Original Article

The promise of the principal-agent approach for studying EU migration policy: The case of external migration control

Georg Menz
Department of Politics, Goldsmiths College, University of London, New Cross, London SE14 6NW.
E-mail: g.menz@gold.ac.uk

Abstract The creation of European Union (EU) common asylum and migration policy has entailed involving governments from neighbouring countries in control and detention functions. Much of the existing literature treats this phenomenon as a mere extension of the more general embrace of communitization. Such transfer of sovereignty in a highly politicized policy domain is remarkable, yet, as is demonstrated, cannot be understood through the lens of the two major schools of European integration studies. This article adopts the prism of the principal-agent approach to study the implications and dynamics of the extension of immigration control policy beyond the geographical remit of Europe. However, there is also evidence of principal slippage. Individual countries, frustrated with what they perceive as principal drift and slow and cumbersome communal action, have established bilateral relations with countries in the periphery of Europe to help detain immigration flows above and beyond the communal efforts. The externalization of migration control is thus best understood as a patchwork of bilateral government initiatives and EU endeavours. Adopting the principal-agent approach provides superior insights than existing accounts and can make sense of the ongoing transformative policy developments.
Comparative European Politics (2015) **13,** 307–324. doi:10.1057/cep.2013.29;
published online 3 February 2014

Keywords: EU immigration; asylum policy; principal; agent; externalization

Within the space of a decade, the European Union (EU) has made remarkable strides in developing the fundamental base of a common asylum and migration policy (CAMP). A highly politicized policy domain that is particularly close to core defining principles of the modern post-Westphalian state, including control over territory and constituency, has been recast and reshaped by the impact of several EU framework directives. Following the 1997 Amsterdam Treaty and the 1999 Tampere Council meeting, new directives have been crafted that cover asylum, family reunion,

long-term residents and select groups of labour migrants. Given a history of decades of low or no levels of activity in this field, including the protracted wrangling over the implementation of Schengen between 1985 and 1997, this rapid progress is remarkable. Equally remarkable is the extent to which the EU has erected a cordon sanitaire around its geographical borders, impeding physical access to Europe by those migrants considered undesirable.

In the scholarly literature, this externalization of migration control has commonly been understood through a neofunctionalist prism, whereby the movement towards the communitization of CAMP has created an impetus for communal approaches to border control beyond the physical borders.[1] An alternative interpretation focuses on the role of particularly active individual member states, notably Germany, and thus essentially adopts an intergovernmental approach. Thus, the phenomenon is generally interpreted by using the conceptual lenses of the two main approaches to European integration.

This article highlights the shortcomings of the two main schools of European integration theory in accounting for migration policymaking. Building on, yet expanding earlier work by Stetter (2000), it is argued that the principal-agent approach constitutes a superior tool in analysing and making sense of dynamics in this domain. Although the article is predominantly conceptual, it discusses the advantages of the principal-agent framework with an empirical application to the externalization of immigration policy. The empirical focus concentrates on the mobility partnerships, for reasons of space constraints, one case each from the Eastern neighbourhood, Armenia and the Southern neighbourhood, Morocco, are discussed. In addition, the article explores instances of 'principal slack', that is, member states pursuing bilateral initiatives outside of the EU framework. In methodological terms, the article focuses on the period since the Tampere Council meeting in 1999 to the present, and draws on desk research and a review of relevant policy documents, legislation, journalistic sources and the existing academic literature.

The rest of this article is organized as follows. The first section provides a brief and critical overview of the state of the art in the scholarly literature on the CAMP and especially the externalization of EU migration policy, highlighting how amendments can be made. The second section introduces the principal-agent approach. Following this, the application of this approach to the field is developed in the third section. It can afford key insights and an improved understanding of past and future developments that the two main schools of European integration, neofunctionalism and liberal intergovernmentalism, as well as the existing body of literature in migration studies cannot provide. EU member states delegate key decision-making powers to the European Commission as this affords them with numerous advantages: enforcement and monitoring of implementation in this critical domain, considerations of credibility and limited agenda-setting powers. In terms of power resources, such communitization also provides an important advantage over European initiatives

based on unilateral policy initiatives, as these might be seen as unduly privileging such policy entrepreneurs. However, individual member states might still launch bilateral initiatives, especially if they fear 'principal slack' and are frustrated by what they may perceive as sluggish and inefficient control measures, a development discussed in the fourth section. A conclusion summarizes the findings and discusses briefly how the principal-agent model might be fruitfully applied to the study of EU immigration policymaking more broadly.

Theorizing Europe's Migration Policies and Externalized Migration Control

Since the meeting of the European Council in Tampere in 1999, the Commission in conjunction with the member states has rapidly developed a fundamental framework of legislative output that has recast immigration policy considerably. Tampere presented a meeting of minds between the Northern and Southern EU member states. Southern European countries were keen to see tangible action against growing numbers of undocumented immigrants, although hesitant to accept the past pattern of European initiatives based on a German impetus, as had been the case with the 1985 Schengen Agreement and the 1990 Dublin I Convention. Thus, the Spanish government submitted an urgent submission for action at the 1998 Pörtschach Justice and Home Affairs Council meeting that preceded Tampere (Occhipinti, 2003, pp. 80–82). Northern European governments were similarly keen to avoid the South and, with an eye to eastward enlargement, the East becoming a 'soft underbelly' for the entry of undocumented migrants. The communiqué passed at Tampere thus imposed a 5-year deadline for establishing basic framework directives in a number of immigration policy domains, including crucially the numerically most important issue areas of family reunion, asylum and labour migration. This deadline was indeed met. By 2004, framework directives had been passed on family reunion (2003/86/EC), the status of long-term residents (2003/109/EC) and political asylum (the 'procedures' directive 2005/85/EC and the 'qualification' directive 2004/83/EC), and refugees (the 2003/9/EC 'reception' directive) though, despite the Commission's concerted efforts, not labour migration (2001 draft directive).

The increasingly active involvement of the Commission and the attendant development of communitization in this policy domain have attracted considerable scholarly interest over the past few years. Geddes' (2008) work provides an in-depth empirical coverage of the early years and the ongoing efforts of increasing Europeanization in this domain. His argument is fundamentally neofunctionalist, stressing that increasing integration in this domain was ultimately linked to the Single Market project. A similar argument can be found in a number of other accounts (Boswell, 2003; Messina, 2007). An alternative explanation follows an ultimately

more intergovernmental logic, stressing the key role of member states and their preferences in the elevation of immigration policymaking to the European level. Such an argument informs Menz (2009) and Caviedes (2010). Luedtke's (2011) study on policymaking uncovers a more nuanced picture of protracted negotiations and often fierce political battles. Kaunert (2010) argues that policy entrepreneurship on the part of the Commission also plays a significant role, which is often neglected. Similarly, Guiraudon (2003) drew on March and Olsen's garbage can model to highlight the highly diverse power resources at play in different subfields of European immigration policymaking.

A highly influential contribution was Guiraudon's (2000) argument that ministers of the interior 'escaped' the confines of national capitals with the attendant scrutiny by non-governmental organizations, the media and, not least, the courts. Drawing on Baumgartner and Jones, the argument thus suggested that the more isolated environs of Brussels were a much preferable 'venue' to be 'shopped' for. This meant that while European policy would most likely be driven by intergovernmental compromise solutions, yet elaborated in Brussels and possibly infused with a European flavour. One finds traces of the 'venue shopping' argument also in Lavenex's (2006) argument about transnationalization as a process driven by member states, although through an ultimately neofunctionalist logic of member states accepting the externalization of EU immigration control.

Simultaneously, the communitization of *externalized migration control* developed. The existing literature analyses this through a neofunctionalist angle (Geddes, 2005; Gammeltoft-Hansen, 2006). Thus, Lavenex's (2006) influential contribution argued that member states accept the outward movement of power over migration control for pragmatic reasons, preferring an orderly communautarian approach to a messy *de facto* control over the foreign policy dimensions of migration policy.

Both of the two major schools of European integration struggle to make sense of the emergence of CAMP, in general, and the externalization of migration control, in particular. The *neofunctionalist* approach struggles to account for the timing and the form that communitization of migration policy has taken. The agreement in principle in Amsterdam to construct a CAMP was undoubtedly motivated by the Single Market project. Yet this cannot help us comprehend the details of how and when CAMP and the externalization of migration control were constructed. A neofunctional approach is thus helpful in accounting for the general drive, its direction and its persistence since Amsterdam, yet it is by necessity somewhat sweeping. Why and how would the externalization of migration control flow and the involvement of third governments from the communitization of *internal* migration control?

Neofunctionalism postulates that transnational elites in Brussels and the national capitals are active agents in the communitization and help orchestrate or at least enhance functional pressures, spawning 'spillover effects'. This goes some ways

towards accounting for the emergence of a momentum for the design of a CAMP after Maastricht, but cannot compellingly account for the externalization:

> Sector integration … begets its own impetus toward extension to the entire economy even in the absence of specific group demands and their attendant ideologies. Thus, ECSC civil servants speaking for national governments have constantly found it necessary to 'harmonise' their separate policies in order to make it possible for the integrated sectors to function, without necessarily implying any ideological commitment to the European idea. (Haas, 1958, p. 297)

Similarly, the *intergovernmental* prism, associated with Moravcsik's (1993) work, is unhelpful in addressing the degree of empowerment that the European level has experienced since 2004. That year, the sole right to initiate policy passed to the Commission. More strikingly yet, the 2009 Lisbon Treaty introduces the ordinary legislative method, qualified majority voting in the Council of Ministers and jurisdiction for the European Court of Justice (ECJ) to this policy domain. This considerable degree of empowerment seems difficult to reconcile with a purely intergovernmental line of reasoning. Moreover, individual countries launched their own independent bilateral initiatives rather than attempting to affect EU measures. This development is similarly difficult to reconcile with policy patterns inscribed in an intergovernmentalist understanding. Ultimately, since 1999, much of CAMP making does not entail or is linked to grand bargains over future movements towards closer union. Even the fundamentally important decisions to incorporate immigration into the third pillar in the post-Maastricht architecture and to move towards the rapid construction of a policy base in 1997 cannot be approached in a particularly fruitful manner from this angle. It is also debatable whether national governments truly accumulate and take into account national-level influences in their design of a national interest position. An application of a political economy angle that stresses the role of national employer associations and unions (Menz, 2009) focuses not on the bargains surrounding the major leaps forward in integration, but on the day-to-day politics of policy design. The original attraction of the venue shopping argument was precisely its erstwhile intuitively plausible claim, as it is considerably diminished, that national governments and their ministers responsible for the immigration portfolio sought to insulate themselves from national actors and pressures. In contrast, the intergovernmentalist approach is methodologically hampered in accounting for the externalization of migration management and cannot provide helpful insights.

Thus, both of the major schools of European integration provide only limited or indeed very little analytical guidance. Although the neofunctional approach seems broadly to point into the generally correct direction of increased functional pressures towards integration, highlighting the crucial role of transnational elites as active players, it is very vague about the specific modalities and circumstances of CAMP

making. The substantial movement towards communitization implied by the Lisbon Treaty cannot be accounted for and seems counterintuitive from this angle. The liberal intergovernmentalist approach cannot be easily deployed at all, for policy-making develops on a day-to-day basis now, while historically multilateral agreements proliferated in this field. Neither school can convincingly account for the externalization of migration control. These dynamics can be made sense of not by relying on the established schools of integration, but by applying the principal-agent theory. The next section undertakes this task.

Applying the Principal-Agent Model to the Extraterritorial Control of Immigration

Instead of relying on the two key schools of European integration, I suggest applying the principal-agent framework, following Stetter (2000). His study stresses that member states turned to applying the Commission as an agent in order to address 'costs from international regulatory failure' (p. 85). Despite promising work advocating the application of this model to European studies (Pollack, 1997; Kassim and Menon, 2003), this call has not been heeded in the domain of immigration policymaking. However, the prism can be fruitfully applied to studying the politics of delegation of powers in this domain (Kiewit and McCubbins, 1991; Hawkins *et al,* 2006). In the international relations literature, it has long been recognized that designing an international institution helps to minimize transaction costs, to monitor compliance and to aid overcoming collective action problems (Keohane, 1984). Consequently, the framework of the EU permits the delegation of sectoral competences to European bodies that offers a variety of benefits. Drawing on both Pollack's (1997, pp. 103–104) and Kassim and Mennon's (2003, pp. 123–124) useful summary of the literature, we can identify the following advantages: overcoming problems of collective action, dealing with problems of incomplete contracting, delegating knowledge to an agent with specialist knowledge, overcoming regulatory competition, displacing responsibility for unpopular decisions, locking in distributional benefits and resolving the problem of policymaking instability. In addition, agents might bring credibility to increasingly complex regulatory affairs. They are also able to monitor state compliance with given contracts and raise an alarm in case of breach of contract.

Delegation of technocratic regulatory tasks to specific agencies might allow achieving greater efficiency, arm's length relationships with the sector involved, bolster credibility and avoid moral hazards, and afford relative insulation from political pressure. However, dilemmas associated with delegating powers from a principal to an agent are well documented in the literature and comprise agents pursuing policy outputs that reflect their own interests and preferences rather than those of the principal, a problem known as agency slack. There is both '*shirking*,

when an agent minimizes the effort it exerts on its principal's behalf and *slippage*, when an agent shifts policy away from its principal's preferred outcome and toward its own preferences' (Hawkins *et al,* 2006, p. 8). This literature therefore addresses the question posed in contribution on the rise of regulatory agencies and the 'regulatory state' (Pelkmans, 1990; Majone, 1996) of how incentive structures for actors are affected and what strategies these actors pursue in taking advantage of the newly changed rules of the game. Clearly, monitoring of the agent's action is important, yet agents can over time assemble considerable informational advantages, attain informal or formal agenda-setting powers and can be difficult to rein in. McCubbins and Schwartz (1984) distinguish between continuous 'police patrol' oversight and 'fire alarm' oversight, which relies on third parties alerting the principal to the agent's misconduct.

Kassim and Menon (2003, p. 135) correctly point out that 'the question of effectiveness, the notion of delegation for distributional as opposed to informational purposes, as well as the implications of delegation for legitimacy and democratic accountability, are all, therefore, promising avenues for future research …'. This article endeavours to take up this call, focusing on the first two aspects. For reasons of space constraints, this article cannot examine to what extent CAMP making in general can be more usefully understood by using the principal-agent approach. Future scholarly work should establish in more detail to what extent equipping the Commission with considerable agency powers in designing policy and driving the agenda avoided immigration policy being excessively driven or coloured by individual member states. Given how pivotal the German role had been in Schengen and Dublin, and in light of unsuccessful attempts at creating a system of burden-sharing, some member states might have preferred the Commission playing the leading role in policy development. In addition, important institutional safeguards were put in place to avoid the perils entailed in appointing agents identified in the literature. The Amsterdam framework can be legitimately described as '[importing] the comfort blanket of intergovernmentalism and constrain[ing] the scope for supranational institutionalisation' (Geddes, 2008, pp. 120–121) because not only was the right to policy initiative to be shared jointly between the member state governments and the Commission, but unanimity was to remain in place until Lisbon. At the same time, an informal policy consultation forum, the Committee for Immigration and Asylum, was established that permitted the Commission to solicit feedback from the member states at an early stage in policy development. With governments keeping a close eye on policy development and retaining the veto right, both slippage and shirkage thus appeared to be rather distant possibilities. The saga of the ill-fated 2001 labour migration directive demonstrated that member state governments were very seriously determined to block excessively ambitious and overtly liberal policies, which they might have interpreted as constituting slippage and closer in spirit to the preferences of the Commission than those of key member states including Germany and France.

Appointing the Commission as an Agent: The Case of the Mobility Partnerships

The gradual emergence of CAMP until the Maastricht Treaty is well documented (Stetter, 2000, pp. 85–93; Messina, 2007, pp. 138–169; Geddes, 2008; Menz, 2009). There was great reluctance among member states to move towards communautarization quickly. Member states preferred to retain their national models of regulation that are well documented in the literature (Favell, 2001). This changed only in 1985, when the Schengen Agreement on cooperation regarding external and internal border control started. Although the harmonization of asylum policies were discussed as early as 8–9 December 1989, at a meeting of the European Council in Strasbourg, there was considerable reticence on the part of member states to accept Europeanized migration control in practice, as is evident from the delayed implementation of Schengen, which only came into force in 1997. Even then, there was little appetite for rapid Europeanization. When during the discussions surrounding the Amsterdam Treaty in the summer of 1997 the suggestion was made to introduce qualified majority voting to the realm of the free movement of persons, the German delegation vetoed the proposal (Marshall, 2000, p. 122).

Concurrently, with the rapid strides made towards the creation of CAMP came the development of the externalization of migration control. A remarkable leaked 1998 Austrian Presidency Paper, entitled Strategy Paper on Immigration and Asylum Policy (Presidency to the K4 Committee, Doc 9809/98, CK 4, Brussels 1 July 1998), which caused considerable debates in Tampere in 1999, suggested creating concentric circles of migration: the inner circle comprised the core EU, including the new members of the 2000s, the second circle comprised the countries in the Western Balkans, the third circle comprised the so-called European Neighbourhood countries in North Africa and the Commonwealth of Independent States (CIS), and the fourth circle was composed of countries of origin, including notably in sub-Saharan Africa. This article suggested bringing the countries immediately surrounding the inner circle of the EU itself 'into line with the first circle's standards'. The third circle, comprising North Africa, Turkey and the CIS, would concentrate on 'transit checks and combating facilitator networks', whereas emphasis regarding the fourth circle, comprising China, the Middle East and Sub-Saharan Africa, would lie on limiting migration incentives. Both bilateral and multilateral initiatives seek to prod and cajole North African and Central and Eastern European (CEE) governments into performing roles of gatekeepers and prison wards. The Budapest Group is an important informal forum for migration control discussions with CEE countries, lately extended to cover Russia, Ukraine, Moldova and all of the CIS, originally growing out of a German unilateral initiative, as Lavenex (2006) mentions. In 2001, the 5+5 dialogue group for the Western Mediterranean was established, comprising Algeria, France, Italy, Libya, Malta, Mauritania, Morocco, Portugal, Spain and Tunisia. The March 2003 'Wider Europe-Neighbourhood: A New Framework for

Relations with our Eastern and Southern Neighbours' and the May 2004 'European Neighbourhood Policy-Strategy Paper' aimed at creating a circle of 'friends' in the Eastern and Southeastern periphery. Within the framework of the Eastern and Southern neighbourhood agreements, the Commission initiated 'mobility partnerships', which offer liberalized visa regulations for travel to the EU and limited labour migration in exchange for cooperation on border management, readmission agreements, joint surveillance flights over the Mediterranean and deportation. The 2006 Global Approach to Migration and Mobility was meant to coordinate these partnerships, and its 2011 renewal focused on North Africa, given that the tumultuous Arab Spring had served as an impetus for its revival, although Eastern neighbours are being considered as well (European Commission, 2011). Mobility partnerships are thus envisioned for Tunisia and possibly Egypt and Libya in the future, depending on political events in these countries (European Commission and High Representative, 2012).

The advantages of employing an agent in negotiating the externalization of migration control are considerable. Member states find themselves in a stronger negotiation position, and from the perspective of third countries make for a more attractive partner if negotiating as part of a multitude of EU countries. The advantages of the mobility partnerships, successfully concluded thus far with Cape Verde, Moldova, Georgia, Armenia and Morocco, are that they offer a *quid pro quo* framework for a more managed and indeed controlling approach of migration from these countries, both regarding their nationals and others. The partnership with Armenia thus entails an obligation to 'strengthen the implementation of the integrated border management, including … further improvement of border surveillance and border management capacities and cross-border cooperation … and to fully cooperate on return and readmission' (Council, 2011, p. 4). Similarly, Morocco is obliged to 'resume negotiations … to conclude a balanced readmission agreement … prevent and combat illegal migration and networks involved in trafficking … enhance information exchange, administrative capacity … with regard to border management' (Council, 2013, p. 7). In return, Morocco is promised simplified visa issuance procedures for its nationals, better and more readily available information on legal migration channels and a shift towards sectoral cooperation and mutual recognition of vocational degrees (Council, 2013, p. 5). Armenia is being offered similar incentives (Council, 2011, pp. 2–3).

The negotiations are carried out by the Commission in the first instance, but need to be approved by the Council of Ministers. The advantages identified in the literature are evident: collective action problems are overcome, yet member states retain the flexibility to roll out specific cooperative programmes beyond the framework agreement or to opt out entirely. Responsibility is thus delegated to an agent with specialist knowledge in the form of DG Home Affairs, yet member states can add specific programmes as long as they are consistent. The use of the Commission as an agent also deals with problems of incomplete contracting, as adherence to the terms of the partnership are much easier to monitor and sanctions are much more credibly

administered by the agent. Assuming a future popular backlash against immigration from these countries, appointing the Commission as an agent also permits 'blaming Brussels' and thus may potentially displace responsibility for unpopular decisions. Member states are keen on securing readmission agreements and joint border management schemes with countries in Europe's geographic periphery. The Commission as an agent can help lock in distributional benefits accruing from the punitive 'stick' side of the agreement, while also carrying a reputation of credibility, resolving the problem of policymaking instability. It is perceivable that mobility partnerships encounter little interest among the third countries, as has been the case thus far in Egypt, owing partially to the political instability and the lack of enthusiasm for accepting readmission agreements. However, for the EU member states, the delegation of powers to an agent offers a more efficient policymaking mode that delivers the cooperation of sending and transit countries, which is considered highly desirable.

Principal Slippage: The Bilateral Externalization of Migration Control

While the Commission also commenced upon the externalization of migration controls, it became evident very quickly that 'principal slippage' was starting to emerge, with member states developing different preferences and thus unable to agree on a robust and coherent approach to externalized migration control. This was notably the case with regard to the notion of creating extraterritorial asylum processing centres that was pursued only half-heartedly by the Commission because of the lack of robust support from the member states.

This ambitious initiative to outsource migration control and move the accommodation and even processing of asylum seekers outside of Europe came in the form of former British Prime Minister Anthony Blair's proposal to the Council meeting in Thessaloniki on 19–20 June 2003. A draft had been leaked to British daily *The Guardian* in February. The idea to process refugees and asylum seekers extraterritorially had been informally suggested by the Danish government in the later part of its EU presidency in late 2002 (Noll, 2003) and drew on earlier policy plans from 1986, whereas the Australian so-called Pacific solution, that is, the processing of claimants on foreign territory (Christmas Island, Papua New Guinea and Nauru) introduced by the Howard government in the 2001 Border Protection Bill and possibly the United States response to the Haitian refugee crisis in 1994 and its processing in the offshore zone of Guantanamo Bay, may have served as sources of inspiration. The suggestion entailed the creation of Regional Protection Areas and Transit Processing Centres . The EU Justice and Home Affairs Council considered the proposal on 5–6 June and most member states, with the notable exception of France and Sweden, were broadly supportive. The 2004 Communication that followed this meeting entailed the provision to draft a proposal for the creation of

such 'Regional Protection Programmes' (RPPs). In October 2004, EU-funded pilot schemes for regional detention centres were rolled out in Algeria, Libya, Mauritania, Morocco and Tunisia. In September 2005, the Commission set out the establishment of regional protection programmes in the Western CIS and the Great Lakes region of Africa, with a view of taking future action in the Horn of Africa, North Africa and Afghanistan (COM, 2005, 388 final; Amnesty International, 2005). Following an incident off the Italian coast in July 2004 during which the vessel Cap Anamur owned by a German NGO rescued Sudanese refugees and Italian authorities at first refused to permit landing in Italy (Süddeutsche Zeitung, 2004), both the Italian and German governments expressed support for the Danish–British initiative. The European Commission made €2 million from its budget for external migration management known as AENEAS available (COM, 2005, 388, final, 1 September 2005). This funding was geared at pilot projects in the Western Newly Independent States and the Great Lakes Region of Africa. RPPs were subsequently established in Ukraine and Tanzania (UNHCR, 2006a), in the latter case as early as 2004 and with bilateral funding from the United Kingdom, Denmark and the Netherlands (UNHCR, 2006b). Financial support from the Commission continues under the auspices of the 2007–2013 AENEAS replacement, entitled Thematic Cooperation Programme with Third Countries in the Development Aspects of Migration and Asylum, with €900 000 earmarked for the Tanzanian project alone.

Levy (2010, p. 111) summarizes his discussion of the attempts at creating extraterritorial processing camps as being described by a 'shifting coalition of Member States [which] vetoed or expressed significant concerns' and consequently EU responses were somewhat uneven. He also points to the deliberately vague language used in the Hague Programme, which, although endeavouring to explore extraterritorial processing, also stressed 'the need for careful assessment of the legality of any potential processing schemes'. This legality and in particular the extent to which creation of such camps would contravene both spirit and letter of the *non-refoulement* principle of the 1951 Geneva Refugee Convention was indeed a crucial point of debate.

The creation of the European Agency for the Management of Operational Co-operation at the External Borders of the Member States of the EU (Frontex) in 2005 is similarly an exercise in appointing EU-level agents acting as analysts and researchers in the operational headquarters in Warsaw. It is worth noting that the border guards and police officers, seconded to Frontex by the member states, remain legally under the command of the respective national government, and Frontex does not have independent enforcement capacity. This institutional design is again indicative of limited powers bestowed upon an agent, tightly controlled and indeed equipped by the principals and cannot be easily interpreted as a mere exercise in Europeanization. Frontex patrols the EU's external borders, provides training for national border guards and coordinates joint deportation flights and Rapid Border Intervention Teams .

Although the EU's movement towards the externalization of migration control cannot be regarded as either extraordinarily slow or inefficient on its own terms, there were clearly member states that felt frustrated both by pace and scope of EU action taken. Some of these frustrations were the result of principal slippage and serious disagreements over policy among member states. The externalization was and is politically sensible, both because it potentially conflicts with the *non-refoulement* principle and because it involves cooperation with governments with mixed human rights records, which directly contravenes the Barcelona declaration of the mid-1990s, which committed the EU to promoting human rights throughout the Mediterranean region. Because of the perceived shortcomings at the EU level, a number of national governments commenced their own independent bilateral negotiations with North African governments. Most commented upon is the Italian–Libyan rapprochement that culminated in the signature of the 30 August 2008 Treaty on Friendship, Partnership and Cooperation (Andrijasevic, 2006; Lavenex, 2006; Klepp, 2010; Gammelftoft-Hansen, 2011). From the 1990s onwards, the two governments commenced first informal cooperation on migration control, followed by a more formal bilateral agreement on the joint patrolling of Libyan ports and the Northern coastline (Paoletti, 2011, p. 274). In a *quid pro quo* manner, Libya accepted deportation flights, including third-country nationals, in return for significant logistical, technical and financial assistance for Libyan border police, deportation flights departing from Libyan territory, the interception of vessels in Libyan waters and in the construction of detention camps in Gharyan, Kufra and Sebah (Andrijasevic, 2006, p. 9; Paoletti, 2011, pp. 274–276). Italy also provided tents and other material for the construction of the camps (AFP Rome, 2004), while providing necessary equipment such as boats, jeeps, radar equipment and helicopters for sale to the Libyan armed forces. Maps provided by NGO Migreurop (2007) provide the location of a total of 19 such camps in Libya alone, 9 in Tunisia and Algeria, and 7 informal camps in Morocco. The Italian government was particularly keen on reducing the attraction of the southernmost isle of Lampedusa, although in authorizing mass removal to Libya, for the first time in October 2004, it deliberately did not carry out an in-depth examination of individual dossiers, thus violating the *non-refoulement* principle. Joint maritime patrols had been carried out since 2005 informally, but a December 2007 treaty formally permitted not only this practice but also the patrolling of Libyan waters by Italian navels. Finally, the 'Friendship' agreement formally entails an apology by Italy for abuses committed during colonial rule and provides US$ 5 billion in infrastructure projects over 20 years. Its Article 19 commits both parties to enhanced border controls to reduce undocumented migration. The Italian government commits itself to funding 50 per cent of the Libyan border controls. Gammeltoft-Hansen (2011) points out that the 2010 Frontex Annual Risk Analysis records a drop in undocumented migration to the EU in 2009, with a 50 per cent drop in numbers along the Libyan–Italian border (*EU Observer*, 2010). What makes this considerable bout of activity so remarkable is that attempts to

communautarize the extraterritorialization of EU border controls were proceeding apace. Notwithstanding such endeavours, the Italian government effectively jumped the gun and took proactive measures that pre-empted and to an extent contravened European efforts at border controls, including a remarkably relaxed stance on the contentious question of non-refoulement. Paoletti (2011) reminds us, however, that some of the initiatives were short-lived, including the detention centres themselves, given the considerable criticism the Italian authorities attracted by human rights groups. The end to the Gaddafi regime in 2011 also put paid to joint endeavours.

Despite the considerable policy development at a multilateral level, individual member states engaged in bilateral policy initiatives with countries in geographical proximity, especially in Northern Africa. In essence, individual member states pursued their own externalization efforts, despite the fact that EU-level endeavours were under way simultaneously or were about to commence. This development suggests that certain governments were impatient and did not display a high level of trust in European initiatives. The Italian government was not alone in interpreting principal slippage as an invitation to engage in bilateral border control agreements. Nor was Libya the only beneficiary. What is equally remarkable is the degree of continuity, notwithstanding regime change imposed by the Arab Spring of 2011. The Italian government had assisted its Tunisian counterpart in the assistance in migrant detention camps as early as 1998, which could be sued both for Tunisian and third-country national deportees, entailing 500 million lira (€260 000) in financial assistance, as outlined in the *Scambio di Note tra l'Italia e la Tunisia concernente l'ingresso e la riammissione delle persone in posizione irregolare* (Rome, 6 August 1998) (Global Detention Project 2011a, p. 1). Similarly, the German government has provided major military assistance to the border police forces and regular armed forces of North Africa. In 2005, six high-speed boats were provided to the Tunisian border police. Egyptian forces had received six such boats 2 years earlier, whereas in 2002 Algeria received surveillance equipment worth €10.5 million. In addition, Tunisia received communication and surveillance equipment between 2002 and 2004 worth €9.77 million and Morocco received trucks worth €4.5 million (Bundesregierung, 2002; BICC, 2007).

In July 2003, the Government of Spain and Mauritania signed an Agreement on Immigration that entails the latter accepting deportation not only of its own nationals but also of third-country nationals who can be 'presumed' to have transited through Mauritania *en route* to Spanish territory. A second agreement, signed in March 2006, spawned joint surveillance operations along the Mauritanian coast (Global Detention Project, 2011b, p. 2), whereas the Spanish Government seconded military equipment and personnel to assist in the detention of migrants at sea. The Spanish Agency for International Development Cooperation helped establish Mauritania's only detention centre in the port city of Nouadhibou in 2006 to interfere with sea crossings to the Canary Islands.

The development of bilateral agreements on migration control, usually entailing a *quid pro quo* bargain of financial assistance in return for stepped-up efforts in the detention and arrest of migration movements, is remarkable because it effectively sidelines EU efforts at moving migration control governance beyond EU territory. These developments are therefore difficult to reconcile either with the functionalist logic of spillover effects and transnational elites or with the intergovernmental emphasis on the agency of individual governments and the economic interests they represent. EU immigration policy, it is argued here, is best understood as an exercise in the employment of an agent (Commission) by the member states (principals). This process helps overcome the various problems correctly identified in the literature, including, among others, collective action problems and problems with derogation and credibility. The fairly tight control of the agent in the early years has created a high-trust environment, in which the principals feel confident to bestow more freedom upon the agent, including the introduction of qualified majority voting (now known as the ordinary legislative method) and competency for the ECJ in this policy domain. Shirking and slippage in the early years have been successfully avoided and any such attempts have been robustly arrested, as in the case of the labour migration directive.

However, despite steps being taken towards the establishment of multilateral frameworks that include the European Neighbourhood countries and the creation of fora such as the 5+5 Group or more recently the Global Approach to Migration and Mobility, individual EU member states appeared disappointed by the disagreement among principals regarding the appropriate course of action towards extraterritorial migration governance. Notwithstanding the Commission efforts, which itself entailed talks with the Libyan government to provide financial assistance in exchange for enhanced efforts at arresting immigration and Frontex manoeuvres that included North African navies (notably the so-called Nautilus Operation of 2007), individual member state government developed bilateral initiatives on immigration control with counterparts in North Africa. The claim that these initiatives foreshadow European developments seems difficult to maintain (Klepp, 2010). It seems more a matter of individual principals breaking rank, as they correctly perceive of principal slippage where the preferred outcome is no longer identical with that of other principals, and no immediate robust movement can be expected on the part of the agent as a response. As noted, the Commission is also slightly hamstrung because tighter cooperation with countries in North Africa, a region not renowned for its commitment to human rights and in the case of Libya not even a signatory to the Geneva Convention, seems contradictory to the proclaimed goals of the Barcelona Process. The process of 'pushing back' (*respingimento*) of vessels carrying migrants also comes dangerously close to a violation of the non-refoulement principle, with considerable leeway in practice being granted to individual military commanders at sea (Klepp, 2010).

Conclusion: Applying the Principal-Agent Framework to Studying EU Migration Policy

The study of European migration policy could generally be enhanced by understanding the relationship between the Commission and the member states as one of agent and principals. This article explores the externalization of migration control, highlighting the advantages afforded to member states in appointing the Commission to negotiate mobility partnerships. However, pre-empting developments at the EU level, certain member states have also engaged in principal slippage and negotiated bilateral agreements with countries in North Africa. Given the backlash experienced, cost, ultimate benefit and poor efficiency (Paoletti, 2011), the long-term appeal of such strategy appears dubious. In contrast, we have noted that the neofunctionalist prism ultimately provides a much too fuzzy and vague vision of policy development in this sector, whereas the intergovernmentalist approach does not do justice to the often complex day-to-day politics and policymaking. Employing an agent seemed to be a mutually acceptable solution to all member states, because the potential attendant problems all appear to be addressed satisfactorily through considerably developed institutional safeguards. These safeguards and in particular substantial policy input and veto powers during the crucial first 5 years of policy development meant that both slippage and shirking could be reigned in. The advantages of delegation identified in the literature are considerable. Notwithstanding the politically contentious nature of migration policymaking, *overcoming regulatory competition* is particularly pertinent, although *overcoming problems of collective action* is arguably the most central one, given the very nature of migration movements. The basic argument for delegation thus seemed to be a potent one and through the often complex battles in Brussels over the basic contours overly ambitious policy designs by the Commission have been reigned in and watered down.

Past scholarly efforts have been strongly influenced by the use of the European venue as one being more amicable to restrictionist policy difficult to design and even more so to defend politically at the national level (Guiraudon, 2000). However, it seems more apt to speak of the Commission as agent acting on behalf of and acting in informed consent with the member state governments in designing CAMP. In doing so, the Commission could be relied on to learn from past instances of being perceived as engaging in slippage. This form of regulation also depends on high levels of consensus among the member states, especially so during the first 5 years following the 1999 Tampere Council meeting, during which the unanimity principle prevailed in the Council of Ministers. Such consensus proved to be difficult to establish the case of extraterritorial governance of migration analysed in this article. In an instance of principal slippage, certain member states developed bilateral agreements. Future scholarly work could examine in more detail to what extent the expectation of the principals for effective and efficient policy design by the agent are met in practice. With the policy slant of the Commission often being more liberal than is true of the

political preferences at member state levels, and with recent ECJ decisions suggesting a more pro-migrant stance on the part of the Court, it is possible that the long-term policy outcome of migration design will start to change as a result of the long-term institutional implications of the changes entailed in the Lisbon Treaty. In such a case, it is not inconceivable that the principals will seriously consider more stringent control of the agent to prevent slippage and devise ways of anticipating the newly emergent role of the ECJ as a *de facto* second agent.

About the Author

Georg Menz is Professor of Political Economy and Jean Monnet Chair of European Integration in the Department of Politics at Goldsmiths College, University of London. His book publications comprise *Varieties of Capitalism and Europeanization: National Response Strategies to the Single European Market* (OUP 2005), *Internalizing Globalization: The Rise of Neoliberalism and the Decline of National Models of Capitalism* (Palgrave 2005), *The Political Economy of Managed Migration* (OUP 2008) and *Labour Migration in Europe* (Palgrave 2010). His research interests lie in the field of comparative and international political economy, European Union politics and immigration. He is currently completing a monograph entitled *Comparative Political Economy*.

Note

1 To avoid conceptual confusion, the term 'communitization' is used rather than Europeanization, a term that carries multiple meanings. Communitization is defined as a prominent involvement of EU institutions in the governance process.

References

AFP Rome. (2004) Refugee Crisis in Italy. 11 November.

Amnesty International. (2005) *EU Regional Protection Programs: Enhancing Protection in the Region or Barring Access to the EU Territory?* Brussels, Belgium: Amnesty International EU Office.

Andrijasevic, R. (2006) How to Balance Rights and Responsibilities on Asylum at the EU's Southern Border of Italy and Libya. Oxford: COMPAS. Working Paper 27.

BICC – Bonn International Center for Conversion. (2007) *Informationsdienst Sicherheit, Rüstung und Entwicklung in Empfängerländern Deutscher Rüstungsexporte*. Tunesien, Bonn: BICC.

Boswell, C. (2003) *European Migration Policies in Flux: Changing Patterns of Inclusion and Exclusion*. London: Blackwell.

Bundesregierung. (2002) *Rüstungsexportbericht Der Bundesregierung 2002*. Berlin, Germany: [German] Federal Government.

Caviedes, A. (2010) *Prying Open Fortress Europe: The Turn to Sectoral Labor Migration*. Lanham, MD: Lexington Books.

Council [of the European Union]. (2011) Joint Declaration on a Mobility partnership between the European Union and Armenia, 3121st Justice and Home Affairs Council Meeting, Luxembourg, 27–28 October, Press Release.

Council [of the European Union]. (2013) Joint Declaration Establishing a Mobility Partnership between the Kingdom of Morocco and the European Union and Its Member States, Addendum 1, Revision 3, 3 June.

EU Observer. (2010) 50% drop in EU irregular migrant border crossings after Italy-Libya pact 3 August.

European Commission. (2005) *Communication from the Commission to the Council and the European Parliament on Regional Protection Programmes*. Brussels: European Commission, COM(2005) 388 final.

European Commission. (2011) The Global Approach to Migration and Mobility, COM (2011) 743 final.

European Commission and High Representative of the European Union for Foreign Affairs and Security Policy. (2012) Delivering on a New European Neighbourhood Policy, JOIN (2012) 14 final.

Favell, A. (2001) *Philosophies of Integration: Immigration and the Idea of Citizenship in France and Britain*, 2nd edn. Basingstoke, UK: Palgrave Macmillan.

Gammeltoft-Hansen, T. (2006) Outsourcing Migration Management: EU, Power, and the External Dimension of Asylum and Immigration Policy. Copenhagen: DIIS. Working Paper 2006/1.

Gammeltoft-Hansen, T. (2011) The externalisation of European migration control and the reach of international refugee law. In: E. Guild and P. Minderhout (eds.) *The First Decade of EU Migration and Asylum Law*. Leiden, the Netherlands: Brill Academic, pp. 321–356.

Geddes, A. (2005) Europeanization goes south: The external dimension of EU migration and asylum policy. *Journal for Comparative Government and European Policy* 3(2): 275–293.

Geddes, A. (2008) *Immigration and European Integration: Towards Fortress Europe?* 2nd edn. Manchester, UK: Manchester University Press.

Global Detention Project. (2011a) *Tunisia Detention Profile: Global Detention Project: Programme for the Study of Global Migration*. Geneva, Switzerland: The Graduate Institute.

Global Detention Project. (2011b) *Mauritania Detention Profile: Global Detention Project: Programme for the Study of Global Migration*. Geneva, Switzerland: The Graduate Institute.

Guiraudon, V. (2000) European integration and migration policy: Vertical policy-making as venue shopping. *Journal of Common Market Studies* 38(2): 249–269.

Guiraudon, V. (2003) The constitution of a European immigration policy domain: A political sociology approach. *Journal of European Public Policy* 10(2): 263–282.

Haas, E. (1958) *The Uniting of Europe: Political, Social, and Economic Forces, 1950–1957*. Stanford, CA: Stanford University Press.

Hawkins, D., Lake, D., Nielson, D. and Tierney, M. (2006) Delegation under anarchy: States, international organizations and principal-agent theory. In: D. Hawkins, D. Lake, D. Nielson and M. Tierney (eds.) *Delegations and Agency in International Organizations*. Cambridge: Cambridge University Press, pp. 3–26.

Kassim, H. and Menon, A. (2003) The principal-agent approach and the study of the European Union: Promise unfulfilled? *Journal of European Public Policy* 10(1): 121–139.

Kaunert, C. (2010) The area of freedom, security, and justice in the Lisbon Treaty: Commission policy entrepreneurship? *European Security* 19(2): 169–189.

Keohane, R. (1984) *After Hegemony*. Princeton, NJ: Princeton University Press.

Kiewiet, D.R. and McCubbins, M.D. (1991) *The Logic of Delegation: Congressional Parties and the Appropriations Process*. Chicago, IL: University of Chicago Press.

Klepp, S. (2010) A contested asylum system: The European Union between refugee protection and border control in the Mediterranean sea. *European Journal of Migration and Law* 12(1): 1–21.

Lavenex, S. (2006) Shifting up and out: The foreign policy of European immigration control. *West European Politics* 29(2): 329–350.

Levy, C. (2010) Refugees, Europe, camps/state of exception: Into the zone, the European union and extraterritorial processing of migrants, refugees, and asylum seekers (theories and practice). *Refugee Studies Quarterly* 29(1): 92–119.

Luedtke, A. (2011) Uncovering European Union immigration legislation: Policy dynamics and outcomes. *International Migration* 49(2): 1–27.

Majone, G. (1996) *Regulating Europe*. London/New York: Routledge.

Marshall, B. (2000) *The New Germany and Migration in Europe*. Manchester, UK: Manchester University Press.

McCubbins, M.D. and Schwartz, T. (1984) Congressional oversight overlooked: Police patrols versus fire alarms. *American Journal of Political Science* 28(1): 165–179.

Menz, G. (2009) *The Political Economy of Managed Migration*. Oxford: Oxford University Press.

Messina, A. (2007) *The Logics and Politics of Post-WWII Migration to Western Europe*. Cambridge: Cambridge University Press.

Migreurop. (2007) *Les Camps D'etrangers En Europe Et Dans Les Pays Mediterraneens*. Brussels, Belgium: Migreurop.

Moravcsik, A. (1993) Preferences and power in the European community: A liberal intergovernmentalist approach. *Journal of Common Market Studies* 31(4): 473–524.

Noll, G. (2003) Visions of the exceptional: Legal and theoretical issues raised by transit processing centres and protection zones. *European Journal of Migration and Law* 5(3): 303–341.

Occhipinti, J. (2003) *The Politics of EU Police Cooperation: Toward a European FBI?* Boulder, CO: Lynne Rienner Publishing.

Paoletti, E. (2011) Power relations and international migration: The case of Italy and Libya. *Political Studies* 59(2): 269–289.

Pelkmans, J. (1990) Regulation and the single market: An economic perspective. In: H. Siebert (ed.) *The Completion of the Internal Market*. Tübingen, Germany: J.C.B. Mohr, pp. 29–58.

Pollack, M.A. (1997) Delegation, agency, and agenda setting in the European community. *International Organization* 51(1): 99–134.

Stetter, S. (2000) Regulating migration: Authority delegation in justice and home affairs. *Journal of European Public Policy* 7(1): 80–103.

Süddeutsche Zeitung. (2004) UNHCR fordert Überarbeitung des EU-Flüchtlingsrechts, [UNHRC demands revision of EU refugee policy], 13 July.

UNHCR. (2006a) *Global Approach: Eastern Europe*. Geneva, Switzerland: UNHCR.

UNHCR. (2006b) *SOPCP Tanzania Update*. Geneva, Switzerland: UNHCR.