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## European migration governance since the Lisbon treaty: introduction to the special issue

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### Introduction<sup>1</sup>

It is 16 years since European heads of state gathered for the 1999 summit meeting at Tampere, Finland, and agreed to create a common asylum and migration policy. Before Tampere, cooperation on migration issues between European governments had taken place on an ad hoc and intergovernmental basis. Since 1999, the European Union (EU) institutions have steadily acquired increased powers over migration, and with the 2009 Treaty of Lisbon migration policy-making was brought under the ordinary legislative procedure, with ‘co-decision’ between the European Parliament (EP) and the Council, and Qualified Majority Voting (QMV) in the latter. Migration governance remains an area of shared competence, with national governments retaining the right to decide how many immigrants from outside the EU they admit, but today almost every aspect of migration—from outside and within the Europe—has a supranational dimension.

The papers in this Special Issue address various facets of this complex and evolving field, including the EU’s migration relations with non-EU countries, its interactions with international organisations, the structure of European asylum policies, and national-level labour migration policy-making. While each paper examines dynamics that are particular to the sub-field in question, collectively the papers aim to provide an overarching analysis of the shape and substance of European migration governance six years after the Treaty of Lisbon. The Issue explicitly reflects the increasingly multilevel nature of European migration governance, which incorporates supranational, international, national, and sub-national authority structures, and the increasingly complex array of actors operating at—and often across—each level. While not all levels or actors are equally important across different migration policy sub-fields, there is no longer an iota of migration policy that does not involve complex interactions between European, national, and international institutions and actors.

In this introduction, my aim is to outline the political context and policy-making dynamics that have emerged since 2009. In doing so, I make two central claims: first, that after a period of rapid expansion, European migration policy shows signs of sclerosis<sup>2</sup>; and second, this can be explained by a renewed tension between national governments and the European institutions over ‘how much’ Europe (this is despite, or perhaps *because* of, the post-Lisbon communitarisation of migration policy) as well as divisions between member states over the content of some, though not all, European migration policies.

## The post-Lisbon architecture of European migration governance

The architecture of European migration governance is more baroque than modernist, but amidst its fragmentary, overlapping, and elaborate forms, distinct elements can be identified (for more a detailed account than possible here see: Boswell and Geddes 2011; Geddes 2008, 2014). The whole edifice sets atop the Schengen Area, a free movement zone of 26 countries<sup>3</sup> without passport or customs controls at the internal borders, which developed as an intergovernmental agreement outside of European Treaty framework and was only incorporated into EU law by the 1997 Treaty of Amsterdam (Monar 2001; Zaiotti 2011). Since anyone traversing the external border of the Schengen Area is able to move freely to any other Schengen country, the abolition of internal border controls implied cooperation and strengthening of the external borders. Schengen countries operate a common visa policy and a number of so-called flanking measures, including shared databases for criminal suspects and other wanted persons (the Schengen Information System or SIS) and visa data (the Visa Information System or VIS). There is no doubt that Schengen represents a pooling of sovereignty, and along with monetary union, is one of the EU's most visible and remarkable feats. Like the Euro, Schengen has also come under serious pressure in recent years (as discussed below).

A second element of the European migration regime, and one that has undergone substantial reforms since 2007, is the Common European Asylum System (CEAS), which includes the Dublin Regulation, the Asylum Directives, and the European Refugee Fund and European Asylum Support Office. Under the Dublin Regulation an asylum-seeker must usually claim asylum in the first EU country they enter, a 'one-stop' principle intended to prevent multiple applications and so-called asylum-shopping. If an asylum-seeker is found to have made a claim or simply been detected transiting through another EU member state (using the Eurodac fingerprint database), then they may be returned to that country. This has had the (predictable) effect of placing the responsibility of processing asylum applications on states with an external border, especially to the south and south-east, where many asylum-seekers enter, something that has become the source of growing controversy in recent years. Following rulings by both the European Court of Human Rights and the European Court of Justice (ECJ),<sup>4</sup> transfers to Greece were suspended in 2011 on the grounds that migrants' fundamental rights could not be guaranteed. For similar reasons, transfers to Italy, Hungary, Poland, and Malta have also been suspended for short periods, and the United Nations High Commissioner for Refugees (UNHCR) has called for suspension of transfers to Bulgaria as a result of the deteriorating situation brought on by an influx of asylum-seekers from Syria. The EU tried to address this situation with a revised version of the Dublin Regulation (DRIII), which includes new safeguards, notably a requirement for states to assess the rights implications of a Dublin transfer before they remove someone to another member state, and an 'early warning mechanism' intended to prevent the degeneration of member states' asylum systems. In 2015, as the number of Syrian and other asylum-seekers arriving in Europe increased, the Dublin system came under growing pressure, and in September the Commission proposed a permanent relocation scheme which would effectively bypass Dublin rules in cases of emergency refugee situations. At the same time, Germany has announced that it is suspending Dublin returns of Syrian refugees.

Notwithstanding the EU's aim to create a common policy, asylum legislation and practices across European states are anything but common. Recognition rates of the same nationals (the proportion of claimants from a given country who are granted refugee status or some other form of protection) vary substantially between member states, and the standards of decision-making and reception conditions are highly variable. This is despite the ongoing attempt by the EU to harmonise asylum procedures and protection through the three asylum directives—the Qualifications Directive, Procedures Directive, and Reception Conditions Directive—which have raised asylum standards in some countries (Kaunert and Leonard 2012, 1402–1403). This is an ongoing project: a set of revised asylum directives came into effect from July 2015 and at the time of writing member states are discussing proposals from the Commission President Jean-Claude Juncker for a wide-ranging overhaul of the asylum system in response to the Syrian crisis.

Alongside the CEAS, and in various ways intertwined with it given the 'mixed flows' of irregular migrants and asylum-seekers to Europe, the other most developed aspect of the European migration regime is what the EU calls 'the fight against irregular immigration'. This is a fight waged with many weapons, some targeted at preventing unauthorised entry at the external borders, others at the detection and removal of irregular residents. Since 2005, the EU's external border agency, Frontex, has coordinated member states' controls at the external borders. Frontex organises joint operations along maritime and land borders, and has the capacity to intervene with European Border Guard Teams in crisis situations, as it did at the Greece–Turkey border in 2010. Frontex is also actively involved in the development of the EU's integrated border management system, including the Eurosur surveillance system in the Mediterranean and the development of so-called smart borders technologies. Frontex illustrates at once the extent and the limitations of European states' pooling of sovereignty on migration and border management: on the one hand, nowhere else in the world are the border agencies of sovereign states coordinated as they are now in Europe; yet on the other hand, governments have opposed calls for an integrated European border agency, an idea originally proposed by the Commission in 2004 and recently revived in its 2014 Communication on the Area of Freedom, Security, and Justice (AFSJ) (CEC 2014a, 6).

The EU's focus on the external border can distract attention from the fact that the vast majority of irregular immigrants living in Europe enter with authorisation and then overstay their visa. The day-to-day business of detecting and intercepting irregular immigrants remains predominantly a national matter, undertaken by police, immigration officials, and increasingly an array of co-opted non-state actors, but the EU has legislated to establish common standards for the return of irregular immigrants (the 2008 Returns Directive), establish sanctions for firms that employ undocumented workers (the 2009 Employers Sanctions Directive), and signed a number of readmission agreements with non-EU states to facilitate the return of third country nationals (for which the EU offers visa facilitation agreements as an incentive). The lengthy negotiations leading to the Returns Directive, which was the first piece of migration legislation decided post-Lisbon using the co-decision procedure, were especially significant as they revealed a shift in the position of the EP from its traditionally liberal towards a more restrictive policy position (Acosta 2009; Ripoll Servent 2011). As discussed further below, this development partly explains the apparent paradox that communitarisation of migration policy-making since Lisbon has not resulted in a less restrictive migration policy.

In contrast to its actions on asylum and irregular migration, EU policy on legal migration, which includes economic and family migration, as well as immigrant integration policy, is relatively underdeveloped. Decisions on admissions are a national competence and there is no prospect of this changing. The number of immigrants that a country admits and how it expects them to integrate once admitted are too politically sensitive and, in the case of integration, too closely tied to distinct conceptions of citizenship and identity for harmonisation to even be considered. This said, there has been no shortage of legislative activity on legal migration, with directives on, *inter alia*, a ‘Blue Card’ for highly skilled workers (2009), a single work and residence permit (2011), seasonal employment (2014), and intra-corporate transfers (2014). But while the list looks impressive, none of these directives touch national governments’ right to decide how many immigrants to admit; instead they establish common procedures and rights for those who are admitted.

Similarly, the EU’s influence on family migration policy in the member states has been fairly anaemic, despite the Commission’s attempts to establish minimum standards for the conditions under which family reunification is granted and the rights of family members concerned. The 2003 Family Reunification Directive was a highly contested piece of legislation (the Parliament tried, unsuccessfully, to have it annulled by arguing that it undermined fundamental rights), and has turned out to have little integrative effect due to the large amount of discretion it grants to national governments. According to the Commission, it has even enabled some governments to lower standards (CEC 2008, 14). In 2008, the Commission proposed to strengthen the rules on family reunification, subsequently launching a consultation in 2011, but almost all governments opposed reopening the Directive, with many stating that member state discretion should not be reduced; even some non-government organisations (NGOs) expressed concern that reopening the legislation might result in a more rather than less restrictive policy.<sup>5</sup>

Finally, an increasingly important policy field in recent years is the so-called ‘external dimension’ of migration, which refers to the EU’s efforts to develop cooperative relationships with third countries, especially those in its near neighbourhood to the south and east (Boswell 2003; Kunz, Lavenex, and Panizzon 2011; Lavenex 2006). The external dimension dates back to Tampere, but has received increased attention in recent years, partly because externalisation of migration controls has helped to make up for the shortcomings of internal policies (Parkes and Schwarzer 2012, 6). Since 2005, the external dimension has functioned under an overarching framework called the Global Approach to Migration, relaunched in 2011 as the Global Approach to Migration and Mobility (GAMM). The GAMM attempts to rebalance the external dimension, and thus make it more attractive to third countries, by placing greater emphasis on mobility opportunities, regional protection, and development. Its central instrument is Mobility Partnerships—informal agreements between the EU and third countries which offer various incentives (and the prospect of visa facilitation) in return for cooperation on border management and immigration controls. Yet despite the new rhetoric, the principal motivation behind the GAMM on the part of the EU, and certainly of the Council, is to prevent irregular migration to Europe.

### Why a European migration regime?

So, 16 years after Tampere, both immigration to and movement within Europe is now governed by a complex amalgam of institutions and processes operating on local, national,

European, and international scales; in short, European migration governance is a paradigm of 'multilevel governance' (Hooghe and Marks 2001). And the structures of migration governance are shaped by contradictory imperatives of openness and closure typical of the liberal states which make up the Union (Hampshire 2013). The interesting question to be considered, then, is not whether a European migration policy exists, but why it evolved the way it did (Lahav 2014, 457) and why it has come under such strain in the last five years.

Explanations of the development of a European migration policy field have tended, unsurprisingly, to draw upon wider theories of European integration. An initially plausible account borrows on neo-functional theories (e.g. Haas 1958) to argue that the emergence of a European migration policy was the result of 'spillover' from the single market project. Economic cooperation generated a functional need for free movement of labour, which in turn led to cooperation on the management of migration; as such, a supranational migration policy was an inevitable result of the wider European project of market-building (see Butt Philip 1994; Stone Sweet and Sandholtz 1998). Though plausible, neo-functional accounts suffer from a number of flaws, perhaps the two most fatal being their inaccurate predictions regarding actors and outcomes. First, if a common migration policy was a 'spillover' from the single market, then one would expect the supranational institutions which regulate that market to be the main actors in establishing a European migration policy. Yet this is far from true: while European institutions have been empowered over time, key migration policies remain national competences (against functional logic) and the Commission 'took a back seat' on migration until the late 1990s (Guiraudon 2000, 255). Instead, cooperation developed outside of the European institutions in secretive, intergovernmental forums, for example the early Schengen discussions. Second, neo-functionalism implies that a common market would lead to far greater harmonisation, particularly in economic migration, than has been the case. Indeed it is this latter field that remains the *least* regulated at the European level. More generally, the variation between member states and across different migration policy domains is hard to reconcile with a sweeping functional logic (Givens and Luedtke 2004, 149).

Accounts influenced by liberal intergovernmentalist theories of European integration (e.g. Moravcsik 1998), which depict member states as the main actors and seek to explain European integration as an outcome of bargaining between national governments, have fared slightly better. Just as wider theories of intergovernmentalism hold that states cede limited authority to supranational institutions in order to achieve their policy goals, and indeed lock in their domestic preferences, so intergovernmentalist approaches to European migration policy see cooperation on migration as state-driven and agreements reflective of the lowest common denominator of national positions. Perhaps the most developed explanation of European migration policy along these lines is Givens and Luedtke's (2004) model of intergovernmental bargaining. In their account, EU migration policy is a result of bargaining between national governments based on preferences determined through domestic politics. Their central contention is that when the political salience of a given immigration issue is high any harmonisation that results is likely to be restrictive towards immigrants' rights. It is undoubtedly a strength of this model that it connects European developments to national politics, a linkage which, as argued below, has become stronger in recent years, and that it recognises the highly contested and far from inevitable path of European migration policy.

Yet despite these strengths, an intergovernmental bargaining model comes up short in a number of respects. The depiction of policy-making as ‘bottom-up’ underplays the influence of European level institutions, notably the agenda-setting powers of the Commission and, since 2009, the legislative power of the Parliament. As several scholars have argued, European migration policy-making involves both ‘uploading’ and ‘downloading’ between the national and European levels (Lahav 2004; Menz 2008) and the institutional changes brought about by Lisbon have strengthened European institutions vis-à-vis member states (Kaunert and Leonard 2012, 1404). Another problem with the model is that its focus on contestation and high-conflict politics fails to recognise that key elements of the European migration regime (notably Schengen) were developed below the radar of national politics through networks of like-minded officials. A purely intergovernmental model risks throwing out the European baby with the neo-functionalist bathwater. Finally, the ongoing response to the Syrian refugee crisis casts doubt on the idea that high salience leads inevitably to restrictive harmonisation.

Recognising the shortcomings of both state-centric and supranational accounts, Virginia Guiraudon draws on March and Olsen’s ‘garbage can’ model of policy-making to develop an account of the constitution of a European migration policy domain. According to Guiraudon, the rise of immigration on the EU’s agenda was driven by a ‘motley crew’ (2003, 265) of actors, governmental and non-governmental, national and supranational, each with different agendas. The mobilisation of a disparate sets of actors variously engaged in venue-shopping for institutions conducive to their interests (Guiraudon 2000; Guiraudon and Lahav 2000; see also Kaunert and Leonard 2012), has given rise to an ‘ad hoc and contradictory’ (Guiraudon 2003, 277) policy field. For example, the dominance of a security agenda in the EU’s early migration cooperation was a result of police and security agencies going transnational during the 1980s in order to escape legal constraints at the national level. Conversely, the rise of anti-discrimination policy on the EU agenda, which resulted in the Race Equality Directive of 2000, was driven by the decision of pro-migrant NGOs to shift their activities upwards to the European level. Thus there is no single logic or overarching explanation of European immigration policy: it is neither a *sine qua non* of the single market as neo-functionalism claims, nor is it simply the result of governments bargaining on the basis of aggregated domestic interests.

### From Lisbon to ... where exactly?

How well do these theories help explain recent developments? The Lisbon Treaty—formally the Treaty on the Functioning of the European Union (TFEU)—marked the coming of age of European migration governance. What had started out as an intergovernmental ‘pillar’ in the 1992 Maastricht Treaty, and was partly communitarised by the 1997 Amsterdam Treaty, was now fully incorporated into the treaty framework. Articles 77–80 of TFEU set out the EU’s competences on borders, asylum, and immigration and, in Article 80, the EU committed to ‘the principle of solidarity and fair sharing of responsibility’ as a governing principle for migration policy. Equally, if not more important, were the changes Lisbon made to policy-making. Migration was brought entirely under the community method, empowering the EP and ECJ. The EP was given powers of ‘co-decision’ over migration policy, meaning it votes on legislation with the Council, and

under the QMV procedure, single member states cannot veto legislation. The jurisdiction of the ECJ was extended, in particular by allowing it to issue ‘preliminary rulings’ on migration and asylum matters. This enables a more activist role for the ECJ and the possibility that it will issue rulings that constrain the executive branch of member states governments (Acosta Arcaza and Geddes 2013).

Thus, just 10 years after the heads of state at the Tampere European Council had committed to the creation of a common asylum and migration policy, Europe seemed to have put this policy on a fully supranational footing. Yet in the years since Lisbon came into force migration policy has in fact seen a resurgent intergovernmentalism: on the one hand, longstanding ‘vertical’ tensions between national governments and the European institutions—regarding both the degree of harmonisation and content of European policy—have waxed rather than waned; on the other hand, newer ‘horizontal’ conflicts between member states have emerged, caused by a growing divergence of national interests and a deficit of trust in the enlarged EU.

In fact, this could be seen before the Lisbon Treaty had even been ratified by national parliaments, when in 2008 the French Presidency of the Council made a bid to reassert control over the migration agenda with its Pact on Immigration and Asylum. The Pact set out general guidelines for the future development of European policy. It arguably added little that was new in terms of content, but it was important for its timing and symbolism: just as the Commission was developing its proposals for what would become the Stockholm programme for the AFSJ,<sup>6</sup> here was a member state using its Presidency of the Council in a bid to set the agenda. Of course, member states have long sought to upload their policy preferences to the European level, but the French Presidency’s, and by extension the Council’s, public attempt to steal a march on the Commission showed that national governments had no intention of going quietly into the European night. Indeed, since 2009, there has been a series of altogether more substantive conflicts between member states and the European institutions over, *inter alia*, internal borders in the Schengen zone, visa policy towards the Western Balkans, the accession of Bulgaria and Romania to Schengen, asylum ‘burden-sharing’, and free movement rules (more on these below).

European-national tensions can also be seen in something that has *not* come to pass. Lisbon clearly changed the institutional rules of the game (Trauner and Ripoll Servent 2015) and it might have been expected that the empowerment of supranational institutions which had traditionally taken a liberal, even pro-migrant, approach to migration policy would result in greater harmonisation and more liberal policies. However, the introduction of the EP into the decision-making process has not resulted in either. This is partly because the EP has not used its new powers in the way that some expected it to (Ripoll Servent and Trauner 2014), and partly because member states’ have responded to the post-Lisbon rules by resisting further harmonisation and liberalisation.

These developments help to explain why, by 2014, EU migration policy looked to be running out of steam. As the Stockholm programme was coming towards its end, in March 2014 the Commission presented its proposals for the next five-year programme for the AFSJ. In marked contrast to the ambitious tone and content of previous documents, the 2014 Communication, entitled ‘An Open and Secure Europe: Making it Happen’, contained few new proposals and instead insisted on the need to use existing tools to the full (CEC 2014a). The Council concurred and concluded that: ‘building on



the past programmes, the overall priority now is to consistently transpose, effectively implement and consolidate the legal instruments and policy measures in place' (European Council 2014, 2). It was symptomatic of the lack of direction that the new strategy—unlike the Tampere, Hague, and Stockholm programmes that went before it—was given no name: agreed at the June 2014 European Council summit held in Brussels and nearby Ypres,<sup>7</sup> tradition dictates that the new programme should be named after one of these places, but presumably neither a label as politically toxic as 'Brussels' nor as redolent of inter-state conflict as 'Ypres' seemed an especially good idea (Parkes 2015, 4).

As the quotes above illustrate, the official reason for the minimalist agenda of the programme-with-no name is that the rapid expansion of European migration and asylum policy over the last decade requires a period of consolidation. On this account, the pace of European legislation has outstripped implementation in the member states, leaving a substantial gap between policies and practice which now needs to be filled. There is an element of truth to this, clearly seen in the case of the CEAS, where the EU has legislated extensively yet national practices remain anything but common. However, the real explanation is a political not technocratic one.

### **The crises in Europe's other zone**

As the Eurozone crisis has called into question the very survival of the European project, another crisis—or rather series of crises—have been unfolding in Schengen, Europe's 'other zone'. I want here to discuss briefly three developments that have combined to exacerbate tensions between national governments and the European institutions, but also created divisions between member states over the direction of European policy: the domestic politicisation of immigration and Europe; tensions between northern and southern member states over both asylum and irregular migration since the Arab Spring; and conflict over free movement in an enlarged Europe. Together these developments have reinforced a generalised reluctance among national governments towards further harmonisation at the European level, at the same time as increasing cross-national variation and disagreement on the content of European policy, together resulting in an increasingly sclerotic policy-making environment.

### ***Domestic politicisation of immigration and Europe***

Public opposition towards immigration is not new, but since the EU embarked on its migration project in the late 1990s immigration has become an increasingly salient issue and public attitudes have hardened across many member states (Morales, Pilet, and Ruedin 2015). National politicians have long been wary of supporting European policies that might be perceived as surrendering sovereignty or relaxing immigration controls, hence the intergovernmental basis for migration policy-making during the 1990s and the well-established dynamic of interior ministers in the Council blocking or watering down supranational proposals emanating from the Commission or Parliament. But as Euroscepticism and negative public opinion on immigration has increased, national governments have reasserted their authority in the recently communitarised policy process.

This tendency has been exacerbated by the success of populist radical right parties, particularly in Western Europe. Radical right parties are diverse in many ways (see Mudde

2007), but two things that they do have in common, is their opposition to immigration and to the EU, with the latter often depicted as an elite conspiracy to foist globalisation and multiculturalism on 'the people'. This brew of nativist populism has enabled radical right parties to increase their electoral support and parliamentary presence across Western Europe, and in in some countries (Austria, Denmark, Italy, the Netherlands, and Switzerland) they have joined or supported national governments. The radical right also did well in the 2014 EP elections, with the *Front National* and United Kingdom Independence Party (UKIP) becoming the largest parties from France and the UK, respectively.

Populist radical right parties have attracted a huge amount of attention—both in the academic literature and in the popular press—something which arguably exaggerates their significance. As Mudde (2013) has argued, radical right parties are neither necessary nor sufficient for the introduction of stricter immigration policies, and they should be seen as catalysts rather than initiators of wider trends. Public concern about immigration and scepticism towards the EU has deeper roots, shaped by what Hanspeter Kriesi has called the 'transformed conflict structures of West European societies' (2014, 362) and exacerbated by the financial crisis; and mainstream parties, especially those on the centre-right, have their own reasons, independent of a far right threat, for adopting restrictive immigration policies at both national and European levels. So the populist far right cannot be seen as *the* explanation for national governments' reaffirmed caution towards European migration policy. Nevertheless, by mobilising a previously latent opinion and in the process emerging as a real electoral force in several countries, populist radical right parties have sharpened the minds of politicians across Europe.

Party politics matters for immigration policy (Hampshire and Bale 2015; Hix and Noury 2007) and the above developments are fundamental to understanding European policy-making dynamics since Lisbon. As politicians have had to cope with increased public scepticism about both European integration and immigration, they have become less supportive of the Europeanisation of the migration policy domain and, to the extent that they have endorsed new policies at the European level, they have preferred immigration control over liberalisation.

### **North–south tensions over asylum**

While domestic pressures have reinforced national governments' wariness of migration policy harmonisation, at the same time a number of developments have pushed member states apart over the content of European migration policies. Two broad axes of contention have emerged: a north–south dispute triggered (or rather exacerbated) by the migration and refugee crisis in the Mediterranean; and an east–west conflict over free movement in an enlarged Europe.

The first axis is, like domestic politicisation, not entirely new, but it has been given impetus by conflicts at the EU's southern external borders. The Arab Spring, which began with a wave of democratic optimism but soon descended into conflict and, in the case of Libya and Syria, civil war, has had important consequences for European migration governance. The conflicts in Libya, Tunisia, and now especially Syria have created large numbers of forced migrants, some but by no means most of whom have headed towards Europe.<sup>8</sup> At the same time, the destabilisation of the Mediterranean region has problematised bilateral immigration control, such as the treaty signed by Italy and

Libya in 2008, which offered Libya \$5 billion over 20 years in return for cooperation preventing migrants trying to reach Italy by boat.

The conflicts in North Africa and the Middle East have exacerbated tensions between member states over 'burden' or 'responsibility-sharing'. Southern member states, especially Italy and Malta, have long complained that other EU countries do not do enough to help them deal with asylum-seekers and undocumented migrants who arrive on their shores. Many of these asylum-seekers want to travel on to other EU countries, but the Dublin regulations require that their claim is assessed in the first country they enter, placing a large administrative and financial burden on southern member states. In 2011, this complaint erupted into an international dispute between France and Italy, after the Italian authorities issued travel permits to undocumented Tunisian migrants on the assumption that they would move on to France. The French authorities responded by reinstating border controls at the French-Italian border, with Nicolas Sarkozy later declaring that 'Schengen ne marche pas' [Schengen is not working] in an election debate with François Hollande. As the France-Italy conflict was unfolding, the Danish government reintroduced customs controls at its border with Germany under pressure from the far right Danish People's Party. And the long-running problems with the Greece-Turkey border and Greek asylum system (which lead to suspension of Dublin returns, as discussed above) required a large Frontex operation and €100 million in European funds to secure the border.

For a short time, it looked as if the Schengen free movement zone might implode. The inter-state dispute between France and Italy led member states to propose reforms to the Schengen rules, which quickly evolved into a conflict between the Council on the one hand, and the Commission and Parliament on the other hand. Interior ministers insisted that the Schengen rules should be redrawn to allow national governments to re-introduce border controls in the face of a sudden influx of migrants. The Council wanted member states to have the power to re-introduce controls without consent from the Commission or Parliament. However, the Commission insisted that it should have the right to grant approval for the re-introduction of national controls and proposed a system under which it would evaluate the functioning of Schengen. A year-long stalemate ensued, during which the EP suspended cooperation on migration legislation in an attempt to ensure that the supranational institutions retained control over Schengen governance. The stalemate was finally broken in 2013, when the Irish Presidency of the Council brokered a compromise that enables governments to impose controls in emergency situations and grants the Commission powers to monitor Schengen borders and recommend suspension of countries failing to meet the required standards.

If the Schengen crisis has been resolved for now, inter-state tensions over asylum-seekers have not. The tragedy off the coast of Lampedusa on 3 October 2013, when over 360 migrants died after their boat capsized, brought the issue to public attention, prompting a chorus of moral indignation and renewed promises of action from European leaders. The Italian government responded with the 'Mare Nostrum' search-and-rescue mission, which lasted until late 2014 when it was replaced with the more limited Operation Triton, run by Frontex. Following Lampedusa, Italy was allocated €30m by the EU 'to face the particularly high influxes on its southern coasts and relieve the pressure on Lampedusa' (CEC 2014b, 6-7) while the European Asylum Support Office signed an agreement to offer Italy operational support.

But these measures could not address the essential inequity of the European asylum system: while northern member states, which are the preferred destination of many asylum-seekers, are shielded from asylum flows, southern member states face a large and growing administrative task, not to say human tragedy. During 2014 and 2015 the situation worsened (CEC 2014c, 2), and with the worldwide coverage of the terrible photo of Aylan Kurdi, the three-year Syrian boy who drowned as his family attempted to reach Greece, in September 2015, the EU was finally pushed to review its asylum policy. At the time of writing, member states are considering a Commission proposal for an emergency distribution of 160,000 refugees already in Greece, Hungary, and Italy, as well as a permanent relocation scheme and wider overhaul of asylum policy.

Schengen has also been tested by disagreements over visa policy towards the Western Balkans. In 2009, the EU lifted visa requirements for Serbia, Macedonia, and Montenegro, with an immediate and dramatic effect on asylum applications from these countries. Serbia became the main origin of asylum-seekers in the EU, indeed across all industrialised countries, and by 2013, there were 34,700 Serbian asylum claims (UNHCR 2014, 19–20). Germany was the main country of application with 14,900 claims in 2013, over 80% of Roma origin (CEC 2013, 15). Only a tiny proportion, less than 1%, received positive decisions in the period 2011–2013.<sup>9</sup> The German Government, as well as the governments of Sweden and The Netherlands, have pushed the Commission to insist those countries do more to prevent unfounded asylum applications, with the threat of visa suspension. In November 2010, the Commission established a ‘post-visa liberalization monitoring mechanism’, which evaluates a range of measures promised by the governments of the Western Balkans countries in return for visa-free travel (CEC 2013), and in January 2014 a new visa suspension mechanism entered into force. Most recently, among the September 2015 Commission responses to the refugee crisis is a proposal to expand the EU’s safe countries of origin list to include the Western Balkan countries in an effort to reduce unfounded asylum applications and increase returns.

### *East–west conflict over free movement*

A second axis of contention between member states involves the free movement of EU citizens. The enlargement of 2004 created large income differentials within the EU, with average wages between three and four times higher in western European than A8 countries. Most member states imposed transitional controls on access to their labour markets, but by 2011 when the remaining controls had to be lifted, intra-European migration had increased substantially (the UK, along with Ireland and Sweden, opened its labour market immediately, resulting in a large eastern European migration to the UK from 2004). European mobility was given another boost by the 2007 accession of Romania and Bulgaria, with transitional controls for those countries lapsing in 2014. At the same time, the effects of the Eurozone crisis in southern Europe, especially in Spain where youth unemployment reached a staggering 50%, caused thousands of young people to migrate north in search of work. In several countries, these movements have become the subject of increasingly fierce political contestation, revealing the ‘divisiveness of mobility’ (Parkes and Schwarzer 2012).

The starkest example is the UK, where successive governments have come under growing pressure to limit immigration from Europe. Facing a growing threat from

UKIP and committed to reducing net migration from ‘tens to hundreds of thousands’, in November 2014, David Cameron set out a number of proposals intended to reduce the number of Europeans exercising their free movement right to live and work in Britain, including measures to tighten access to in-work benefits for EU citizens. Having won the 2015 election, Cameron is committed to negotiate these proposals with other European leaders ahead of a referendum on British membership in 2017. While other European governments have made clear that the principle of free movement cannot be undone, several are sympathetic to the idea that the benefit rules should be revised. The German Government in particular has expressed a willingness to consider these issues. Unsurprisingly, the governments of post-2004 member states have been more critical. After Cameron’s November speech, the Polish Europe Minister, Rafal Trzaskowski, told the BBC’s *Newsnight* programme that stopping EU migrants from accessing benefits for the first four years after entering Britain was a ‘red line’ for Warsaw.

A separate tension over east–west migration is France’s programme of expelling Roma. Since 2007, and more visibly since 2010, the French government has been dismantling Roma camps and returning their inhabitants to Romania and Bulgaria (see Balch, Balabanova, and Trandafolu 2014). Over 1200 Roma have been repatriated under the programme. The French policy caused a public row between European leaders at the September 2010 EU summit when the EP passed a resolution condemning the expulsions and Viviane Reding, then Commissioner for Justice, threatened legal action. Sarkozy used the dispute as an opportunity to assert national sovereignty over supposed interference by Brussels, arguing that the programme was legal under free movement rules and denying that it was discriminatory. The Commission eventually backed down and the threatened legal action never materialised, though in November 2011 the French policy was condemned as discriminatory in a case brought by a housing charity to the Council of Europe.<sup>10</sup>

Finally, and related to both of the above controversies, the accession of Bulgaria and Romania to the Schengen zone has been repeatedly pushed back due to opposition from some member states in the Council. Bulgaria and Romania were originally due to join the Schengen zone in 2012 after the Commission reported that they had met the technical requirements for accession. However, several older member states, including France, Germany, Finland, and the Netherlands, have used their veto (Schengen accession still requires unanimity) and it looks unlikely that either country will join in the next couple of years. These member states argue that neither Bulgaria nor Romania has adequately addressed judicial corruption or the influence of organised crime in law enforcement, even though these are not formal requirements for Schengen accession. Less publicly, they worry that accession will undermine the integrity of the external border and create a ‘land bridge’ to Turkey. Thus, an east–west division, as well as a supranational-national one (the Commission continues to support Bulgarian and Romanian accession) has created a political deadlock.

### Return of the national?

To summarise: the politicisation of Europe and immigration at the domestic level, coupled with the growing fragmentation of national migration interests in the enlarged EU, has reinforced member states’ resistance to further harmonisation and channelled such will

as exists among national governments for European policy-making towards immigration control. All member states agree on the need to curb irregular immigration, for example, even if there are disagreements on how and by whom this should be done. And though the Commission has historically favoured a ‘root causes’ approach compared to the Council’s control-oriented agenda (Boswell 2003), it has proven possible to find common ground with the European institutions, helped by the way in which the EP, historically critical of how the fight against irregular immigration was being waged, has adopted a more conciliatory approach under co-decision rules (Ripoll Servent 2011; Ripoll Servent and Trauner 2014). Thus, measures against irregular migration, including returns and external border management, have burgeoned in recent years. Frontex, for example, has seen a sevenfold increase in its budget from €15.7 million in its first full year of operation in 2006, to €114 million for 2015.<sup>11</sup>

But in many other areas, member states are increasingly divided about the shape of migration governance. Indeed, cross-national variation in government preferences for the direction of European policy has increased rather than decreased since the Lisbon Treaty. The half-decade since Lisbon came into force has seen a number of disputes—over free movement, visa policy, the enlargement of Schengen, and most dramatically, over refugee, and asylum-seekers. As we have seen, in the absence of any real appetite for further legislative activity, the latest, nameless five-year programme for the AFSJ looks distinctly underwhelming. Despite Lisbon’s communitarisation of policy-making, then, the most dynamic areas of European migration policy remain those that fared best under inter-governmental arrangements: policies directed towards controlling and excluding, rather than enabling, immigration to Europe (Schain 2009, 103). In many ways, the recent history of European migration governance is one of ‘institutional change and policy continuity’ (Lavenex 2014, 2). It may prove that the refugee crisis will kick-start a new round of European harmonisation, and certainly on the issue of mandatory relocation several governments have already shifted their position. But member states have yet to agree on the details of the Commission proposal, and whether member states’ appetite for a European solution to the refugee crisis will persist remains to be seen.

### Outline of contributions

As the above discussion has illustrated, European migration governance is complex, involving multiple actors and institutions, operating at different levels, and with different objectives; and different types of migration are regulated by different policy regimes. The contributions to this Special Issue adopt various approaches to analysing the governance of migration in Europe. Each stands alone, but collectively the papers provide a current analysis of recent European developments. Reflecting the growing emphasis on the external dimension, several of the articles analyse the EU’s migration relations with third countries, while others consider labour migration policy and the European and international asylum system.

In her contribution, Sandra Lavenex examines the role of international organisations in the development and implementation of EU external migration policies. Distinguishing between three distinct roles for organisations such as the UNHCR and International Organisation for Migration (IOM)—as ‘counterweight’, ‘sub-contractor’, and ‘rule-transmitter’—Lavenex shows how they have sometimes managed to retain independence from

the EU, but are increasingly instrumentalised into the delivery and diffusion of EU policy and norms. She argues that the effect of this multilevelling of migration governance is to increase the EU's administrative capacity and also its normative legitimacy in structures of global migration governance.

In his contribution, James Hampshire takes a somewhat more skeptical view of the EU's influence on migration governance beyond its borders. He examines how institutional conflicts internal to the EU shape and ultimately constrain its migration relations with third countries through the GAMM. At the heart of the GAMM are so-called Mobility Partnerships, non-binding agreements for migration cooperation between the EU and third countries. Hampshire argues that the conflicting agendas of the Council and the Commission, intra-institutional diversity within the Commission, and above all the different migration interests of member states hamper the EU's capacity to develop issue-linkages in its migration negotiations, which are needed to overcome the asymmetries of interest between the EU and third countries.

The next two papers consider migration governance in two regions that have become a growing priority for the EU: south-east Europe and the southern Mediterranean. Andrew Geddes and Andrew Taylor examine the effects of the EU on migration and border security in Slovenia, Croatia, and Macedonia, where preparations for membership required domestic legal and institutional adaptation. Using social network analysis to capture interactions and power relations between actors in the migration and border security networks of these countries, they argue that adaptation to the EU's migration *acquis* has had transformative effects, creating transgovernmental forms of governance and strengthening the core executive, particularly interior ministries.

In his paper, Michael Collyer examines the EU's migration relations with Southern Mediterranean. He finds that the variety of processes and initiatives through which the EU engages with Southern Mediterranean countries leads to haphazard and sometimes contradictory outcomes. The spatial extent and constitutive features of the region are constantly shifting and only ever partially resolved. This becomes apparent when one moves from high-level political statements, to the numerous programmes populated by lower level civil servants and civil society organisations. In his analysis, region-building is a heterogeneous and even uncontrollable process, lacking the guiding logic found in high-level EU strategic documents.

Georg Menz's paper turns to the least Europeanised migration policy field—labour migration—where national prerogatives remain central. Menz examines how pro-migration actors including government elites, business interest groups, and think-tanks have framed migration in terms of national competitiveness and economic exigency. He argues that the role of discursive representation in migration policy-making has been underplayed in the existing literature, which tends to focus on interests and institutional variables. The rhetorical advocacy of pro-migration groups helps to explain why, despite an adverse political climate characterised by skeptical public opinion and persistent unemployment, European governments have been able to liberalise labour migration policies.

In their contribution, Eiko Thielemann and Mogens Hobolth consider the 'numbers versus rights trade-off' in the context of European asylum policy. They observe two countervailing trends in asylum policies: on the one hand, increased efforts to limit the number of asylum applicants, and on the other hand, strengthened rights and protections for those

granted asylum. This appears similar to the ‘numbers versus rights’ trade-off developed by political economists, according to which countries with large numbers of migrants offer them relatively few rights, while smaller numbers of migrants are associated with more rights. While this model looks at first glance to be applicable to asylum policy, Thielemann and Hobolth argue that closer inspection of asylum and visa data for European countries reveals its limitations, and they suggest that the reason for this is because it ignores the role of the institutional context in which policy decisions are taken, in particular the role played by constitutional norms and non-majoritarian institutions.

## Disclosure statement

No potential conflict of interest was reported by the author.

## Notes

1. The proposal for this Special Issue was accepted by the previous Editorial team. Since the Guest Editor subsequently became Deputy Editor of JEMS, the review process has been conducted by the Editor-in-Chief, applying the same procedures used for all Special Issues, including external review.
2. Since writing this, and at the time of going to press (early September 2015), there are signs that a renewed push for European cooperation is unfolding as a result of the refugee crisis. In the face of unprecedented refugee movements, especially from Syria, the Commission has proposed a mandatory distribution plan for 160,000 refugees as well as a wider overhaul of European asylum policy. The governments of most member states, including France and Germany, have stated they support the plan. The proposal is due to be discussed at an extraordinary meeting of the Home Affairs Council on 14 September. Assuming the refugee distribution system comes into force it will represent a major policy shift. It is too early, however, to tell whether the crisis will generate fundamentally new European policy-making dynamics to the ones discussed in this Introduction.
3. Schengen is not contiguous with EU membership: of the 26 countries who are in Schengen, 22 are EU member states, while four—Iceland, Lichtenstein, Norway, and Switzerland—are not; and of the six EU member states that are outside of Schengen, two have opted out—UK and Ireland—while four—Bulgaria, Croatia, Cyprus, and Romania—are awaiting admission.
4. *M.S.S. v. Belgium and Greece*, Application No. 30696/09, Merits, 21 January 2011.
5. The consultation and responses may be found at [http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2012/consulting\\_0023\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2012/consulting_0023_en.htm)
6. Since 1999, policies for the AFSJ have been developed through five-year programmes, named after the city in which they were agreed: Tampere (1999–2004), Hague (2005–2009), and Stockholm (2010–2014).
7. In a bid to cut costs—and to be seen to be cutting costs—European Council meetings will now take place in Brussels rather than in different European cities as before.
8. The vast majority of the estimated nine million people who have fled their homes in Syria are either internally displaced or living as refugees in neighbouring countries, principally Turkey, Lebanon, Jordan, and Iraq. The relatively small number (approximately 150,000) who have claimed asylum in Europe has nevertheless prompted concern among European Governments of a new asylum crisis.
9. My calculations using Eurostat data available at <http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>
10. *Centre on Housing Rights and Evictions v. France*, Complaint No. 63/2010. [http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC63Merits\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC63Merits_en.pdf)
11. See <http://frontex.europa.eu/about-frontex/governance-documents/2015>



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