The European Union as an actor in international relations. A case-study of the legislation development on the common immigration and asylum policy.

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Abstract

The European Union has been becoming one of the most prominent actors in the contemporary international relations. The emergence of a phenomenon which does not fall into traditional explanatory models triggered the vast number of the researches trying to provide the explanation of the EU actorness and international identity. In the academic field there is a fierce debate over the nature and the future of the European Union as a player at the international arena.

The goal of this research is to contribute to the comprehending of the European Union as an international actor through singling out its peculiarities and probing various theories explaining the EU actorness. The research is based on the case-study of the common policy development in the field of immigration and asylum. The study is conducted at the level of the legislation analysis in order to simplify the research and draw conclusions which can question or support some of the existing explanations of the EU actorness.

The research applies the methodology developed by Jef Huysmans in the framework of the theory of securitisation. The set of analytical tools is used in order to make the analysis of the vast number of different documents feasible and productive.

The research is designed the way that it is not supposed to provide the ultimate definition of the EU actorness but rather contribute to the academic debated over the nature of the European Union as an actor in international relations.

The research proves that the existing theories aimed at explaining the Union's role and nature are applicable to certain extend and manage to provide valid conclusions concerning some aspects of the European Union policies but they all have the limitations. Therefore, the multi-causal approach to the study of the EU's actorness is the most appropriate.

Keywords: the European Union common immigration and asylum policy, the EU actorness, the EU international identity.

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Introduction

The European Union has lately been gaining importance in international relations and becoming more visible at the international arena through various means including membership in international organizations, participation in peace keeping operations and other activities. Taking into account economic power of the Union which is significant even under the circumstances of the recent crisis accompanied by political power of combined influence of the EU Member States it is no surprise that the Union has been one of the key research subjects in many fields of studies. The scholars question the nature of the Union and try to predict the direction of its further development and the possible role it may play in the future.

Some researchers tend to consider the EU as a regular actor similar to states which have no option but to obey the general principles of the international system, such as the proponents of political realism like Hyde-Price[1]. Others believe in unique nature of the Union and view it as a qualitatively new actor that has a potential to reshape the system of international relations, as it is suggested by Manners in his theory of Normative Power Europe[2]. Some approaches prefer the combination of different explanatory concepts like Liberal Intrgovernmentalism[3]. The key point is that there is no agreement in the academic field concerning the nature and the peculiarities of the European Union as an actor in international relations.

On the one hand, in some fields such as economy the Union can be called a rising superpower but on the other hand, in fields requiring military force the Union lacks the capacity. Consequently, the EU is a controversial actor and it triggers debates among scholars who try to grasp the logic behind the EU's policies and forecast the model of its actions. Due to geographical location, the membership of the major European countries and special relations within North Atlantic region the EU is directly or indirectly involved in major international events. This contributes to the growing interest towards the Union as a player in international relations.

Despite the numerous researches and theories that tackle the EU actroness there is considerable confusion among scholars of how to interpret the EU in the context of the contemporary world. The theories propose contradictory explanations each of them being justified in certain ways but often failing to explain some aspects of the Union or proving to be inaccurate in their

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[1] Hyde-Price, A., 2008. A 'Tragic Actor'? A Realist Perspective on 'Ethical Power Europe', *International Affairs*, Vol.84: I, pp.29-44
[2] Manners, I., Normative Power Europe: A Contradiction in Terms?, JCMS 2002, Vol. 40, pp. 235-258
[3] Moravcsik, A., 2010. Europe, the Second Superpower. Current History: A Journal of Contemporary World Affairs. March 2010. pp. 91-98

predictions. Because of this abundance of theories and their contradicting approaches to the explanation of the EU, the Union remains a subject attractive to further studies since it is constantly evolving and new policies or domains of integration are being introduced on a regular basis.

The fact that the EU is gaining weight at the international arena and expands its external activities requires better understanding of this actor which makes the research of the EU's international identity topical and challenging. Owing to the comprehensive nature of the European integration and complicated structure of the EU system of policy making it seems advantageous to turn to analysis of a particular policy field which can serve a case study in comprehending the EU actorness. Ideally such a policy field should be connected with both internal and external aspects of the Union's activities. One of such spheres is immigration and asylum policy. That area is the central subject of the research as it combines both issues of high and low politics, humanitarian, economic, political and cultural aspects and also includes some elements of security both traditional (border control) and soft security or human security (such as threats to identity or economic prosperity). These factors make the area challenging for cooperation between the Member States and hence representative in terms of the role-model of the policy making at the supranational level. Practical importance of the study of this field is justified by the controversial nature of the policy and long-existing public debate over the efficiency of the EU approach to the immigration which sometimes led to tragic outcomes like those happening in the Mediterranean Sea in March 2011[4] or in October 2013[5]. Due to complexity of the field it was opted to focus exclusively on the legal aspects of the policy making because practical implementation of the policy measures is affected by the number of factors that may deteriorate the outcomes of the policy while the legislation presents the clear vision of the policy framework and its goals as seen by the Union and the Member States.

The analysis of the policy development at the level of legal instruments from the launching of the common policy may facilitate the understanding of the Union as an actor in international relations, reveal the main motives behind its policy, single out the factors affecting the decision making process and find out unique feature of the Union as a political system and a player at the

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[4] In March 2011, during the Libyan conflict, 72 migrants tried to reach Italy on a boat but lost control of the sea vessel. The call for help was left unanswered and 63 people died. The survivors submitted the complaint to the Tribunal de grande instance in Paris and the Audiencia Nacional in Madrid against French and Spanish military for not providing assistance.
[5] On 3 October 2013, a boat with migrants from Libya heading to Italy sank near the Italian island of Lampedusa, more than 300 people died. Later on 11 October another boat with migrants from Syria and Palestine wrecked, around 30 people died.

international arena. These conclusions, in their turn will contribute to the academic debate concerning the nature of the EU and its actorness.

The main purpose of the research is to analyse the development of the EU common immigration and asylum policy on the basis of the legislation and therefore reveal the following aspects of the policy:

- Why the policy was initiated on the communitarian level?
- What are the main factors behind the policy development, are they of external or internal nature?
- What are the peculiarities of the policy at different stages of its development and why?

Through the analysis of the policy the research is seeking to find an answer to the main research question: what kind of an international actor is the European Union? Taking into account the complexity of the European Union and understanding that the proposed approach has considerable limitations in explaining the EU as the whole the major goal of the research is to contribute to the search for the answer to this question and reflect on the peculiarities of the Union rather than trying to find an ultimate explanation of the phenomenon called the European Union.

The main tool for approaching and analysing the policy is the theory of securitisation adapted to the field of immigration by Huysmans. The theory is used as a set of practical tools which facilitate the study of the legal instruments of the Union's common immigration and asylum policy.

Concerning the theoretical basis the research covers briefly the main explanations of the EU actorness offered by various schools and paradigms but is not limited by adhering to any of them as the main explanatory model. This option allows certain flexibility in interpretation of the Union's actions and diminishes the possibility that a chosen approach can turn out to be too narrow or one-sided.

The major findings of this research prove that all the theories explaining the European Union actorness have both strong sides and weaknesses. They manage to explain certain aspects of the Union accurately and lead to well-grounded conclusions supported by the EU practices and policy developments covered by this research but at the same time the actual policy framing is a more complicated process that deviates at some points from the models presented by the theories due to both external and internal factors. Consequently, the most appropriate approach to the studies of the European Union as an international actor is multi-causal explanations proposed by

Liberal Intergovernmentalism. The theory itself is not sufficient enough to explain all the aspects of the Union's policy making but the fact that this theory does not rule out the use of various methods belonging to different paradigms and schools makes Liberal Intergovernmentalism the most convenient and appropriate tool for studying the EU actorness.

In the course of the research it has been found out that the European Union has some similarities with the state actors, for example the rationality of its policy and interest oriented approach; the need to take into account the limitations posed by the international system and the EU's ability to correlate its policy with the major trends of the world politics which implies flexibility and ability to adapt.

The Union nevertheless, cannot be equated with other states in its actions due to the political system, the multi-level decision-making mechanism, the important role of the Member States in policy making and the lack of supranational sovereignty in external activities.

The unique qualities of the Union distinguish it from other international organizations and international regimes as the level of the integration has exceeded both of these structures.

At the same time the European Union has a potential to exercise the policy in which the values play an important role along with pragmatism and there is a tendency to portray the Union as an actor which pays special attention to normative aspects of the policy, though at the current stage of the policy development the Union does not achieve this goal.

Thus the Union represents the entity which is still under construction but is already different from all existing actors at the international arena and also from those which used to exist in the past.

The main contribution of this research to the academic debate over the nature of the European Union as an actor in international relations is that the research has attempted to apply the practical tools of the securitisation theory to the chosen field in order to reveal the main feature of the policy making to prove or refute existing approaches to the study of the Union actorness and highlight strong and weak sides of the main theories explaining the EU as a political actor.

The structure of the research serves the main purposes of it and is as follows:

The research could be divided into three big parts; the first part presents the methodology of the research and covers the academic debate on the topic briefly presenting the main theories and approaches to the interpretation of the EU actorness and its role in contemporary international relations.

The second part of the research which includes three chapters consists of the analysis of the legislation development of the EU common immigration and asylum policy. The part is divided into chapters in accordance with the periods of the policy development.

The last part of the research presents the general conclusions on the policy and the EU actorness and is the most important part of the research.

The Conclusion summarises the analysis and findings of the paper.

Chapter 1

The subject of the research and the methodological basis

The main focus of the research is placed on analysis of the European Union legislation on immigration and asylum as a case study of the European Union activities which are supposed to help to understand what kind of actor the Union is and what goals this policy serves.

The policy of immigration and asylum was chosen as a case study because it combines the elements of domestic (internal) policy and external actions. It is a compressive field which touches upon such elements as human rights, human and social security, culture, identity, integration of the non-EU citizens in the Member States societies, social cohesion, border control, and visa policies. The combination of different aspects of the policy requires comprehensive and flexible measures to be adopted and the fact that this policy was transferred to the Communitarian level manifested that the Union is intended to act as an independent player at the international arena.

The policy is to be analysed on the basis of the legislative instruments providing the common measures in the field of immigration and asylum. This approach seems to be legitimate as it allows focusing on the "ideal" model of the policy and helps to single out initial intentions of the EU and the Member States. Due to numerous factors affecting practical dimension of the policy implementation it is often challenging to conclude what was the main purpose of the policy measure and if the outcomes of the decisions were planned to be as they are or they became the result of the combination of the EU's actions and random influences which are not in the area of the Union control. Focussing on legislation alone helps to avoid this ambiguity.

Therefore, the subject of the research is the legislation development on the European Union common immigration and asylum policy. The main goal is to find out the peculiarities of the policy which can lead to better understanding of the EU actorness in international relations.

For the purposes of the research the following methods are utilised:

The main method is comparative analysis of the legal instruments which envisage the policy aims and measures. In the framework of the research the different periods of the legal basis development are examined and compared to each other in order to single out the main tendencies and policy-specific features.

Other method is content analysis aimed at deeper understanding of the role of the legislation in policy making and figuring out the details which are not claimed directly but can be noticed through specific use of terms in legal documents.

One of the main methodological frameworks the research is based on is the method proposed as a part of the securitisation theory adjusted to the field of immigration by Huysmans[6].

The theory proved to be a useful tool as it provides well-developed methodology explaining how such a comprehensive issue should be approach and studied. The theory was tailored by the author especially for dealing with the immigration issues thus it takes into account all peculiarities in the field and practical difficulties the researcher may encounter. Moreover, the theory facilitates the work with legal basis which is extensive and comprised of the hundreds of documents of different importance which sometimes replicate each other and reiterate the main statements. Without the tools provided by the theory is would be almost impossible to approach this array of documents and extract necessary information. With the help of the theory it is easier to single out relevant data.

Huysmans combines the definition of security developed by such authors as Campell, Waver and Walker which include soft security elements in addition to military ones and the classic theory of securitization as a rhetoric act created by Buzan and applies this combination to the policy of immigration. The main difference between the notion of securitization as proposed by Buzan and Huysmans' approach is that the latter abandons the exclusive focus on a speech act and introduces more comprehensive approach to understanding of securitisation.

According to Huysmans it is possible to define if securitisation takes place by revealing where the issue is integrated institutionally and discursively. In other words by defining the nature of treaties and other legal documents dealing with asylum and immigration issues a researcher can conclude if these issues are considered to be threats. The choice of specific bodies, authorities and agencies which are entitled to tackle the issues of human mobility can deliver a clear message about a general political attitude to the problem and be more informative than the official rhetoric.

For example, if the emphasis of the document is laid on the EU security rather than protection of human rights one can conclude that securitisation does take place. If the terms 'security', 'terrorism', 'threat' are used hand in hand with 'migrants', 'refugees' and 'asylum seekers' – the

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[6] Huysmans, J., 2005. The Politics of Insecurity. Fear, migration and asylum in the EU. Buzan, B., and Little, R., (eds.). University of Bristol. Routledge Taylor and Francis Group.

researcher may conclude that the latter issues are treated in the framework of the policy of insecurity.

The author also emphasises the importance of routine practices of dealing with the issue in focus: what approach is used to the treatment of incoming people; are they treated as more dangerous and suspicious or as equal to the EU citizens (such factors as a separate passport control in the airports for domestic flights within the Union can be a signal of securitisation process). The author calls such an approach technocratic.

According to Huysmans security knowledge implies a particular way of arranging social and political relations. It has a specific capacity for fabricating and sustaining antagonistic relations between groups of people. This notion seems to be crucial for the study of immigration and asylum policy as it broadens the definition of securitisation in contrast to the traditional approach which implies the use of security rhetoric in order to justify the implementation of emergency methods of problem solving or alternation of normal decision making process.

Other point worth mentioning is that insecurity which results from such an approach is a politically and socially constructed phenomenon. The definition of threat-referent objects is crucial to understanding the policy. It means that it should be found out what is a threat, what does this threat jeopardises (what values or relationships) and who is exposed to this threat (state or people). Formulation of these points is called modulation of insecurity domain.

Security modulation comes from the context and can result in the hierarchy of threats which are classified in accordance with two characteristics 1) is the threat of objective or subjective nature (real or perceived) and 2) how much political priority does it deserve (how high is the threat on the political agenda).

Securitization process of any phenomenon can also be linked to the competition between branches and bodies of power in the governmental structures. The use of language of national security can be utilised by certain agencies in order to extent their power and shift from normal procedures of decision making as this language has the capacity to skew institutionalised tension in favour of executive power.

Thus threat focused analysis provides the comprehensive understanding of how the political agenda is formed and where the current policy in the field of immigration and asylum stems from.

Despite the practical usefulness of the theory in the course of the research it proved to have considerable limitations. When considering the common policy development in the field of immigration and asylum from the position of the securitisation theory the Union seem to act as a traditional state. The securitisation theory dealing with the immigration policy focuses on the process of securitisation itself and overlooks the actor of the policy development. With the main research question being the nature of the Union as an actor and player in international relations the theory was rendered too narrow to serve as the exclusive basis for the whole research due to the following reasons:

Firstly, the theory considers the immigration policy as an isolated political phenomenon taken out from the context. On the one hand it facilitates the understanding of the securitisation process but on the other hand it reduces the policy making to an abstract process conducted by a non-specified actor. With the accent placed on the actor as the main research question such an approach seems to be too limited.

Secondly, the theory is based on the notions developed by Buzan. Initially the concept of securitisation was created with regard to a nation state. Despite the well-adjusted approach used in applying the theory to the EU it still bears some ideas inherent in studies of a state. Such an approach may prove to be justified when the study is focused on the policy itself, but taking into account the fact that the policy is to serve as a case study to explain the EU actorness predefined notion of equating the Union with a state-like actor can become misleading and cause inaccurate conclusions concerning the EU international identity.

Third, the theory can help to answer the question if the securitisation of immigration issues happens but does not explain why. It also does not deal with the reasons of policy changing over the time which is an important aspect for understanding the Union's logic of policy development.

Fourth, the securitisation theory as it is clear from the name focuses on one aspect of a policy. If the policy is used as a case-study it is necessary to consider other aspects of the policy such as correlation between external international events and policy changes, dependence on general process of integration, adoption of new major agreements, enlargement of the Union and other factors. This theory cannot be used to study these aspects, analysis of which is vital when the policy serves as a way to explain the nature of the actor.

On the basis of that in this research the general technical approach to the policy making developed by Huysmans is applied but the focus and research questions are different. It is beneficial to use the methodology as guidelines because when Huysmans seeks for an answer to

the question if the policy is securitised he takes into account a lot factors and this provides comprehensive understanding of the policy and what is important to pay attention to.

As a result the combination of the Huysmans' approach to policy study and the method of contend and comparative analysis are to provide the in-depth understanding of the common immigration and asylum policy.

This research applies the following techniques:

- the use of document sampling instead of focusing on the entire body of legislation
- classification of the legal instruments to facilitate analysis
- deep analysis of the documents which includes answering these questions:
    o What measures are mentioned in the text?
    o What decision making authority issued the document?
    o What is the general tone of the document?
    o What are the main issues the paper deals with apart from immigration and asylum?
    o What is the list of issues in the order of appearance in a document?
    o What language does a document operate?
    o How much attention in terms of space and detail is paid to different policy issues in comparison with each other?
    o What issues are covered by legal instruments which are binding and what issues are dealt with by the means of recommendations without binding power?
    o What internal and external factors lead to adoption of the measures?
    o How previous legal instruments are connected with those adopted later?
    o What level if the decision making is used to develop certain measures?

These questions serve the purpose of revealing how and why the policy is developed in a particular way and what conclusions can be drawn from the answers as concerns the nature of the European Union as an international actor.

In addition to the notion of securitisation the understanding of the opposite process proved to be necessary for this research. The process of de-securitization[7] includes the attempts to prove that there is not a threat, or at least not a threat that is existential, and that the problem or challenge can be comprehended or managed within the framework of standard political practices. This

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[7] Wæver, O. 1995 Securitization and Desecuritization, in Ronnie D. Lipschutz, (ed.), *On Security*, New York: Columbia University Press. pp. 46–86

process includes abandoning the securitisation rhetoric and other techniques of securitization and return to the normal procedures in policy and decision making.

In order to fill the provide the theoretical basis for the research after the denouncement of the securitisation theory as the central theoretical basis and support the research findings the broader theoretical discussion concerning the EU actorness in international relations is presented in the following chapter.

Chapter 2

Review of the literature: the academic debate on the European Union as an actor in international relations

Around the turn of the 21st century there was a shift in the approach to studies of the EU; more scholars now consider the Union to be an independent actor in international relations. This change can be explained by the fact that before that the EU activity at the international arena was not institutionalized but after the adoption of Common Foreign and Security Policy and launching of European Security and Defence Policy it became possible to view the European Union as an entity which had a potential to act globally. With the extension of an array of policies which are developed and implemented on the supranational level the Union gains more importance in the world and according to some approaches can significantly modify the international system as such.

Notwithstanding the fact that scholars agree that the Union is an important player at the international arena there hardly is a single interpretation of what kind of an actor the EU is today and what is the key incentives and driving force of its policy developments. Jacques Delors for example called the EU an "unidentified political object"[8]. There are numerous approaches to defining the EU as an international actor which could be divided into three main groups: approaches which consider the European Union as an international organization; the studies equating or comparing the EU with a state (or modification of a state-like entity) and the works elaborating the theory that the European Union is a phenomenon different from all actors which have existed in international relations. It is worth mentioning that in the review of the academic debate on the nature of the European Union presented in the following section of the paper the focus is laid on the explanation of the inner nature of the Union rather that the role it plays and the scale of influence it can exert. In other words, the intent is not to figure out if the EU can become a centre of power or a new super-power in the world politics but to cover what kind of a system the Union is or tends to be.

The purpose of the following chapter is to present the main approaches to explaining the EU and its role in the world which can then be used in interpretation of the findings gained from the analysis of the policy documents.

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[8] Delors, J., cited by Zielonka, 2008. Europe as a Global Actor: Empire by Example? International Affairs 84:3. 2008. pp. 272

One of the scholars who view the Union as a rising superpower in a form of an international organization which is not likely to go beyond this structure is Andrew Moravcsik[9]. According to Moravcsik the European Union is heavily underestimated in terms of its capacity to become a Superpower along with the United States. The scholar considers the recent developments of the Union and lists the number of achievements in economic, political and even military spheres which can serve as a sufficient pledge for the Union to become a centre of power in the 21st century. The EU's growing involvement in processes in different regions and high level of representation in various international institutions also contribute to the increase of the Union's influence.

Even though Moravcsik compares the EU with the state actors of the international relations such as the USA, China and India he does not equate the EU with a state and does not believe that the further integration will result in a state-like entity. Moravcsik refers to the Union as nothing but an international organization "Far from falling into disarray, the EU emerged as the most ambitious and successful international organization of all time"[10]. Moreover, while advocating the importance of the European Union for the International Relations system the scholar rejects the necessity for further unification and deeper political and military integration. He views the Union to be more effective as "a rather decentralized network of governments" and claims that "it is unrealistic to expect the EU or any international organization to pre-commit governments to act in such circumstances (deploying the military force against a smaller enemy). And needless to say, governments in Europe are unlikely to relinquish sovereignty to form a common European army"[11]. Moravcsik sees the future of the Union in preserving its a coalition-of-the-willing form of Europe which is more flexible than any structure that requires single decision making in political field and consensus for undertaking every international move.

To sum up, it can be underlined that though Moravcsik does not directly explain the EU's nature in its international relations, yet, from the article it can be concluded that the scholar does not differs between the European Union and any other international intergovernmental organizations in terms of structure and the level of political integration. Despite the achievements in creation of a common market and border-free area within the EU, Moravcsik insists that in interaction with outer world it is necessary for the Union to stick to a flexible structure which preserves national sovereignty. This is what can enable the Union to become a powerful actor at the international arena.

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[9] Moravcsik, A., 2010. Europe, the Second Superpower. Current History: A Journal of Contemporary World Affairs. March 2010. pp. 91-98.
[10] Moravscik, 2010. p. 92
[11] Ibid., p. 98

Another theory associated with the name of Andrew Moravcsik which also deals with the EU actorness is Liberal Intergovernmentalism. The proponents of this theory consider it to be a 'baseline theory' in the field of regional integration. Liberal Intergovernmentalism is a new approach to the European Union studies emerged in the end of 1980s – bebining of 1990s after the European integration wad revived. Despite new significant changes that took place in the development of the institutional basis of the Union including the creation of the EU as such Moravcsil still insisted that the phenomenon of the European integration can be explained through a revised intergovernmental model which pays special attention to the power and interests of the Member States[12]. A special feature of Liberal Intergovernmentalism is that it avoids monocausal explanation of the European Union and argues that different theories should be combined in order to understand the development and functioning of the Union. In particular, Moravcsic uses the methods and arguments of three theories: liberal theory of national preferences; intergovernmental model of bargaining; institutional choice. Such an approach distinguish the Liberal Intergovernmentalism from other theories of European Integration as it specifies the motivations of actors involved in integration and European decision-making process and make predictions of the direction of the developments which can be tested empirically.[13]

One of the most important assumptions of the Liberal Intergovernmentalism theory is that states are the actors and the EU can be studied from the position of considering states to be key actors which pursue their interests in the context of anarchy. The states achieve their goals through bargaining with other states in the framework of intergovernmental interactions. Hence the union is the bargaining platform rather than a centralized authority making and enforcing political decisions.[14] Nevertheless, Moravcsik draws a line between Liberal Intergovernmentalism and political realism naming the points inherent in the latter which he refutes, namely, the idea that national security is the dominant motivation, that state's power is based on a coercive capabilities, state preferences and identities are uniform and interstate institutions are not significant. Liberal Intergovernmentalism agrees with political realism only on the notion that in the EU political will of the Member States is supreme in decision making since they are posses uncompromised political legitimacy.

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[12] Moravcsik, A., 1998. *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht.* Ithaca: Cornell University Press. pp. 18-86
[13] Moravcsik, A. and Schimmelfenning, F. 2009. Liberal Intergovernmentalism. in Wiener, A., and Diez, T. (eds.) *European Integration Theory* . Oxford: Oxford University Press. p.68
[14] Ibid.

The second point the theory relies on is that the states are rational actors; they act accordance with the estimated utility of choices they make. Common actions and agreements to cooperate consequently result from rational evaluation of the synergy effect.

The international cooperation can be explained by the following pattern of state actions: firstly, states decide on their preferences, then negotiate their arguments and create or tailor international institutions to ensure the achievement of their goals. Each phase should be considered separately with the help of separate theories: theories of preferences, bargaining and institutionalisation accordingly. That way the "EU integration can be best understood as a series of rational choices made by national leaders. These choices responded to constraints and opportunities stemming from the economic interests of powerful domestic constituents, the relative power of states stemming from asymmetrical interdependence, and the role of institutions in bolstering the credibility of interstate commitments"[15].

Moravcsik considers the European Union to be a unique (sui generis) phenomenon and the driving force for the integration was not the spill-over effect or supranational entrepreneurs but a gradual process of preference convergence among the most powerful Member States[16]. In that sense the theory leads to a conclusion that the European Union is best described as international regime for policy coordination.[17] One of the definition of the international regime was proposed by Kransner: "implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations.[18]

Moravcsik sees the explanation of success and stability of the Union as an international regime in moderate changes introduced by the amendments to the Treaty. Even the Constitutional project despite its declared drandeur was a conservative document. The EU legal base and policy making are developed in a coherent way and with no hustle. According to Liberal Intergovernmentalism this pattern of the EU development in defined by the absence of national preferences for big integration projects. The integration is fostered as long as national the Member States perceive it to be for their advantage. In areas such as economy the reforms and unification gained enough support to create common market and introduce a single currency, but since the Union is operated in a confederation-like model the spheres of fiscal policy, social security issues, citizenship and immigration are likely to remain in the realm of national level

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[15] Ibid., p. 69

[16] Pollack, M., 2005. Theorizing EU Policy-Making. Wallace, H., Wallace, W., Pollack, M. (eds.) *Policy-Making in the European Union*. Firth Edition. Oxford University Press. p. 18.

[17] Moravcsik., 1993. Preferences and power in the European Community. A Liberal Intergovernmentalist Approach. *Journal of Common Market Studies*, vol. 31(4), p. 480.

[18] Krasner, S., 1982. Structural Causes and Regime Consequences: Regimes as Intervening Variables. International Organization, vol. 36(2) p. 187.

authority.[19] Liberal Intrgovernmentalism sees the integration process not as threat to nation states but as factor which ensures their survival, endurance rescue and strengthening. Moravcsik believes that European Union does not need to further develop its integration to preserve itself, on the contrary the Union already achieved the state of well-developed and mature system and can successfully remain as it is. He claims that the EU is not a state in the making but the most ambitious and prominent multilateral organization. The pledge of applicability of the Liberal Intergovernmentalism to the EU integration in all fields is that it does not reject other ideas but on the contrary uses some of their statements and aim at synthetic theoretical approach.

The fact that this research refers to Liberal Intergovernmentalism may raise a question why other theories of European integration are not mentioned. The answer to that would be the focus of the Liberal Intergovernmentalism which seeks to explain not only the process of integration and its origin but pays significant attention to the results of this integration looking for the explanation of what kind of an entity the Union and what role it plays in international relations. Viewing the EU as a multilateral international organization with the features of international regime is beneficial to the purpose of this research.

Some authors persuade a different direction of research and consider the Union to be something principally different from all entities and actors ever existed in history.

One of such scholars is Ian Manners the founder of the concept of Normative Power Europe.

In his article "Normative Power Europe: A Contradiction in Terms?"[20] Manners briefly covers existing approaches to the EU identity in international relations and suggests a new approach which takes into account peculiarities of the Union as a political structure. Manners bases his approach on Bull's notion that the EU's international role is to promote the norms which displace the state as a centre of concern[21].

Manners' idea of Normative Power Europe as noted by the author is close to that of civilian power developed by Twitchett and Maull. They underlined three main features of such power: first, centrality of economic power to achieve national goals; second, primacy of diplomatic cooperation to solve international problems; and finally, willingness to use legally-binding supranational institutions to achieve international progress.

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[19] Moravcsik., 2002. In Defence of Democratic Deficit: Reassesing Legitimacy in the European Union. Journal of Common Market Studies, vol. 40(4), November. p. 605.
[20] Manners, I., Normative Power Europe: A Contradiction in Terms?, JCMS 2002, Vol. 40, pp. 235-258
[21] Ibid., p.236

The idea of a normative power itself is not new. Manners refers to the number of scholars who developed similar ideas. Among others he names Carr's classification[22] of powers including economic, military power and power over opinion; Duchene's reflection[23] on the EC's normative power as an 'idée force'. Manners also mentions Galtung's notion of 'ideological power which is power of ideas'[24] based on the process of the power-sender's ideas penetrating and shaping the will of the power-recipient through the media of culture.

Regardless of the similarities of the aforementioned ideas with the Normative Power Europe concept, Manners criticizes them for excessive focus on the EU's resemblances to the state. The scholar attempts to redefine the approach toward the studies of the European Union and refrains from analyzing the EU in terms of institutions and policies. He also refers to Smith's claim that research of the normative dimension is crucial as it involves "fundamental choices about the EU's international identity"[25] and aims at moving beyond the debate over state-like features.

Emergence of a brand new actor at the international arena which is different from both states and empires existed before was defined by the changes in international relations. The shift in global powers enabled the entity deprived of significant military capacity to influence international processes. While more traditional debates over the European Union as a civilian or military power are centred on the question of capabilities, Manners' approach focuses on the EU's ability to shape conceptions of 'normal' in international relations.

Manners claims that the EU is not simply promoting its own norms like historical empires did or contemporary global powers do; he emphasizes that due to the conditions under which the European Communities were created – namely the post-war period – the Union has always been the reflection of condemnation of nationalism and manifestation of people's devotion to peace and liberty. Manners agrees with King who characterizes the European Union as a hybrid of supranational and international forms of governance which transcends Westphalian norms[26]. He insists that the EU is a new and different political form, a cross-cutting polity.

As a proof of the idea that the European Union is a Normative Power the scholar refers to the legal basis of the Union – its constitution (constitutional agreement on the European Union) as it

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[22] Carr, E.H. 1962. *The Twenty Years' Crisis 1919-1939: An Introduction to the Study of International Relations.* 2nd edition. London: Macmillan. p. 108

[23] Duchene, F. 1973. "The European Community and the Uncertainties of Interdependence". In Kohnsramm, M., and Hager, W. (eds.) *A Nation Writ Large? Foreign Policy Problems before the European Community*. Basingstoke: Macmillan. pp. 2-7

[24] Galtung, J. 1973. The European Community: A Superpower in the Making. London: Allen and Unwin. p. 33

[25] Manners, I. 2002. p. 239

[26] King, T. 1999. "Human Rights in European Foreign Policy and the Petersberg Tasks". In Jorgensen, K.E. (ed.) *European Approaches to Crisis Management*. The Hague: Kluwer Law International, p. 313

is the document which determines the Union's international identity. Manners cites the number of norms which envisage the EU's adherence to the norms protecting Human Rights and willingness to promote such norms in the world without declaring the intention to use force. The Union in its constitution obliges itself to act in a normative way only. This refraining from the use of force makes the EU unique as other actors of international relations reserve their right to use force including for the sake of protection of human rights. This notion seems to be close to the concept of a soft power.

Further the author elaborates the concept and explains what principles and norms incorporated in the EU's normative Basis make the Union a Normative Power[27]. He singles out two groups of principles: major and minor. Five major principals are as follows:

1. The centrality of peace
2. The idea of liberty
3. Democracy
4. Rule of law
5. Respect for human rights and fundamental freedoms

Minor norms include:

1. The notion of social solidarity
2. The norm of anti-discrimination
3. Sustainable development
4. Principle of good governance

All these norms are deeply rooted in the Europe's value system and have historical context. "The reinforcement and expansion of abovementioned norms allows the EU to present and legitimate itself as being more than the sum of its parts"[28]. Thus, Manners sees the synergy effect in promoting these norms by the EU.

Apart from incorporating these norms into its own legal basis the actor should spread them in order to be considered a Normative Power. Manners names several ways of the EU norms diffusion[29]. First, contagion which is unintentional diffusion of ideas from the EU to other political actors, the example, experiments of regional integration (Mercosur) inspired by the EU's success. Second, informational diffusion which results from strategic communications

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[27] Manners, I. 2002. p. 242-243
[28] Ibid., p. 244
[29] Ibid., p.244-245

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(policy initiatives, declarations). Third, procedural diffusion that requires the institutionalization of a relationship between the EU and third parties (inter-regional cooperation agreements, the EU enlargement, the EU's membership in international organizations). Fourth, transference, spread of the EU's norms along with exchange of goods, trade, aid, technical assistance with third parties; this can lead to exportation of community norms and standards or be a result of financial rewards and sanctions. In addition overt diffusion can take place as a result of the physical presence of the EU in third countries or organizations (embassies, missions). Therefore, the European Union has an extensive set of tools to promote its values and norms into the outer world.

Summarizing Manners ideas it can be claimed that due to peculiarities of its historical evolution, its hybrid polity and the constitutional configuration the European Union's basis for interaction with the world is normatively different. Because of its normative basis the EU has a predisposition to act in a normative way as concerns world politics. Manners draws attention to the fact which is usually overlooked: the role of the EU at the international arena is defined not by what the Union undertakes or what rhetoric it uses but rather by what it is. This enables to characterize the Union as a changer of the international system norms[30].

Manners' approach as well as general adherence to the idea that the EU is an 'ethical', 'normative' or 'civil' power in the international system is heavily criticized by the scholars who share realistic paradigm of international relations. Even though they do not refute that there has been a tendency both in political and academic fields towards considering the European Union a new self-proclaimed ethical actor or a 'force for good' this school of thought tries to prove such an approach to be counterproductive and bound fail.

The realists' critique stems from traditional perception of international relations as a self-help system of relations based on security competition, interest pursuing and rationality of actors; the system is inherently chaotic and non- hierarchic. Under these conditions the attempts to pursue foreign policy based on moral and ethic principles alone is likely to turn out to be inefficient ethical 'crusades' detached from actual interests of the EU member-states[31].

Other aspect of criticism approaches the idea of universal morality as such. Realists underline the fact that "conceptions of the EU as an ethical or normative power tend to rest on an assumption that there are cosmopolitan norms and values that transcend the particularistic claims of discrete

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[30] Ibid., p. 252
[31] Hyde-Price, A., 2008. A 'Tragic Actor'? A Realist Perspective on 'Ethical Power Europe', *International Affairs*, Vol.84: I, p.29

political communities"[32] which is misleading in terms of political realism. Proponents of realism claim that the assumption that one's values and interests cannot be of universal applicability. The tendency to impose the EU's vision of problems and solutions in different continents is alarming and policy based on these assumptions can leave the Union a weak and ineffective actor, unable to further the economic and strategic interests of its member-states[33]. Realists also question necessity and feasibility of moral behaviour in international relations. They refer to classic clash 'ethics of ideals vs. ethics of responsibility' covered by Max Weber and presume that ideals are bound to lead to obsession and making of inappropriate decisions.

Realists do recognise resent attempts of the EU to be viewed as a normative actor yet they highlight that there is a fundamental contradiction in the nature of the EU's identity and actual role it plays as an actor in international relations. Namely, the Union promotes and protects the interests of its member-states using economic measures and its membership as a political tool. At the same the EU is portraying itself as a power acting for universal good. The values and interests the EU pursues are territorial integrity of the Union, political and strategic security, prosperity and economic well-being of member-states – which are in fact traditional interests of any state actor. Consequently, the EU pursues its own interests but no actor can effectively do so and claim that it is doing good for others[34]. Some examples such as cooperation with China in the field of arms sales can serve as evidence that economic interests prevail over human rights and regional stability concerns.

The fact that not all international actors are willing to adhere to moral principles in their foreign policy limits the opportunity for the EU to act as an ethical power. Often when dealing with states acting in traditional force-based manner it is more efficient to act in accordance and refer to the means which do not comply with morality and ethics of conviction but are effective[35].

In order to prevent the degrading of the EU's role in international relations the Union should adhere to the principles realists propose that ethical dimension of the European Union's foreign and security policy be limited to three principles of statecraft rooted in Weber's "ethic of ultimate ends" which are prudence, scepticism and reciprocity.

Realists underline that the foreign policy of the European Union shall take into account the limitations which the international systems creates: the balance of power, inevitable competition between actors, limited resources, domestic structure and behaviour of others states which define

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[32] Ibid., p. 33
[33] Ibid., p. 34
[34] Ibid., p.32
[35] Cooper, R., 2003. The Breaking of Nations: Order and Chaos in the Twenty-First Century. London: Atlantic, p.62

'parameters of the possible'[36]. Hyde-Price states that the EU "makes its own history under circumstances directly encountered, given and transmitted from the past" and in this citation the Union as an actor in international relations is deprived of the opportunity to make a choice as there is only one line of feasible actions – as a result there cannot be morality as a major factor in policy making.[37] What is peculiar about realists' consideration of the plausibility of the EU's policy based on ethics is that they do not distinguish between state-actors and the European Union. This school of thought being highly critical of the international organizations equates the Union and state actors without considering the possibility of the EU nature to alter the principles operated in a self-help system of international relations. Hence, it can be claimed, that according to the realists' criticism against the Normative Power Europe Theory their approach to the union as an international actor is the same as to a state and in their view the EU follows the same pattern of policy making as any other state.

A different interpretation of the European Union's position in international relations is presented by Karen Smith. She believes that the Union used to be a civilian power but following the new decisions taken in defence field the EU might have changed the direction of its development and has opened the possibility to become a more state-like entity. The author analyses the number of the agreements starting from Maastricht treaty and conveys the idea that throughout its history the Union has been moving towards stronger position in international relations. The decisions of the Cologne European Council (1999), Petersberg tasks and Helsinki European Council conclusions contributed to the development of the EU's military capacity. This shift in the Union's defence policy resulted in the abandoning of the civilian power image yet increasing the EU's influence in international relations[38]. Consequently, the author considers this change to be a positive tendency as a civilian power in "rather uncivil world"[39] is bound to face limitations in persuading its interests. She also proposes that the Union exercised the role of the civilian power merely because of the lack of military tools, it was a civilian power "by default"[40], but the modification of the international environment which included the collapse of bipolar system and transatlantic crisis of the 1980s enabled Europe to acquire some defence potential and leave behind the image of exclusively civilian power in international relations. While the EU is till acting as a civilian actor there is a clear trend of moving towards an actor with full military capacity.

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[36] Hyde-Price, A., 2008. P. 38
[37] Ibid.
[38] Smith, K., 2000. The End of Civilian Power EU: A Welcome Demise or Cause for Concern? *International Spectator*, Vol. XXXV, No. 2. April-June 2000. pp. 11-28
[39] Ibid., p. 13
[40] Ibid., p. 14

When discussing why the European Union needs to develop a defence dimension Smith refers to a notion that "the model for European integration if the foreign, security and defence fields is effectively the state". Even though the author does not explicitly support this statement, from the general logic of the article it is clear that Smith shares the position that the EU follows into the model of a state-like pattern of development and representation at the international arena. The author questions the possibility of actual use of the EU's army in any part of the world as well as the existence of actual military threats to Europe to which they will need to respond alone without NATO support; at the same time Smith provides numerous examples concerning the need to have a military backup of the Union's actions and diplomacy which follows the logic of a state behaviour in international relations which has to rely on traditional military power in order to achieve its goals effectively. The development of European Union's military capacity is seen as a further step towards a state model of the integration.

Other author who takes critical position towards current state of European integration which limited political cooperation and indecisiveness in terms of creation of joint military capacity is Jolyon Howorth who insists that for the sake of gaining importance in international relations the EU needs to revise its priorities and adapt its approach to external actions and adopt Grand Strategy.[41] Howorth believes that the European Union suffers from considerable weaknesses such as demographic decline, dependence on imported energy resources, lack of important natural resources, lack of military capacity and some other 'handicaps' which are aggravated by the instability of the emerging multi-polar system of the international relations. The fact that it is generally believed that the achievement of beg goals is beyond the EU's capacity because of resent failure of the constitutional project, economic difficulties and moreover the intention of the leading EU Members to prioritise national interests over the commutation exacerbates the situation and jeopardises the importance of the EU in the world. These factors make the introduction of the EU grand strategy necessary and urgent. Under the grand strategy the scholar understands greater institutional and political integration, greater military and civilian capacity, more focused and appropriate resources base, autonomous intelligence and better and efficient relations with partners.[42] These measures are supposed to replace a reactive ad-hoc foreign policy of the EU with more coherent and efficient approach and bring the Union at a new level of integration which basically will be very similar to a state or confederative structure.

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[41] Howorth, J., 2009. What Europe badly needs is a "Grand Strategy". Official website of *Europe's World Journal*. [accessed 23.03.2014]. Available from: http://europesworld.org/2009/10/01/what-europe-badly-needs-is-a-grand-strategy/#.U1efPPl_vWY

[42] Ibid.

Additional reason to adopt such a pattern of external activities is that other players of international relations act in strategically. Addressing the argument that the EU is not a unitary state Howorth claims that it makes the need for a clear common strategy even more urgent because with the size of the EU should be used in order to increase its importance; while in case the Member States would prefer to stick to national-based policies their ability to exert influence will decrease in comparison with such actors as the US, China or Russia.

There is also a tendency in the world to create cooperative multiple strategies among main players and so far the Union's cooperation with other players was based on economic interests rather than political ones.

The author also emphasizes that during the last decades the traditional methods to influence global developments in terms of security proved to be counterproductive. The new approaches offered by the Union could work but they cannot be introduced and promoted without closer cooperation and political integration; in order to have a voice in the world, as Howorth sees it, the EU 28 Members need to act together.

A very important incentive for the EU to develop its own military capacity accompanied by joint political decision making is the fact that after the end of the Cold War the Transatlantic alliance became less united and the USA and Europe tend to pursues different interests; consequently Europe can no longer rely completely in the USA in ensuring its military security. This leads the scholar to a conclusion that the Union needs to develop its own strategy. Howorth states that there are numerous destabilising threats outside Europe which can undermine its prosperity and security. Alienation between the USA and EU in addition to self-proclaimed peacekeeping intentions requires the Union to provide sufficient military capacity and political system which will ensure functioning of existed forces and create new ones.

Howorth believes that despite the inner contradictions on the future vision of the EU the Member States should realise that the world is changing rapidly and the global rearrangement of power is taking place pushing the Union to decide on its strategy. Otherwise, a relatively successful project which worked under the circumstances if the 20th century is risking of being destroyed by excessive pressure from outside and become a history.

On the whole the scholar connects the future and moreover survival of the union with the creation of the EU's own military capabilities and considers further integration in the field of high-politics to be vital for the Union. Howorth does not see any alternative to that scenario

regardless of how difficult it could be to make the Member States agree on integration in the military field.

A more optimistic approach towards the nature and future of the European Union as was proposed by Jan Zielonka. In his book "Europe as Empire. The Nature of the Enlarged European Union"[43] he argues that a Neo Medieval Paradigm is underestimated in contemporary European Studies and shall be paid more attention to especially after the enlargement of the European Union of 2004. The author proposes a neo medieval approach as a contrast to the notion that the Union is to develop in a superstate of the Westphalian model advocated by many scholars.

As seen by Zielonka the typical Westphalian state was characterized by four features: hard outer borders, a central authority, a roughly homogeneous cultural identity and coinciding administrative, economic and military regimes. Moreover, such states could rely on sovereignty as a guiding principle in international politics. Zielonka criticizes modern European research field being predominated by the belief that the EU has the potential to transform itself into a superstate with the aforementioned qualities. The author claims that there is not enough evidence to support the Westphalian paradigm.

Neo-medieval paradigm advocated by Zielonka embraces the four opposite characteristics which Zielonka believes are the most suitable for the description of the European Union. First, the external borders of the Union are blurred. Zielonka states that the EU members are sometimes closer to non-members and thus it is difficult to distinguish between EU and non-EU states. Furthermore, the Union's external borders are often of temporary nature especially taking into account the enlargements. Second, in the Union political system neither power nor authority are concentrated but rather distributed unevenly among states, bodies and institutions. The general structure of the European Union is multi-layered quasi-feudal relations between various agents which prevent the emergence of a Westphalian chain of power. Third, Zielonka does not believe that the process of developing a single European cultural identity is taking place and suggests that the Union will remain heterogeneous in the future. Four, according to Zielonka the concept of sovereignty can hardly be associated with the Union as it does not possess its own state-like sovereignty while member states tend to interfere in each other's domestic affairs undermining the sovereignty at the national level.

Though Zielonka was not the first to propose the neo-medieval theory which earlier was discussed by Hedley Bull in his book *The Anarchical Society. A Study of Order in World*

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[43] Zielonka. J., 2006. *Europe as Empire. The Nature of the Enlarged European Union*, 2006. 1st Edition, Oxford: Oxford University Press.

Politics[44], it was Zielonka who tried to turn this approach into a comprehensive paradigm for European Studies.

The first part of the book is devoted to the eastward enlargement of the Union of 2004 which exacerbated internal disparity in the Union and since then there is a clear line between old and new members. Concentration on the differences and the attempts of adaptation between the EU of 15 and new member states of Eastern Europe is used by the author to justify the neo-medieval concept. Zielonka calls the enlargement an "impressive exercise in empire building"[45]. The author sees the enlargement as an attempt conducted by the "old" member-states to fill a power vacuum, open up new markets, and ensure stability and predictability along the Eastern border. There is also a tendency to suppress disagreement of those members (or simply bribe them) which face considerable disadvantage because of the enlargement[46]. What differs Zielonka's views from other mainstream approaches to the enlargement of 2004 is that he rejects the notion that enlargement has led to the clear divide between West and East in the Union which is considered to be paralyzing for economic growth and governance efficiency. Zielonka tends to highlight South-North division and claims that increased diversity inside the Union encourages further development towards a neo-medieval empire proving the EU transformation into a Westphalian type superstate unlikely to happen.

In the second part of the book Zielonka argues the applicability of his concept to the sphere of economy, democratic governance and the EU Foreign Policy. The applicability of the neo-medieval concept to the first two fields seem rather questionable (as noted by critics of the approach, such as Ian Klinke) but for the latter domain the concept proves to be beneficial as Foreign Policy is the sphere where the European Union resembles a Westphalian-type state the least. The Union's Foreign Policy is shaped by the involvement of numerous actors, the policy lacks any hard power tools which could be applied exclusively under the EU jurisdiction and authority, the member-states exercise multiple loyalty and the authority is overlapping[47]. The notion of neo-medieval empire could be reduced to the entity which is comprised of many levels of interaction and has numerous centres and in which majoritarian structures predominate only at the national level. Some of other statements, such as the idea that the EU external borders are fuzzy seem to be not grounded. Nevertheless, the concept could serve as an academic legitimizing of the political agenda of those forces which favour further economic integration

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[44] Bull. H., (2002), The Anarchical Society. A Study of Order in World Politics. 3rd edition, Columbia University Press
[45] Zielonka. J., (2006), p. 44
[46] Ibid., p. 61.
[47] Klinke, I. 2006., Review of Jan Zielonka: Europe as Empire, Perspectives. The Central European Review of International Affairs 27/2006. P.135-139

and liberalization but are against stronger political Union as well as the idea of the EU acquiring the a special "imperial mission".

In his article "Europe as a global actor: empire by example?"[48] Zielonka reflects on the scale of the influence the EU can exert and concludes that though Europe today is more than a normative or soft power (as in addition to diplomatic and normative power the Union possess considerable economic leverage to influence other actors of international relations) the EU is a continental empire rather than a global one. The EU's regulatory imperialism is limited and the Union experiences difficulties trying to impose its will or models on some actors which refuse to sacrifice their sovereignty for the sake of economic development or democratic enhancement (China for instance). The author emphasizes that modern day scholars more often agree that the EU is not a state, and is nothing like state, but rather a kind of empire, however peculiar and different from other empires such as the USA of the nineteenth century Britain[49]. It is a polycentric governance structure, "a polity without a coherent demos, a power without identifiable purpose, a geopolitical entity without defined territorial limits"[50].

This last notion although being very vague clearly reflects the general state of academic debate concerning the nature of the European Union as it is today – the entity which bears similarities with various traditional actors of international relations and the same time contradicting standard definitions of these actors. In order to reveal or at least come closer to understanding of the European Union as an international relations actor the further research will focus on the common immigration policy as a case study of the EU's identity at the international arena.

The research of the common immigration and asylum policy of the European Union is to be based on the study of the legal instruments framing and regulating this field. The three following chapters of the work are devoted to the representation and analysis of the main EU documents dealing with the issues of immigration and asylum. The goal of this part of the research is to follow the development of the policy from the very beginning at the level of legislation and reveal the important features of these documents at different stages of the policy development. Analysis of the structure, process of policy making and peculiarities of the legal basis will contribute to understanding of the EU identity in the sphere of immigration and asylum and therefore facilitate interpretation of the EU as an actor in international relations on the whole.

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[48] Zielonka, J., (2008)
[49] Zielonka. J., (2008). p. 473, 475, 484
[50] Ibid. p. 473

This part of the research addressing the legal analysis is divided into three chapters each focussing on the different period of the policy development, in other words each chapter is devoted to a particular generation of the policy measures starting from the signing of the Treaty of Amsterdam.

Legal basis of the European Union policy in the field of immigration and asylum is vast and complicated. The number of documents dealing with a common immigration and asylum policy is considerable and it is physically impossible to cover all of them. Taking into account that immigration and asylum cannot be considered apart from the common foreign policy, the number of documents which could be included in the analysis is even greater. In order to make the research possible and simplify dealing with legal instruments it proved to be crucial to categorise the documents, otherwise a research could end up in a futile attempt to compare instruments of different nature and binding power. Categorisation allowed narrowing down analysis by focusing on a sample of instruments instead of analysing as many papers as possible; combining documents of the same type made it feasible to generalise and nevertheless draw well-founded conclusions.

Needless to say, there is a clear hierarchy of the EU documents as in any legal system. The EU law system resembles the one of a state to a certain extent. For the goals of the research and in order to facilitate it, all legal instruments in focus were divided in several groups. Three levels of documents can be named depending on the binding power of a document, the body (authority) which it was passed by, a number of issues it covers and in some cases the validity period.

The highest level is the Treaty on the European Union, which plays a role similar to the one of a Constitution in a state. It defines basic principles for all policy areas, sets long-term goals and delegates the powers to the institutions and limits their authority to act in a certain field of politics. What is special about the Treaty is that it defines the level on which a policy should be pursued – supranational (often referred to as the Communitarian or the level of the Community in official documents), national (level of the Member States) or regional (meaning micro regions either in one Member State or trans-border regions between two or more Member States). Depending on the level of a policy the priorities as well as the means available for the development of the policy vary. The Treaty, due to its nature, does not go into detail tackling particular issues and avoids too peculiar definitions, though it sets the deadlines or approximate time limits for the policy to be enhanced.

Detailed policy measures, as a rule, are envisaged in the legislation of a lower level which is titled in this research as the policy-specific instruments. This category includes programmes and

action plans designed to put the Treaty provisions into practice. As it is clear from the title these papers deal exclusively with one policy field or several issues which are considered by the Treaty as a coherent system. These documents are adopted for a shorter period of time and hence, are more specific and detailed. The set of policy specific instruments is the core of policy making and contains the principles, norms, goals, step-by-step measures, interim deadlines and other means necessary for the implementation of the goals set by the Treaty. These legislation pieces are more practical and closer to the ground; they often look less ambitious and relatively moderate in their goals and aspirations.

The list of the legal instruments of the second level analysed in the following chapters includes:

1. Council and Commission Action Plan of 3 December 1998 on how best to implement the provisions of the Treaty of Amsterdam on the creation of an area of freedom, security and justice;

2. Presidency Conclusions of Tampere European Council held on 15 and 16 October 1999;

3. The Vienna Action Plan of 3 December 1998;

4. The Hague Programme from 5 November 2004;

5. The Stockholm Programme adopted in May 2010.

The last class of legal instruments touched upon in this research is comprised of the documents which ensure efficient communication between different bodies of the EU political system, clarify or explain some aspects of the legislation of higher level, propose new measures, express the position of a certain authority and serve other of such matters; this category of legislation in this research is referred to as circulation documents. The documents of this category are not binding. They can be issued prior to development of more important legislation or after that, so they can both facilitate the creation of programmes or elucidate them. Regardless of the fact that these instruments have limited power in practical implementation of the policy, their availability for a research helps to follow the inner processes in the EU system, the change of positions and alternation of the accents in policy making. The main focus in considering this group of documents is placed on the Commission Communications directly referred to by the Council Programmes.

Another dividing mechanism used in this research regarding the legal instruments is a chronological ordering. Three periods of the development of the common policy of immigration and asylum can be singled out. The main criterion for the chronological separation of periods is the adoption of a new version of the Treaty on the European Union. Due to the hierarchical

nature of the policy legislation with adoption of the amendments to the Treaty instruments of lower level should be altered as well in order to comply with the new goals and principles. Such a division corresponds with the chronological qualification provided in the programmes on immigration and asylum which name the measure of the first generation, the measures of the second generation and the measures of the period of a global approach to migration and mobility.

In the following chapters the legal framework of a common immigration and asylum policy is outlined. The instruments are presented in accordance with the level and period they belong to. Each period and each category of documents are represented by one or two most important piece of legislation. Even though in the framework of this research more document were analysed there is no need to cover all of them – a sample is sufficient to demonstrate the logic and peculiarities of the policy development.

Chapter 3

Measure of development of the common immigration and asylum policy of the first generation

The following chapter describes and analyses the initial period of the development of the European Union's common policy on immigration and asylum. The chapter provides the outline of the documents which launched the common policy and introduced the first measures in the field of immigration and asylum. The part of the research focuses on the provisions of the Treaty of Amsterdam which deal with the common foreign policy and the area of freedom, security and justice to which the immigration and asylum policy institutionally belongs. As concerns the lower level of legislation this chapter analyses the Tampere Conclusions, Vienna Action Plan and the Commission communication related to the Conclusions. The main purpose of this part is to reveal the goals and main principles of the policy at the first stage of its development and see if they changed with the introduction of further measures adopted later.

Before the Treaty of Amsterdam was signed the issues of asylum and immigration were regulated mainly by intergovernmental agreements. It means that cooperation in this field did take place earlier but it is generally assumed that the development of the common asylum and immigration policy as a genuine communitarian policy did not began before the Treaty of Amsterdam.

The key intergovernmental agreement in the field of human mobility was The Schengen acquis[51] - an Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders signed on 14 June 1985. In addition to the measures aimed at creation of border-free area between the parties to the treaty Schengen agreement stipulated for steps towards the harmonization of the visa policies. Measures provided for by the Treaty included common rules and procedures applied with regard to visas for short stays, asylum requests and the border control.

The Agreement was followed by Schengen Convention[52] of 19 June 1990. It came into force in 1995 and abolished checks at the internal borders of the signatory states and established a single

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[51] Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders. *Official Journal L* 239 , 22/09/2000. pp.13-18

[52] Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders. *Official Journal* L 239 , 22/09/2000 . pp.19-62

external border where checks of immigrants for the Schengen area were carried out in accordance with unified procedures. Common rules regarding visas, right of asylum and checks at external borders were adopted to ensure the free movement of persons within the territory of the states participating in the Convention while preserving law and order.

There also were intergovernmental agreements dealing with more specific problems, for example Dublin Convention[53] which defines what State is responsible for the examining of an asylum application submitted by a third country national.[54] As stated by the Convention after it is defined which State is responsible for examining an application the procedure is conducted in accordance with national law.

The abovementioned measures though having some weaknesses were acknowledged by the number of Commission Communications as considerable achievement which enabled further development of immigration and asylum policy at the level of the Union. This shift to the Communitarian level was introduced by the Treaty of Amsterdam.

3.1. The provisions of the Treaty of Amsterdam on the EU foreign policy and the area of freedom, security and justice

The European Union Common Immigration and Asylum Policy (hereinafter referred to as the EU CIAP) legally belongs to the area of freedom, security and justice at the same time it is also closely connected with the sphere of foreign and security policy. In other words, the immigration and asylum issues are incorporated in so-called the second and the third pillars of the European Union.

Consequently, the development of the EU CIAP legislation directly depends on general development of the common foreign policy and steps taken towards the creation of the area of freedom, security and justice. The three pillars were established by the Maastricht Treaty[55] which allowed the member-states to take joint action in the field of foreign policy. The EU common foreign and security policy is introduced and regulated by the provisions of Title V of the Treaty on European Union as envisaged by the Maastricht Treaty. The second and the third pillars were specific in comparison with economic area cooperation as the main operational and procedural

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[53] Convention Determining the State responsible for examining applications for asylum lodged in one of the Member States of The European Communities. *Official Journal of the European Communities*. 19.08.1997. No C 254. pp 1-12.
[54] Ibid., Articles 4, 5. p. 4
[55] Treaty on European Union. Official Journal C 191, 29 July 1992 [accessed 11 March 2014] Available from: http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html

principles laid down in the Treaty made these pillars of an inter-Governmental nature[56] with the decision-making process that requires unanimity. Though the Maastricht Treaty founded the two pillars which the CIAP belongs to, this version of the Treaty does not touch upon the issues of immigration and asylum.

The launch of the common immigration and asylum policy is associated with the adoption of the Treaty of Amsterdam in 1997 which also gave an impetus to development of the common foreign and security policy. The Treaty of Amsterdam authorised the EU to pass legislation in this area at the Union level. The Treaty of Amsterdam was supposed to equip the EU with instruments which could facilitate the pursuing of common foreign and security policy and enable the Union to be more active and responsive at the international arena.

The Treaty of Amsterdam reinforced common foreign and security policy by altering the decision-making process. According to the Treaty of Amsterdam a decision can be taken by a qualified majority vote. The right for "constructive abstention" ensured that decisions can be passed even in the field characterised by strong adherence to sovereignty and cautious exercised by the Member States. This right was guaranteed by Article 23 "Abstentions by members present in person or represented shall not prevent the adoption of such decisions. When abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration [..]. In that case, it shall not be obliged to apply the decision, but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position".[57] This change mitigated contradictions which could arise between the Member States concerning foreign policy issues. At the same time a Member State was given the right to block the decision even if it was supported by the majority for important reasons of national policy[58]. This outline of the decision-making mechanism is crucial as it helps to understand why the emergence of the EU as an important international actor became possible after the Treaty of Amsterdam came into force.

This peculiar approach to the decision making in the area of external actions also demonstrates that the role of the Member States in the policy development of the level of the Union is extremely high and intergovernmental approach dominates the field even though there are legal

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[56] *Treaty of Amsterdam. Common foreign and security policy.* The "Summaries of EU legislation" website [accessed 11 March 2014] Available from:
http://europa.eu/legislation_summaries/institutional_affairs/treaties/amsterdam_treaty/a19000_en.htm
[57] Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Related Acts. *Official Journal of the European Communities.* 24.12.2002. p. 325/18
[58] Ibid.

provisions which transfer some decisions to the communitarian level. These points of the Treaty of Amsterdam serve as a prove of the notion of Liberal Intergovernmentalism that the Member States remain the "masters of the treaty"[59] and presume their leading role in defining the depth and direction of the integration of the Union.

As concerns the third pillar of the Union the Treaty of Amsterdam commits the Council to adopt the number of measures within the period of five years after the Treaty comes into force[60]. The measures are supposed to regulate the questions related to the ensuring the border-free regime inside the European Union for both the EU- and non-EU nationals, all questions concerning visas and residence permits for the third country citizens. The Treaty also requires the development and adoption of the measures aimed at the control of the EU external border and tackling illegal immigration and repatriation of the illegal immigrants.

These measures were to unify the control system of the external borders of the Union and ensure the creation of the area of free movement for all persons within the EU. At this stage of the policy development the measures provided by the Treaty are designed with the view of the unification of the approaches to the policy issues among the Member States. This demonstrates the need for creation of a common vision within the Union in order to pursue the policy at the communitarian level. Even the Treaty does not impose the common measures – they have to be developed by the Council (which is comprised of the heads of state or the heads of the governments of the EU Members) – it means that the common policy from the very beginning is supposed to be the result of the negotiations and bargaining among the Member States. This feature characterises the common policy and the Union as an arena where the Member States can try to reach an agreement and cooperate for the sake of synergy effect, the notion that corresponds with the realists' approach viewing the EU as an example of an international organization dependent on national interests and the ability of the Member States to agree with each other rather than a self-sufficient actor[61].

In the field of asylum and refugee policies the Treaty refers to the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 on the status of refugees and obliges the Council to develop the criteria and minimum common standards on receiving and examining asylum applications and determining the Member State responsible for taking care of the procedures; also the measures should include minimum standards for providing temporary protection to

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[59] Moravcsic., A. and Schimmelfenning, F., p.68.
[60] Treaty of Amsterdam. 2002., Article 62.
[61] Hyde-Price. A., 2008. P. 39.

displaced persons and steps to promote a balance of effort between Member States in receiving and bearing the consequences of receiving displaced persons and refugees.[62]

Therefore, the Treaty authorised the Council to develop the steps which shall shape the immigration and asylum policy within five years and create a coherent system of unified principles and norms as concerns receiving and defining the status of asylum applicants and share responsibility and expenses among the Member States.

The focus of an early stage of the common policy development is laid exclusively on the norms and principles, at this point of time practical solutions are not yet considered by the Treaty which may lead to a conclusion that at certain stages of integration development in a given field the Union resembles international regime in its classical definition as a set of norms and rules[63]. This stage of policy required the creation of common rules in order to enable joint actions of the Member States in the future.

As it comes from the aforementioned details the role of the Treaty on the European Union is very similar to the one a Constitution plays in a state: the Treaty does not regulate the policy as such but defines the general direction in which it should be developed and provides the ultimate vision of the institutional structure the Union shall aim at. In addition it constitutes the principles that the policy in the field of immigration and asylum should be based on.

Due to the fact that the Treaty is not supposed to be amended often the policy specific issues are generalised and remain applicable regardless of the international events that may take place in the field concerned.

Despite the high position of the Treaty in the hierarchy of the EU legislation the document cannot impose the measure on the Member States; the Treaty can commit the EU bodies to work on the policy development but the Member States have the opportunity to influence this development or exclude themselves from participation in common actions. Moreover, the launching of the policy does not come out of the blue – it is based on the previous achievements of the cooperation in the field of immigration and asylum at the intergovernmental level, the intergovernmental agreements on asylum and visa policy referred to in the beginning of this chapter support this point. Consequently, it is possible to claim that the common EU policy requires preliminary work, agreements and experience of the Member States at the intergovernmental level and that way the common policy is created from the top but relies on bottom-up expression of the political will of the Member States.

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[62] Treaty of Amsterdam. 2002., Article 63.
[63] Krasner, S., 1982. P.187.

Summarising the provisions of the Treaty of Amsterdam the document states that the Union should be a territory free of the internal borders and checks. The right to move freely inside the EU is granted not only to citizens of the Member States but also to the nationals of third countries; hence, once a person enters the Union (taken the entrance was legal) he or she gains a right of free movement similar to the one that the EU-nationals have. The regulations on entrance to the EU territory are to be unified through the Union.

Since the Treaty is to give general guidance it does not reflect the small-scale institutional development or issue-specific decisions that should to be taken. In order to analyse the actual policy shifts it is necessary to focus on programmes and the Council conclusions.

3.2. Policy-specific instruments of the first generation

After the signing of the Treaty of Amsterdam the policy in the field of immigration and asylum was launched; clear tasks and deadlines were set and the Council and Commission started their work on developing the methods of the realisation the requirement set by the Treaty. Their endeavours resulted in adoption of the first big document aimed at the creation of the area of freedom, security and justice to which the immigration and asylum policy belongs – the Tampere Conclusions.

But before that preliminary decisions which later became the foundation of the Tampere Conclusions were fixed in the Council and Commission Action Plan[64] from the 3 December 1998. The Plan provides the measure necessary for the implementation of the provisions of the Treaty of Amsterdam on the creation of the area of freedom, security and justice. This document is often called Vienna Action Plan.

The Action Plan defines the priority objectives for five years and sets a timetable of measures necessary for creating the area of freedom, security and justice envisaged by the Treaty of Amsterdam. The goal of the Action plan is to ensure the implementation of changes envisaged in the Treaty of Amsterdam, especially those coming from transferring of the areas of visa, asylum and immigration from the third to the first pillar of the European Union. The document acknowledges that this policy is the area of major public concern and the goal is to change the situation and "bring the European Union closer to people"[65]. The Action Plan in its introduction explains what consequences of the changes introduced by the Treaty would be. For example, the

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[64] Council and Commission Action Plan of 3 December 1998 on how best to implement the provisions of the Treaty of Amsterdam on the creation of an area of freedom, security and justice. *Official Journal of the European Communities.* C 19/01. 23.1.1999
[65] Ibid., p. 2

incorporation of Schengen acquis with the Union is a significant recognition of the cooperation efforts taken by the Member States.

Since the Treaty of Amsterdam granted the Commission the right to initiate legislation it is supposed to be deeply involved in the ensuring that the area of freedom is created. For the transitional period, however, the initiative was to be shared between the Commission and the Member States. Active involvement of the national level decision makers is important aspect which demonstrates caution exercised by both Member States and the Union in the implementation of the policy which is sensitive in terms national interests and transferring power to the Union level bodies.

The Action Plan highlights the weakness of the previous attempts to handle the issues of immigration and asylum – they were often based on 'soft law' comprised of resolutions and recommendations which are not binding and also the adequate monitoring arrangements were not provided.[66] The problem of monitoring was solved only by the policy measures of the second generation.

The Action Plan laid down the guiding principles of the reforms demanded by the Treaty of Amsterdam which are as follows: rationalisation and simplification (no duplication), specialisation and responsibility, continuity, transparency and flexibility.

The document sets measures and priorities in implementation of the Treaty of Amsterdam objectives. The overall priority is to improve the exchange of statistics and information on asylum and immigration.

All measures are divided into two groups: those to be taken within two years after the Treaty of Amsterdam comes into force and those which should be completed within 5 year. The former includes[67]:

- assessment of the countries of origin of asylum seekers in order to formulated a country specific integrated approach;
- facilitation of the implementation of the Dublin Convention;
- the implementation of Eurodac;
- adoption of minimum standards on granting or withdrawing refugee status in order to accelerate the procedures (with special attention paid to children);
- limit 'secondary movements' by asylum seekers between the Member States;

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[66] Ibid., point 8, p. 3
[67] Ibid., point 36, p. 8

- define minimum standards on reception of asylum seekers;
- conduct a study to establish the merits of an asylum procedure;
- instrument on the lawful status of legal immigrants;
- establish a coherent EU policy on readmission and return;
- combat illegal immigration;
- procedures and conditions for issuing visas, abolition of the 'grey list';
- define what countries nationals are or are not required visas.

Five-year measures include:

- implementation of the European migration strategy;
- adoption of minimum standards for qualification for a refugee status;
- defining minimum standards for subsidiary protection;
- improvement of the possibility to remove a person who have been refused the right to stay in the EU;
- preparation of the rules and condition on granting visas;
- determination of the rights and conditions under which non-EU nationals can stay in the Union.

Apart from aforementioned steps the Action Plan demanded that minimum standards for giving temporary protection to displaced persons who cannot return to their countries should be developed as soon as possible. Promotion of balance of effort between the Member States in receiving and bearing the consequences of receiving displaced persons should also be done rapidly.

That way the Action Plan serves as a facilitating intermediary tool which transmits the requirements of the Treaty of Amsterdam to a lower and more practical level of legislation. On the basis of the Vienna Action Plan the Tampere Conclusions were developed.

Presidency Conclusions of Tampere European Council,[68] or the Tampere Conclusions were the first immigration and asylum programme outline developed by the Council in accordance with the goals set by the Treaty of Amsterdam. The Conclusions were adopted at a special meeting of the European Council held on 15 and 16 October 1999 in Finland. Since the immigration and asylum policy belongs to the area of freedom, security and justice, the Tampere Conclusions deal not only with immigration and asylum issues but also cover such problems as criminal justice, judicial and police cooperation. It is a distinguishing feature of the European Union policy

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[68] Tampere European Council 15 and 16 October 1999. Presidency Conclusions. *Official website of the European Parliament* [Accessed 11. 11. 2013] available from: http://www.europarl.europa.eu/summits/tam_en.htm

system that immigration/asylum and fighting with crime/terrorism seem to be considered as having a certain level of correlation.

Tampere Conclusions consist of introduction and five sections; each section deals with one aspect of the creation of the area of freedom, security and justice. Section A is devoted to the common immigration and asylum policy.

The introductory part of the paper titled "Towards a Union of Freedom, Security and Justice: The Tampere Milestones" sets the goals of the Conclusions. According to the EU principles freedom of movement to which the European Union is firmly attached shall not be an exclusive right of the citizens of the EU Member States but shall be granted to those who happen to be in difficult circumstances and justifiably seek for the entrance to the Union – this is why the common immigration and asylum policy is to be developed. In the same point of the document it is underlined that the policy should take into account the need to protect the external borders of the Union and prevent illegal emigration. In other words, the Union aims for the balance between providing guarantees to those who seek the access to the Union territory (and have strong reasons to apply for it) and the protection of the interests of the Union and its citizens. This balanced approach characterises the European Union as a rational actor guided by both its own interests and the external demands as stated by both political realists[69] and liberal intergovernmentalists[70].

This part also reaffirms that the Union is bound by the international law concerning refugee rights, the Union is fully committed to the norms envisaged in it and in other human rights instruments. It is claimed that the Union should not only take into account external demands for access to its territory but shall "be able to respond to humanitarian needs on the basis of solidarity"[71]. The Union should ensure that third country nationals accepted to its territory can integrate in a local society. The adherence to the norms of the international law and taking into account humanitarian concerns contributes to the perception of the Union as an actor aspiring to be more than a self-interests oriented player. Nevertheless, at this point of policy development the focus on the human rights issues is not the key element of policy making.

Section II establishes principles and goals in the field of a common immigration and asylum policy. The very first point of the Section firmly states that the Union and the Member States

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[69] Hyde-Price, A., 2008
[70] Moravcsik., 1993
[71] Presidency Conclusions of Tampere European Council, 1999.

respect the right to seek asylum and the principle of non-refoulement which means that nobody can be sent back to persecution[72].

It is agreed that the Union should work towards creation of the single asylum system on the territory of the Union and to that end the first thing that should be accomplished is to work out how to determine which Member State is responsible for examination of the asylum application. There also should be clear common standards for asylum procedure, common minimum condition for asylum seekers and rules on the recognition of the refugee status and subsidiary protection. The body responsible for these decisions is the Council which is advices to consult international organizations, such as UNHCR. The Council is also urged to facilitate the reaching of an agreement on measures of temporary protection with the guiding principle of solidarity between the Member States.

Another body empowered to prepare a communication concerning common asylum procedures and the validity of a status of refugee seekers in the Union is the Commission. The European Council also suggested that there should be a special reserve fund created for the situations of considerable influx of refugees, the Commission is entitled to be responsible for considering that possibility.

The third Part of the Conclusions is devoted to Fair treatment of the third country nationals. The ultimate goal of integration process in this area is to ensure that an individual legally residing in the EU territory gains the rights compatible with those of the EU citizens. Discrimination on any ground should be ruled out.

The Conclusions also acknowledged the need to approximate national legislations of the Member States as concerns conditions for entrance and residence of third countries nationals. The Council suggests that in work for that purpose an economic and demographic situation in the Union on the whole should be taken into account as well as the circumstances in certain Member States which include historic and cultural aspects. Such an approach makes the policy to be comprehensive, flexible and sensitive to the limitations of the external and internal environment in which the Union exists. Despite the goal of unification of the principles and some procedures the common policy does pay attention to the circumstances and the needs of both the Union and the Member States as well as the peculiarities of the immigrants' cultural and historical backgrounds which proves that the policy implies the search for the solutions which are less costly and most advantageous for the Union and the Member States. This is an additional supportive argument of the rationality of the EU as a political actor.

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[72] Ibid., point 13.

As it was mentioned above according to the Conclusions it is desirable that legal status of individuals from the third countries residing legally and for a long time in the EU could obtain the rights close to those EU citizens enjoy and there should be a possibility for them to acquire citizenship of the country of the residence.

The next section of the document is called "Management of Migration Flows". Generally, the section deals with facilitation of the management process of the external mobility, and promotes the need for cooperation with the third countries and cooperation between the Member States on visa, consulate and prevention of human trafficking issues. The European Council is committed to combat illegal migration and migration-related criminal activities. It is advices that the Council should adopt by the year 2000 legislation on sanctions against those involved in serious crimes related to migration.

The Section touches upon technical issues of the external border control and changes that should take place in the light of integration of the Schengen acquis into the Union.

As it has been demonstrated the goals and principles stated in the Conclusions and Vienna Action Plan are almost identical to the recommendations set in the Treaty of Amsterdam which demanded to develop the aforementioned instruments within five year. The only difference is that the Tampere Conclusions redirect this task to the Council. It is also peculiar that even though the goal is to develop the common asylum policy applicable throughout the Union the responsibility of considering asylum applications is rested with a Member State which will direct a person applying for a refugee status to the national level authorities. Hence, at the point of the policy launching it was not supposed to be a system of measures exclusively on the Union level and there was no goal of establishing a body of authorities to deal with the problem of asylum seekers the same way as criminal investigation could be done through EuroPol. The priority was given to the national level of problem solving. It can be said that so was done out of principle of subsidiarity but at the same time, the issue of refugees is closely connected with foreign policy and taking into account the goal of creating the area of free movement inside the Union it could have been expected that at least a coordination committee to consider applications would be designed but it was not done. Later the absence of single authority in the field let to the problem of secondary mobility inside the Union and lack of solidarity among the Member States. The level of integration inside the Union at the point of 1999 could be a possible explanation for such a moderate approach. Nevertheless, a system of monitoring asylum seekers (EURODAC) was already created. It raises a question of the main purposes of the policy – whether it is the efficient

protection of individuals in need of such protection or rather management of the flows of asylum seekers and migrants in order to protect the Union's interests in the first place.

The clear aspect of the common policy development could be spotted already at the first stage of the policy making – the repetition of the legislation. As it was demonstrated the decision made by the Treaty was transferred to a lower level of the legislation and there are two big documents (Vienna Action Plan and Tampere Conclusions) dealing with the implementation of the requirements set by the Treaty. This feature illustrates the high level of bureaucratization of the decision making process in the Union that can be a culprit along with other reasons for the relatively slow development of the common policy.

3.3. The instruments of the lower level legislation of the first stage of the EU common immigration and asylum policy development

Among the official documents adopted after the signing of the Treaty of Amsterdam was the Communication 459 of the European passed on 14 July 1998[73].

The Communication provides the overall evaluation of the effect the provisions of the Treaty of Amsterdam may have on an area of freedom, security and justice and gives general overview of the work which is to be done in order to achieve all the goals set in the Treaty. It also covers the state of development in the field of immigration and asylum at the moment the Treaty did not come into force yet acknowledging achievements and highlighting pitfalls of the previous attempts, namely the fact that actions were not organised around a single concept giving them sense and coherence; and that the instruments used were either not designed for this purpose in the case of Community policies or they have proved inadequate. [74]

New approach to the policy in the area of freedom, security and justice was supposed to overcome these weaknesses.

Most of the points and ideas mentioned in the communication were reiterated in the Vienna Action plan and the Tampere Conclusions.

In comparison with the legislation of higher level in the field of immigration and asylum the Communication is more reflective and less formal, due to the nature of the document.

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[73] Communication from the Commission Towards an Area of Freedom, Security and Justice. COM(1998) 495 final. Brussels, 14.07.1998. Official website of the EU legislation [accessed 11.04.2014] Available from: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:51998DC0459
[74] Ibid., p.2.

Nevertheless, the Communication could be viewed as an instrument facilitating the development of the policy and implementation of the prescriptions of the Treaty of Amsterdam.

It is worth mentioning that some points envisaged in the Communication were not included in any other document of a 'higher' level. For instance, the Communication is more elaborate about the need to protect displaced persons and the Union's responsibility to take into consideration the humanitarian concerns. The Communication emphasizes that the Union needs to develop minimum standards for asylum procedures as well as subsidiary forms of protection for people whose individual cases demonstrate a need for protection, despite the fact that they do not qualify for a refugee status under the Geneva Convention; the paper also highlights that there can be individual cases which require special attention even though the is no legal basis for providing protection.[75] The policy framing documents presented above set the goal of developing the means of temporary protection but the point for the cases which do not fall under the Geneva Convention (yet in which people were forced to apply for external protection) were overlooked. Another aspect which is mentioned only at the level of the Communication is the need for the dialogue with the civil society in the course of the policy development[76].

This inconsistency which may seem insignificant makes dramatic difference letting a number of cases to be dismissed without consideration as not qualifying for a refugee status application. The Communication in comparison with the Action Plan and the Tampere Conclusions seems to be more oriented on humanitarian concerns but the Communication does not serve as a main part of the policy legal basis since it has no binding power. Consequently, at the first stage of the common immigration and asylum policy development the problem of weak policy instruments remained.

The documents considered in this chapter represent the legislation development of the common immigration and asylum policy of the EU at the initial stage. Even though the first generation instruments do not outline the practical aspects of the policy yet, they provide important data that can facilitate understanding of how the EU policy legislation is created and how the political system functions.

Some intermediate conclusions could be drawn from the analysed pieces of legislation.

Firstly, it is obvious that at the point of the policy initiation the main focus is on finding common ground between the Member States. In that sense the policy of immigration and asylum is very representative for understanding how the European Union system of legislation and decision

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[75] Ibid., p. 8
[76] Ibid., p. 10

making works and why it takes considerable time to introduce changes. It is also demonstrative in terms of the relations between the actors involved in decision making. Transferring the policy onto the level of the Union is a complicated process and the first steps imply finding agreement on goals and principles that is why the measures of the common immigration and asylum policy of the first generation are devoted exclusively to the framing of a common approach rather than precise practical steps. This is why the policy is introduced in several stages and the first period of five years is not supposed to lead to the creation of new institutions and even financial aspects are not mentioned yet.

Second conclusion that can be made at this point is that the legislation system of the European Union and as a result policy a making process is significantly affected by the nature of the Union. Since the EU is a supranational entity created and governed by its own rules the way each new law affects the whole system shall be taken into account at all levels of legislation. It is especially true for the amendments to the Treaty. This peculiarity is explicitly demonstrated by the Communication 495: among all the new goals and aims set by the Treaty of Amsterdam special attention is paid to the problem of adapting already existing documents, programmes, plans and even drafts which are under considerations to the new standards of the amended Treat. Each policy shaping document therefore needs to be checked and modified if necessary in order to comply with the "language of the Treaty"[77]. One of such examples was the recommendation to revise Dublin Convention[78]. This high level of interdependence of different legal acts and high standards for unification and harmonisation of the European law affect the policy making process. It may be the reason which slows down the development of certain areas because introduction of changes is time and effort consuming even in terms of technical aspects.

Thirdly, in contrast to legislative developments that take place in states the EU system is different in a way that it is challenging to define the direction of a policy development: whether it is a bottom-up process or vice versa. At the first sign it may seem that the policy development is triggered by the provisions of the Treaty (the EU level) and then further steps are undertaken at lower levels as if the development was going from top level downward. It is true that a common policy cannot exist if it is not prescribed by the Treaty, otherwise the Union does not simply have the mandate and authority to act. Nevertheless, the creation of a common policy at the Communitarian level would not be feasible without previous achievements in cooperation in the field of asylum and immigration reached at the intergovernmental level between the Member

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[77] Ibid., p. 10
[78] Convention Determining the State responsible for examining applications for asylum lodged in one of the Member States of The European Communities. Official Journal of the European Communities. 19.08.1997. No C 254. pp 1-12.

States as it was emphasized by the Vienna Action Plan. It means that there is a need for political will of the Member States expressed in intergovernmental agreements which then allows initiating policy making at the Union level. After this was done the provisions are directed back to the Member States and the Member States are committed or recommended to adapt to and implement new requirements but even at this level the Member States remain in control of the extent to which they will pursuing a common policy. Consequently there is a high level of interdependence and the development of political process resembles a spiral where the peak of one circle is the beginning of a new one but at the higher level.

The first stage of the policy development illustrates the launch process of a common policy in the EU. Further development can provide the vision of the functioning models of the policy instruments.

Chapter 4

The second stage of a common immigration and asylum policy development

The following chapter focuses on the measures of the common immigration and asylum policy of the second generation. The beginning of the new period of the policy development was initiated by the signing of the Treaty of Nice amending the Treaty on the European Union; it also was the time when the 5-year period provided by the Treaty of Amsterdam to develop the first measures of the policy ended. The goal of the chapter is to consider what new steps are offered by the second generation of the legislation in the area and whether the policy development continued in the same direction as it was defined by the initial measures. The analysis of the goal and means introduced by new legal instruments can reveal the efficiency of the implementation of the previous ones. The chapter covers the provisions of the Treaty of Nice, the Hague Programme and some lover level documents.

4.1. Treaty of Nice: provisions on the immigration and asylum policy

The Treaty of Nice[79] was adopted after the Nice European Council in December 2000 and signed on 26 February 2001, the Treaty entered into force on 1 February 2003. The main purpose of amending the Treaty was to adapt the Union institutions and the way they function to the coming enlargement of the Union. The Treaty did not introduced dramatic changes to the field of immigration and asylum but there were points which should be considered. Also the process of ratification that proved to be problematic in some Member States triggered so called "period of reflection" on the future of Europe[80].

As an example there is a new requirement that in the field of the common foreign and security policy there should be consistency between the Union's policy and its external actions[81] . The Treaty also extends the range of questions which can be decided by qualified majority instead of unanimous voting.

These changes mean the facilitation of the decision-making process in the field of asylum and immigration and increase of flexibility in the policy area.

Since the Treaty was aimed for adjusting the decision making process in the Union bodies and modification of the EU institutions it did not introduce any new measures or goals for the field of

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[79] Treaty of Nice amending the Treaty on European Union, treaties establishing the European Communities and certain related acts. *European Communities No 1.* Cm. 5090. 2001.
[80] Treaty of Nice Glossary. Official website of the European Legislation [accessed 31.04.2014] Available from: http://europa.eu/legislation_summaries/glossary/nice_treaty_en.htm
[81] Treaty of Nice. Article 27a. p. 10

immigration and asylum. Nevertheless, the amendments to the Treaty and the following enlargement of the European Union considerably changed the environment of the policy and circumstances under which it was to be implemented. It led to the new wave of asylum and immigration policy development which resulted in the so-called measure of the second generation presented in the following subchapter.

The steps provided by the Treaty of Nice and the fact that they initiated a new stage of the policy development demonstrate once again the interdependence of the policy developments within the Union. Even thought the Treaty does not address the immigration policy as such (only in terms of decision making procedures) the changes it introduces in other fields show that the Union is a comprehensive system of policies and the innovations in one field can lead to modification of all other spheres. Also the potential enlargement affects the policy making of this period as acceptance of new Member States significantly reshaped the external border and has a potential to change general accents in the policy. It also demanded the search for common positions on the immigration and asylum matters with new members returning the policy to its initial phase in some regions.

4.2. The Hague Programme: Strengthening freedom, security and justice in the European Union

The main policy framing document of this period is the Hague Programme[82] which was adopted at the European Council of 4 and 5 November 2004 as a continuation of the policy development founded by the Tampere Conclusions.

In the introduction to the Programme it is acknowledged that not all goals defined by the Tampere Conclusions were achieved but nevertheless the progress was made in the field. During the five-year period the foundations for a common asylum and immigration policy were created and the harmonization of border controls was prepared.[83]

It is noteworthy that the problem of the European Union security is mentioned as the main challenge already in the introductory part of the Programme. It results from the consequences of the terrorist attacks in the USA on 11 September 2001 and in Madrid on 11 March 2004. What is of no less importance is that addressing the problem of security the Programme connects the protection of the Union with the need to tackle cross-border problems which include illegal

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[82] The Hague Programme: strengthening freedom, security and justice in the European Union. Council of the European Union. 1654/04 JAI 559. Brussels, 13.12.2004
[83] Ibid., p. 2

migration, trafficking in human beings, terrorism and organized crime.[84] It is stated that the interconnection between the internal and external dimension is gaining importance. In accordance to the theory of securitization mentioned in Chapters 2 the introduction to the Programme is the bright example of the security framing: the problems which are not threats as such are connected to the events demanding security rhetoric and extraordinary measures. Placing such phenomena as immigration along with terrorism and organized crime in one sentence in the very beginning of a programme document cannot but create the negative perception of immigration and produce an alarming effect. The mobilizing effect of the securitization rhetoric is strengthened by the contraposition of fundamental freedoms and rights against the threats which come from outside of the Union border.

Reading thoroughly the introductory sentences of the Programme such as "The security of the European Union and its Member States has acquired a new urgency"; "The citizens of Europe rightly expect the European Union [...] to take a more effective, joint approach to cross-border problems such as illegal migration, trafficking in and smuggling of human beings, terrorism and organised crime"; "Notably in the field of security, the coordination and coherence between the internal and the external dimension has been growing in importance and needs to continue to be vigorously pursued" [85], it is already possible to notice that a general tone of the policy making and perception of the tasks that the EU faces in the field of immigration and asylum changed dramatically in comparison with the 'Amsterdam' period of the policy development. The situations the Union is likely to face are referred to as challenges rather than tasks.

The Programme objectives that concern the issues of immigration and asylum include improvement of the EU capability to guarantee the fundamental human rights on its territory, provide protection in accordance with the international law, ensure control of the external border, combat immigration-related crimes including trafficking in human beings and terrorism and regulate the immigration flows. To this end the establishment of a Common Asylum System shall be achieved. [86]

As it was mentioned above despite the abundance of normative goals listed by the Programme the main focus of the document is placed on security and it is stated that "a key element in the near future will be the prevention and suppression of terrorism"[87]. The basis for common

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[84] Ibid., p.3
[85] Ibid., p. 1
[86] Ibid.
[87] Ibid., p.2.

approach should be the aspiration to preserve national security, and ensure that the Member States take full account of the security of the Union as a whole.

As provided by the Programme strengthening of the area of freedom, security and justice is an instrument to secure safe communities. The matters as freedom, justice, the control of external borders, internal security and the prevention of terrorism henceforth are viewed as indivisible. The securitization language is a dominant factor in representation of the goals and objectives.

On the one hand, in the light of the international events named in the Programme it could be expected that special attention would be paid to security issues since the document deals not only with the area of freedom and justice but also security as it comes from the title. On the other hand, the Programme is multi-annual and it defines the direction of the policy development for a middle-term period. The explicit concern with security threats could be expected as an immediate reaction to the events expressed in Communications from the Commission, for example; yet, these events had prolonged post-effect which reshaped a number of policies including the one of immigration and asylum.

The Hague Programme defines the principles of the policy development which include meeting expectations of the EU citizens, and responding to the new challenges. The programme is based on a pragmatic approach, principles of subsidiarity, proportionality, solidarity and respect for different legal systems and traditions of the Member States. The last point is different from standard approach requiring harmonisation of legal systems of the Member States but with the enlargement of the Union this point was included in the principles.

While the introduction of the Programme focuses on security problems in the body of the document references to European Convention on Human Rights and the Charter of Fundamental Rights form the Constitutional Treaty as well as the Geneva Convention on Refugees are present. The Programme also states that in addition to respect of human rights in all areas of the Union's activity the EU commits itself to promote actively human rights.[88] This point turns the attention to the Manners' theory of the EU's special role in the world an actor guided by the normative principles.[89] The evident securitisation of this period counter-balances this notion and makes the EU a rational rather than purely normative player.

The Programme also urges to set realistic time limits for the implementation of measures depending on their complexity. Taking into account that it is the second generation set of measures the Programme pays more attention to the evaluation of the process of the

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[88] Ibid., p.5
[89] Manners, I. 2002.

implementation of the measures provided in previous and current legal instruments and suggests that systematic evaluation reports should be submitted to the Council.

Other innovative approach introduced by the Programme was the development of asylum and immigration policy with respect to root causes of migration (which was not considered in the Tampere Conclusions).

The Programme suggests studying of appropriateness and feasibility of joint processing of asylum applications outside the EU territory. This proposal can be interpreted as a sign of securitisation in accordance with technocratic approach of Huysmans who underlined that the institutional practical solutions characterise the policy: along with making the third country nationals applying for the asylum the subjects of securitization this proposal reflects the attempt to decrease the vulnerability of the Union and relocate the potential threat further from the Member States territories.

As it was presented in the previous chapter the Tampere Conclusions mainly focussed on creation of common principles, standards and procedures in the field of asylum policy; the Hague Programme initiates creation of structures involving national asylum services in order to facilitates practical cooperation. That way a single procedure for the examining of applications for asylum would become reality. The new European Refugee Fund was established for the period 2005-2010 and the Programme calls for using available Community funds to assist the Member States in processing asylum applications and receiving some categories of the third-country nationals. The programme explicitly states that the migrants who do not have the right to stay legally in the EU must return on voluntary or compulsory basis. This point was not provided in the first generation of immigration regulations. This is why the Programme also claims that there is a need to develop minimum standards for return procedures, establish a European return fund and doing so take into account special concerns with regard to safeguarding public order and security.[90]

That way the Union's policy is gradually gaining a material aspect and it becomes possible to speak of the common system of immigration and asylum management comprised of principles and functional institutions. The introduction of the joint funds regardless of their size and the founding of Frontex and EURODAC in 2004 manifests that the Union in its common policy became a developed community with the integration exceeding the framework of common rules and principles (or the international regime) and is in the progress of becoming a bigger actor.

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[90] Ibid., p. 14

The Hague Programme attaches importance to legal immigration in terms of economic development through knowledge. As it was stated in the previous instruments, the determination of admission of labour migrants is the Member States' competence. Special attention is paid to the issues of integration of third-country nationals legally residing in the EU into the Member States' societies and prevention of social isolation of those groups.

The Programme promotes cooperation with the third countries in all questions related to migration management, asylum, refugee protection, the border control and a problem of return and calls for more active interaction in order to prevent humanitarian tragedies.[91]

Among other initiatives the Programme proposes regional cooperation with the third countries and UNCHR in order to develop joint regional level programmes on the basis of the achievements of the initial phase of the common immigration policy. The widening of the EU's external activities in the field of immigration and asylum represents the growing integrity of the Union as an international actor. The aim of promoting cooperation in a format where the Union acts as a single entity supports the idea that the Union is gaining importance in the world and is coherent enough to attempt to act on the same level as states.

As concerns border control – the Programme calls for its strengthening and improvement of surveillance at the external borders. The control and surveillance fall within the sphere of national border authority; nevertheless, the European Council recommends that the Council establish teams of national experts who could provide rapid analysis of risks on request of a Member State which faces difficulties in managing immigration flows; and in addition create a Community border management fund by 2006. It also provided that a team of expert shall examine the possibility of the creation of a European system of border guards.

Seeing a certain level of correlation between illegal immigration, crime and terrorism the Programme fosters the improvement of the control on visa, border crossing and return issues and emphasizes the need to integrate biometrical information in travel documents, visas, residence permits, EU residents passports and ensure that there is sufficient interoperability between Schengen Information System, the Visa Information System and EURODAC[92]. In other words the Programme demands comprehensive coverage of the date on mobility at the external borders of the Union. Thus, the Hague Programme pays more attention to control of human mobility in comparison with the previous documents and the fact that the programme not only calls for elaborating the monitoring system but insists on the introduction of the concrete measures and

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[91] Ibid., p. 12
[92] Ibid., 13-14.

apply to a high-tech solution (biometrical passports) not only to foreigners but also the EU-citizens can be a sign of policy of insecurity in accordance with the technocratic approach of securitisation[93] that considers great attention to technical details in a general policy paper as a crucial component of the security framing. Comparing the Tampere Conclusions and the Hague Programme the one can notice that the former focuses on the right of people to move freely within the Union and underlines that this right should not be an exclusive privilege of the EU-citizens while the latter suggests the introduction of counter-measures which does not undermine the right for free movement but puts all mobility under the Union's scrutiny.

In visa related policy the Programme provides for further harmonization of legislation and visa issuing practices with the vision of a joint consulate system as an ultimate goal of the policy development.

Generally, the Programme reflects the tendency that dominated post September 11 international relations – securitisation of all aspects of external actions. At the same time the Programme continues the developments founded by the previous phase of policy establishment.

4.3. Instruments of a lower level legislation on immigration and asylum of the second phase of the policy developments

Turning to the third level of instruments dealing with immigration and asylum issues the Hague Programme refers to is the Communication from the Commission which provides the evaluation of the goals achieved in the framework of the Tampere Conclusions and some recommendations for the further development in the field.

Communication 401[94] marked the official ending of the five-year period established by the Tampere Conclusions.

Listing the achievements made in the field of freedom, security and justice the Communication completely omits the sphere of immigration and asylum. The only point which could be associated (although indirectly) with the immigration and asylum policy is the acknowledgment of existing difficulties in practical realisation of the goals set earlier and some factors inhibiting decision-making: "Despite the resolute line taken by the Tampere conclusions, it was not always

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[93] Huysmans, 2006. pp. 15-38
[94] Communication from the Commission to the Council and the European Parliament. Area of Freedom, Security and Justice: Assessment of the Tampere programme and future orientations. COM(2004) 401 final Brussels, 02.06.2004

possible to reach agreement at European level for the adoption of certain sensitive measures relating to policies which remain at the core of national sovereignty".[95] This quotation supports the notion that the common policy remains heavily dependent on the will and interests of the Member States and this peculiarity of the Union's political system remains topical even after 5 years of the endeavours of transferring the policy making to the communitarian level.

The Communication also responds to the criticism concerning the bias towards securitisation and the emphasis on security matters which are inherent in policy development in the area of freedom, security and justice of the second period. It is claimed that in spite of the need for some tough measures provoked by the growing danger of terrorism and organised crime the main principle of policy making is to maintain a balance between ensuring security and protection of rights and freedom of the EU citizens.

The communication assesses the implications of the enlargement on the immigration and asylum policy. It says that the enlargement reshaping the external border of the Union puts additional challenges to the strengthening of external borders and the introduction of the second-generation Schengen Information System. The preparation of the new Member States for complete accession to the Schengen acquis and the need to ensure absence of external borders will require considerable efforts. Nevertheless, all these procedures need to be completed rapidly.

The document emphasizes the fact that the objectives set in the Tampere Conclusions have not yet been achieved; Communication stresses also that the current institutional framework will cause difficulties in their further implementation. However, the signing and entry into force of the Treaty of Nice provided a new impetus for the development of the immigration and asylum policy.

After covering what have been done and what are the new circumstances in the area of freedom, security and justice, the Communication sets priorities for the future Programme of the development of this area. The Communication states the importance of adhering to the established priorities in order to avoid an excessive dispersal of common action. The overall context facing the Union shall also be taken into account; in particular attention should be paid to:
- economic differences between the regions of the world,
- and political instability in certain regions or countries;
- demographic changes in Europe;

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[95] Ibid., p.4

- the expectations of citizens in relation to their rights and citizens' expectations as regards security.

Most of the named priorities were touched upon in the Hague Programme followed the Communication.

The document advocates the need for protection of human rights, democratic values and law and order in the Union, the measures that were fully covered by the Programme.

The Communication recommends developing an integrated border management system and visa policy which includes burden-sharing between member states and the development of coordination mechanisms with the long-term objective of establishing a European Corps of border guards to complement the national border guards.[96] In comparison with the adopted Programme this goal is more ambitious; the Hague Programme only invites to establish an expert group that would analyse the feasibility of creation of such guards. According to the Communication the Union policy and its implementation must be governed by the principle of solidarity while in the Programme the responsibility to protect external border is a national level task with the possibility of assistance from other Member States in satiations of emergency.[97]

Another difference between the Hague Programme and the Communication is noticeable – in the Communication there is a clear division between the problems of immigration and asylum and those of crime and terrorism while in the Programme the issues are considered as correlated (or at least the choice of words and the order of the issues placed in the paper create such an impression).

In the conclusion the Communication insists that the working method of the Tampere Conclusions proved to be efficient and should be preserved. The Communication also suggests that public debate on the matters covered by the future Programme is essential.

The analysis of this Communication may facilitate understanding of how the priorities and goals of the Union level policy are developed and considered. The first draft of the vision of a policy is presented in the documents which do not have binding power; they express the opinion and preliminary decisions. At the same time the Communications are important as they are public and hence can form the image of the Union among its citizens and international counterparts. As in the case described above the lowest level of the legislation can be used in order to mitigate the negative perception of the measures provided by the Programmes or alter this perception by

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[96] Ibid., p. 9
[97] The Hague Programme. P. 15

explaining and clarifying them yet not changing practical outcomes of the policy. The circulation documents demonstrate that there is an aspiration within the EU decision making bodies to exercise human values oriented approach and promote it. Nevertheless, this is not always possible or desirable under the existing circumstances when the Union faces many challenges and threats and when the interests of the Member States should be taken into account. It results in differences of approaches and focus between the complete programmes on the policy and preliminary recommendations. Numerous ideas are excluded from the final version of the Programme which can be explained by the need to get approval of the majority of the Member States; this decreases the scope of steps which can be taken at the EU level. Limited time and funds for the implementation of the measure also affect the level of ambitions.

Summarizing the peculiarities of the second generation of policy measures it should be reiterated that the clear securitisation tendency is the key element of it. The leading notion of this policy development period is "control" despite the importance of other aspects such as human rights protection. On the other hand, it is when the EU for the first time listed promotion of values outside the Union as one of the goals. Other point is the timing of the introduction of the new generation of measures: as it was stated in the documents the goals defined by the previous Programme and the Action Plan were not achieved. Yet, new ones were proposed. The possible reasons for that will be considered in the last chapter.

<center>**Chapter 5**</center>

<center>**5.1. The Treaty of Lisbon: Provisions on immigration and asylum**</center>

The last chapter devoted to the analysis of the legal basis of the immigration and asylum policy deals with the instruments of the third generation or the measures developed in the framework of a global approach to immigration as it is called by some documents. The main purpose of the chapter is to proceed with the coverage of the policy legislation development and find out peculiarities if this period in comparison with the previous two.

The main document of the third period is the Treaty of Lisbon signed on 13 December 2007, and entered into force on the 1 of December 2009 as a replacement to the Constitutional Treaty which was not ratified.

Provisions on border control, asylum and immigration were envisaged in Chapter 2 of the Treaty[98](which used to be Title III in the Treaty of Amsterdam).

According to article 3 (Common Provisions)[99] the Union should be the area of freedom without internal borders which should be implemented in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.

Article 67 of the Treaty establishes that the Union should frame a common policy on asylum, immigration and external border control, based on solidarity between Member States and fair treatment of third-country nationals. Stateless persons shall be treated as third-country nationals. The objectives envisaged by the Treaty mainly reiterate those provided by the previous Treaties and programmes[100].

The significant difference in comparison with the previous generations of the policy tools is that the Treaty of Lisbon obliges both the European Parliament and the Council to adopt the appropriate measures to ensure the achievement of the policy goals. This shift stems from the general change in the structure of the EU policy making mechanisms which enforced the Parliament. Hence, the general development of the EU affects the policy specific issues as well.

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[98] Consolidated Versions of the Treaty On European Union and the Treaty On The Functioning of The European Union. Brussels, Council of the European Union, 15 April 2008, 6655/08.
[99] Ibid., Article 3, p. 21.
[100] Ibid., Article 77, p. 99

The Treaty establishes a common European asylum system[101] comprised of the elements ensuring efficient reception, examination and granting special status of protection to the third country nationals which will be valid throughout the Union. The Treaty of Lisbon is the first legal instrument which mentions the European system of asylum (not only the set of instruments) based on the measures suggested by the previous legislation. At the same time according to the provisions of the Treaty the system requires a lot of further efforts to be established as many of the goals remain unfulfilled.

Measures aimed at managing immigration flows, ensuring fair treatment of third-country nationals and prevention of crimes related to human mobility were supposed to be developed by the European Parliament and the Council[102] together.

In addition to the measures of managing immigration flows and developing common policy on asylum the Treaty of Lisbon ensures that Member States have possibility to protect their national interests in the field of immigration and asylum. Namely, Article 72[103] states that provisions of the Title of the Treaty shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security. Article 73[104] empowers Member States to decide on measures of organization and cooperation as concerns safeguarding national security. Moreover, it is stipulated by Article 79.5[105] that Member States have a right to determine volumes of admission of third country nationals coming to their territory with the view to find employment.

Therefore, the Treaty of Lisbon provides extensive basis for further development of the immigration and asylum policy. Due to the previous endeavour in that field by the moment the Treaty of Lisbon was signed the common policy on immigration and asylum already acquired its framework and consequently the Treaty could cover more issues which are to be tackled at the Union level. Despite considerable achievements in the policy making the Treaty ensures that the Member States enjoy considerable freedom and have an opportunity to deviate their national policy lines from the common direction under specified circumstances. The way this right was formulated enables certain flexibility in interpretation of the provisions as the term "national security concerns" could be applied to various situation differently. This reveals the fact that even after almost ten years of the European level policy development the regulations in the field leave an opportunity for the Member States to limit their participation in a common policy. The

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[101] Ibid., Article 78, p.100
[102] Ibid., Article 79, p.101
[103] Ibid., p. 97
[104] Ibid.
[105] Ibid., p. 102

Treaty is supposed to ensure smooth development of the common policy ensuring coherence and acceptability of the changes in the field of immigration and asylum this is why the changes are moderate.

5.2. The Stockholm Programme

The Stockholm Programme[106] as an instrument of the second level of legislation sets the priorities of the European Union for the area of justice, freedom and security for the period of 2010-2014. The programme is based on the achievements of the Tampere and Hague programmes; it was designed to address new challenges and strengthen the area of justice, freedom and security with special attention paid to the interests and needs of the EU-citizens.

The Programme differs from its predecessors in terms of structure: previous Programmes were divided in the parts dealing with one issue at a time including common policy on immigration, asylum issues, judicial cooperation. The Stockholm Programme structure is more sophisticated and pursues different logic in arrangement of the document. From the titles of the chapters (for example, Towards a Citizens' Europe in the Area of Freedom, Security and Justice[107]) it is clear that the change of focus of the policy in the area of freedom, justice and security took place – the rights and interests of the EU citizens are now the central element and driving force of the development. The language also changed – it became more representative and explanatory, less formal and it seems that the Programme is designed not only for decision makers but for the EU citizens too. It may result from the "rethinking of the EU future" period after the failure of a Constitutional project proved that the support of the public opinion is vital and the Union policy should be clear and transparent in order to make the EU closer to people and gain their support.

The Programme provides brief coverage of what was achieved since the launch of the common immigration and asylum policy. The list of successful implementation of the previous policy measures includes:

- the external borders of the Union are now managed in a more coherent manner.
- the external dimension of the Union's migration policy focuses on dialogue and partnerships with third countries, based on mutual interests.
- significant steps have been taken towards the creation of a European Asylum System.
- Frontex has reached operational maturity in its field of activity.

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[106] The Stockholm Programme — an Open and Secure Europe Serving and Protecting Citizens. *Official Journal of the European Union*. 2010/C 115/01. 04.05.2010
[107] Ibid., p. 4.

Despite the aforementioned achievements the EU is facing new challenges and further development of the policy in the area shall be pursued, new approaches and reshaped structure of the Union's political system are viewed as an empowering factor which ought to be used at its maximum capacity for facilitation of the policy enhancement.

The main challenge and the goal of the Programme are to ensure respect for fundamental rights and freedoms and integrity of the person while guaranteeing security in Europe.

Among its priorities the Programme seeks to ensure better access to Europe in the globalised world for those who legitimately require that access or need international protection. The vision of the European Union in the future as suggested in the document will be Europe of responsibility, solidarity and partnership in migration and asylum matters. For the first time in a legal instrument of that level it is stated that well-managed migration can be beneficial to all stakeholders[108]. It was also not until this Programme that the Union on this level of policy named a region where illegal immigration creates considerable problems (Southern borders).

In addition to traditional tools of the policy making and implementation the Programme suggests the involvement of new actors such as citizens, civil society, business and professionals in various fields which signals that the policy is becoming more practical and closer to the real problems faced by the Union, the Member States and citizens in the field of immigration and asylum. The attempt to invite grass-root actors to the policy making and evaluation can be interpreted as an effort to justify the Union's policy and make it more sensitive to the needs of people and at the same time increase the EU's legitimacy.

Furthermore, the attention to the problem of how the policy measures prescribed by the Programme should be put in practice distinguishes this document form previous ones.

Other peculiarity of this Programme is the different order in which the issues are considered. Both previous Programmes started with asylum and immigration, on the contrary, in the Stockholm Programme these issues are considered in the last chapters – after the parts that deal with the protection of human rights and cooperation in the field of judicial procedures and criminal justice. On the one hand it demonstrates the change of priorities and de-securitization of the immigration and asylum policy; on the other hand, it helps to draw a line between issues which are perceived negatively such as cross-border crimes and terrorism and immigration and asylum seeking (which contributes to de-securitisation of the policy as well).

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[108] Ibid., p. 5

Chapter 5 of the Programme Access to Europe in a Globalised World is devoted to external border management and visa policy.[109] The priority of border management is to a facilitate legal access to the territory of the EU at the same time taking measures to counteract illegal immigration and cross-border crime and maintain a high level of security. The strengthening of border controls should not prevent access to protection systems of the Union by those in vulnerable conditions. The Programme calls for close cooperation between Frontex and the EASO and reinforcement of the role of the former. The development of practical solutions to fulfil those goals is the task for the Council and the Commission.

The separation of the tasks and division between different aspects of the policy among the EU bodies make the Union's system more specialised and closer to the one of a state – as practical measures are to be implemented by the Council and the Commission (organs playing the role of the executive power) and the general principles to be developed by the European Parliament alone of jointly by the Parliament and the Council. The fact that only a few issues can be considered by the Parliament without participation of the Council shows that the traditional state-like separation of power is not yet achieved and a supranational body (the Parliament) is still under close control of the national representatives in decision making in the field that includes interaction with third countries.

As concerns the visa policy, the Programme states that it should be part of a broader vision that takes account of relevant internal and external policy concerns. The Member States are encouraged to intensify regional consular cooperation. The Programme promotes conclusion of visa facilitation agreements with third countries and establishing a common European issuing mechanism for short term visas.

Chapter 6[110] of the Programme tackles the issues of immigration and asylum. Contrasting to the previous regulations on the matters, the Stockholm Programme places the immigration in the context with regard to the long-term consequences human mobility can have on economic and demographic situation and emphasizing that the circumstances of immigrants should be taken into consideration in decision-making. Furthermore, the Programme urges that the development of immigration policy should be coherent with the development in other fields such as foreign and development policy and trade, employment, health and education policy at the European level.

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[109] Ibid., 26-27
[110] Ibid., 27-33

The Programme refers to the European Pact on Immigration and the Communication from the Commission "Global Approach to Migration" reaffirming the goals set in these documents which are as follows[111]:

- to organise legal migration taking into account of the priorities, needs and reception capacities determined by each Member State, and to encourage integration,
- to control illegal immigration by ensuring that illegal immigrants return to their countries of origin or to a country of transit,
- to make border controls more effective,
- to construct a Europe of asylum,
- to create a comprehensive partnership with the countries of origin and of transit in order to encourage the synergy between migration and development.

The goals seem 'traditional' for this type of policy documents and basically they continue the direction of the policy development defined in earlier papers. It can also raise the question whether the reiteration of the main policy goals is a sign of consistency or rather stagnation in the field and inefficiency of practical implementation of legal instruments? If the method of reading the legislative documents proposed by Huysmans is applied to the Programme this question becomes even more topical as the choice of terms in legislation is always careful and accurate and can be seen as a reflection of the current situation in the field. If one reflects on the terms used in the goal setting – what draws attention is that after development and realisation of two generations of the policy measures the new Programme aim at the goals which require to 'create', 'construct' and 'organise' but not yet 'maintain', 'continue' or 'adjust'. This choice of terms maybe be a signal that the process of policy development is going not as promptly as it was supposed to be.

The Programme urges for more active and full use of available technical and legal instruments in the immigration management. In comparison with the previous approaches of the earlier stage of the EU migration policy – the notion 'management of migration' as designed by the Stockholm Programme includes not only measures of combating illegal immigration and unifying visa policy and border checks but also promotion of mobility of certain groups of people and measures aimed at attracting high-qualified workers in the EU.

Among other innovations in the immigration management introduced by the Programme is the inclusion of the diaspora groups in the Union development initiatives.[112] This point as seen in the context of the previous documents could be considered as a signal of further de-securitisation of

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[111] Ibid., p.28
[112] Ibid., point 6.1.2., p. 29

the policy as the third country nationals residing in the EU are viewed not as a threat or dehumanised subjects of the policy but as the holders of rights whose interests should be taken in account in decision-making process. Moreover, the intention to work with the diaspora groups directly proves that the EU is ready to listen to people in policy making not just rely on international law which is supposed to reflect and protect the interests of those people. This process of 'going to the ground' is specific for the third stage of the policy development and could not be detected in previous legislation. That change can be linked to significant problems of the EU legitimacy among its citizens the apex of which was the failure of the Constitutional project and the long debate on the lack of democracy at the Communitarian level.

Aspect of integration of the third country nationals legally residing on the territory of the EU Member States is more elaborate than in previous programmes and covers such issues as opportunities for employment, an access to introductory and language courses, promotion of migrants' participation of in collective life and monitoring of achievements in the field.[113]

As concerns the issue of illegal immigration the principles and goals are very close to those provided by earlier documents. Some points are worth mentioning though. For example, the Programme establishes that a return decision issued by one Member State is applicable throughout the Union that eliminates the possibility that individuals who do not have a right to reside in the Union cannot move to another Member State and it also rules out the need for additional examination and decision issuing by other Member States. Special attention is paid to the problem of return and readmission and tragic consequences of illegal immigration and trafficking in human beings. The problem of illegal minors arriving at the EU territory has been singled out as a separate issue requiring more attention and special approach[114].

Provisions regarding an asylum policy are envisaged in Chapter 6.2[115] of the Programme. The ultimate goal of the policy is to create a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection. The policy shall be based on high protection standards, fair and effective procedures and measures preventing abuse. One of the objectives is to ensure that similar cases should be treated alike and result in the same outcome. Generally, the new Programme reaffirms adherence to the goals and principles established in previous documents. Significant difference is that the Stockholm Programme introduces an external dimension of the Union asylum policy – which implies activities of the Union and the Member States in the third countries hosting large numbers of refugees with the aim to enhance protection capabilities there. Such measures were mentioned in

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[113] Ibid., 6.1.5., p. 30
[114] Ibid., 6.1.7., p.31
[115] Ibid., 6.2., p. 32-33

the Hague Programme but it is the Stockholm Programme that shapes them in a separate policy dimension. This new aspect of the policy results from the previous achievements which despite the pitfalls and certain lack of efficiency enabled the Union to gain weight as a single actor with regard to the immigration and asylum issues. Expansion of the area of freedom, security and justice policy to external dimension is a distinguishing feature of the new stage of the EU policies. The Programme directly states that "the Union has a single external relations policy"[116] and "the Union and the Member States must act with solidarity, coherence and complementarity"[117]. In comparison with the language and approach of the previous programmes and other documents these formulas are stronger. This is a rare example when the common policy document opts for such a verb 'must' instead of 'recommend'. Such a dramatic difference could be explained by the fact that the policy existed for about ten years by the time the Stockholm Programme was signed but the policy did not reach the level it was supposed to. The adherence to individual actions and dominance of the Member States inhibited the development of common dimension of the policy but in order to be able to exert influence and be perceived as a single actor the Union needs coherence among the Member States in its external actions – this is probably why the programme appeals to relatively firm formulas.

In the Stockholm programme there is a clear attempt to separate issues of immigration and asylum and terrorism and international crime which could be explained by a growing tension in some EU Member States societies against the immigration which put the Union in difficult situation when the immigration is inevitable and even necessary for the economy but perceived negatively in a number of countries. In order to mitigate this negative reaction the Programme changes accents and this is why it is possible to claim that the instruments of the third period are not only practical policy making tools but also an appeal to the EU citizens designed to shape the public opinion. Such an appeal to the citizens is presented in the short introductions to every part of the Programme which are supposed to explain the goals of the policy, the current situations or the EU's positions on the matter. This is not typical of the legislation of that level which usually is designed for the decision makers. For example chapter 6.1.5 devoted to the integration of the third country nationals has the following explanation "Integration is a dynamic, two-way process of mutual interaction, requiring not only efforts by national, regional and local authorities but also a greater commitment by the host community and immigrants"[118] or the titles of the Programme chapters such as "Living together in an area that respects diversity and protects the most vulnerable", "Making people's lives easier: a Europe of law and justice" sound unusual for

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[116] Ibid., p. 33
[117] Ibid., p.34
[118] Stockholm Programme., p. 30

the EU legislation and are more self-explanatory and easier to comprehend for the average reader than traditional language formulas used in such documents. This implies that one of the Programme aims is to affect the public opinion or at least explain what the Union is intended to do the field of immigration and asylum and why.

5.3. The lower level of policy legislation of the third period of the EU common immigration and asylum policy development

Communication on the Global Approach to Migration and Mobility[119] from the 18 November 2011 is presented as an example of the document which belongs to the lower level of legislation of the latest period of the immigration and asylum policy development.

The Communication was adopted after the Stockholm Programme hence, the circumstances and international environment were different when the document was developed. According to the Communication the Arab Spring and events in the Southern Mediterranean in 2011 put immigration at the top of political agenda of the European Union. This is an additional example of how large-scale international events influence the policy.

The paper introduces a renewed Global Approach to Migration and Mobility with the objective to make immigration policy more strategic and more efficient. The Communication shifts the EU approach from dealing with immigration to dealing with human mobility across external border which include new categories of the third country nationals.

The Communication urges for better coherence between immigration policy and other EU external actions which should complement each other and facilitate practical realisation the goals in various fields including migration, security, trade and other fields.

Addressing all the issues which are typically touched upon by this type of documents the given Communication is slightly different as it changes general perception of immigration considering legal migrants to be a part of the solution to the most acute problems of the Union including shortage of labour resources, and aging of the population. It also proposes more positive image of an immigrant, who is not depriving the EU citizens of their benefits but rather contributes to the EU economic development and enriches culture and society.

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[119] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Global Approach to Migration and Mobility. European Commission. COM(2011) 743 final. Brussels, 18.11.2011.

Important idea is presented among objectives of the Communication that the immigration policy should be migrant-centred. In essence, migration governance is not about 'flows', 'stocks' and 'routes', it is about people.[120] The Communication also places bigger emphasis on human rights issues related to migration than previous instruments making the Union more values oriented in comparison with the previous stages of the policy development.

Another aspect which is peculiar about this Communication is the attention it invests in the external dimension of the immigration policy of the EU, namely bilateral cooperation with non-EU countries. It provides wide range of recommendations on further enhancement of dialog with the EU counterparts on issues related to legal immigration, return of illegal migrants and other aspects. The communication positively evaluates the measure in this field that have already been achieve and urges that the Union utilises all the instruments it has in order to improve the situation.

It is alarming though that despite the manifestation of a brand new approach of the EU towards immigration and asylum which is supposed to be global and human-rights oriented, which can bring positive change in the human mobility area and tackle most of problems the Union faces, the legal instrument by which this approach is established and promoted is the Communication from the Commission which is according to an official definition "a policy document with no mandatory authority. The Commission takes the initiative of publishing a Communication when it wishes to set out its own thinking on a topical issue. A Communication has no legal effect."[121]

Despite this weakness, on the whole the third period of the immigration and asylum policy development introduced the number of positive changes.

First of all there is a process of de-securitization of immigration. The inflow of foreigners in the EU is presented not as a threat but as an opportunity.

Second, this period of policy is characterised by the shift to more humane policy and people oriented approach. It concerns both – the image of an immigrant and asylum seeker who now is presented as person rather than dehumanized subject of a policy; and the recipients of the policy papers – the new documents are aimed at the citizens not only policy makers.

Third, the immigration and asylum policy becomes a more comprehensive area which includes the external EU actions and become a part of a bigger issue of international activity of the Union.

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[120] Ibid., p. 9
[121] European Commission Glossary. Official website of European Judicial Network. [accessed 19.04.2014]. Available from: http://ec.europa.eu/civiljustice/glossary/glossary_en.htm#Communication

The policy therefore transforms from a reactive actions which are to prevent threats and protect the Union to more adaptive and pragmatic course which takes advantage of the existing circumstances and seeks to mitigate the possible negative consequences for the Union and its citizens.

Chapter 6

General conclusions on the Immigration and Asylum policy legislation development and the EU as an actor in international relations

Analysis of the development of legislation on the immigration and asylum conducted in the previous chapters enables to reflect on what kind of policy it is supposed to be if measures are implemented fully and timely. The legislation represents the vision of the policy and the role of the Union in the field of human mobility under given circumstances as seen by the Member States and the Union itself. External and internal factors may inhibit or facilitate the process of policy implementation and practical fulfilment of the goals set in the legal instruments, thereby can lead to the outcomes of the policy which contradict the designed model. Focusing on legislation alone provided the normative perception of the Union; a clear-cut system of views and values agreed upon by the Member States in the field of immigration and asylum. On the contrary practical outcomes of the policy are under the influence of numerous factors and often it is impossible to single out the main causes of certain a failure or success, therefore focusing on the legislative basis of the policy is an advantageous tool to use for the explanation of the nature and peculiarities of the European Union as a political actor and an actor in international relation.

As it was mentioned in the introduction the immigration and asylum policy is a comprehensive area of activities which involves both domestic and external dimensions, interaction within the Union and with third countries, it also includes working with public opinion and ensuring legitimacy of the Union. The common policy in the field of immigration and asylum is representative for understanding the EU because on the one hand, it requires more political convergence and as a rule it is the field where the Member States find it more challenging to find common ground in comparison to the economic field. On the other hand, immigration and asylum field is not as problematic in terms of transferring decision making power to the level of the Union in contrast to the issues like military capacity and army cooperation. Thus, the policy represents the combination of the elements of high and low politics where it is possible to develop measures at the Communitarian level but at the same time it is not free from contradictions between the Member States and reluctance to take big steps towards common policy. Notwithstanding the fact that legislation and practical solutions do not always hundred per cent correlate with the expected results or the aspirations of the decision makers, this field is coherent enough to demonstrate the EU's patterns of common policy development on the whole.

This chapter is dealing with the characteristics of the EU common immigration and asylum policy throughout its development and concludes how the Union itself can be explained as an actor in international relations through the prism of the policy.

6.1. The Characteristics of the European Union common immigration and asylum policy

The conclusions regarding the common immigration and asylum policy as such drawn from the study of the legal basis are as follows:

Firstly, according to the Treaty and the following acts the external border shall be designed and function the same way as borders of states – the Treaty implies unified system of border checks and harmonised requirements on entry throughout the Union. The Treaty in a long term leads to the development of unified norms, principles and procedures in everything what concerns asylum and immigration. It seems that when all the requirements of the Treaty are implemented the European Union external border would make the EU immigration and asylum system very close to the one of a state which relies on a single set of rules and has relatively centralized institutional framework. Responsibilities and costs of border and immigration flows management are supposed to be shared among the Member States on a fair basis. As designed by the Treaty the EU's external border can serve as a membrane which on the one hand protects the territory from massive influx of immigrants but on the other hand is permeable.

Despite the aspiration to create a single external border of the Union, according to the Treaty there is space left for the Member States to manoeuvre in case the domestic authorities decide that national economic interests are jeopardised because any Member State has the right to determine the volumes of admission of the third-country nationals entering their territory in order to seek employment. The asylum applications are also examined by national authorities though by the means of unified principles. Moreover, the control of the border falls into the responsibility of the Member States and the Union interferes only in emergency situations when one Member State turns out to be unable to handle the influx of immigrants or refugees. These limitations of the common actions diminish the initial idea of having a single border. The latter point also upsets the balance of burden sharing as the Member States whose territory is closer to the external border especially those in the South face more difficulties and bare more expenses both in terms of material resources (border maintaining, conduction of border checks) and political ones (especially in cases with tragic outcomes of the attempts to cross the border illegally when the Member States need to make political statements or comment on the situation).

Even though the vision of the Union's interaction with the external world in the field of human mobility was firmly set by the Treaty, the general principles of the immigration policy changed throughout its development with adoption of special programmes and communications. For instance, the second period of the immigration and asylum policy development characterised by the securitisation process reshaped the external border into a frontier - less permeable and sensitive to external impulses, isolating the threats posed by the outside world (with the term "threats" being extended). Such ideas as tighter border control and examining of the asylum applications outside the territory[122] of the Union inherent in this period made the EU look more as a fortress or a "glass cube" reluctant to accept outsiders regardless of the circumstances which pushed people to seek for entering the EU.

This leads to the second conclusion. Even though the policy is gradually developing in one direction it is flexible enough to deviate from this direction in response to external and internal events of a big scale. The Second period reflects general tendencies in international relations – this period of the policy development coincided with post September Eleven changes in the world when the world politics was panic stricken and major actors reshaped their approaches to many issues in accordance with the security-oriented values. On the opposite, smaller-scale events in the field of immigration do not affect the policy legislation as much as those reshaping international relations system. In other words, the policy is being developed towards the goals and with principles defined by the Treaty with little regard to actual changes in the field but in subordination to the fluctuations in the sphere of high politics.

Third, the development is taking place by moderate and small changes introduced mainly by the amendments to the Treaty on the European Union. This corresponds with Moravcsik's explanation of the EU's stability[123] based on the slow and gradual development which prevents drastic turns of policy line and allows the Member States and the EU bodies to adjust their systems to innovations. It is peculiar that the introduction of the common immigration and asylum policy took place ten years before the Treaty of Lisbon was signed but the general framework and recommendations on the policy in this area are very similar in both the Treaty of Amsterdam and the Treaty of Lisbon. Furthermore, in a number of policy documents it is stated that the goals set by previous instruments are not fully achieved, so the deadlines set by the Programmes and often not followed. This can lead to a question how much was done in the area of the immigration and asylum during the last ten years and whether the goals set in 1997 were

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[122] Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status. Official Journal of the European Union L 326. 13.12.2005. pp. 13-34
[123] Moravcsik., 2002. p.611

achieved? And if they were not why new measures are being introduced? The possible answer to this question will be given further.

Fourth, as it was mentioned in the description of the first generation of the measures on immigration and asylum the EU legal system is hierarchical, yet it is difficult to define the direction of the policy development because it is the combination of bottom-up and top-down decision making; with bottom-up pattern being the developments which start at the level of the Member States and then transferred to the Union level and top-down - from the Union to the Member States and regional authorities. Both directions are closely interconnected.

Fifth, the hierarchy of decision-making and legislation does exist but it is relative. Formally the level of the Union policy making is supreme and supranational but as it was noted by the Liberal Intergovernmentalists[124], the Member States presume their right to limit the integration and opt out from participation in a number of activities at the EU level. This was provided by the Treaty on the EU (the right to refrain from participation in joint actions by constructive abstention[125]) and Policy Programmes which place some issues under national level authorities. This feature of the high level of the Member States' influence is reflected also in the formulas the policy documents use. Most articles providing the introduction of the joint measures operate such terms as "recommend"[126], "invite"[127] or "call upon"[128] and none of the legal instruments considered in this research prescribe or require some steps to be taken by the Member States. This peculiarity allows concluding that in spite of the fact that since the signing of the Treaty of Amsterdam the immigration and asylum policy is in the domain of the European level policies it still depends heavily on political will of the Member States in its realisation. That way the system of the EU policy making is multi-level with imbalance towards the national level authorities, at least as concerns the issues which are linked to external activities of the Union. Due to the complicated system of legislation which requires consent from all parties involved and rules out imposing of any measures by the EU bodies on the Member States as well as the lack of opportunities for the Member States to influence each other in the matters which can considerably affect national economic interests and social coherence the pace of policy development is relatively slow and the process of coordination and unification requires efforts and resources.

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[124] Moravcsic., A. and Schimmelfenning, F. p.68
[125] Treaty of Amsterdam., Article 23.
[126] The Hague Programme: strengthening freedom, security and justice in the European Union. Council of the European Union. 1654/04 JAI 559. Brussels, 13.12.2004. p.3, 8.
[127] The Stockholm Programme — an Open and Secure Europe Serving and Protecting Citizens. *Official Journal of the European Union*. 2010/C 115/01. 04.05.2010. p.6,7,8
[128] Communication from the Commission to the Council and the European Parliament. Area of Freedom, Security and Justice: Assessment of the Tampere programme and future orientations. COM(2004) 401 final Brussels, 02.06.2004. p.3, 16.

Sixth, following the legislation developments on different levels and in different periods it is clear that the common policy on immigration and asylum is the result of experiments, tries and errors. There is no such experience of creating a common policy on a supranational level neither in Europe nor in any other regions; observing how certain ideas are proposed in communications and abandoned later on the higher level of legislation makes it obvious that there is uncertainty in the EU of how the policy should be designed and conducted and there is no pattern of any predecessor to follow. This leads to the problem that the policy legislation has shortcomings in terms of overlapping and a certain lack of coherence.[129] In the fields of economic integration and even military alliance creation there is the abundance of historic examples how the coordination and unification may be implemented; in the field of immigration and asylum such cooperation is not widely spread and the European Union is in fact a pioneering entity.

Generalising the aforementioned conclusions it can be reiterated that the policy on immigration and asylum is extremely complex and comprehensive phenomena which therefore can serve as a case study for analysing the nature of the European Union as an actor in international relations.

6.2. The European Union as an actor in international relations through the prism of the common immigration and asylum policy

Having followed the development of the common immigration and asylum policy from the moment it was launched and focusing on legal aspect of it, the number of notions can be presented in regard to the EU actorness. As it was demonstrate by the policy legislation analysis the Union is a complex, multi-level entity with the system being constantly under improvement and enhancement. Nevertheless at this stage of the integration it is possible to reflect on the nature and qualities of the Union as a political and international actor.

First and foremost, it seems crucial to focus on the motivation behind the policy development and find out how this motivation can explain the Union actorness.

The common immigration and asylum policy was launched within the framework of the measures aimed at the creation of the area of freedom, security and justice. By the time of signing the Treaty of Amsterdam the need to ensure freedom of movement inside the Union became crucial resulting from the economic integration and creation of the common market and common economic system. With the aspiration to eliminate internal borders the EU faced the demand to introduce common immigration system because once an individual enters the territory of the EU he or she is entitled to the right of relatively free movement within the Union,

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[129] The Stockholm Programme — an Open and Secure Europe Serving and Protecting Citizens. *Official Journal of the European Union*. 2010/C 115/01. 04.05.2010. p.5

otherwise a border free area would be impossible. Consequently, the immigration policy of each Member State has a capacity to influence the situation in other Member States due to secondary mobility of the third country national within the Union. This situation dictated that the immigration issues should be coordinated in order to ensure the balance of responsibilities for immigration flows inside the Union and to safeguard the interests of all Member States. As concerns the asylum policy it was dictated by similar incentives accompanied by the intention to create a single external border which in its turn required the unification of the measures of the asylum application examination and decision making, otherwise there might be the opportunity for the abuse of differences by the third country nationals.

In more practical terms as stated by the Hague Programme[130] the goal of the policy is to ensure balance between economic and humanitarian considerations in the field of asylum and solve demographic and economic difficulties by the immigration of labour forces. In the legal documents it is clearly visible that the Union is driven by the interests of the Member States and the Union on the whole. The policy is pragmatic and close to the ground – the Union avoids committing itself to excessive responsibilities in the field of human mobility and prefers case-to-case approach. Due to the fact that the Union needs the political will of the Member States in order to develop and implement any measure the policy has to take into account the interests of the national level. This combination makes the Union a rational actor which is not deluded by any kind of expectations but acts in accordance with the given circumstances. When the threat of terrorism arose in the second phase of the policy development – the Union highlighted the protective aspects of immigration and asylum policy driven by security interests. Such an approach characterises the EU as a rational actor as claimed by both the realists[131] and liberal intergovernmentalists[132].

The element of the bargaining within the Union described by the Liberal Governmentalism is also inherent in the policy making since the measures on immigration and asylum are developed either by the Council comprised of the highest representatives of the Member States (heads of state or governments) or by the Commission. Despite these points the approach to the EU actorness offered by Liberal Intergovernmentalism proves to be inaccurate as regards specific policy areas since it supposed that the issue of immigration will remain at the national level and the Union will not evolve further than international regime.

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[130] The Hague Programme: strengthening freedom, security and justice in the European Union. Council of the European Union. 1654/04 JAI 559. Brussels, 13.12.2004. p.15-33
[131] Hyde-Price, A., 2008.
[132] Moravcsik, A., 1998., Moravcsic., A. and Schimmelfenning, F.

The success of the common immigration and asylum policy as policy of the Communitarian level may be questioned but the policy does belong to the level of the Union; moreover, the development of common external border with special funds to maintain it and the operation of Frontex and EURODAC as well as the process of the introduction of a single asylum status and procedural unification makes the Union something more coherent than just an international regime which implies merely the set of principles and rules regulating the relations of certain actors.

The Union attempts to present itself at the international arena as a single actor, capable of establishing bilateral (EU-a third country) relations with third countries. The need for expansion of the EU external activities was emphasized by the Stockholm programme. The programme calls upon the Union (not only the Member States) to develop cooperation with the countries of origin and transit of immigrant flows and coordination of the measures on the field of immigration and asylum with other external activities of the Union.[133] Initially the policy pursued by the Union reflected the attempts to protect the Union's interests and interests of its Member States by partial isolation of the external influences and management of the immigration and asylum flows inside the EU. At the time of the launching of the immigration and asylum policy some measures seemed to be poorly adjusted to the given circumstances and could not respond to actual international situation in a proper way. At that stage the policy was more reactive rather than adaptive let alone being orientated on long-term prospects. Yet, with the determination to pursue the policy at the Communitarian level by the third generation of the policy measures it becomes more obvious that the EU is looking for its place at the international arena and seeks to fit the existing system of relations taking into account the circumstances and limitation which may affect its actions[134]. The policy becomes more balanced and the awareness of the challenges and opportunities placed from outside of the Union becomes the indispensible part of policy planning. This approach makes the EU more rational and flexible as an international actor. This interest-oriented policy adjusted to the external factors creates similarity of the EU's behaviour in international relations to the patterns of behaviour inherent in traditional states. Nevertheless, some features disclaim this resemblance demonstrating that the European Union is not a federal super-state and is not likely to become one.

One of such non-state features is the impetus which encourages the development of the policy. The introduction of each new set of measures of the policy manifests the shift to a new stage of

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[133] The Stockholm Programme — an Open and Secure Europe Serving and Protecting Citizens. *Official Journal of the European Union*. 2010/C 115/01. 04.05.2010. pp.27-28
[134] Ibid., pp.17-33

the policy development. Nevertheless, as it was mentioned above, often by the moment the new measures are introduced the previous ones are not yet fully implemented. It raises a question why the new instruments are adopted if there is no practical need for them and why new goals are set when the previous ones are not yet achieved. The answer to this question could be a reformulated statement made by Manners' which claims that the Union is defined by what it is rather than what it does[135]. In the observation of the policy developments in the field of immigration and asylum what catches attention is the fact that the new measure are introduced not because they are needed or there is a demand from outside to respond to but because there is an inner logic of the EU level policy development which covers all areas of social life and is closely bound to the amendments introduced to the Treat.

The classical scheme explaining how a political system functions developed by David Easton[136] and later theories implies that there should be an impulse or demand from outside which provokes the reaction from the system that in its turn produces the response in the form of policy measures. This is how political systems of most states function. In case of the European Union's policy as a rule there is no clear demand from outside or the impulse is neglected (like numerous tragedies which took place in the Mediterranean sea when illegal migrants tried to enter the Union that made the Member States make statements expressing their regret but were never reflected in the following policy programmes). The impetus as a rule comes from inside with the signing of a new amending Treaty. Due to the organisation of the system all legal instruments are to be adjusted to the amendments to the Treaty and the signing of the Treaty affects all fields of integration. It means that the development of the immigration and asylum policy is connected with the development of other fields. It could be argued that even in nation states there is a certain level of correlation between the developments of different fields but in the case of the European Union this correlation is extremely strong and direct.

Another strong counter argument against the notion of the state model of the EU actorness is its multi-level structure of decision making in which special emphasis is laid on the Member States. The Union, at least at the current point, does not have sovereignty comparable with the one enjoyed by the Member States, all the mechanisms to exert the influence on the common policy available to the EU Members make the policy fragile in terms of its dependence on the nation level authorities which have the right to refrain from participation in the common measures at any point of time. Most states do not use this right but the very existence of such a possibility

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[135] Manners, I. 2002. p.252.
[136] Easton, D., 1953. *The Political System. An Inquiry into the State of Political Science*, New York: Knopf.

affects the policy making, decisions cannot be taken rapidly and have to be moderate to be accepted by all Members with different interests.

Other aspect which makes the Union a unique actor is the enlargement process and the changes it initiates. Having created the single border and relatively functional common system of immigration and asylum management the Union represents an entity more integrated than an average international organization. This leads some scholars to the conclusion that the Union is likely to become a state-like actor. But the changes each enlargement triggers are so fundamental and large-scale that no annexation of the territory by a traditional state can be compared to. Moreover, the preparation to the enlargement and the design of policy which can ensure smooth process of inclusion of new members in the system demonstrated by the legislation of the second period of the policy development shows that the Union is more complex than an international organization.

Thereby it could be claimed that the Union is more than the international organization or international regime but less than a state.

Turning to the issues of the values the policy is based on it is necessary to question the statement of the EU being a Normative Power.

In all legal instruments dealing with immigration and asylum the European Union firmly reassures its adherence to the norms of international law on human right and refers to international conventions it is a signatory to. "The Union must ensure that its policies are in full compliance with international law, in particular, human rights law"[137]. Tremendous emphasis on the rights and freedom is placed in the programmes and other legislation as concerns the citizens of the European Union. Most of measures are considered to serve the purpose of ensuring these rights. But does it make the Union a Normative Power as described by Manners[138]?

As concerns human rights and freedoms the main focus of the policy is on internal aspects and attempts to improve the quality of life of the EU citizens and grant similar rights to the third country nationals legally residing in the territory of the Union. This makes the Union an entity adherent to liberal and democratic ideas typical of post-industrial states. But according to the Normative Power Europe theory or other approaches describing the international players acting first of all out of normative incentives internal normative policy is not enough to be considered a

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[137] [137] The Stockholm Programme — an Open and Secure Europe Serving and Protecting Citizens. *Official Journal of the European Union*. 2010/C 115/01. 04.05.2010. p. 25.
[138] Manners, I. 2002, pp. 235-258.

normative power in international relations. The European Union in terms of its immigration and asylum policy does bare some similarities with the model of a normative actor. For instance, the policy avoids the force-based means of dealing with immigration or asylum issues. Even during the period of securitization of the policy legal instruments refrained from addressing the military or other hard measures of ensuring security in the sphere of human mobility; possibility of closing the EU external border even under special circumstances was never considered. The possible explanation for that can be the nature of immigration and asylum policy which does not require force-based solutions unless there are extraordinary situations which are not likely to happen. At the same time the immigration and asylum are regulated not only by normative means; there is Frontex (border control agency) which was created before the development of the common principles and norms on asylum was completed, but there are no joint institutions which could render assistance to the nationals of the third countries who happen to be the victims of trafficking or faced the threat to their lives and need to seek for international protection. This imbalance leads to a conclusion that the interests of the Union and its Member States prevail over humanitarian and normative concerns. As it is demonstrated by the legislation the Union does not commit itself to provide help or conduct rescue operations even under extreme circumstances to non-EU nationals (such norms are not considered in the legislation, individual case-based decisions are not ruled out though) – the assistance in emergencies is to be provided to the Member States. Despite the proclamation of the importance of human rights envisaged in the policy making legislation the measures in the area are interest-oriented.

In addition the fact that the international law is often referred to does not make a significant difference as all Member States (as well as other states in the world) are parties to these agreements and conventions and are obliged to observe international law. Therefore the EU a priori is bound by the international norms and it can hardly be considered the manifestation of a special attitude to normative side of policy making. That is why the emphasis on human rights and international norms does not seem to be outstanding or influencing the direction of the policy development. The Union does states that one of its goals is promotion of values outside the Union territory but the way it is formulated in the Stockholm Programme this approach is more likely to be used as a tool to decrease the influx of the refugees to the Union and protect the EU's interests – in other words normative rhetoric is utilised as a means of pragmatic policy. Even in terms of space devoted to the problems of the migrants' rights or Human rights on the whole in the Stockholm Programme (the parts called "Proactive policies for migrants and their rights"[139] and "Human rights"[140] which takes less than a page and is comprised of only two and

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[139] The Stockholm Programme. 2010. p. 30

one points accordingly) the policy seems to pay less attention to the normative aspects in comparison with practical interests and needs of the Union.

Therefore, the European Union may be considered as a normative polity as concerns internal policies but in regard to external actions in the field of immigration and asylum the Union can hardly be classified so.

One of the aspects of the common immigration and asylum policy – the creation of the common external border – supports the argument of the Zielonka's neo-medieval approach[141] to explaining the role of the EU in the world. As it was demonstrated above the Union is acting in accordance with its interests. The long process of the creation of the common external border was relatively successful. The absence of internal borders makes the territory of the EU similar to the territory of a potentially single state or empire. The tendency of empires to enlarge are also reflected in the policy documents which ensures the number of measures for enclose of new Member States in the system of immigration, asylum and border management. Moreover, as it is presented by the legislation of the immigration policy there is an aspiration to nurture the creation of the single identity as the EU citizens are referred to not as the nationals of the Member States but as the nationals of the Union. Unification of visa regimes and single approach to human mobility is designed to strengthen this perception of the existence of a single Europe nation. So in terms of legislation there is a potential that the Union may get closer to the Empire described by Zielonka. But the last point of the neo-medieval approach is missing and it can turn out to be the major obstacle on the way of creation of a European Empire – this point is quasi-federative political system. Even though Zielonka's approach claimed that multi-centred structure of political system can serve as a sufficient foundation for creation of a regional Empire the level of coordination between the Member States seems to be quite low in the field of immigration and asylum and with numerous options for the Members to act independently in that field the genuinely unified political system does not seem to be feasible so far. Nevertheless, Zielonka was right in terms of some aspects of the EU functioning and the level of influence it has in the region through economic and other "soft" means. But in terms of political influence as a one single actor there is a long way to go because the development in that direction was initiated only by the Stockholm programme. The peculiarities of decision making and the language of the legislation makes it questionable if there is enough willingness among the Member States to act as a unified political actor since the Member States pursue different goals

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[140] Ibid., p.34.
[141] Zielonka. J., 2006.

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and face different challenges. This reluctance is clear as the problems in the field of immigration faced by different parts of the Union vary greatly and the level of economic development is also differs throughout the Union. All these notions undermine the possibility of emerging of truly Communitarian level policy and hence the creation of an empire is also doubtful.

Summarizing the aforementioned ideas it can be concluded that all the theories approaching the European Union actorness in the international relations have their weak points and can be refuted by the opponents or by the actual developments of the Union policy making. At the same time it is not possible to claim any of these theoretical approaches is completely inaccurate or inapplicable. Each theory manages to grasp one or several characteristics of the European Union as an actor and political system. Most of theories fail to explain all the sides of the Union since they operate traditional notions and ideas which were developed in accordance with the realities of the past. Taking into account constantly changing system of the Union and new measures and approaches introduced every five years most theories fail to keep up with the pace of changes and operate the terms which happen to be outdated in many cases even though the development of the EU policy is time-consuming itself. The complexity of the European Union structure and decision and policy making process renders a lot of theories limited to a certain extent. Due to this reason despite the fact that some of points of this theory were refuted by this research Liberal Intergovernmentalism can be viewed as the most appropriate approach to the studies and explanation of the Union because this is the theory that urges for multi-causal explanation and combination of different theoretical approaches.

The general characteristics of the European Union as an actor in international relations based on the analysis of the common immigration and asylum policy legislation conducted in this research are as follows.

The European Union is the multi-level polity[142] of a unique nature[143] which combines national, intergovernmental and supranational levels of cooperation. The decision-making process can be conducted on the level of supranational cooperation but is heavily dependent on the political will of the Member States. The Union having the number of instruments for joint actions and the extended legal basis introducing common principles has therefore overgrown the traditional international organization of the intergovernmental nature or international regime being more than that but due to its dependence on the decisions of the Member States and their supremacy over policy making at all levels the Union cannot be seen as an entity close to a traditional state

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[142] Manners, I. 2002. p. 237-239.
[143] Moravcsik., 1993.

structure. Owing to the difficulties in transferring the decision making to supranational level in the field of immigration and asylum which is not the purely high politics field and differences of the Member States' interests the Union does not seem to be likely to develop into a state-like model.

The Union in its both internal and external actions proves to be a rational actor pursuing its interests[144] which are the result of the bargaining or coordination between the Member States. The external limitations are taken into account when the Union develops the policy measures. The European Union does adhere to the requirements of the norms of the international law and pays attention to the problem of human right protection but this is more important for the EU's internal actions and has less impact on external moves of the Union. The Union relies on non-force solutions which can be called "soft" measures and the main policy tool is the unification of approaches of the Member States.

Thereby, the Union as an actor in international relations is the combination of the features described by the number of theories and depending on the period of the policy development and European integration the characteristics of a particular model can dominate or seem to dominating but with the passing of time the Union changes and evolves gaining new features and qualities and proving the previous explanations of its actorness obsolete or inaccurate. Therefore, the European Union as an actor is a flexible entity not fitting any existing model but representing a combination of various traits inherent in actors of different nature.

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[144] Hyde-Price, A., 2008.

Conclusion

The concluding part of the research presents the main findings and explains how these findings serve the research goals set in the introduction.

The main purpose the work was to contribute to the understanding of the nature of the European Union as an actor in international relations via the analysis of the common immigration and asylum policy. The research was based on the analysis of the legislation development.

In the framework of the research the three periods of the legislation development were analysed. The legal basis in focus included the documents of different levels in accordance with their binding power from the Treaty on the European Union and to the circulation documents which have no mandatory power. The research followed the development of the policy legislation from the moment it was transferred to the communitarian level to the introduction of the latest Global Approach to immigration and asylum.

In the course of the research it was proved that focussing on legal basis is justified as the legislation on immigration and asylum demonstrated the number of qualities inherent in the EU policy making. Due to the complexity of the field of immigration and asylum the research provided comprehensive coverage of the policy development mechanisms typical of the Union and applicable not only to this field but to others as well. This analysis enabled drawing more general conclusions concerning the nature of the European Union as an actor.

The methodology of the securitisation theory also turned out to be an excellent instrument for the dealing with the numerous documents which considerably facilitated the process of the examining the legislation and singling out relevant information.

The main findings concerning the policy on immigration can be summarised to the following points:

- the main goal of the common policy on immigration and asylum is the creation of a single system of border control and immigration management that resembles the one of states; the border in accordance to the policy documents can serve as a penetrable membrane or a frontier depending on external factors;
- the system developed by the Union is flexible and responsive to the large-scale international events but less sensitive to smaller changes in the field of asylum and immigration itself;

- the development of the policy is conducted via moderate changes and is relatively slow due to the peculiarities of the EU decision making system;
- the policy development results from the combination of the bottom-up and top-down decision making;
- the policy making system is relatively hierarchical and the Member States enjoy a special role in it;
- the policy development is a unique process which has no compatible examples in the world and thus relies on the EU's expertise only.

The policy peculiarities and understanding of the process of the common policy making can be used to characterise the European Union as an actor in international relations:

- as it was revealed the EU is a rational actor guided by the circumstances of the international system and its own interests;
- the European Union as it is today was proved to be more than an international organisation or international regime but less than a state, superstate, federation or empire;
- there is an inner logic in the EU development coming from its structure and nature which affects all spheres and policies;
- the Union is multi-level structure with Member States having a prominent position in it;
- enlargement of the Union can be considered as one of the crucial characteristics of the EU affecting the direction of the policy developments;
- the Union is attempting to find its place in the system of international relations as a single actor even though in some case there is a lack of unanimity among the Member States.

In the course of the research the number of the theoretical approaches were partially proved as applicable for the explanation of certain aspects of the Union's actorness. Nevertheless it was demonstrated that the European Union is far more complex phenomenon to be explained by one theory especially if the theory originally was developed for the state actors.

The main limitation of this research came from the fact that the European Union as a political system and the set of policies embraces numerous and different fields. Depending on the focus of the study the conclusions can vary greatly, as for example the field of military cooperation and the common market are ruled by different logic and are basically incompatible. The field of immigration and asylum serves as a middle ground between high and low politics but even this comprehensive sphere is specific and some conclusions drawn from its analysis may be proved inapplicable to other dimensions of the European Integration.

The fact that the research focussed on the legislation alone also influenced the conclusions presenting the "ideal" or desirable model of the EU policy. On the one hand, it represents the insight vision of the Union as it is perceived by the Member States and decision making authorities, reveals the role the EU seeks to play in the world and hence allows understanding of the intentions, motives and incentives of the European Union as an actor. On the other hand, this approach does not take into account the factual results of such intents and external constraints the Union may face when implementing this vision of its policy and its actorness.

This was the reason why the main goal of this research was to reflect on the nature of the EU as an actor in international relations and contribute to the academic debate on the topic but not to try and find a single answer to this problem.

As it is seen from the conclusions presented in Chapter 6 sometimes it is possible to refute certain ideas of what the European Union is but quite challenging to offer a sound explanation to replace those ideas which would be elaborate enough to provide the model valid for all fields of integration and flexible enough to adapt to possible changes in the EU structure and policies.

Taking into account this limitation the research has achieved the goals set in the introduction. Further development of the common immigration and asylum policy can prove the validity of the aforementioned conclusions or vice versa undermine them but in either case this research can be viewed as case study contributing to the understanding of the European Union's peculiarities as an actor of the contemporary system of international relations.

References

Primary sources

1. Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders. *Official Journal L* 239 , 22/09/2000.

2. Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders. *Official Journal* L 239 , 22/09/2000 . pp.19-62

3. Convention Determining the State responsible for examining applications for asylum lodged in one of the Member States of The European Communities. *Official Journal of the European Communities*. 19.08.1997. No C 254. pp 1-12.

4. Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Related Acts. 2 October 1997 *Official Journal of the European Communities.* 24.12.2002.

5. Treaty on European Union. Official Journal C 191, 29 July 1992 [accessed 11 March 2014] Available from: http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html

6. Communication from the Commission Towards an Area of Freedom, Security and Justice. COM(1998) 495 final. Brussels, 14.07.1998. Official website of the EU legislation [accessed 11.04.2014] Available from: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:51998DC0459

7. Council and Commission Action Plan of 3 December 1998 on how best to implement the provisions of the Treaty of Amsterdam on the creation of an area of freedom, security and justice. *Official Journal of the European Communities.* C 19/01. 23.1.1999. pp. 1-15.

8. Tampere European Council 15 and 16 October 1999. Presidency Conclusions. *Official website of the European Parliament* [Accessed 11. 11. 2013] available from: http://www.europarl.europa.eu/summits/tam_en.htm

9. Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for effective application of the Dublin Convention. Official Journal of the European Communities L 316. pp. 1-10.

10. Treaty of Nice amending the Treaty on European Union, treaties establishing the European Communities and certain related acts. *European Communities No 1.* Cm. 5090. 2001.

11. Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. *Official Journal of the European Communities.* 07.08.2001. L 212. pp. 12-23

12. Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification. *Official Journal of the European Union.* L 252. 03.10.2003. pp. 12-18.

13. Communication from the Commission to the Council and the European Parliament. Area of Freedom, Security and Justice: Assessment of the Tampere programme and future orientations. COM(2004) 401 final Brussels, 02.06.2004

14. Treaty establishing a Constitution for Europe from 29 October 2004. *Official Journal of the European Union.* C series, No 310. 16.12. 2004.

15. The Hague Programme: strengthening freedom, security and justice in the European Union. Council of the European Union. 1654/04 JAI 559. Brussels, 13.12.2004

16. Consolidated Versions of the Treaty On European Union and the Treaty On The Functioning of The European Union. Brussels, Council of the European Union, 15 April 2008, 6655/08

17. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A Common Immigration Policy for Europe: Principles, actions and tools. COM (2008) 359 final. SEC 92008) 2026/2027. Brussels, 17.06.2008

18. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Policy Plan on Asylum: An Integrated Approach to the Protection Across the EU. COM (2008) 360 final, SEC (2008) 2029/2030. Brussels, 17.06.2008

19. European Pact on Immigration and Asylum. Council of the European Union. 13440/08, LIMITE ASIM 72. Brussels, 24 September 2008 (07.10).

20. The Stockholm Programme — an Open and Secure Europe Serving and Protecting Citizens. *Official Journal of the European Union*. 2010/C 115/01. 04.05.2010

21. Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions. Communication on migration. COM (2011) 248 final, Brussels, 04.05.2011

22. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Global Approach to Migration and Mobility. European Commission. COM (2011) 743 final. Brussels, 18.11.2011

Secondary sources

23. Carr, E.H. 1962. *The Twenty Years' Crisis 1919-1939: An Introduction to the Study of International Relations.* 2nd edition. London: Macmillan. 233 p.

24. Cooper, R., 2003. The Breaking of Nations: Order and Chaos in the Twenty-First Century. London: Atlantic. 210 p.

25. Duchene, F. 1973. "The European Community and the Uncertainties of Interdependence". In Kohnsramm, M., and Hager, W. (eds.) *A Nation Writ Large? Foreign Policy Problems before the European Community*. Basingstoke: Macmillan. 275p.

26. Galtung, J. 1973. *The European Community: A Superpower in the Making*. London: Allen and Unwin. 194 p.

27. Howorth, J., 2009. What Europe badly needs is a "Grand Strategy". Official website of *Europe's World Journal*. [accessed 23.03.2014]. Available from: http://europesworld.org/2009/10/01/what-europe-badly-needs-is-a-grand-strategy/#.U1efPPl_vWY

28. Huysmans, J., 2005. *The Politics of Insecurity. Fear, migration and asylum in the EU*. Buzan, B., and Little, R., (eds.). University of Bristol. Routledge Taylor and Francis Group. 191 p.

29. Hyde-Price, A., 2008. A 'Tragic Actor'? A Realist Perspective on 'Ethical Power Europe', *International Affairs*, Vol.84: I, p.29-44

30. King, T. (1999) 'Human Rights in European Foreign Policy: Success or Failure for Postmodern Diplomacy?'. *European Journal of International Law* , Vol. 19, No. 2, pp. 313–37

31. Klinke, I. 2006., Review of Jan Zielonka: Europe as Empire, Perspectives. The Central European Review of International Affairs 27/2006. P.135-139

32. Krasner, S., 1982. Structural Causes and Regime Consequences: Regimes as Intervening Variables. International Organization, vol. 36(2). pp. 185-205

33. Manners, I., Normative Power Europe: A Contradiction in Terms?, *JCMS* 2002, Vol. 40, pp. 235-258

34. Moravcsik, 1993. Preferences and power in the European Community. A Liberal Intergovernmentalist Approach. *Journal of Common Market Studies*, vol. 31(4), pp. 473-525

35. Moravcsik, A., 1998. *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht.* Ithaca: Cornell University Press. 514 p.

36. Moravcsik., 2002. In Defence of Democratic Deficit: Reassesing Legitimacy in the European Union. Journal of Common Market Studies, vol. 40(4), November. p. 605.

37. Moravcsik, A. and Schimmelfenning, F. 2009. Liberal Intergovernmentalism. in Wiener, A., and Diez, T. (eds.) *European Integration Theory* . Oxford: Oxford University Press. pp. 67-87

38. Moravcsik, A., 2010. Europe, the Second Superpower. *Current History: A Journal of Contemporary World Affairs.* March 2010. pp. 91-98

39. Pollack, M., 2005. Theorizing EU Policy-Making. In Wallace, H., Wallace, W., Pollack, M. (eds.) *Policy-Making in the European Union*. Firth Edition. Oxford University Press. p. 13-49

40. Smith, K., 2000. The End of Civilian Power EU: A Welcome Demise or Cause for Concern? *International Spectator*, Vol. XXXV, No. 2. April-June 2000. pp. 11-28

41. Zielonka. J., 2006. *Europe as Empire. The Nature of the Enlarged European Union*, 2006. 1st Edition, Oxford: Oxford University Press. 293 p.

42. Zielonka, J. 2008. Europe as a Global Actor: Empire by Example? *International Affairs* 84:3. 2008. pp. 271-484

43. *Treaty of Amsterdam. Common foreign and security policy.* The "Summaries of EU legislation" website [accessed 11 March 2014] Available from: http://europa.eu/legislation_summaries/institutional_affairs/treaties/amsterdam_treaty/a19000_en.htm

44. European Commission Glossary. Official website of European Judicial Network. [accessed 19.04.2014]. Available from: http://ec.europa.eu/civiljustice/glossary/glossary_en.htm#Communication