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The negotiation and contestation of EU migration policy instruments: a research framework

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ABSTRACT

This article develops a research framework for the analysis of the politics of migration policy instruments. Policy instruments are seen as living instruments; they evolve and develop similar to moving targets. A scholar interested in this field of research may focus either on the establishment of a given instrument or on its use. The question of an instrument's design relates to the policy transfer literature focusing on how certain policies move from one setting to another. In the context of a policy transfer, actors from the other - 'receiving' - institutional setting negotiate and, potentially, contest or reinterpret a policy instrument. The evolution of policy instruments once adopted in a specific institutional context is a second area of interest. The original goals can be diluted throughout the implementation process notably due to tensions between intergovernmental and supranational actors, or sticky institutionalization, which is characterized by path-dependencies. Often the choice of new instruments derives from an inefficiency or loss of credibility of past instruments. This editorial therefore seeks to make a twofold contribution: first it investigates the added-value of a policy instrument approach to the study of migration; second it furthers research on the external dimension of EU migration policy.

Keywords

EU external migration policy - migration governance - policy instrument - non-EU countries.

1. Introduction

The better ‘governance’ of international migration has become a priority for the EU. An important element in the EU’s efforts to establish a common EU migration policy has been the strengthening of cooperation with third countries, in particular with migrant’s countries of origin. Since the early 2000s, the EU has agreed upon a range of migration policy instruments with third countries such as the Mobility Partnership and readmission agreements. Although each of these instruments is usually structured similarly, they also exhibit substantial differences in terms of both content and practical use. A case in point is the Mobility Partnership with Morocco signed in June 2013 that gives Moroccan authorities more leeway in defining priorities compared to the EU’s earlier Mobility Partnerships with Cape Verde, Moldova, Georgia and Armenia. The question therefore arises: which factors determine the design and use of EU migration policy instruments?

By focusing on the politics of migration policy instruments, this Special Issue brings together a set of contributions that seek to shed light on this and related questions. A particular emphasis is placed on the role and impact of third countries and international organizations in defining and applying EU migration policy instruments. What is the direction of influence between the EU, third countries and international organizations? How do the EU’s policy instruments in the migration field evolve in view of constant interactions with non-EU actors and institutions? These questions are relevant to the study of the governance of international migration at large given that policy instruments reflect wider norms that underpin such cooperation.

With this research focus, the Special Issue seeks to make a twofold contribution to the academic literature. A first objective is to investigate which kind of added value a policy instrument approach can offer to the study of migration. This approach has found increasing academic attention¹, yet its application has so far been limited to few policy areas such as environment² and common foreign and security policy³. A second objective is to contribute to the better understanding of the evolving dynamics of the external dimension of EU migration policy. The establishment of this external dimension has been closely followed by political observers and the academic community⁴. While building upon this knowledge, this Special Issue seeks to go one step further; it no longer focuses

¹ Lascoumes, P. and Le Galès, P. (2007). Introduction: Understanding Public Policy through its Instruments—From the Nature of Instruments to the Sociology of Public Policy Instrumentation. *Governance* 20(1): 1-21, Le Galès, P. (2006). Special Issue of Governance: Understanding Public Policy Through Its Instruments, NewGov Deliverable 9/D02.

² Bomberg, E. (2007). Policy learning in an enlarged European Union: environmental NGOs and new policy instruments. *Journal of European Public Policy* 14(2): 248-68, Halpern, C. (2010). Governing Despite its Instruments? Instrumentation in EU Environmental Policy. *West European Politics* 33(1): 39-57.

³ Menon, A. and Sedelmeier, U. (2010). Instruments and intentionality: civilian crisis management and enlargement conditionality in EU security policy. *West European Politics* 33(1): 75-92.

⁴ See e.g. Lavenex, S. and Uçarer, E. M. (2002) *Migration and the Externalities of European Integration*, Lanham/Boulder/New York/Oxford, Lexington Books; Lavenex, S. (2006). Shifting Up and Out: The Foreign Policy of European Immigration Control. *West European Politics* 29(2): 329 - 51; Wolff, S., Wichmann, N. and Mounier, G. (2009). The External Dimension of Justice and Home Affairs: A Different Security Agenda for the EU? *Journal of European Integration* 31(1): 9-23; Sterkx, S. (2009). The External Dimension of EU Asylum and Migration Policy: Expanding Fortress Europe?, in: J. Orbie (ed.) *Europe's Global Role: External Policies of the European Union*, Burlington, Ashgate, pp 117-39; Haddad, E. (2008). The External Dimension of EU Refugee Policy: A new Approach to Asylum. *Government and Opposition* 43(2): 190-205, Boswell, C. (2003). The 'external dimension' of EU immigration and asylum policy. *International Affairs* 79(3): 619 - 38; Trauner, F. and Carrapico, H. (2012). The external dimension of EU justice and home affairs after the Lisbon Treaty: analysing the dynamics of expansion and diversification. *European Foreign Affairs Review* 17(Special Issue 2012): 165-82.

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on the reasons why migration objectives found their way in EU external relations and/or ‘contaminated’ other policy areas such as development. Rather, it is interested in how migration policy instruments once established in EU external relations evolve over time and in constant interactions with third countries and international organizations. With only few exceptions⁵, the EU’s external migration cooperation has been analyzed from a Eurocentric perspective, thereby neglecting the potential impact which non-EU actors may have on the evolution of an EU policy.

This introductory article is structured in three parts. It starts by analyzing the different layers of migration governance (national/regional/international). The next and main section adapts the policy instrument approach for the purposes of the present research interest and clusters migration policy instruments in EU external relations. The editorial is concluded by situating the different contributions of the Special Issue in the politics of instrumentation.

2. The different Layers of Migration Governance

The presentation of the different layers of migration governance is relevant as policy instruments often migrate between the layers (national/regional/international). In the case

⁵ See e.g. Reslow, N. (2012). The Role of Third Countries in EU Migration Policy: The Mobility Partnerships. *European Journal of Migration and Law* 14(4): 393-415; Betts, A. and Milner, J. (2006). The externalisation of EU asylum policy: the position of African states, Working Paper No. 36, Oxford University.

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of the EU, for instance, many policy instruments have their origin either at the national or the international level.

2.1. The national level

Nation states have remained central actors in the governance of international migration. In many cases, migration-related arrangements are concluded only between a country of migrants' origin and a country of destination. Labor migration, in particular, has remained a field that is regulated in bilateral relations or in a unilateral form (meaning that migrant receiving states choose who they admit into their territory, with little or no influence from the migrant sending countries). In Europe, several states have been very active in signing bilateral agreements, in particular with migrants' sending countries in Africa. Important examples of bilateral partnerships have been Italy-Libya, France-Mali, France-Senegal, Denmark-Kenya and the UK-Tanzania⁶. Linking migration-related issues to development aid and trade, these agreements have often sought to engage the migrant sending countries in the control of unwanted migration through readmission agreements and capacity building.

The national level has also been of high relevance for EU migration policy. At the beginning of the European cooperation, the EU level was not meant to take away

⁶ Betts, A. (2011). The global governance of migration and the role of trans-regionalism, in: R. Kunz, S. Lavenex and M. Panizzon (eds.) *Multilayered Migration Governance. The Promise of Partnership*, Oxon, Routledge, pp 23-46.

decision-making competences from the national level. Cooperation was rather designed to shield an epistemic community (namely security-oriented actors from ministries of the interior of member states) from constraints exerted by constitutions, jurisprudence and laws at the national level. The EU provided these actors with ‘venues of decision-making’ in which they were protected from domestic and European actors with other preferences⁷. Many policies adopted at EU level were of a restrictive nature and aimed at reducing the number of irregular migrants and (bogus) asylum seekers⁸. With the gradual *communitarisation* of EU Justice and Home Affairs, the EU’s role in immigration and asylum has been changing and other actors such as the European Commission or the European Parliament have gained influence⁹. Still, member states and transgovernmental networks of law enforcement officials have remained particularly powerful in the process of externalizing EU migration policies¹⁰.

2.2. The regional level

International migration management often takes place in a regional context, also due to

⁷ Guiraudon, V. (2000). European Integration and Migration Policy: Vertical Policy-making as Venue Shopping. *Journal of Common Market Studies* 38(2): 251 - 71, Joppke, C. (1998). Why Liberal States Accept Unwanted Immigration. *World Politics* 50(2): 266-93, Guiraudon, V. and Lahav, G. (2000). A Reappraisal of the State Sovereignty Debate. The Case of Migration Control. *Comparative Political Studies* 33(2).

⁸ Guild, E. (2006). The Europeanisation of Europe's Asylum Policy. *International Journal of Refugee Law* 18(3-4): 630-51, Geddes, A. (2008) *Immigration and European Integration: Beyond Fortress Europe?*, Manchester, Manchester University Press.

⁹ Kaunert, C. and Léonard, S. (2012). The development of the EU asylum policy: venue-shopping in perspective. *Journal of European Public Policy* 19(9): 1396-413.

¹⁰ Lavenex, S. (2006). Shifting Up and Out: The Foreign Policy of European Immigration Control. *West European Politics* 29(2): 329 - 51.

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the fact that migration flows often exhibit regional patterns (e.g. Central American and Mexican migrants coming to the United States).

The wording ‘regional context’ can be understood in a twofold way. First, it can imply that countries within one region seek to find common responses to international migration challenges. This may involve the delegation of legal competences to a regional organization such as the European Union. In the case of the EU, this has happened with the Treaty of Amsterdam (1999) which incorporated the Schengen rules and regulations into the EU’s legislative framework and transferred immigration and asylum, along with visa, external border controls and civil law matters, from the intergovernmental ‘Justice and Home Affairs’ Pillar to the ‘European Community’ Pillar. With these new competences, the European Council quickly called for the development of ‘a common EU asylum and migration policy’, including measures aimed at establishing a ‘partnership’ with countries of origin, ensuring fair treatment of third country nationals legally residing in the EU, creating common asylum procedures and rules and better controlling irregular migration¹¹. However, measures on legal migration did not feature high on this agenda given that the heads of state and governments had been reluctant to give away any decision-making power in this field. Until the Lisbon Treaty, decisions on legal migration required unanimity. While the EU is the regional organization with the farthest-reaching legal competences in the field, other regional entities such as the African Union (AU) or MERCOSUR in South America also increasingly deal with migration-related challenges. Their approach towards migration, however, may differ

¹¹ European Council (1999). Presidency Conclusions, Tampere, 15 and 16 October 1999.

from the EU. The African Union, for instance, is less concerned with issues of irregular migration than with the well-being of the African Diaspora.

Second, regional context can also imply that the governance of international migration increasingly takes place in trans-regional frameworks. ‘Trans-regionalism’ has become a prominent governance mode in relation to irregular migration and, to some extent, labor migration¹². In so doing, migrants’ receiving states, in particular in Europe, the US and Australia, have stopped waiting (passively) until a migrant has reached the borders of their territory. ‘Rather, they have increasingly sought to exert extra-territorial authority in order to shape the movement of people within or from other regions in the world’¹³. Policy instruments and norms are sometimes the result of the influence of the transnational networks that may consist of NGOs or regional inter-state organizations such as the International Centre for Migration Policy Development (ICMPD). Of relevance have also been (loosely institutionalized) inter-state dialogues such as the High-Level Dialogue on International Migration and Development, the International Conference of Population and Development or the Global Forum on Migration and Development. They may end up or relate to regional consultative processes such as the Budapest Process, the Mediterranean Transit Dialogue, or the South American Conference on Migration¹⁴.

¹² Betts, A. (2011). see note 6.

¹³ Betts, A. (2011). see note 6, at p. 32.

¹⁴ Thouez, C. and Channac, F. (2006). Shaping International Migration Policy: the Role of Regional Consultative Processes. *West European Politics* 29(2): 370-87.

2.3. *The international/global level*

‘Migration has become global but there is no global regime to govern the international movement of persons’. This statement by Philippe Fargues¹⁵ refers to the fact that there is no migration law that can be considered of global reach. The existing regime is complex, multilayered and consists of international, regional and trans-national treaties as well as bilateral arrangements¹⁶. Although migration law has been codified to some extent at the international level, it has not been accompanied by a corresponding international architecture. According to Alexander Aleinikoff¹⁷, there is ‘substance without architecture’. This does not imply that international organizations (IO) have not dealt with migration-related issues. On the contrary, many IOs such as the International Organization for Migration (IOM) and the International Labor Organization (ILO) have dealt exclusively or partially with aspects of migration governance. These organizations, however, have primarily provided their member states with services and advice. Regardless of the many international initiatives in the migration field, the willingness of nation states to subscribe to legally binding international norms has been limited. In Bett’s analysis of global migration governance, multilateralism through international organizations is only a ‘thin layer’. In several cases, however, migration issues are

¹⁵ Fargues, P. (ed.) (2010). *Understanding Human Migration*. Florence, European Union Institute, at p. 18.

¹⁶ Kunz, R., Lavenex, S. and Panizzon, M. (eds.) (2011). *Multilayered Migration Management: The Promise of Partnership*, London, Routledge.

¹⁷ Aleinikoff, T. A. (2007). International Legal Norms on Migration: Substance without Architecture, in: R. Cholewinski, R. Perruchoud and E. MacDonald (eds.) *International Migration Law: Developing Paradigms and Key Challenges*, The Hague, TMC Asser Press, pp 467-79.

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‘embedded’ in the work of international organizations and/or in international norms, without being explicitly monitored by migration institutions¹⁸.

Two main narratives - ‘migration management’ and ‘migration-development nexus’ - dominate the global discourse and therefore norms and policy instruments. The first discourse concerns the need to manage or control migration fluxes, while the other insists upon the need to take into account the development roots and benefits of migration. It is interesting to note that the EU, in spite of its governance specificities, mirrors these discourses. Inspired by the New Public Management discourse, the ‘migration management’ view has been criticized for lacking an ethical dimension¹⁹. The second narrative focuses more on the ‘migration-development nexus’. A key assumption here is that the more targeted use of development aid and trade can contribute to reducing permanent migration²⁰. The potential of migrants has also moved to the centre of attention. Contrary to earlier discussions that assumed migration has a negative impact on the development of a country (in particular through ‘brain drain’), a new consensus emerged in the 1990s highlighting the aspect of ‘co-development’ and the potential of the transnational engagement of migrants in the development of their home societies²¹.

¹⁸ Betts, A. (2010). *Global Migration Governance - the Emergence of a New Debate*, Global Economic Governance Programme, University of Oxford.

¹⁹ Barrero-Zapata, R. (2012). European Migration Governance: From “Anything Goes” to the Need for an Ethical Code *American Behavioral Scientist* 56(9): 1183-203, Geiger, M. and Pecoud, A. (2012) *The politics of international migration management*, London, Palgrave.

²⁰ De Haas, H. (2007). Turning the Tide? Why development will not stop migration. *Development and Change* 38(5): 819-41.

²¹ Nyberg-Sørensen, N., Van Hear, N. and Endberg-Pederson, P. (2002). The Migration-Development Nexus: Evidence and Policy Options. *International Migration* 40(5): 49-

3. Understanding EU Migration Policy Instruments

This section presents the analytical framework upon which the articles contributing to this Special Issue build. It starts by highlighting the benefits of a policy instrument approach to understand the dynamics of international migration governance. It then looks how these instruments are being diffused or developed within the context of EU migration policy and proposes a typology of migration policy instruments.

3.1. The added-value of a policy instrument approach

The policy instrument approach in public policy is tightly linked to the booming literature on new governance dealing with non-hierarchical, soft, and informal modes of policy-making. In the quest for ‘better governance’, traditional policy instruments such as legislation, constitutions and regulations have been challenged by the need to accommodate a wider range of interests and stakeholders. The above-mentioned layers of international migration governance have multiplied the spaces, regions and arenas where policy instruments are designed, contested and implemented.

150, Faist, T., Fauser, M. and Kivisto, P. (eds.) (2011). *The migration-development nexus: a transnational perspective*, Basingstoke, Palgrave.

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There are two strands of the literature for the study of policy instruments. The first one, borrowing from economics, adopts a rational-choice inspired analysis of policy instruments. It focuses on researching how instruments are able to efficiently reach their objectives, often relying on a cost-benefit analysis. It sees policy instruments as pragmatic tools to solve public policy issues at the functional disposal of policy-makers. Usually ‘policy instruments are widely seen as being substitutable’ and ‘public policy is thus a toolbox from which the optimal tools are (or should be) selected’ leading to the best possible outcome through an ideal ‘policy mix’ of instruments²². This rational approach, however, does not focus on the ‘politics’ of instrumentation and the way instruments can be contested over time and evolve depending on the context.

This is more the focus of a second strand of literature that sees policy instruments as ‘a condensed form of knowledge about social control and ways of exercising it’²³. Far from being ‘neutral devices’, they are contested and the object of dynamics of politicization, de-politicization and connected to issues of legitimacy. In this light, policy instruments are defined as ‘a device that is both technical and social, that organizes specific social relations between the state and those it is addressed to, according to the representations and meanings it carries. It is a particular type of institution, a technical device with the generic purpose of carrying a concrete concept of the politics/society relationship and sustained by a concept of regulation’²⁴. A focus on the politics of instrumentations hence implies to look at the drivers behind the choices of instruments as well as the structure of

²² Flanagan, K., Uyarra, E. and Laranje, M. (2011). Reconceptualising the ‘policy mix’ for innovation. *Research Policy* 40(702-713).

²³ Lascoumes, P. and Le Galès, P. (2007). see note 1, at p. 1.

²⁴ Le Galès, P. (2006). see note 1, at p. 8.

a public policy²⁵.

This has been well demonstrated in the case of so-called EU ‘new environmental policy instruments’ (NEPI)²⁶. NEPIs were introduced in the form of market-based instruments, voluntary agreements, and emission trading schemes to cope with weaknesses of traditional EU environmental policy-making (e.g. weak enforcement)²⁷. While the innovative character of those new instruments is often put forward, observers often neglect why specific instruments are adopted in specific situations or how they evolve over time²⁸. Often EU institutions borrow seemingly ‘new’ policy instruments from the national or international level in order to ‘legitimise [their] environmental competence’²⁹. Halpern argues that NEPI were more useful in structuring the policy than achieving particular objectives. They were instrumental in providing specific groups with access to EU policy-making, addressing new issues and improving coordination. Information-based and consultative instruments have thus been useful in ‘structuring forms of production of knowledge and expertise’³⁰.

Few studies have applied this research lens for other areas such as migration and EU external relations, let alone looked at the role of non-EU actors in the politics of

²⁵ Le Galès, P. (2006). Ibid.

²⁶ Bomberg, E. (2007). Policy learning in an enlarged European Union: environmental NGOs and new policy instruments. *Journal of European Public Policy* 14(2): 248-68, Jordan, A. and Lenschow, A. (eds.) (2008). *Innovation in Environmental Policy? Integrating the Environment*, Cheltenham, Edward Elgar.

²⁷ Halpern, C. (2010). see note 2 at p. 40, Bomberg, E. (2007). see note 2, at p. 248.

²⁸ Halpern, C. (2010). see note 2, at p. 40.

²⁹ Halpern, C. (2010). see note 2, at p. 46.

³⁰ Ibid.

instrumentation. An exception is the work of Menon and Sedelmeier³¹ for EU security policy, investigating the cases of crisis management and enlargement conditionality. Another study using the policy instrument approach is the one of Farrell³². She looks at the negotiations of Economic Partnership Agreements as policy instruments, and highlights the pressures that transnational civil society exerted on the European Commission's proposal. The introduction of new policy instruments was the direct consequence of mounting criticism on the Lomé Convention. Following Peter Hall's typology of change and social learning, Farrell identifies a 'first order change' with the EU's change of instrument (from Lomé to Cotonou); a 'second order change' with the introduction of new policy instruments such as Economic Partnership Agreements³³. The 'third order change', which should lead to a paradigmatic change, however, was not identified. The EU retained its core beliefs of normative power, and kept third countries somewhat excluded from the process.

The studies applying the policy instrument approach so far have hence focused on the politics of instrumentation *within* the EU and on the EU as an actor or regionalism. The role and influence of external actors, e.g. if they mobilize against EU's policy instruments, are under-researched. Studies also often lack a dimension of temporality -

³¹ Menon, A. and Sedelmeier, U. (2010). Instruments and intentionality: civilian crisis management and enlargement conditionality in EU security policy. *West European Politics* 33(1): 75-92.

³² Farrell, M. (2009). EU policy towards other regions: policy learning in the external promotion of regional integration. *Journal of European Public Policy* 16(8): 1165-84.

³³ Farrell, M. (2009). *Ibid*, at p. 1177.

how policy instrument evolve over time³⁴.

3.2. *Defining EU migration policy instruments*

This Special Issue adheres to Lascoumes and Le Galès' understanding that policy instruments are not neutral but carry meanings about politics, knowledge and social control (see above). Therefore, a policy instrument has both an ideational and a functional dimension. The ideational dimension relates to the objectives and norms that underpin a given policy instrument. In this context, norms are understood as 'a standard of appropriate behavior for actors with a given identity' - basically what actors consider as normal or appropriate behavior³⁵. The functional dimension concerns the way in which the actors seek to translate these objectives and norms into outcomes. In doing so, they first establish and then apply specific rules and technical tools.

Let us exemplify this understanding of policy instruments for the case of EU readmission agreements. Such an agreement presents the legal codification of a concrete objective of EU migration policy – that is to establish a 'credible' EU migration policy that is 'capable of reacting in case of abuse'³⁶. These objectives are informed by wider societal

³⁴ But see Geddes, A. (2005). Europe's Border Relationships and International Migration Relations. *Journal of Common Market Studies* 43(4): 787-806, at p. 799.

³⁵ Finnemore, M. and Sikkink, K. (1998). International Norm Dynamics and Political Change. *International Organization* 52: 887-917, at p. 891.

³⁶ See e.g. Commission of the European Communities (2002). Green Paper on a Community Return Policy on illegal Residents, Brussels, COM (2002)175, 10 April

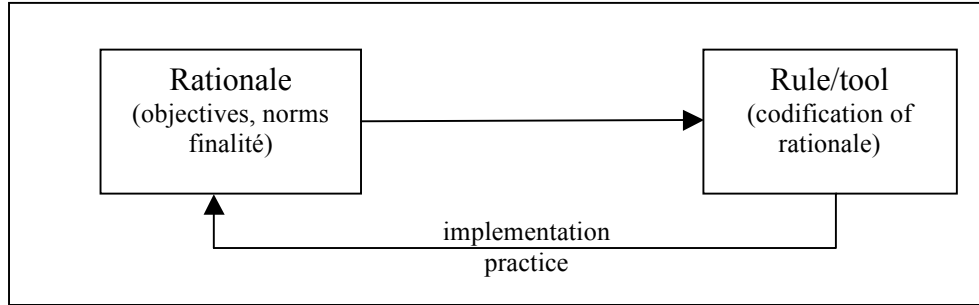
norms and developments. In the literature, it is well-established that (and how) migration has become ‘securitized’ and transformed into a ‘law-and-order’ issue. This implies that migration has increasingly been framed as a threat to a country’s social, economic and political stability³⁷. In the present case, therefore, the increasing relevance of a societal perception towards migration (migrants as ‘security threats’) has found its expression in the EU objective of ‘fighting illegal migration’. This is to be achieved by signing EU readmission agreements with third countries. The very use of this legal device, however, not only depends on the way it was set-up (e.g. does the agreement include a ‘third-country-national clause’ or not?), but also on the ways in which the contracting parties employ it. A third country may contest an EU readmission agreement not only in the negotiation process but also in the implementation phase e.g. by systematically disapproving the certificates and documents provided by EU member states in the context of a return. This practical experience of cooperation feeds back into how the EU defines its policy objectives and instruments. In a long-term perspective, it may even impact the societal norms and objectives underpinning migration policy.

The Special Issue therefore builds upon the understanding that policy instruments are *living instruments*; they evolve and develop similar to moving targets.

Figure 1: Conceptualising a policy instrument

2002; Council of the European Union (2002). Co-operation with third countries of origin and transit to jointly combat illegal immigration, Brussels, 9917/3/02.

³⁷ See, among others, Huysmans, J. (2000). The European Union and the Securitization of Migration. *Journal of Common Market Studies* 38(5): 751 - 77.



A researcher interested in policy instruments may focus either on the establishment of a given instrument or on its use. Depending on which of these two time-phases one is interested in, different research questions may guide the enquiry:

- ***With regard to the establishment/design of a policy instrument:***

Which objectives does a policy instrument seek to achieve? What are the norms and values that inform these objectives? Which factors impact the negotiation process of a given policy instrument? Has a particular policy instrument been developed in or migrated from another setting/governance level? Why do actors adopt particular policy instruments at a certain time and not others? And, with regard to the migration policy instrument that builds upon the cooperation with non-EU actors, what has been the impact of third countries and/or international organizations in the negotiations of the EU policy instrument? Have external actors exerted any influence over the design of the instrument and how?

- ***With regard to the use of a policy instrument:***

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Which factors characterize the use and application of a policy instrument? To what extent are they actually used? How can one evaluate the success or the failure of a policy instrument? How is a policy instrument that is originally developed in a different setting/governance layer interpreted/transferred into another institutional context? What are forms of contestation towards a certain instrument?

While many of these research questions are addressed in the different contributions, they open up further and other avenues of research beyond this Special Issue. An intriguing aspect possibly addressed in further research is that some of the EU's policy instruments, often recently created, are hardly used by member states, which prefer to rely on existing bilateral instruments. For instance, the Commission complained in its evaluation of EU Readmission Agreements (EURA) that the 'inconsistent application of EURAs undermines greatly the credibility of the EU Readmission Policy towards the third countries, which are expected to apply the EURA correctly'³⁸. Similarly, at the level of operational cooperation, bilateral patrolling between the Spanish Guardia civil and the Moroccan gendarmerie or between the Italian Guardia di Finanza and the Libyan authorities might be privileged over a coordinated Frontex operation.

3.3. *A typology of EU migration policy instruments*

³⁸ European Commission (2011). Evaluation of EU Readmission Agreements. COM(2011) 76 final, 23 February 2011, at p. 5.

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A typology of migration policy instruments used in EU external relations includes agreement- and incentive based instruments, operational and practical support, and international law and norms development. It is important to highlight, however, that the boundaries between the different categories are at times quite blurry. When signing an EU readmission agreement, for instance, a third country often receives enhanced operational and financial support as well as facilitated travel opportunities for its citizens³⁹. Immigration control agreements (or migration clauses in other EU agreements) are often linked to trade concessions and/or development aid. In many instances, this kind of arrangement is embedded into broader strategic frameworks of cooperation⁴⁰. International law is a category on its own. The EU's objective of actively contributing to the development of international norms and principles in the area of asylum and migration is a relatively recent one, e.g. spelled out in the 2005 EU strategy for external action in JHA⁴¹. In practice, however, the EU and its member states are often more concerned with how to accommodate already existing international laws and principles within its national and European structures than with developing new ones.⁴²

Table 1: Migration policy instruments in EU external relations

³⁹ Trauner, F. and Kruse, I. (2008). EC Visa Facilitation and Readmission Agreements: A New Standard EU Foreign Policy Tool? *European Journal of Migration and Law* 10(4): 411-38.

⁴⁰ Cassarino, J.-P. (2007). Informalising Readmission Agreements in the EU Neighbourhood. *The International Spectator* 42(2): 179-96.

⁴¹ Council of the European Union (2005). A strategy for the External Action of JHA: Global Freedom, Security and Justice, Brussels, 15446/05, 6 December 2005.

⁴² See Roos and Zaun, this issue.

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<i>Type</i>	<i>Instrument</i>	<i>Objective</i>	<i>Origin/forerunners</i>
Agreement-based and incentive-based			
	EU readmission agreement	Regulation of return procedures of migrants in irregular situations	National; first European agreements signed in early 19 th century
	EU visa facilitation agreement	Facilitated application procedures for Schengen visas	National; e.g. United States Visa Waiver Programm was created in 1986
	Visa Free Dialogues	Achieving full visa liberalization for the Schengen area	
	Embedded migration clauses	Migration-related clauses in EU Association, Development and Trade Agreements	National and international; e.g. General Agreement on Tariffs and Trade (GATS) of World Trade Organization (WTO)
	Circular migration	Temporary work and resident permits for migrant worker	National; e.g. German <i>Gastarbeiter</i> Programme
	Mobility Partnership	Framework for regulating legal migration	National;
	Aid Programmes	Capacity building and tackle 'root causes' of migration	National;
Information-based and operational support			
	Practical cooperation	e.g. cooperation on 'country of origin' information, FRONTEX operational support for border management and migration control	National and regional (e.g. Regional Consultative Processes)
International Law			
	International norms and conventions	EU coordination in Int. Organizations to develop international norms and conventions	

Source : own elaboration; inspired from Halpern⁴³

The table shows that most of the EU's migration policy instruments build upon or are inspired by national or international forerunners. For instance, the historical roots of European readmission agreements lie in the early nineteenth century when Prussia first

⁴³ Halpern, C. (2010). see note 2, at p. 43-44.

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signed such agreements with other German States in 1818 and 1819.⁴⁴ Circular migration schemes have been a long-standing instrument used by some member states before it found access to the EU's toolbox of policy instruments. Examples thereof include the *Noria* principle in France, the *Gastarbeiter* programme in Germany and other guest worker systems.

4. The politics of instrumentation and the Special issue

The politics of instrumentation differ according to which time-phase one analyses. Each of the contributions of this Special Issue focuses either on a policy instrument's inception or on its evolution.

Given that many migration policy instruments migrate from one governance level to another, the question of an instrument's design relates to the policy transfer literature focusing on how certain policies move from one setting to another. Diffusion has been defined as 'the process by which an innovation is communicated through certain channels over time among members of a social system'⁴⁵. Policy innovation and transfer may be actively promoted by external actors – yet it may also be the result of more unintended consequences or parallel developments e.g. between two regional organization such as

⁴⁴ Coleman, N. (2009) *European Readmission Policy. Third Country Interests and Refugee Rights*, Leiden, Martinus Nijhoff Publishers, at p. 12.

⁴⁵ Berry and Berry quoted in Stone, D. (2008). Global Public Policy, Transnational Policy Communities, and Their Networks. *The Policy Studies Journal* 36(1), at p. 546.

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Mercosur and the EU.⁴⁶ Many of the EU's external effects are not necessarily intentional by nature but also stem from unintended side effects of the EU's internal regime. Sandra Lavenex and Emek Uçarer⁴⁷ therefore introduce the term 'externalities' from economics for analyzing the whole range of ways in which the EU impacts third countries and international organizations. They maintain that 'the external effects of European policies take place along a continuum that runs from voluntary to more constrained forms of adaptation, and include a variety of modes such as unilateral emulation, adaptation by externality, and policy transfer through conditionality'⁴⁸.

In the context of a policy transfer, actors from the other - 'receiving' - institutional setting negotiate and, potentially, contest or reinterpret a policy instrument. This process may alter both the instruments' ideational (meaning and rationale) and the functional dimension. From a theoretical perspective, actors' reactions to a policy instrument with a foreign origin may be best explained either according to a logic of appropriateness or according to a logic of consequentiality⁴⁹. According to the logic of consequentiality, the transfer of a policy instrument provides actors with new or enhanced opportunities to pursue their interests and to shift the balance of power in favour of their preference⁵⁰. A logic of appropriateness considers a wider normative environment in which actors behave

⁴⁶ Acosta and Geddes, this issue

⁴⁷ Lavenex, S. and Uçarer, E. M. (2002) *Migration and the Externalities of European Integration*, Lanham/Boulder/New York/Oxford, Lexington Books.

⁴⁸ Lavenex, S. and Uçarer, E. M. (2004). The External Dimension of Europeanization: The Case of Immigration Policies. *Cooperation and Conflict: Journal of the Nordic International Studies Association* 39(4): 417 - 43, at p. 417.

⁴⁹ March, J. G. and Olsen, J. P. (1998). The Institutional Dynamics of International Political Orders. *International Organisation* 52(4): 943 - 69.

⁵⁰ North, D. C. (1990) *Institutions, Institutional Change and Economic Performance*, Cambridge, Cambridge University Press.

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and choose the policy option that is considered most legitimate⁵¹. The pre-existing structures and local agents become key in negotiating and ‘localizing’ international norms and rules. This can even lead to a policy instrument’s modifications ‘in accordance with their preconstructed normative beliefs and practices’⁵². Path dependencies, the structure of domestic institutions and pre-existing norms are hence of particular relevance for compliant or non-compliant behaviour⁵³. New policy instruments will ‘never enter a normative vacuum but instead emerge in a highly contested normative space where they must compete with other norms and perceptions of interest’⁵⁴.

Inspired from these theoretical perspectives, Cassarino⁵⁵ offers a telling account on how the Tunisian government selectively incorporated elements of the EU’s migration policy toolbox in order to enhance its own strategic options with regard to surveillance and control. Whereas this example can be explained from a rational-choice perspective, a constructivist lens offers important insights in other instances. According to Wolff⁵⁶, the issue of appropriate behavior has been of strong relevance in the EU’s readmission negotiations with Turkey and Morocco. Acosta and Geddes⁵⁷ show that the normative underpinnings of EU migration policy have been contested in the framework of the

⁵¹ March, J. G. and Olsen, J. P. (1998). see note 49.

⁵² Acharya, A. (2004). How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism. *International Organization* 58: 239-75, at p. 269.

⁵³ Checkel, J. T. (2001). Why comply? Social learning and European Identity Change. *International Organization* 55(3): 553 - 88.

⁵⁴ Finnemore, M. and Sikkink, K. (1998). International Norm Dynamics and Political Change. *International Organization* 52: 887-917, at p. 897.

⁵⁵ This issue.

⁵⁶ This issue.

⁵⁷ This issue.

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Mercusor cooperation. In fact, this contestation and opposition to EU migration norms has influenced the development of a more liberal approach towards migration in South America.

The evolution of policy instruments once adopted in a specific institutional context is a second area of interest. The politics of instrumentation of EU migration governance, especially with third countries, is a complex process. The original goals can be diluted throughout the implementation process notably due to tensions between intergovernmental and supranational actors, or sticky institutionalization, which is characterized by path-dependencies⁵⁸. Often the choice of new instruments derives from an inefficiency or loss of credibility of past instruments. This is true for the case of EU enlargement conditionality and European Security and Defence Policy (ESDP); it appeared at the beginning of the 1990s as a solution to new security challenges posed to Europe, in particular the crisis in ex-Yugoslavia, and also to restructure the relationship between the EU and NATO after the fall of the Berlin wall⁵⁹. However, eventually, the ESDP's goals and structure came to revolve mostly around civilian crisis management objectives. 'Similarly, there was never a strategic collective EU decision taken to use enlargement as a tool of security policy. Rather conditionality emerged as a by-product of a highly contested process leading to the EU's eastern enlargement, in which different actors pursued competing objectives'⁶⁰. Thus, the purpose and structure of a specific instrument can be diluted throughout the policy-making process and may have different

⁵⁸ Wolff, S. (2012) *The Mediterranean Dimension of the European Union's Internal Security*, Houndmills, Palgrave.

⁵⁹ Menon, A. and Sedelmeier, U. (2010), see note 3, at p. 82.

⁶⁰ Ibid.

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outcomes than those originally intended. In the field of migration policy instruments, such unintended consequences have been identified in the case of the Western Balkans⁶¹. The increase of asylum applications originating from the Western Balkans was not foreseen by EU member states and made them revise their approach on how to grant (and maintain) visa-free travel.

Finally, bilateral relations of member states as well as the international/global level as discussed above may also turn out to be a constraint (or, on the contrary, an inspiration) for EU migration policy instruments. External actors and the intended recipients of those policy instruments exert another potential influence. With regard to the EU's instrument of mobility partnership, for instance, third countries such as Senegal and Cape Verde have not 'merely been passive recipients of policy proposals' but actively sought to influence the EU's policy outcomes⁶². Morocco and Turkey have sought to discuss visa facilitation and liberalization by behaving as hard bargainers⁶³. International rules and conventions have turned out to be an inspiration for EU migration policies and been incorporated, in different ways, into EU law⁶⁴.

With their different empirical foci, the authors provide for detailed and rich insights into the politics of migration policy instruments and contribute to our understanding of this important aspect of EU external migration relations. Certainly, they cannot (and do not seek to) provide an answer to all the research questions identified in this editorial. The

⁶¹ Trauner and Manigrassi, this issue

⁶² Reslow, N. (2012). see note 5.

⁶³ Wolff, this issue.

⁶⁴ Roos and Zaun, this issue.

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Special Issue understands itself as an endeavor to open up a new field of migration research, inviting other scholars to go in a similar direction and further deepen our knowledge.

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