on the contrary, could not effectively contribute to the lobbying efforts of EWL and ILGA because of the resistance of the British government towards the claims of the groups and its reluctance to opt in to the new asylum instruments (Interview 26).

This section has revealed that the lobbying strategies of the pro-migrant groups differed as regards the two directives. While less attention was paid to the Commission when the original Qualification Directive had been negotiated, during the recast procedure all groups approached the Commission at the drafting stage. As reason for their early stage commitment they stressed that they wanted to ensure that their positions were taken into consideration from the very beginning of the decision-making process. A similar difference in strategy could be detected for the lobbying of the Parliament. During the negotiations of the original Qualification Directive, the Parliament was not considered in the advocacy strategies of the groups. When the recast was being discussed, on the contrary, the lobbying of relevant MEPs formed a significant part of their strategy. In the Parliament, the interest representatives met with the rapporteur and shadow rapporteurs of the directive, with members of the LIBE committee and other MEPs to which they had developed personal relations over time. With a view to their engagement with the Council, all pro-migrant groups reported that rather than approaching the persons responsible for the dossiers in the Council General Secretariat or the working groups, they met with officials working with the Permanent Representations or representing the EU Presidency when the directive were negotiated, as well as civil servants of the national ministries. More than during the negotiations of the original Qualification Directive, during the discussions on the recast, the staff of the Brussels liaison offices cooperated with their national member organization in the attempt of convincing national decision-makers of their position.

The increase in attention paid to the Commission and the Parliament implies that this is due to a change in political opportunity structures offered by those two institutions. The groups appear to have responded to this change. With a view to the Council, on the contrary, the access barriers seem to have remained the same. That would explain why the groups did not focus their means on lobbying the Council but contacted Permanent Representations, EU Presidencies, and decision-makers at national level instead.

To what extent do political opportunity structures determine the lobbying strategies of pro-migrant groups?

In order to test the preliminary assumptions about the effect of the authority and responsiveness of the EU institutions on the lobbying choices of the pro-migrant groups, these variables are examined for the Commission, the Parliament, and the Council during the two policy-making processes. For this assessment, information generated from expert interviews with the interest representatives and EU officials involved in the decision-making is analysed.

Commission

The majority of the interest representatives that has been interviewed on the accessibility of the EU institutions assessed the Commission as a predominantly open and responsive institution (Interviews 1, 8, 9, 11, 12, 18, 19). As reason for this openness, it was referred to the sincere intention of DG Home to widen the possibilities for asylum-seekers to obtain refugee status and improve the rights attached to the status (Interview 11). A further reason that was given regards the career background of the Commission officials working in DG Home – some of them appear to have worked with either NGOs or international organizations such as the UNHCR before (Interview 8). Nevertheless, the Commission was

not ascribed a general responsiveness towards NGOs: access rather varies between the Commission officials. Comparing the accessibility of the Commission over time, it is said to have become more difficult for the pro-migrant groups to approach Commission officials just after the separation of DG Justice and Home Affairs and due to the consequent personnel turnover (Interview 10, 12, 22). A further issue that was brought to the attention of the author is the general perception that the Commission more and more, already in its proposal, takes into account how far Member States are willing to go. That has resulted in a decrease in the responsiveness of the Commission towards the demands of the pro-migrant group. According to the interviewees, whenever the Commission senses reluctance from the capitals towards more progressive and liberal provisions, the Commission would prefer abandoning a provision to risking that a directive is rejected completely by the Member States (Interviews 11 and 22). At the same time, however, the Commission is reported having intensified its stakeholder dialogues by means of formal and informal meetings and consultations in recent years (Interview 1).

Commission officials themselves have also confirmed the Commission's openness towards NGOs. "It's not only that I am approached, I also approach them," one interviewee stressed (Interview 7). She referred to ECRE, EWL, and TdH as groups that she had consulted either formally or informally. As the main reason for the consultation of NGOs, the Commission officials pointed to the limited knowledge they possess about what is going on in the Member States. They argued that it is for instance difficult for the Commission to monitor and pinpoint those Member States that do not transpose the directive in the way the Commission meant it to be transposed. "NGOs are our eyes at Member States level. We don't have any other means of monitoring what's happening. We really base ourselves on what NGOs working on the ground tell us," one of the Commission officials said (Interview 7). Nevertheless, they stated that they cannot speak for all their colleagues and, thus, the responsiveness of the Commission depends on the person's receptiveness towards civil society and on the policy that is concerned (Interviews 3 and 7).

This self- and peer assessment of the responsiveness of the Commission towards pro-migrant groups has only partly proven the assumption that political opportunity structures did affect the lobbying choices of pro-migrant groups. On the one hand the Commission's general rights-based approach as regards asylum legislation appears to have made the institution a vital lobbying target. Moreover, the institutionalisation of stakeholder consultation might even have facilitated the access of the groups to the Commission. On the contrary, the interest representatives have noticed a growing reluctance towards recommendations of which the Commission assumes that the Member States would not approve of. As regards the authority of the Commission, no significant change between the negotiations of the original Qualification Directive and its recast could be observed. During both decision-making processes, the Commission had the right of initiative and functioned as a mediator in the negotiations between the Parliament and the Council. Thus, while the Commission's legislative authority remained high during both negotiations, its responsiveness towards the claims of the pro-migrant groups seems to have decreased slightly. This change in responsiveness notwithstanding, the groups have even intensified their lobbying strategies towards the Commission in recent years.

Parliament

The Parliament, just like the Commission, has been described as an easily accessible institution (Interviews 1, 2, 4, 10, 11, 12, 18, 19, 22). As reasons for its accessibility, the interest representatives named the transparent organization and work of the Parliament as well as the fact that its meetings are public and all documents are publicly available (Interviews 10, 12, 22). Nevertheless, it was pointed to the difficulty to develop lasting contacts to relevant MEPs because of their limited mandate and to the likeliness that they

are not re-elected for the next parliamentary term or change between committees (Interviews 1, 9, 11). The interviewees also stressed the importance of lobbying the Parliament as a consequence of the modified decision-making that granted the Parliament the same legislative competences as the Council has – making it a crucial player in the legislative process (Interviews 1, 5, 19). As a drawback of the expanded competences, the interest representatives reported that it has become more difficult to convince MEPs of their views because the parliamentarians more and more seem to consider feasibility matters in their decisions (Interviews 1 and 26). Moreover, they did not ascribe the Parliament a general responsiveness but explained that this is a question of the individual attitude of the MEPs. They further elucidated that in the negotiations of the recast directive, it was the Greens, including the rapporteur, the Socialists and Democrats, and the Lefts that approved of their ideas, whereas the Liberals and the Conservatives widely opposed their views. This led to an internal friction within the Parliament and, consequently, weakened the power of the Parliament in the negotiations with the Council. Thus, even if Jean Lambert, the rapporteur, had been willing to include more recommendations of the pro-migrant groups, she could not do so because of the opposition from other political groups and some Member States (Interview 9, 11, 18, 26). Finally, a representative of EWL explained that she has noticed that with the general political climate in Europe becoming more conservative, it has also become more difficult to convince MEPs of rights-based ideas because they are increasingly guided in their voting by what their national government predetermine (Interview 11).

The MEPs that have been interviewed on the Parliament confirmed the opinion of the interest representatives whereupon the Parliament is responsive towards civil society concerns. The rapporteur of both Qualification Directives highlighted that it was not only the groups that approached her; she also took the initiative and contacted them – for instance ECRE, ILGA Europe, and EWL. She regarded the consultations as a helpful instrument to strengthen her own argument or “to make sure that we really understood the wording that has been given to us and understood the implications of that [legislation]” (Interview 17). Other MEPs argued that because of the excellent organization of pro-migrant groups such as AI Europe, ECRE, and ILGA Europe, they do not need to contact them because they are usually approached very early in the decision-making procedure and provided with very detailed and tailored position papers. According to them, it is the LIBE committee in particular that has established a very good relationship to NGOs. On the other hand, one MEP alluded to the national background of the parliamentarians that notably affects the lobbying intensity. As he represents the United Kingdom, he is less frequently approached because the UK government has not opted in on the Qualification Directive (Interviews 21 and 27).

Again, the political opportunity structures only partly appear to explain the lobbying choices of the pro-migrants. The most obvious reason for not having lobbied the Parliament when the original Qualification Directive was negotiated is the limited authority it had back then. It always seems to have been a responsive institution but was not considered by the pro-migrant groups as a useful lobbying target before it gained the right to co-decide. This newly gained power is certainly one of the main reasons for the increased interest of the groups in the Parliament. Just like the Commission, however, the Parliament is reported to take its new responsibility seriously and weighing feasibility against more liberal standards (Interview 17). Thus, while the legislative authority of the Parliament has increased as a result of the introduction of co-decision in negotiations on asylum matters, the institution’s responsiveness towards the political objectives of the interest groups appears to have decreased by some degree. Despite the aloofness and growing reluctance of some MEPs to adopt the groups’ recommendations unquestioned, this does not appear to have undermined their persuasion that lobbying the Parliament and trying to convince MEPs of their position is worthwhile.

Council

From the results of the interviews with interest representatives, it became clear that even though since the Swedish EU Presidency more information on the work of the Council has become publicly available (Interviews 12 and 18), the pro-migrant groups still find it difficult to access the Council. According to them, most of the draft documents are still not accessible to the public and the composition and the procedures of the working groups are opaque. Furthermore, stumbling blocks that had occurred during the discussions were concealed from the public because meetings were rarely broadcasted and staying in contact with relevant opinion-makers in the Council was impeded due to the high personnel turnover (Interviews 1, 8, 9, 10, 12, 22). For a better visualisation of the opaqueness of the Council, a representative of JRS said that he has got the impression that “once you are employed with the Council General Secretariat, you need to undergo surgery where your mouth is stitched up” (Interview 9). These issues were prevalent during both policy-shaping processes. What impeded the advocacy work of the pro-migrant groups during the recast process is the fact that the recast Qualification Directive was adopted in an early agreement where the Council had its common position ready before the Parliament agreed on its report. As a consequence, the interest representatives complained about difficulties to follow the trilogues and to react on them (Interviews 18 and 22). For those reasons, the pro-migrant groups, rather than trying to access the Council itself, approached the Permanent Representations of the Member States or national ministries. Lobbying the Permanent Representations, yet, appears to have become more obsolete in recent years. This is because they are not as involved in the Council negotiations as they used to be. Today, national experts from the Member States are sent to attend the working group meetings. Thus, in order to find out about the outcomes of these meetings, the national member organizations need to approach national ministries to identify these experts (Interview 18). The interest representatives also drew on the fact that Permanent Representations are bound by their national governments. Thus, they agreed that it is important to address national politicians and civil servants too (Interviews 10, 11, 12, 26). Some of the pro-migrant groups, however, experienced difficulties in accessing national authorities especially in countries that are ruled by a conservative government and by countries that opted out of the Qualification Directives (Interviews 10 and 26).

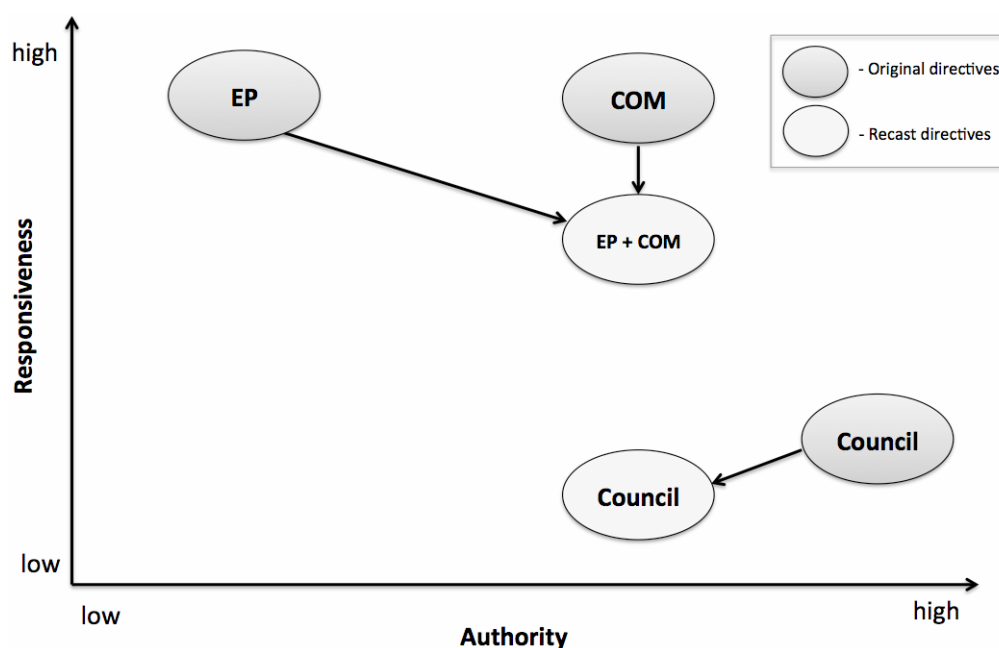
Representatives of the Council General Secretariat and Permanent Representations have come to similar conclusions concerning their responsiveness. An official of the Council General Secretariat for instance explained the limited responsiveness of the Council by claiming that the institution has to defend the interests of the Member States because there are no counterparts for human rights organizations in the civil society; the Council, thus, acts as that counterpart. What is more, the Council General Secretariat seeks to be a “neutral broker” because it assists each EU Presidency in mediating between the different Member States. It is for these reasons that he thinks the Council is not responsive towards pro-migrant groups (Interview 2). Only few of the JHA Councillors that have been interviewed on their accessibility reported that pro-migrant groups frequently approached them when the Qualification Directives were negotiated. However, they also revealed that the lobbying intensity on the part of the interest groups was much higher when their country held the EU Presidency. Again, it was explained that the openness of a Permanent Representation depends on the personal contacts established to individual JHA Councillors (Interviews 15, 16, 25). Some of the interviewees that were not approached by interest groups in Brussels assumed that this is due to the fact that in their countries an institutionalised and consolidated system of stakeholder consultations exists that gives interest representatives the opportunity to raise their concerns (Interviews 4, 6, 15, 20, 23). Most of the interviewed JHA Councillors appear to be accordant that lobbying national ministries and decision-makers is a much more promising strategy than

approaching the Permanent Representations in Brussels because they are bound by instructions of the governments. Hence, all they can do is forward the position papers and recommendations to their colleagues in the capitals (Interviews 13, 14, 20, 23, 24, 25).

As a conclusion, both the interest representatives and EU officials have revealed that the political opportunity structures at Council level are very limited. Opaque organization and proceeding as well as the self-concept of the Council as the advocate of national interests have impeded the lobbying attempts of the pro-migrant groups. To compensate for these restraints, the groups focussed on Permanent Representations and national lobbying routes instead. Here the interest representatives experienced similar restraints either in the form of lack of relevant authority or responsiveness on the part of the lobbying targets. As regards the overall authority of the Council, it needs to be stressed that since the introduction of the co-decision procedure in asylum matters, the Council's legislative authority has decreased. Thus, the assumption regarding the limited political opportunity structures at Council and Member State level has been confirmed by the empirical data. Both, its authority and responsiveness towards the claims of the pro-migrant groups has declined. To bypass these unfavourable political opportunity structures at Council level, the groups included national decision-makers in their lobbying strategy when the recast directive was discussed. Yet, this adapted strategy was hampered by the limited responsiveness of crucial national policy-makers. Until today, the pro-migrant groups do not seem having been successful in developing an efficient solution that overcomes the limited political opportunity structures prevalent at Council level and national level.

For a better understanding of the relation between authority and responsiveness of the three EU institutions during the two policy-making processes, Figure 2 illustrates the empirical findings.

Figure 2: Authority and responsiveness of the EU institutions during the negotiations of the original Qualification Directive and its recast



What other factors affected the lobbying strategies of pro-migrant groups?

Besides the political opportunity structures that appear to have widely determined the lobbying choices of the pro-migrant groups, the interest representatives pointed to other factors – personnel and financial capacities, representativeness, and the engagement of the member organizations at national level – that are meant to have affected their lobbying strategies. In the following, the relation between these internal factors and the lobbying strategies chosen by the pro-migrant groups are highlighted.

With a view to the personnel and financial capacities, most of the groups stressed that their resources did not allow for a close and continuous monitoring of the inter- and intra-institutional negotiations and for a systematic follow-up on the debate (Interviews 8, 9, 10, 11, 12, 18, 19, 26). “We can’t go to the institutions every day,” one interest representative said even though he knows that “one meeting is good, two meetings are better” (Interview 1). This issue has also been referred to by a representative of the JRS (Interview 9). Another interviewee reported that due to the limited resources of the group, they had to focus their lobbying attempts on certain issues (Interview 12). A representative of EWL, in turn, explained that limited resources are the reasons for not having lobbied the Council at all. She stated, “if you really want to have an impact [on the Council], you need to invest lots of time”. According to her, one person alone is required to follow what is happening in the Council (Interview 11). A representative of TdH is convinced that if the group had invested more money and personnel in the advocacy work on the recast Qualification Directive, they could have achieved much more (Interview 8). A representative of the Red Cross referred to the high turnover within the group that hampered its advocacy work. Between 2008 and 2010 there was nobody working on asylum issues in the Brussels Secretariat of the Red Cross and when she took up her job she had to work hard to catch up with what has been happening in the meantime (Interview 10). Finally, an official of Asylum Aid stressed that limited resources prevented the group from maintaining a liaison office in Brussels what, as consequence, prevented any personal contact to EU policy-makers (Interview 26).

Another internal factor that seems to have affected the lobbying attempts of the pro-migrant groups is their representativeness. On this aspect, the interest representatives agreed that the more EU member states are represented by a group, the better its standing and the more likely its ability to access EU decision-makers is. They explained this interrelation by arguing that EU decision-makers are more willing to meet one umbrella group than many different national groups due to their time constraints. While a representative of Caritas, therefore, stated that it would be much better if migrants and asylum-seekers were involved in the work of the group because this would increase its representativeness, a representative of ECRE was convinced that because the group represents “more than 67 NGOs across Europe both within the European Union but also in the border countries [...], this does certainly open some doors for us” (Interviews 1 and 18).

As a final factor that affected the lobbying attempts of the pro-migrant groups towards the Qualification Directives, the interviewees pointed to the internal structure of the groups and more precisely to the engagement of their member organizations. Some interviewees, in this context, illustrated that their members did not prioritise the recast Qualification Directive and that is why they less actively lobbied on it compared to other directives (Interviews 8 and 11). A representative of ILGA Europe linked the national priorities of its members with the ability to provide the EU institutions with on the ground information. Small members, according to him, found it more difficult to conduct fundamental research. As a consequence, ILGA had less information to provide the Commission with in 2009 compared to the information provided for the Parliament or the Member States during the further course of the negotiations (Interview 22). A representative of the Red Cross alluded to another aspect. She confirmed that the actions

taken by the Brussels Secretariat are usually the result of discussions between its national societies. As it is not always easy to find a compromise that is agreed on by all the members because they focus on different aspects of asylum, long debates between the members sometimes impede the flexibility to react to the inter-institutional negotiations at EU level (Interview 10). Finally, a representative of TdH regretted that the member groups function independent from the office in Brussels and do not optimally cooperate with each other and, thus, do not always pursue the same strategy (Interview 8).

The results gained from the interviews with the pro-migrant groups disclose that, even though political opportunity structures appear to have extensively affected their lobbying tools and routes, internal factors like personnel and financial resources, representativeness, and engagement of the Member States cannot be neglected in that regard. Thus, both external political opportunity structures and internal group-specific factors cannot be considered as completely separate issues. In fact, it is the combination of external and internal factors that appear to have determined the lobbying strategies of the groups.

Conclusion

This article aimed to assess the extent to which political opportunity structures affected the lobbying strategies of the pro-migrant groups that lobbied on the two Qualification Directives. In the following, the results of this assessment are summarised.

Approaching the Commission was an essential aspect of the strategies of the pro-migrant groups – both in the context of the original Directive and the recast directive. Their lobbying efforts were certainly facilitated by the general openness of the Commission towards actors of the civil society and its interest in collecting information from various stakeholders. As such, the Commission has fostered the institutionalisation of stakeholder consultations and has become an active partner that seeks contact with NGOs. However, the interest representatives also reported having noticed a growing reluctance towards the promotion of rights-based innovations in asylum policies in recent years. Thus, while the legislative authority of the Commission remained high over the years, its responsiveness towards the ideas of pro-migrant groups has slightly decreased. This change in the political opportunity structures notwithstanding, the groups continued their advocacy work towards the Commission.

With regard to the Parliament, the interest representatives explained that they did not consider MEPs in their lobbying strategies on the original Qualification Directive because the Parliament only had the right to be consulted at that time. However, with the coming into force of the Lisbon Treaty and the extension of the right to co-decide on legislative instruments to the Parliament, MEPs have become important lobbying targets. With the newly gained power, the Parliament started to take his responsibility more seriously and more and more seems to favour feasibility concerns over rights-based ideas. That has certainly limited the responsiveness of the Parliament towards the demands of the pro-migrant groups, which, nevertheless, regard the Parliament as a very open institution that is worth lobbying.

Finally, the Council in general and in particular the Council General Secretariat were described by the interest representatives as opaque and inaccessible during the negotiations of both directives. Therefore, the groups focussed their lobbying attempts on the Permanent Representations in Brussels or they encouraged their member organizations to lobby relevant decision-makers at national level instead. Yet, Permanent Representations and national decision-makers cannot be described as actors that offer more open political opportunity structures than the Council. Permanent representations,

while they might be more accessible, are bound by instructions of their national governments and, thus, lack legislative authority. National civil servants working in the relevant ministries, on the contrary, are intensively involved in the positioning of the Member States but at the same time appear to have been as difficult to access as their equivalents at EU level. As a consequence, even though the groups sought to bypass the limited political opportunity structures of the Council, they seem to have encountered similar issues when approaching Permanent Representations and national ministries.

Thus, the investigation of the lobbying strategies of the pro-migrant groups, indeed, has confirmed the initial assumption whereupon political opportunity structures affect the lobbying channels of the interest groups. Yet, from the interviews with the interest representatives it also became clear that, in addition to the political opportunity structures, internal factors such as personnel and financial capacities, representativeness, and the engagement of the member organizations in the lobbying attempts have had an effect on the lobbying choices of the pro-migrant groups. As regards the two Qualification Directives, the majority of the interviewees acknowledged that their limited capacities also constrained their ability to liaise more frequently with the relevant decision-makers. Furthermore, they pointed to the limited capacities of their member organization and to the fact that they did not always share the same policy focus as factors that hampered their ability of gathering timely on the ground information. Their representativeness, on the contrary, was generally assessed as adequate. However, smaller groups that are not represented in many EU Member States seem to be less successful in making their voice heard in Brussels. As a consequence, both the political opportunity structures that prevail at EU and national level and the internal factors of pro-migrant groups need to be considered as factors that influenced their lobbying choices.

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- Interview 2 Council General Secretariat, 14 June 2011.
- Interview 3 Commission 21 June 2011.
- Interview 4 Finnish delegation, 21 June 2011.
- Interview 5 TdH, 27 June 2011.
- Interview 6 British delegation, 30 June 2011.
- Interview 7 Commission, 4 July 2011.
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