EU NGOs’ impact on shaping the EU future migration and asylum policies

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ABSTRACT

In 1999 the European Union (EU) defined for the first time common priorities in the area of migration and asylum. In 2014 the Justice and Home Affairs Council is deciding on the fourth multi-annual strategic guidelines. This thesis examines the role of non-governmental organisations (NGOs) in the EU influencing these guidelines through the European Commission public consultation, and their impact on shaping the future agenda for migration and asylum. While the EU has gained more competences in this field and increased legal protection standards across the EU, member states favour restrictive and security-oriented policies. EU NGOs represent a more liberal rights based approach, and having difficulties getting their points across. A step-by-step process tracing reveals the factors that enabled influence, such as a structured civil dialogue with opportunities for input. However, there were also elements disabling this influence, related to the disconnection between civil society and the Council, which partly undermined the purpose of the consultation.

Keywords: Migration, Asylum, European Union, Human Rights, Non-Governmental Organisations
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1. BACKGROUND

1.1. Introduction
In 1999 the European Union (EU) decided for the first time to define common political and policy priorities in the area of freedom, security and justice, including migration and asylum in Europe. Since, the EU has set new priorities every five years, mirroring Europe’s evolving political climate and trends. This year, the current ‘Stockholm programme’ is coming to an end and member states will decide on their fourth strategic document for future priorities. In preparation of the communication (i.e. proposal) by the European Commission, (hereinafter ‘the Commission’) conducted a public consultation to receive member states’, citizens’ and stakeholders’ inputs. The role of the Commission was to listen to the contributors to the consultation and put forward a proposal for strategic guidelines for the EU decision makers to discuss, amend, and finally adopt.

1.2. Research question
This thesis will look at the role of non-governmental organisations in the EU (hereinafter ‘EU NGOs’) in influencing the EU migration and asylum policy process. I will be asking: what role do EU NGOs play in the development of the multi-annual strategic guidelines and what is their impact on shaping the future agenda for migration and asylum.

I have chosen the case study of the new strategic guidelines on migration and asylum because it is one of the rare occasions when the Commission set up a public consultation with the purpose to consult all stakeholders, including NGOs. This offered the opportunity to trace the process of an institutional civil dialogue; from civil society attempts to influence, to the final outcome. I find it particularly timely to look at the development of EU migration and asylum policies in the time of EU elections and when discrimination, racism and hate speech are on the rise across Europe (Council of Europe, 2014:5). Furthermore, Grabow & Hartleb (2013) state that right wing and populist national parties across Europe are on the upswing following their change of mobilisation tactics, arguing not only against immigration but also against further EU integration. EU NGOs often try to counter these negative trends to safeguard migrants’ and asylum seekers human rights (Social Platform, 2013a:2). My discussion will focus on factors that enabled or disabled civil society to impact the EU’s future agenda for
migration and asylum policies. Previous research tends to focus either on institutional and structural aspects, or on political factors; I will try to combine several approaches.

1.3. Limitations
While the public consultation covered the areas of justice and home affairs, this research will be limited to the area of home affairs, i.e. migration and asylum policies. I will not examine EU NGOs’ individual contributions. Instead I will build on contributions submitted by two coalitions, representing in total 40 EU NGOs, namely the European NGO Platform on Asylum and Migration, and Social Platform. My process tracing is limited to EU NGOs impact on the Commission’s communication through the public consultation, although, the decision making process continues until the Justice and Home Affairs Council (hereinafter ‘JHA Council’) has decided on the future guidelines.

1.4. Disposition
This thesis is structured as follows: Firstly, it discusses previous research in the field of the development of EU’s migration and asylum politics and the role EU NGOs play in relation to the EU institutions. The second section outlines the theory and methodological considerations, building on process tracing while addressing its challenges. It will include the consideration of my dual and biased position as a student and a Policy and Advocacy Officer working in the field in Brussels. The third section examines the empirical data: the EU decision making process and consultations with civil society, the EU’s multiannual programmes, the Commission’s public consultation and the contributions by EU NGOs, member states and other stakeholders. The fourth section focuses on, the result of the Commission’s communication. The last section presents the analysis and conclusions, structured according to a five steps process tracing approach.

1.5. Theoretical and methodological consideration
I will use the methodology of process tracing in order to examine EU NGOs’ influence and impact. I will answer my research question by making a comparison between the contributions to the public consultation by EU NGOs, member states and other stakeholders and the result of the Commission’s communication. I will build on the five steps outlined by Dür (2008:562) 1) influence attempts, 2) access to decision makers, 3) decision makers’ responses to influence attempts, 4) the degree to which groups’ preferences are reflected in outcomes and 5) groups’ statements of (dis)satisfaction with the outcome. I will also look at the challenges making it difficult to measure impact through process tracing.
1.6. Material

My research is based on EU documents such as the previous multi-annual programmes in the field of migration and asylum, and member states’ and EU NGO’s joint contributions published online after the end of the consultation. In addition to examining previous academic research, I will also make use of a selection of reports and assessments by well-known European think tanks based in Brussels.

2. PREVIOUS RESEARCH

This part presents previous research in terms of the development of EU’s migration and asylum policy since 1999, when EU’s first multiannual programme in the field of justice and home affairs was adopted. It also looks at the different roles EU actors’ play; as changes in EU’s institutional governance and treaties led to EU acquiring more and more competences, NGOs have emerged as key actors. Researchers has examined the adoption and implementation of different EU legislation and policies and outlined the positions by the Commission, the European Parliament (hereinafter ‘the Parliament’), the member states, and the EU NGOs.

2.1. The development of EU migration and asylum policy

The following scholars provide different explanations as to why the EU has gained more competences, and why member states favour restrictive EU migration and asylum policies. Brinkmann (2004:185) explains how the political context after 11 September 2001 caused member states and the EU to tighten their laws on immigration and asylum. Labour market needs and the estimates on the costs and benefits of migrants have led member states to restricted attitude towards migrants (ibid:187). Kostakopoulou (2011:152) on the other hand claims that the prevalence of a security-centred paradigm has been a constant feature of justice and home affairs cooperation in all its institutional forms. An example is the concept of free movement, which is not only perceived as a positive freedom of crossing borders but also as a negative freedom, associated to danger, risk or fear of irregular migration. One reason for these mixed messages is that it is a by-product of the institutional configurations of the third ‘security’ pillar that has permeated the first ‘freedom’ pillar (ibid:152). Zhyznomirska (2011:510) describes how EU’s integration and internal security identity is based on the definition of common external threats, therefore ‘‘More Europe’ on such matters as irregular migration, asylum, protection of external borders and criminal justice, becomes a
collective salvation to individual member states’ (ibid:510). Chou (2009:543) argues that ‘repressive measures have dominated the external dimension of EU asylum and migration cooperation’ in order to achieve internal and external security removing ‘undesirable persons and the entry prevention of future ones’ (ibid:548). To change these trends, member states need to instrumentalize the progressive components and avoid further repressive ones (ibid: 554).

Researchers are divided in their views of whether member states use the EU as a venue to either push for more restrictive legislation or for increased legal protection for migrants. Some scholars refer to ‘venue-shopping’, i.e. that national policy-makers look for alternative venues at an EU-level to overcome national obstacles to developing more restrictive asylum and migration policies (Kaunert & Léonard, 2012:1298). Luedtke (2009:4) represents the position that member states support EU immigration legislation only as far as it is more restrictive than their own in order to lower their standards. Member states are not interested in regulating labour migration, except for some ‘progressive components’ such as legislation in the areas of the admission of highly skilled students for academic exchanges, unremunerated training or volunteering and scientific research (Chou, 2009:549). Chou (2009: 554) explains how the lack of legal migration routes is the reason for why third country nationals are likely to use alternative channels to enter the EU, which involves organised crime. Luedtke, (2009:2) claims that while member states represent a more restrictive immigration policy due to ‘direct electoral pressure’, ‘Eurocrats’ do not, i.e. the Commission, the Parliament and NGOs stand for a liberal policy favouring third country nationals’ rights, protection and freedoms. It is easier for the EU decision makers to coordinate ‘exclusion of unwanted immigrants’ than on the ‘inclusion of legal immigrants’ (ibid:3). Menz (2011:438) describes Europeanization as a process where member states went from giving up their exclusive national power in favour of shared European competence to partly going back to safeguard their national interests. Governments may choose to ‘either attempt to upload their own position as a blueprint for future European regulation, bargain for exceptions that safeguard the national status quo, or seek to delay or even impede European decision making while crucial domestic negotiations games play out’ (ibid:438).

Kaunert & Léonard (2012:1405) stand for a more optimistic view where EU achievements and co-operation in the area of asylum demonstrate increased legal protection standards across the EU. They (ibid:1400) contest Luedtke’s theory of venue-shopping by arguing that it’s an oversimplified approach based on assumptions that all 28 member states share the
same preferences. Some preferences among national governments may also be the result of cooperation formations and preferences may also change due to new actors in the field or due to unexpected opposition (Kaunert et al., 2013:183-184). Additional criticism against venue-shopping is that scholars do not consider the role of NGOs in the development of the EU asylum and migration policy (ibid:181). Even if relevant directives on asylum lay down minimum standards, there is no evidence that member states use this to lower their own standards, on the contrary national governments are reluctant to alter their own domestic provisions (Kaunert & Léonard, 2012:1401-2). Further, the fact that member states adopted the Lisbon Treaty brought about a strengthened role of the European Court of Justice (ECJ) and shared competence with the Parliament as well as ‘judicialization’ of EU asylum policy, which supports the claim against member states’ venue-shopping (ibid:1405).

2.2. The role of different actors; the EU institutions and NGOs

Over the past 20 years, as the EU’s competences in the field of migration and asylum were gradually increased, NGOs emerged as key actors on the European level and also as mediators at the national level (Ucarer, 2014:132). It can be worth noting that grass-root level NGOs are not actively engaged in working with EU institutions mostly because their activism and organisational structure is geared towards a national context. A Brussels based and specific expertise of policies at the EU level is needed in order to enable NGOs to liaise continuously with EU policy makers (Kaunert et al., 2013:186). Scholars debates whether the ‘Europeanization’ of the migration and asylum policies has led to widening the distance between NGO positions and policy outcomes as policies have become more restrictive (Ucarer, 2014:128). Kostakopoulou (2011:155) describes how civil society in general is anxious ‘about authoritarian policy-making and the adoption of a European security model characterised by a generalised focus on prevention and the neutralisation of the threat’. Ucarer (2014:127) discusses the NGOs’ struggle to influence the area of freedom, security and justice considering its characteristics of lowest common denominator policy output and resistance to transparency.

Several scholars have examined the impact of EU NGOs in influencing the content of different EU Directives in the field of migration and asylum. Ucarer’s (2014) process tracing of several Directives (Family Reunification, Asylum Procedures and Return and Trafficking), showed the distance between human right NGO positions and policy outcomes. Interestingly, the gap has remained even after the Lisbon Treaty entered into force, despite its intention to provide better leverage for NGOs (ibid:128). Regardless of the consultation with both NGOs
and the Parliament on the Family Reunification Directive and the Asylum Procedures Directive, the Council adopted the directives in 2003 and respectively 2005 ignoring much of their feedback (ibid:137). Despite its ‘co-decision’ powers in 2009 the Parliament voted against the Return Directive strengthening the rights of persons subject to return, which the NGOs advocated for. What is more, the issue of undocumented migrants is a ‘political nonstarter in most member states’ (ibid:139). Due to the significant improvement from the instruments that existed before, the Trafficking Directive did not attract the same level of criticism (ibid:141). Kaunert et al. (2013:190-191) studied NGOs’ lobbying influence linked to one and the same issue under different treaty arrangements, namely the Qualification Directive under the Amsterdam Treaty and the recast Qualification Directive under the Lisbon Treaty. For both Directives, many or even a majority of the recommendations by NGOs were taken up by the Commission’s proposal, but only a few were reflected in the position adopted by the Council. ‘The majority of successful directives (…) owe their success to the fact that many countries had relatively generous national legislation on those topics’ (Luedtke, 2009:5-6). Both the Long-term Residents and Family Reunification Directives made it possible for certain member states to lower their standards, but recent Lisbon Treaty have given the Parliament ‘co-decision’ powers and the Commission nowadays seeks more inputs from NGOs (ibid:20-21). Due to the politicization of migration and asylum policies, NGOs and parliamentarians on national and European level need to build coalitions in order to be able to successfully exert influence (Menz, 2011:458).

Tallberg (2010:635) describes international NGOs as ‘sociological institutionalism’ based on norms and ideas legitimising their work, while EU’s institutional design and member states delegation of power to the EU’s supranational institutions is considered ‘functional institutionalism’, emphasising efficiency as the driver. With regards to the Council of the European Union, Tallberg (2003:2) argues against scholars that claim that the rotating Presidency does not have any exert influence over shaping EU policy agenda. He outlines different ways the Presidency can influence, which are normally not accounted for in relevant literature. Firstly, through agenda-setting to e.g. raise awareness about neglected issues or develop proposals for actions (Tallberg, 2010:7-8). Secondly, through agenda-structuring by emphasising or de- emphasising issues already on the agenda, determining the frequency of meetings and structuring of the actual meeting agenda (ibid:10) and finally, through agenda-exclusion by either remaining silent on an issue that is considered a problem by others or excluding items from the agenda of either working groups or on the ministerial level.
The Presidency is complementary to the Commission in mediating between member states and the Council. While the Presidency should be neutral and impartial, member states accept the exploitation of the Presidency office because they will get their turn to chair in the future (ibid:15). Developments show that the Commission is no longer as responsive to NGOs that represent a progressive and liberal approach to EU policies, in order not to antagonise member states that have become more conservative (Kaunert et al., 2013:192).

3. THEORY AND METHODOLOGICAL CONSIDERATION

3.1. Process tracing

I will use process tracing as both a method and a theoretical framework to examine EU NGOs attempts to influence the development of the multi-annual strategic guidelines and to make an impact on the shaping of the future agenda for migration and asylum.

Process tracing is applied for the purpose of understanding decision making by methodologically identifying a causal process and its mechanism through the dependency of different variables (Rohlfing, 2012:31). For example Ucarer (2014) uses process tracing as a way to examine the influence of NGOs in the negotiation of different EU Directives. While it is ‘the most frequently used approach to measuring interest group influence in the EU’, not many have studied the phenomenon (Dür, 2008:560-62). Collier (2011:825-828) provides an illustration of what process tracing is by the example of a crime story: by examining the sequences of events and/or situations, one can determine their dependency or relations to each other and systematically answer who the killer was. Tallberg (2010:644) argues that process tracing is an effective methodological approach to demonstrate the variety of factors explaining power over political processes.

The methodology provides a structured way to look at EU NGOs and other interest groups, by distinguishing five steps: 1) influence attempts, 2) access to decision makers, 3) decision makers’ responses to influence attempts, 4) the degree to which groups’ preferences are reflected in outcomes and 5) groups’ statements of (dis)satisfaction with the outcome (Dür, 2008:562). These five steps will further outline my discussion and conclusions.
3.1.1. Challenges to the methodology

There are several aspects that need to be taken into account to avoid that the absence of proof is taken as proof of absence (Dür, 2008:564). One needs to be attentive to the issue of different channels of influence that may either strengthen or weaken the impact by interest groups, e.g. counteractive influence by opposing actors such as other lobbyists or governments. In this case the outcome should not be mistaken for a lack of influence but should instead be measured in terms of successful impact that deterred a worsening outcome (ibid:561). The opposite scenario would be when a group’s position is already backed up by decision makers and/ or public opinion, which might lead to an overestimation of the actual influence by the group itself (ibid:561 and Kaunert et al. 2013:189). Finally, there is the ‘behind the scene’ influence that needs to be addressed even if it can be partly problematic to measure; this might lead to interest groups impact taking place already in the drafting phase of e.g. a directive or an agenda setting, before approval by the Commission and/or Council (Dür, 2008:562). I believe several further distinctions need to be added to Dür’s approach to process tracing: 1) diversifying between ‘interest groups’ e.g. civil society organisations, social partners and for profit and non-profit actors, 2) the level of resources e.g. how social partners are financially and resource-wise better equipped than civil society and, 3) the power dynamics where national governments are more powerful in the capacity of decision makers. Furthermore Dür’s argument that ‘governments and international organisations aim at increasing political participation by societal groups’ can be put in question when taking into account the consequences of the austerity measures imposed due to the crisis across Europe. This has led to budget cuts for the EU as a whole (Van Rompuy, 2013) and for many member states as well, which subsequently has had an adverse effect on the resources of civil society, see e.g. European Women’s Lobby report of ‘the price of austerity’ (2012).

Without further assessment Dür briefly mentions that the Commission may have political issues at stake, which can dilute the reading of interest groups influence. Silverman (2011:418) warns that ‘bureaucrats often know precisely what policy changes they wish to make and commission research in such a way that the end-product is likely to legitimate their thinking’. Greenwood & Halpin (2007:190) on the other hand acknowledge not only the role of interest groups, but also how ‘civil servants seek groups input, because they may have expertise, assist with implementation or they add democratic legitimacy to the outcome’. Additionally, I would add the importance of paying attention to whether governmental
organisations involve interest groups on the basis of a genuine dialogue and participation or as a means to claim democratic legitimacy by a ‘tick-the-box’ exercise (4.1.1.).

Dür (2008:565) presents two other ways besides process tracing of measuring interest groups influence. Firstly, the ‘attributed influence’ method ‘measures assessed perception of influence rather than actual influence’ by using surveys. Secondly, ‘the degree of preference attainment’ method calculates the degree of influence between a group’s ideal position and the final position (ibid:565). Contrary to process tracing, the last mentioned method ‘allows for measurement of influence at the interval level’ (ibid:567). What is its strength is at the same time its weakness: the method can consider different channels of influence, but does not make it clear through which channel influence is exerted (ibid:568). In the end, the best result will come out of a combination of methods, i.e. ‘method-shopping’ (ibid:570). Hall (2012:21) questions ‘whether to reject our theory as false or to reject our observation as inadequate for testing the theory’ and adds that ‘good’ causal explanation for social or political phenomena should include a historically specific, multivariate and theory-oriented explanation.

3.1.2. Complementary interviewing

While ‘process tracing requires collecting large amounts of data from a wide range of sources’, interviews can be used as a complementary tool in order to confirm or reveal weaknesses in the reliability of data and provide additional information behind decisions, actions and events (Tansey, 2007:765-766). One should be cautious, though, about relying too much on interviews, especially considering that decision makers and lobbyist may over- or understate their claims (Dür, 2008:563). Policy-makers may deliberately portray themselves as being ‘careful (and) multidimensional’ and sometimes be ‘prone to underrepresenting their role in political decision-making’ (Tansey, 2007:767). In addition to the general considerations to be taken into account when conducting interviews, I am also attentive to my dual position as a student and a policy and advocacy officer working for an NGO in Brussels on topics related to the one I am researching. This dual role gives me both advantages and disadvantages. I have an extensive professional network providing me with access to formal information as well as informal information, ‘behind the scene’. This enables me to make a more nuanced and complete assessment of my research question than I might have been able to do otherwise. On the other hand, my position and professional networks make me biased with respect to the information I receive and the assessment I make. Further, my professional role limits my ability to conduct interviews as a neutral researcher who in some ways might have been in a more favourable situation. These aspects of a biased approach are further
addressed by Silverman (2011: 415) arguing that ‘conclusions and implications to be drawn from a study are (...) largely grounded in the moral and political beliefs of the researcher’ and Tallberg (2010:635) further describes how NGOs base their work on norms and ideas. For these reasons I have chosen not to conduct interviews. Instead I use the advantages of my professional role, while at the same time attempting to remain critical and cautious in my analysis.

4. EMPIRICAL DATA
This part provides an overview of the EU decision making process, followed by an explanation of the EU's multiannual programmes on asylum and migration policies. The third part examines the Commission’s public consultation and summarises the main points of the contributions by EU NGOs, member states and relevant stakeholders. Finally, the Commission’s communication is presented.

4.1. The EU decision making process
The powers and responsibilities of the EU institutions are laid down in the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). The European Council consists of the 28 member states that set the EU priorities and political directions. The Presidency of the Council of the EU is shared by the member states on a rotating six months basis. Greece is currently holding the EU Presidency the first half of 2014 and is therefore responsible for organising and chairing all the meetings of the JHA Council that will be discussing and adopting the guidelines (foreseen for June 2014). EU legislation in the area of migration is adopted through the ‘ordinary legislative procedure’ (European Parliament, 2014), i.e. by the ‘co-decision’ of the Parliament and the Council of the EU. The Commission represents the interest of the Union as a whole and is the one proposing new EU legislation. It is the duty of the member states to implement adopted legislation and that of the Commission to ensure that it is properly applied. The Commission is divided into several departments known as Directorates-General (DGs). During the previous Commission (2004-2009) there was one Commissioner and one DG responsible for the area of Justice, Freedom and Security. With the current Commission (2010-2014) there are two Commissioners and two DGs, one for Justice and one for Home Affairs. The EU institutions also comprise the Court of Justice of the EU (ECJ) and inter-institutional and specialised bodies such as e.g. the European External Action Service, the European
Ombudsman, the EU Agency for Fundamental Rights and the European Asylum Support Office (European Commission, 2014b).

4.1.1. *EU institutions consultation with civil society*

Article 11 (TEU) states that ‘the institutions shall maintain a broad, transparent and regular dialogue with representative associations and civil society’ and ‘the Commission shall carry out broad consultations with parties concerned in order to ensure that the Union’s actions are coherent and transparent’. Therefore, when the Commission starts working on a new policy initiative or revises existing legislation, it opens a public consultation. According to EU NGOs civil society’s quality relationship with decision makers can be measured using the following scale where consultation and dialogue is not the final level: -1) exclusion, 0) indifference, 1) one-way dissemination of information, 2) consultation, 3) dialogue, 4) participation and 5) partnership. An effective civil dialogue is based on NGOs being included ‘in all stages of decision making: agenda setting, policy definition/decision making, implementation, evaluation, and reformulation’ and the ‘accountable to all parts involved’ and the ‘political will by public authority to take into account the results’ (Social Platform, 2009).

4.2. **The EU's multiannual programmes**

Migration and Asylum are regulated in chapter V (TFEU) and Article 68 stipulates that the ‘European Council shall define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice’. DG Home Affairs prepares a proposal for the Council and consults internally with other DGs. Considering that this is not a matter of legislation, the Parliament is not involved in the process. The Parliament (2014: recital 1) has however requested the Council and Commission to ‘better fulfil their obligation’ to keep them informed on their work ‘in accordance with the Treaty of Lisbon’.

4.2.1. **Timeline of the EU Treaties and multiannual programmes**

The timeline below serves as an overview of the history and development of the EU migration and asylum policies.
<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
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<tbody>
<tr>
<td>May 1999</td>
<td>The Treaty of Amsterdam</td>
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<tr>
<td>October 1999</td>
<td>The Tampere European Council Conclusions</td>
</tr>
<tr>
<td>February 2003</td>
<td>The Treaty of Nice</td>
</tr>
<tr>
<td>September-December 2008</td>
<td>Consultation for the Stockholm Programme</td>
</tr>
<tr>
<td>December 2009</td>
<td>The Treaty of Lisbon</td>
</tr>
<tr>
<td>October 2013-January 2014</td>
<td>Consultation for the new guidelines</td>
</tr>
<tr>
<td>July 2014</td>
<td>New strategic Guidelines (?)</td>
</tr>
</tbody>
</table>

The table outlines the Treaties that have governed the EU (black), the programmes steering EU’s migration and asylum priorities (grey) and the public consultations (white). All previous programmes were linked to institutional changes and covered a five year period partly in line with the EU policy cycle (Pascouau, 2014:8). The future JHA agenda on the other hand takes place on the basis of a stable ‘constitutional’ framework. Article 68 calls for short ‘guidelines’ compared to previous long programmes, in terms of process, it resembles the Tampere conclusions of 1999 (ibid:8).

The Tampere European Council conclusions in 1999 followed the entry into force of the Amsterdam Treaty; they were short, political oriented and forward looking (Pascouau, 2014:8). The so-called Tampere ‘Milestones’ (1999) were formulated with a consistent rights-based approach. Most parts can be found repeated in later programmes but the writings that never were repeated as strongly were the concerns of fair treatment of third country nationals and the aim for an ‘integration policy (…) granting third country national’s rights and obligations comparable to those of EU citizens’. This included non-discrimination in economic, social and cultural life and development of measures against racism and xenophobia. It also stated that ‘The legal status of third country nationals should be approximated to that of Member States’ nationals’ (European Council, 1999). Kostakopoulou (2011:156) concluded that the ‘Tampere commitment to the equal treatment of long-term resident third country nationals’ did ‘not find its way into the Lisbon Treaty’. Despite the rights-based approach, the ‘Tampere programme’ builds the discourse of internal/external
security where threats were mainly seen as foreign or transnational. Further, EU’s response included strengthened border controls, strict visa policies, lowered standards of humanitarian protection within the EU, and the increased reliance on security and intelligence agencies (Zhyznomirska, 2011:513-514). The next programme was adopted in Hague in 2004 parallel to the negotiation of the Constitutional Treaty and was the result of a shift in the debate towards security concerns and the EU enlargement, which resulted in the central aim to strengthen the area of justice and home affairs. While the Commission’s proposal was in line with the Tampere ‘Milestones’, it ‘was watered down in the negotiations. Harmonisation of immigration (…) was not achieved. Instead, minimum standards at a rather low level were agreed (Brinkmann, 2004:197). Finally, the Stockholm-programme was adopted in 2009 just after the entry into force of the Lisbon Treaty. Kostakopoulou (2011:162) argues that the Stockholm Programme had a more balanced citizen centred approach than the previous programme thanks to the Swedish EU Presidency. A wide-ranging dialogue with the civil society and various stakeholders led to the adoption of a programme consisting of both the discourse of the Hague programme emphasising security, control and surveillance, and the initial Tampere principles giving focus to the respect for citizen’s rights and human rights (Kostakopoulou, 2011:161-4). Despite the long and large consultation process the Stockholm-programme resulted in a series of detailed objectives and measures compiled into a lengthy document, which came to be seen more as a ‘Christmas tree’, than a political document of orientation (Pascouau, 2014:8: House of Lord, 2014:38).

Pascouau (2014:12-14) argued that all the public consultations that was carried out ahead of the previous programmes failed because they were organised in a ‘speedy manner (…) without properly setting the framework for the exercise’ and only involved a selected group of people, such as national and EU decision makers, a few academics and specific stakeholders working with the issues’. Further on he pointed out how the Parliament - being the ‘co-legislator’ - was hardly involved and neither were agencies such as Frontex, the European Asylum Support Office, Europol or Eurojust formally invited into to participate.

4.3. The Commission’s public consultation

In 2013 the Commission set up two public consultations on the future of the area of justice and home affairs within the EU. One was entitled ‘Debate on the future of Home Affairs policies: An open and safe Europe – what next?’ between October 29, 2013 and January 21, 2014, by DG Home Affairs. The other one was organised around a conference on November 21-22, 2013, ‘Assises de la Justice - Shaping Justice policies in Europe for the years to come’,
by DG Justice. The reason why I mention both is because many stakeholders provided one written contribution for both public consultations. Additionally, on December 3, 2013 the Commission co-organised a hearing with EU NGOs (Social Platform, 2013b) and on January 29-30, 2014 the Commission (2014c) organised a high-level conference on the future of home affairs. At the end of the consultation period the contributions were published online (Commission, 2013): they came from eight member states (Belgium, Germany, Estonia, Finland, Greece, Hungary, Italy and the Netherlands) and Catalonia, 16 international organisations, networks and NGOs. Seven contributions came from academics and five from businesses and trade unions. I will present the key elements by EU NGOs, member states as well as the main points by the EU Agency for Fundamental Rights, the Committee of the Regions, the Parliament, the United Nations and the International Organisation for Migration.

4.3.1. EU NGOs contributions

The NGO stakeholders in Brussels working on migration and asylum are organised within two European networks: the European NGO Platform on Asylum and Migration (EPAM) and Social Platform. Many of the NGOs that are a part of these networks also submitted individual positions; this research will be limited to their joint contributions via EPAM and Social Platform.

The European NGO Platform on Asylum and Migration (EPAM) is an informal network created in 1994 at the initiative of the UN Refugee Agency (UNHCR) and is a group of 26 international and/or EU NGOs working specifically on migration and asylum. The network’s contribution to the consultation outlines their main concerns regarding human rights and inter-institutional coordination, including the involvement of civil society. They describe the need for a coherent and effective asylum and migration legal framework that could ensure the respect of human dignity, human rights, solidarity, pluralism, non-discrimination and equality and that reflects the principles of the Tampere Conclusions. Further EPAM (2014:1-8) calls for better overall monitoring and effective implementation of the EU asylum and migration acquis, an improved dialogue with stakeholders, including civil society organisations, and policies based on existing data and evidence. They presented several specific issues related to ensuring the respect of migrant’s human rights, such as border management policies and measures, migration partnerships with third countries, development of alternatives to detention, assisted voluntary return and reintegration, sufficient channels for regular migration and improved channels for labour migration, family reunification, access to services, a Common European Asylum System, enhanced international protection and shared
responsibility to provide protection, proper implementation and application of anti-trafficking legislation, protection of migrant victims, and survivors of torture’s right to rehabilitation.

**Social Platform** is an organisation founded in 1994 on the initiative of the Commission ‘to build strategic alliances between NGO actors and EU officials’ (Cullen, 2010:318). Today the Platform consists of 49 pan-European networks of social NGOs. They contributed to the consultation with their recommendations (2013a) to the EU institutions and to member states on how to ensure migrants’ human rights (including regular and irregular migrants, asylum seekers and beneficiaries of international protection). Their position paper (2013a) addresses 1) poverty and social exclusion (social, economic and cultural rights), 2) access to quality and sustainable employment, 3) access to basic services of general interest, and 4) civil dialogue (strengthening the EU institutions consultative process with, and by, migrants and their civil society associations). They also address intra-EU mobility for EU citizens and the problem of destitution.

Social Platform complements EPAM on issues that NGOs working specifically on migration and asylum do not focus on. This includes: implementation of existing anti-discrimination laws, mainstreaming into EU’s regular policy priorities (such as the Europe 2020 Strategy), removal of national legislation that criminalises solidarity actions (including by service providers and health professionals) and investment in universal social protection systems, access to essential services (including housing, education, financial services), respect of labour rights and decent working conditions, and guarantees for social rights. As a part of the public consultation Social Platform (2013b) also held a civil society hearing together with the Commission and in cooperation with EPAM on December 3, 2013. The hearing consisted of three panels: The first one on access to Europe linked to entry, where the panellists identified some of the following challenges: alternatives to detention, implementation and training of the Common European Asylum System, monitoring of border management, transposition of the Anti-trafficking Directive and the Victims’ Directive as well as guidelines on the Family reunification Directive. The second panel discussed access to rights for migrants living in the EU, and identified the need to integrate migration into anti-poverty and social inclusion strategies in the EU and into the Europe 2020 Strategy and to promote anti-discrimination, equality and gender equality. The panellists also raised the need to guarantee emergency care where service providers are not criminalised for delivering services to undocumented migrants. The third panel discussed the more long-term future challenges and trends focusing on the challenges of lack of cooperation and mainstreaming across policy fields and
institutions and how greater security has not strengthened but has actually weakened rights and led to more violations. Finally the need to re-state the Tampere conclusions from 1999 was echoed several times.

4.3.2. Member states’ contributions

Reviewing member states’ contribution to the consultation on a future justice and home affairs agenda does not provide the full picture of their position considering only a few submitted statements. Regardless of the consultation, all member states will give their opinion to the JHA Council. While this research is limited to the area of home affairs, I will when relevant mention member states’ comments in the area of justice as well.

Ahead of the consultation some member states submitted two joint statements to the EU Presidency, the Commission and fellow member states. The first joint statement (Annex 2 of Netherlands, 2014:9-11) was by Estonia, Finland, Germany, Hungary, the Netherlands, Slovenia, Sweden and the United Kingdom, who called for the involvement of the Council in the elaboration and implementation of the new guidelines and for the process to be transparent and to involve all stakeholders, including civil society. They pointed out that a lot of legislation has been introduced since the beginning of justice and home affairs cooperation and that it is now time for practical and effective implementation into national legislation. It is only in the area of justice that the statement refers to the respect of fundamental rights saying that the EU shall finalise the accession to the European Convention on Human Rights, and pay attention to vulnerable groups and the rights of victims. The second joint statement (2013:2-3) was by Austria, Belgium, Denmark, the Netherlands and Sweden. They outlined their main political priorities as a joint approach of solidarity and openness, while at the same time emphasising protection and prevention to tackle illegal immigration. They continued that return should be voluntary but that return as such must be upheld to protect migration management in the EU. While recognising the value of free movement for EU citizens, they remarked that ‘fraud and abuse of free movement by third country nationals (...) must be effectively addressed’. Nine member states sent individual written contributions to the public consultation. The Netherlands (2014:5) referred to the joint statements by member states and additionally they mentioned how ‘migrants themselves are primarily responsible for their integration into society’ while ‘the receiving society allows migrants some latitude, accepts them as equals’. Hungary (2014:1-3) also referred to the first joint statement and outlined fighting illegal migration as the overarching main priority including issues such as management of borders and policy cooperation, abuse of the right for asylum.
and abuse of free movement. **Germany** (2014:1) stated that there should be ‘less legislation, more consolidation’, i.e. focus on implementation of current legislation. They also highlighted the need to combat abuse of free movement by preventing ‘fictitious marriages and other forms of fraud’ (ibid:4). The respect of human rights was mentioned twice by Germany; once, when referring to countries of origin’s responsibility to improve living conditions and prevent illegal immigration and secondly, when insisting that security and migration policy should receive special attention. Further Germany listed protection of external borders and enforcement of return policy as important instruments to fighting illegal migration. **Italy** (2014:1-2) pointed out three priorities: legal labour migration as a key to successful integration, integration policies acknowledging international protection holders as a vulnerable group relating to employment and basic services, and protection of unaccompanied minors. **Belgium** (2014) sent a short contribution from their national contact point on integration emphasising the need for more transversal work and collaboration, in the area of employment or education between different DGs within the Commission. **Greece** (2014:1) outlined the need for discussion on the Common Basic Principles in order to address socio-economic challenges to enhance cohesion, the role of countries of origin and the violation of human rights when refusing the women migrant spouse entry due to lack of language skills.


**4.3.3. Key words featuring in the contributions by EU NGOs and member states**

The table below illustrates EU NGOs and member states’ different positions by noting down some of the key words featuring in their contributions.
<table>
<thead>
<tr>
<th>EU NGOs</th>
<th>Member states</th>
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</thead>
<tbody>
<tr>
<td>Human Rights</td>
<td>Implementation of existing law</td>
</tr>
<tr>
<td>Involvement of civil society</td>
<td>Protection and prevention</td>
</tr>
<tr>
<td>Mainstreaming of migrant and asylum issues</td>
<td>Tackle illegal immigration</td>
</tr>
<tr>
<td>into other policy areas</td>
<td>Border management and policy cooperation</td>
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<tr>
<td>Non-discrimination</td>
<td>Labour migration</td>
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<tr>
<td>Equality</td>
<td>Abuse of rights and free movement</td>
</tr>
<tr>
<td>Access to services and social protection</td>
<td>Role of countries of origin</td>
</tr>
<tr>
<td>(including housing and education)</td>
<td>Human rights in countries of origin</td>
</tr>
<tr>
<td>Human rights in border management and</td>
<td>Burden sharing</td>
</tr>
<tr>
<td>assisted voluntary return</td>
<td>Security</td>
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<tr>
<td>Decent working conditions</td>
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<td>Channels for regular migration</td>
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<td>Alternatives to detention</td>
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<td>Family reunification</td>
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<td>Partnership with third countries</td>
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4.3.4. Other EU and international stakeholders contributions

The EU Agency for Fundamental Rights (2013:20-21) noted that ‘once an individual is in the country… he or she is entitled to enjoy a set of fundamental rights granted to all human beings irrespective of their migration status’. Further, the agency commented on the need to review the Dublin Regulation and commit to global solidarity. It highlighted detention as a violation of rights and stated that ‘access to basic rights, such as education or healthcare by migrants in an irregular situation differs significantly among EU member states in law and practice, leading to situations where children cannot go to school and sick persons cannot receive medical care. The Committee of the Regions (2014) prepared a working document ahead of a stakeholder meeting on March 10, 2014 to discuss the future of justice and home affairs, where they raised concerns of consistency with international obligations, and the role of local and regional authorities in ensuring access to fundamental rights of people residing in the EU in the area of education, housing, health and environment and in tackling the rise of right-wing extremism, racism and xenophobia. They also brought up the need for funding for reception and resources for housing for asylum-seekers and refugees. It is interesting to note the discrepancy between governments’ more restrictive stance and regions and cities that
adopt a more rights-based approach. The European Parliament (2014) mentions in its resolution reviewing the Stockholm programme: respecting human rights in detention centres (recital 77) and developing alternatives to detention, including regularisation of undocumented migrants (recital 92), paying more attention to integration of migrants (recital 86), and calling on the Commission to monitor labour market integration and equality policy impact on migrants (recital 88). Members of the European Parliament have generally a more liberal standpoint than national members of Parliament, e.g. in terms of more liberal family reunification conditions and equivalent working conditions for third country nationals (Monar, 2013:127).

The United Nations Special Rapporteur on the human rights of migrants Mr Crépeau (2014:2) urged the EU to ‘establish a human rights-based, coherent and comprehensive migration policy’ and stated that despite the EU’s increased competence in the field of migration it does not always correspond with increased guarantee of rights for migrants. EU’s security framework, including migration and border control prevail a rights-based approach. He commented on how irregular migrants are seen as a security threat to be stopped and not as individual human beings and rights holders (ibid:3). He highlighted the obstacles for irregular access to services (such as health care and housing) due to the risk of being reported to immigration authorities. A solution would be for the EU to ensure a ‘firewall between immigration enforcement and other public authorities, who should not be used as auxiliaries of immigration enforcement’ (ibid:3). Further Crépeau (ibid:4) called for a counter-discourse to anti-migrant sentiments, xenophobia and racism and identified migrant’s lack of access to the political participation as a barrier. UN High Commissioner for Refugees (2014:1-2) outlined how the EU needs to prioritise strengthening cooperation and solidarity as well as the implementation of existing legal and policy frameworks to ensure ‘the fulfilment of fundamental rights that can result from fair and efficient asylum system’. UNHCR (ibid:5) emphasised that the EU needs to ensure coherence between migration and border management and the respect of fundamental rights. The International Organisation for Migration (IOM, 2014) outlined 1) how a common migration policy supports not only growth and competitiveness but also migrants’ rights, including the importance of non-discriminatory access to institutions and services, 2) the need for a ‘human-rights based and protection sensitive approach to the management of EU external borders’ (ibid:6) and 3) enhanced cooperation with external partners.
4.4. **The communication from the Commission**

The Commission communication (2014a) was published on March 11, 2014 with the title ‘An open and secure Europe: making it happen’. Its overall message is for the EU to transpose existing asylum legislation; evaluate and complete the legal framework for migration policy, going from a sectorial to a consolidated approach. It mentions the need for further efforts in the area of integration but particularly it emphasises the need to step up law enforcement cooperation in order to ‘protect Europe’ against common external threats of organised crimes. Human rights are foremost referred to regarding EU’s cooperation with third countries to ensure ‘its international human rights obligations’. Member states are however reminded, in light of the effects of the economic and social crisis, to guarantee fundamental rights in line with the European Charter of Fundamental Rights, when acting within the scope of EU law.

The first section (Commission, 2014a: 4-5) is about ‘maximising the benefits of migration and integration’. It is a small part of the communication, yet it includes several points particularly relevant for the analysis:

- The need for migration policy’s contribution to and synergies with different policy areas.
- Maximising the potential of migrants and coming to terms with the high degree of social exclusion of migrants. According to the Commission this is best done through improved job-matching mechanisms and pre-departure measures (e.g. training and recognition of qualifications). Also further work is needed on portability of pension rights and social entitlements. The Commission proposes a ‘single area of migration’ by evaluating current legislation, identifying gaps, codifying and streamlining the rights of third-country nationals to facilitate intra-EU mobility.
- Strengthening the integration of migrants in the labour market and receiving societies by giving specific attention to gender balance and migrant women, fair treatment and non-discrimination in access to the labour market for vulnerable migrants (in particular women, young migrants and unaccompanied minors) through identifying and disseminating successful policies and best practices.
- Irregular migration - ‘preventing and reducing’ smuggling and trafficking and demand from employers to offer illegal labour opportunities. Cooperation with countries of origin, assisted voluntary return and reintegration are mentioned as key solutions, involving NGOs.
'Schengen, visa and external borders' (section 2, ibid:5-6) and a ‘Common European Asylum System’ (section 3, ibid: 6-7) are highlighting the need for both responsibility and solidarity when member states respond to migration flows, asylum claims, reception, needs of vulnerable groups and those in need of international protection. Section 4 (ibid: 8) develops the global approach to migration and mobility outlining how to support countries of origin through partnership with third countries across different policy areas (e.g. mainstreaming migration policy into development and poverty reduction plans and supporting human rights and democracy). Finally part 5 (ibid: 8-13) speaks about protecting Europe against cross-border crime, mentioning the need to prolong the EU Anti-Trafficking Coordinator and transpose its strategy along with the need to examine if a comprehensive EU strategy to protect children against sexual crimes is needed (European Commission, 2014a).

A word search throughout the document illustrates the current policy trends; ‘security’ features 42 times, followed by ‘challenges’ 15 times and ‘opportunities’ only five times. ‘Rights’ are mentioned 15 times but often referring to human rights obligations outside the EU, ‘threats’ comes up ten times while ‘integration’ only eight.

4.4.1. Initial assessments by stakeholders

Most of the EU NGOs and other stakeholders are awaiting the adoption of the strategic guidelines by the JHA Council before they will analyse the outcome. Some actors have already made some assessments of the initial Commission’s communication. Peers (2014) comments that the communication only represents proposals supported by the majority of member states; the concerns expressed by only a small number of member states are overlooked (ibid:3). By presenting two different communications in the area of justice and home affairs, the Commission avoided presenting one single and coherent vision, as was done with previous programmes. Instead the communication only contains ideas that ‘have been kicking around for years’ (ibid:4). The section on legal labour migration is the area where the EU has done least and the proposals to coordinate joint assessment in order to streamline efforts ‘suggests a significant legislative agenda’ (ibid:1). This is an area were the EU so far has ‘failed to gain a foothold’ (Luedtke, 2009:14). Irregular migration is mentioned but without proposing concrete actions and as for asylum the focus is on transposition and implementation (Peers, 2014:2).
5. ANALYSIS

The analysis answers the research question of what role the EU NGOs played in the development of the multi-annual strategic guidelines and what the NGOs’ impact has been on shaping the future agenda for migration and asylum. The discussion is based on the method and theoretical framework of process tracing; five steps outlined by Dür (2008:562) 1) influence attempts, 2) access to decision makers, 3) decision makers’ responses to influence attempts, 4) the degree to which groups’ preferences are reflected in the outcomes and 5) groups’ statements of (dis)satisfaction with the outcome.

5.1. Influence attempts

When examining the influence attempts, it is useful to distinguish between formal influence and de facto influence.

In terms of formal influence, the Commission informed citizens and stakeholders about the current multi-annual programme coming to its end and asked for feedback through public consultation. The consultation provided an institutionalised civil dialogue giving all stakeholders an opportunity to influence the Commission’s communication by contributing in writing. Additionally, the Commission invited EU NGOs to participate in stakeholder events (Commission 2013: 2014c-d) and organised a hearing together with Social Platform (2013b) for complementary input. After the consultation period ended, all contributions were published online. The consultation was conducted within a limited timeframe giving little space for EU NGOs to consult their constituency on the national level. Moreover, it was carried out without any guiding questions for the stakeholders that could help them to frame their contributions in such a way that the Commission could easily integrate them into their work. By way of comparison, the consultation ahead of the Stockholm programme was designed with guiding questions (Commission, 2008).

With regards to de facto influence, several factors play a role. The Commission (2013) presented the contributions to the consultation by NGOs, member states and other stakeholders on an equal footing online. Irrespective of the fact that member states were not only contributors, but also the decision makers that decide on the guidelines. The communication serves as a proposal that they can revise as they like. While the public consultation provided EU NGOs with a platform for influence, member states have additional venues of influence, such as contacts between national ministries and between groupings of
member states, which their joint statements demonstrates (4.3.2.). Although national governments’ contributions to the consultation provide some insight most of their negotiations take place behind closed doors at the Council or working group meetings.

EU NGOs’ contributions differed distinctly from national governments. Overall the majority of the countries pointed out the need to fight illegal migration, step up security with effective border management and tackle abuse of EU’s free movement. Human rights were rarely mentioned and when they were, they were mostly linked to country of origin’s obligation to ensure human rights in relation to the return of migrants that are not entitled to stay. Greece, in their contribution addressed gender identity, human rights and social cohesion. While Greece’s position seemingly was in line with EU NGOs concerns, it differed distinctly from their views in the capacity of Presidency of the Council of the EU, expressed in their discussion papers for the informal Council meeting. This inconsistency indicates the incoherence at the national level between the different ministries. The language used by member states resembled the discourse of the Hague programme in 2004 while EU NGOs referred to the wording of the Tampere principles in 1999 (4.2.). At the same time, the current political context of asylum and migration is different than a decade ago when the Hague programme was adopted. Today other political factors have an impact, for example the economic crisis and growing inequalities (Council of Europe, 2014:5), and member states do not only fear threats from outside but also view some of their fellow member states as antagonists, e.g. in terms of the recent debates about social benefit tourism and abuse of free movement by EU citizens (Guild et. al. 2013). The EU Agency for Fundamental Rights, the European Committee of the Regions, as well as the UN and IOM (4.3.4.) generally backed up NGOs’ positions calling for enforced commitment to safeguard migrants’ human rights. However, despite their credibility and important role they are not decision makers. They may play an influential role ahead of the negotiations and the drafting phase, but as pointed out in the methodology section, this is where process tracing fails to measure the informal influence.

To conclude, at a formal level, EU NGOs were able to exert influence, but these attempts were affected by the current political context and member states’ influence as decision makers. This power imbalance has a clear disadvantage for civil society’s scope of influence.
5.2. Access to decision makers

The consultation provided a certain access to the Commission, though not to the Council. According to Social Platform (2009), consultation is not the final step sufficient in order to reach a qualitative relationship with decision makers; there is room for improvement to enable EU NGOs’ access through further dialogue, participation and partnership. The hearing organised by Social Platform (2013b) together with EPAM enabled EU NGOs to set the agenda in terms of what issues they wanted to convey to the Commission.

The JHA Council had its first discussions on the basis of a paper prepared by the Presidency before the result of the public consultations was finalised. While the Commission has the role to take into account the contributions when preparing its proposal to the Council, the Presidency is supposed to be complementary (Tallberg, 2010), instead the Council disregarded the inputs from stakeholders. Bearing in mind that there was little involvement of the Greek EU Presidency (compared to the Swedish EU Presidency developing the Stockholm programme) NGOs access to decision makers was disconnected instead of bridged.

A way to bridge the gap between civil society and decision makers with regards to future public consultations in the area of migration and asylum would be to ensure that the JHA Council operates in a transparent and accessible way and bases its discussion on citizens’ input. To balance the power dynamic favouring member states’ positions EU NGOs could be involved in the design of the Commission’s public consultation and assist in the preparation of the Council’s working group agenda and discussions on the topic. This might also make it easier for EU NGOs to go beyond the implementation mode of EU acquis and address issues of growing xenophobia, racism and anti-immigration discourse (Council of Europe, 2014: Grabow & Hartleb, 2013). Another way for EU NGOs to access decision makers would be by mobilising their national member organisations to lobby their governments ahead of the negotiations in the JHA Council. At the same time, national and local NGOs have neither the resources nor the required knowledge about the EU decision making process (Kaunert et al., 2013). The question remains, though, whether access to decision makers through an effective public consultation would automatically improve the outcome of EU NGOs efforts to influence the shaping of EU’s future agenda for migration and asylum. If not, what would be the factors standing in the way?
In short, the disconnection between the decision makers’ negotiations and civil society’s contributions demonstrate that the civil dialogue was more ‘a tick-box exercise’ than a real effort to listen to the voices of NGOs.

5.3. Decision makers’ responses to influence attempts
When the communication was presented, the Commission (2014d) pointed out in its press release on March 11 that stakeholders were consulted on the area of justice and home affairs through the public consultations, a conference and additional seminars and hearings with civil society and other stakeholders. They never provided any information as to whether the input received was taken into account when drafting the communication. Concerning the consultation process – inform and ask for feedback – the Commission’s job was completed, although according to Social Platform (2009) dialogue, participation and partnership remains unsatisfactory. The Commission has the role of listening to the member states as well as to the other stakeholders in order to put together a proposal that is balanced enough to enable constructive negotiations and reaching a decision. Therefore, while the communication mentions some of the concerns of EU NGOs (4.4.), it reflects the interest of member states to a much greater degree (European Commission, 2014a).

The final response by the decision makers to EU NGOs attempts to exert influence will come as a result of the adoption of the strategic guidelines. As research on EU Directives in the field of asylum and migration has shown (e.g. Ucarer, 2014: Menz, 2011: Luedtke, 2009: Kaunert, 2013), one can anticipate that there will be further weakening discrepancy between the Commission’s communication and the Council’s adopted guidelines, leaving little left of the concerns of EU NGOs.

5.4. The degree to which groups’ preferences are reflected in the outcomes
Some of EU NGOs key concepts feature in the communication’s section on ‘maximising the benefits of migration and integration’, yet they are only briefly mentioned, while the bigger part of the communication reflects the interests of member states (4.3.2: 4.4.). A human rights approach was the central point by EU NGOs, while the Commission communication (2014) instead refers to a ‘citizens-oriented approach’ and the ‘safety and security of ‘EU citizens’ which is to be the ‘guiding principle for further work’. This distinction does not take into account that all countries have human rights obligations, irrespective of whether people residing in the EU are citizens or not. Overall the communication did not give answers to how the priorities will be achieved. For example ‘integration and policy synergies’ are mentioned
but without answering how this goal should be reached. Several issues raised in the contributions by EU NGOs (Social Platform 2013a-b; EPAM, 2014) were not addressed, such as irregular migrant’s basic human rights, alternatives to detention, social inclusion of migrants as a part of the Europe 2020 Strategy, the rights of low-skilled workers and family reunification as a right and integration measure.

The Stockholm Programme (Commission, 2010) reflected more of EU NGOs preferences due to the participatory consultation and the length of the programme (37 pages instead of 13) enabling more issues to be included. On the other hand it was not more satisfactory, because it resulted in a ‘Christmas-tree’ product that was inaccessible for EU citizens (Pascouau, 2014: House of Lord, 2014).

To sum up, due to the de facto influence (5.1.) and lack of access to decision makers (5.2.) the Commission’s communication reflected EU NGOs preferences to a limited extent.

5.5. Groups’ statements of (dis)satisfaction with the outcome

The Commission’s communication is not the final stage, considering that the JHA Council has not yet adopted the strategic guidelines. Therefore, the EU NGOs are still in the process of preparing their official responses. One can anticipate at least three different responses by EU NGOs: 1) supportive of the Commission, 2) critical to the Commission or 3) critical to NGOs own approach.

A supportive explanation of the Commission presumes their good intentions of presenting a vague proposal in order to avoid that the Council would micro-manage their work. This would thereby allow the Commission to have more scope to pursue a more liberal immigration policy agenda than the member states would like. It confirms Luedtke’s (2013) theory of the ‘Eurocrats’ being more liberal than the national governments and Kaunert et al. (2013) who also note the Commission’s being more cautious with taking on board NGOs concerns due to member states more conservative standpoint. If this is the case, the fact that the communication predominantly reflects member states preferences above EU NGOs is clearly not the full picture. The vagueness of the communication might even result in an opening for EU NGOs to be able to influence the Commission to prioritise their concerns. It may also mean that the EU NGOs influence might have paid off in terms of their attempt to deter a worsening outcome. Keeping in mind the JHA ministers were critical to the Commission’s proposal for an action plan following the Stockholm programme because they
considered it went beyond what the ministers agreed (House of Lords, 2014:11), it might be difficult for the Commission to put forward own initiatives. Additionally, it has proven hard to measure the intention behind by the method of process tracing. The only source would be through interviews with the Commission and the NGOs, leaving the risk that the interviewees would either under estimate or overestimate their role and influence (3.1.2.).

A second explanation would be more critical to the Commission, assuming their knowledge about the inaccessibility of decision makers (5.1-5.2.) they made the consultation process intentionally cosmetic. They already knew what they wanted to achieve, as Silverman (2011:418) pointed out, and what they considered feasible in relation to member states’ positions, and thereby excluded NGOs from de facto influence.

Thirdly, EU NGOs can take on a self-critical approach and instead of questioning the consultation processes ask whether they themselves adopted the right advocacy strategy and if they could have done things differently in order to have more influence. Many of the concerns by civil society are about the human rights of migrants and are related to the competences of DGs other than DG Home Affairs. Perhaps EU NGOs working in the field of asylum and migration should have been more active in contributing not only to the public consultation of home affairs but also to the one conducted parallel by DG Justice. The DG Justice consultation included the EU’s and member states’ obligation to comply with the European Charter of Fundamental Rights when implementing EU law.

5.6. Comments on the five steps methodology

Applying the five steps methodology as proposed by Dür (2008:562) has proven difficult considering the general challenges to process tracing (3.1.1.) and the challenges specific to this case study of the Commission’s public consultation ahead of EU’s future agenda for asylum and migration. The analysis addresses some of the difficulties in differentiating between the steps: Influence attempts and accesses to decision makers (step 1-2) are interlinked, while decision makers’ response and how the groups’ preferences are reflected (step 3-4) are two sides of the same coin.
6. CONCLUSION

This thesis has examined what role EU NGOs played in the development of the multi-annual strategic guidelines and what their impact have been in shaping the future agenda for migration and asylum. The EU has gained more competence and increased legal protection standards across Europe. While member states favour restrictive and security-oriented policies, EU NGOs represent a more liberal rights-based approach. A step-by-step process tracing of the Commission public consultation ‘Debate on the future of Home Affairs policies: An open and safe Europe – what next?’ (Oct 29, 2013 – Jan 21, 2014) revealed the factors governing influence: EU NGOs are disadvantaged when attempting to exert influence (step 1) by the fact that member states are both contributors and decision makers. The harsh political climate and anti-immigration trends also have an effect. Access to decision makers (step 2) was open to the Commission but disconnected from the Council that had its first discussion without awaiting the results of the consultation. The communication serves as a response from the Commission (step 3). While it mentions some of the preferences of EU NGOs (step 4) it still corresponds better to the interest of member states, accommodating their willingness to adopt the proposal. EU NGOs statements of the final outcome (step 5) may either acknowledge a good intention behind the Commission’s vague proposal, or presume a bad intention of a cosmetic consultation, or alternatively, criticize the NGOs own advocacy strategy.
7. REFERENCES


