



Migration Studies Unit

Working Papers

No. 2009/02

‘When prime ministers replace policemen’: An analysis of the adoption of European Council immigration and asylum JHA work programmes

Markus Sperl*

* Markus Sperl holds an MSc degree in Politics and Government in the European Union from the London School of Economics and Political Science and is currently working at the Immigration & Asylum Directorate of the European Commission’s Directorate General for Justice, Freedom and Security. All views expressed in this paper are purely personal and do not necessarily reflect the views of the European Commission. Email: markus.sperl@gmail.com

MIGRATION STUDIES UNIT
LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE

Migration Studies Unit Working Papers No. 2009/02

This text may be downloaded for personal research purposes only from LSE
Migration Studies Unit Working Papers at
<http://www.lse.ac.uk/collections/MSU/working-papers.html>.

Any additional reproduction for other purposes, whether in hard copy or electronically, requires the consent of the author(s) and editor(s). If cited or quoted, reference should be made to the full name of the author(s), editor(s), the title, the working paper or other series, the year, and the publisher.

The author(s) or editor(s) should inform the Migration Studies Unit at the LSE if the paper is to be published elsewhere, and should also assume responsibility for any consequent obligation(s).

ISSN 1758-499X

© 2009 Markus Sperl

Migration Studies Unit
London School of Economics and Political Science
Houghton Street
London WC2A 2AE

<http://www.lse.ac.uk/collections/MSU/index.html>
<http://www.lse.ac.uk>

**‘WHEN PRIME MINISTERS REPLACE POLICEMEN’:
AN ANALYSIS OF THE ADOPTION OF EUROPEAN COUNCIL
IMMIGRATION AND ASYLUM JHA WORK PROGRAMMES**

TABLE OF CONTENTS

INTRODUCTION 2

***PART 1 – THEORETICAL FRAMEWORK – POLICY FRAMING AND EU
ASYLUM AND IMMIGRATION POLICY 5***

1.1 Key theoretical Concepts 5

1.2 Frame Competition and European Asylum and Immigration Policy 8

***PART 2 - EXCLUDING POLICEMEN? JHA WORK PROGRAMMES AND THE
EUROPEAN COUNCIL 15***

2.2 Reframing EU Migration Policy at Summit Level 15

2.3 Key Players in JHA Council and European Council Action Channels 18

2.2.1 Governmental Politics and National Position Formulation 19

2.2.2 Action Channels at the European Level 23

***PART 3 – A CASE STUDY OF THE ADOPTION OF THE 1999 ‘TAMPERE
MILESTONES’ 29***

3.1 Interests and Preferred Frames of Key Players 31

3.2 Action Channels Structuring Influence on the Tampere European Council 36

CONCLUSION 43

With asylum and immigration policies increasingly handled at EU as well as national level, a new European immigration policy domain is being constituted. An increasing number of domestic and supranational actors now vie to implement their own 'pre-formatted solutions' to migration issues at EU level, with Commission officials, international NGOs, MEPs and governmental actors all active (Guiraudon 2003:277). But despite the diversity of interests represented in Brussels, the literature on the European immigration policy domain argues that among the representatives of Member State governments, only one category of official has dominance over EU migration policy outputs; the 'policemen', meaning 'Interior and Justice personnel' (Guiraudon 2003:267; Lavenex 2006). The latter bring a securitising agenda to the EU-level, and their representatives in the Justice and Home Affairs (JHA) Council have final responsibility for adopting all immigration and asylum legislation.

However, the literature suffers from a major omission – the role of the European Council, which is widely regarded as 'the supreme political body within the European Union' (Tallberg 2008: 655; de Schoutheete & Wallace 2002; Wertz 2008), is neglected. This is despite the fact that the European Council has fulfilled its traditional agenda-setting role with much bravado in this field. Since the communitarisation of migration policies by the Treaty of Amsterdam in 1999, it has adopted ambitious five-year JHA work programmes containing requests for specific pieces of legislation, as well as political orientations to guide EU institutions in their adoption. Hence, while the claim that JHA interests 'still dominate' may ring true for everyday EU migration policymaking (Guiraudon 2003:273), the adoption of JHA work programmes represents a key agenda-setting moment when Prime Ministers in the European Council rather than 'policemen' take the decisions.

Intergovernmentalist scholars would argue that this is of no consequence, as Member State representatives to the EU defend one coherent national position in all negotiating venues (Moravcsik 1998). This paper will argue otherwise. Drawing on the literature on policy frames, it will be argued that both within European Council summits where JHA work programmes are adopted and during the vital preparatory phase, actors are empowered who will potentially sideline interior ministry interests and their preference for the framing of migration exclusively as a security issue. It will be hypothesised that as a result, the European Council is likely to adopt JHA work programmes which in terms of their approach to migration issues are more *ambitious*, more *rights-oriented*, and more *comprehensive* (i.e. balanced with other governmental objectives in areas such as development and foreign policy) than 'everyday' migration policymakers within the JHA Council would prefer. This hypothesis will be tested out in a case study on the adoption of the first JHA work programme which was adopted at the October 1999 Tampere European Council.

Empirical information on European Council summits and their preparations is notoriously difficult to access, and therefore both have 'been subject to limited research, most of which is dated, atheoretical and limited in empirical scope' (Tallberg 2008:686). In addition to existing studies, this paper is therefore based on archival evidence held in UNHCR's Brussels office, and a series of semi-structured interviews with officials from governments, the Commission, NGOs and the UN who have participated in the preparation of JHA work programmes. All unreferenced quotes derive from these interviews (see appendix for interviewee list).

The paper will now proceed as follows. Part one introduces the analytical concepts to be employed and outlines the general aims of European Council JHA work programmes. Part two frames the hypothesis arguing that European Council

JHA work programmes will potentially sideline JHA Council interests. Part three focuses on the case study.

PART 1 – THEORETICAL FRAMEWORK – POLICY FRAMING AND EU ASYLUM
AND IMMIGRATION POLICY

1.1 KEY THEORETICAL CONCEPTS

Intergovernmental theories such as Moravcsik's liberal intergovernmentalism assume that Member State representatives defend national positions which remain constant throughout negotiating venues and are calculated through domestic interest aggregation processes which occur prior to negotiations according to rationalist interests (1998). Yet such theories have attracted criticism for failing to open the 'black box of government'. They neglect both to ask *which* governmental actors dominate interest aggregation processes and participate in negotiations, and to assess whether national preferences can be changed through interactions at the European level. It is precisely these questions which are most relevant to examine the potential for discrepancies between the European Council and the JHA Council's approaches to migration. Three inter-related theoretical concepts which have been found appropriate for analysis will now be presented; policy framing, policy venues and action channels.

Policy framing refers to how a particular policy and the problem it seeks to address are conceptualised by groups of decision makers. As Daviter notes, 'which problem definition prevails and which facet or dimension of the issue at stake dominates policy debates at a given time can substantially influence political choices' (2007:654)

Unlike intergovernmental theories, framing focuses attention on the identities of individual governmental actors involved in policymaking. Depending on the

department or ministry they represent, different actors even within the same government may prefer conflicting policy frames. As Allison & Zeilkow note, 'separate responsibilities laid on the shoulders of distinct individuals encourage differences in what each sees and judges to be important' (1999:256).

The literature on policy venues supplements institutionalist analysis to the concept of framing to demonstrate how institutions can create a 'policy monopoly'. Policy venues are 'institutional locations where authoritative decisions are made concerning a given issue' (Baumgartner & Jones 1993:32). If membership of a policy venue is limited to actors who share similar identities and a preference for certain policy frames, decision-making will be monopolised and influence denied to those operating on conflicting issue definitions.

Of course, not all policy venues reunite decision-makers who unanimously prefer a certain policy frame. In such cases, scope exists for agents to engage in frame competition by attempting to impose their preferred conceptualisation and alter the 'dimensions of choice' on which decision-makers operate (Daviter 2007:656). Here framing is used as 'a weapon of advocacy and consensus' (Weiss 1989:117).

The relative power of agents to engage in agenda-setting through frame competition will primarily be *institutionally determined*. Actors who enjoy membership of policy venues can attempt to reframe issues directly through negotiations. However, as Allison & Zeilkow's theoretical model of 'governmental politics' (1999) captures, final decision-makers in policy venues do not operate in vacuums, and are subject to the influence of external actors who structure negotiations

and can therefore also engage in frame competition. This model draws attention to ‘action channels’, which are:

regularised means of taking governmental action on a specific kind of issue.

Action channels structure the [political] game by preselecting the major players, determining their usual points of entrance into the game, and distributing particular advantages and disadvantages for each game. (Allison & Zeilkow 1999:300).

Certain actors can be ‘hooked in’ to the action channels linked to policy venues, providing them with greater influence to ensure their preferred frames dominate in later negotiations. Analysis of the identities of these dominant actors can improve our understanding of the likely outcome of aggregation processes through which negotiating positions are prepared and the issue definitions on which decision-makers in policy venues will operate.

1.2 FRAME COMPETITION AND EUROPEAN ASYLUM AND IMMIGRATION POLICY

EU asylum and immigration policies provide ideal turf for frame competition between political actors active in the European migration policy domain. Due to the continued controversy over the appropriateness of European legislation in this field, actors with an interest in furthering or slowing integration can attempt to frame migration issues as either 'European' or 'national' in order to dictate the appropriate level for policy responses (Lavenex 2001:855).

Furthermore, frame competition on the *content* of EU migration policies can occur, in particular between Member State government ministries. As Guiraudon notes, 'migration as a policy issue was never confined to a single ministry since it [has] implications for labour, economics, foreign affairs, social affairs and internal affairs' (2003:266). The multi-sectoral implications of migration make framing an ideal weapon of advocacy in potential conflicts over policy responses. While the policy dynamics vary between the areas of asylum, irregular and legal migration, conflicting issue definitions can be utilised by governmental actors to portray each of these forms of migration and related policy responses as either a 'danger' that must be averted or a 'potential' that should be welcomed (Geddes 2009:24).

As Huysmans notes, interior ministry officials have since the 1980s successfully directed European immigration and asylum policies towards a more restrictionist approach by encouraging the framing of migration as a security issue, linking it with its potential to destabilise society due to the unmanageable size of migrant flows, with organised crime and terrorism, and with the negative economic and social impact of fraudulent asylum claims (Huysmans 2000). However other governmental actors may challenge the prioritisation of security interests in order to

achieve their own objectives, by for example highlighting the potential of legal migration to fill labour market gaps or to create streams of remittance payments which can drive development. Such conflicts on the framing of migration issues are at the heart of current debates on how the EU should ‘strike the right balance between security, development, trade and aid’ in its migration policies (Geddes 2009:10).

As will now be demonstrated, a comparison of the vision of EU immigration and asylum policy as formulated in European Council work programmes with the actual policy output of the Council of Ministers in this field shows discrepancies which suggests the prevalence of conflicting framing processes at the two levels.

Aims of JHA work programmes

EU Heads of State and Government (HSG) in the European Council have so far adopted two five year JHA work programmes – the Tampere Milestones of October 1999, and the Hague Programme of November 2004¹. A third is due in 2009, and will be named the Stockholm Programme. Three primary objectives of these programmes can be identified.

Firstly, JHA work programmes aim to define the *normative orientations* of asylum and immigration policy. Prior to the Amsterdam Treaty, a securitised migration agenda dominated policy output, as the functionalist goal of creating a secure environment for the removal of internal European borders controls acted as the primary guiding principle. (Guiraudon 2000). However, starting with the Tampere

¹ The European Council has also adopted numerous other migration-related conclusions. These vary from insignificant ‘hit lists’ of the migration policy achievements of various outgoing Presidencies to important documents such as the Immigration Pact of October 2008, which served both to ‘pave the way for the next five-year programme’ and issue a political signal to the domestic audience of the French Presidency (Collett 2009:2). However, the present analysis will focus exclusively on uncovering the dynamics at work in the adoption of five-year JHA work programmes, which have set the overall political framework for EU migration policy since 1999.

Milestones, JHA work programmes have continuously reaffirmed that the protection of the fundamental rights of EU citizens and third country nationals must also be a primary normative principle in this field, hence underlining the need to balance security and rights concerns in creating the EU's Area of Freedom, Security and Justice (AFSJ) (Lavenex 2001).

Secondly, JHA work programmes set down *political orientations* for asylum and immigration policy, both by requesting specific initiatives and pieces of legislation, and by setting strategic objectives. They have consistently formulated the goal of a *comprehensive* approach to migration, sensitive not only to EU security concerns, but also to the needs of the European labour market (Council 2004:19) and to 'political, human rights and development issues in countries of origin and transit' (European Council 1999:741). In particular, the European Council has advocated developing the EU's external migration policies on the basis of genuine 'partnership' with third countries to ensure that migration cooperation is integrated into existing relations on development, humanitarian assistance and security in a 'consistent' manner (Council 2004:22; Geddes 2009:25).

Third, the European Council has attempted to reframe asylum and immigration policies as 'European' issues, and inject significant political impetus into EU-level cooperation (Monar 2001b). Both the Tampere and Hague programmes underlined that the AFSJ responds 'to a central concern of the peoples of the... Union' – hence giving the highest legitimacy to EU-level migration policy cooperation (Council 2004: 11).

As a demonstration of its ambitions for this field, the European Council has introduced five-year deadlines for the adoption of legislation requested in work programmes, thereby following the working methods used to complete the single

market. The Commission keeps a detailed ‘scoreboard’ recording progress towards implementation and submits progress reports to HSG (Stetter 2007:129).

Dominant Frames at JHA Council level

Responsibility for implementation of work programmes lies with the Commission, which must propose legislation, and with the Council of Ministers and European Parliament, where laws are adopted. At Council level, ‘policemen’ in the JHA Council and its working groups are the dominant players (Geddes 2008:6). Although foreign ministers in the General Affairs and External Relations Council (GAERC) are mandated to strategically coordinate the policy output of all sectoral Councils, the GAERC is ‘impossibly busy’ and unable to efficiently fulfil this role (Gomez & Peterson 2001:72). Practitioners note that migration-related discussions in the GAERC or in other sectoral Councils are a rarity.

Within the Council, JHA ministers therefore enjoy a policy monopoly, operating on shared frames which highlight the potential security threat of migration. Whilst the manner in which work programmes influence negotiations within the Council is complex and cannot be fully examined here, it is clear that the dominance of JHA interests at Council level has led to important differences between the approach to immigration and asylum advocated in JHA work programmes and the policy output and dynamics of the Council.

First, despite the European Council’s calls to reorient EU migration policy towards strengthening the protection of the rights of third country nationals, in implementing work programmes, the JHA Council has prioritised the adoption of restrictionist legislation which corresponds to interior ministries’ migration control objectives. The majority of laws adopted so far aim to combat irregular immigration

or abusive asylum claims (Guild 2005). Whilst the Commission has used the political mandate provided by JHA work programmes to produce proposals which aim to strengthen the rights of asylum seekers and long-term foreign residents, difficult negotiations within the JHA Council have resulted in final agreements often containing a watered-down set of ‘minimum standards’ in these areas (Ackers 2005; Geddes 2008).

Second, JHA officials have been reluctant to allow the priorities of other government ministries to determine the migration policy agenda, resisting the European Council’s calls for a ‘comprehensive’ approach to migration. The Commission’s initial attempts to build a proactive EU-level legal migration policy capable of responding to the labour needs of European industry were met with fierce resistance in the Council, and ambitions in this field have been significantly lowered (Lavenex 2006:337). And although the external dimension to EU migration policy has been rapidly expanding since 1999, it has largely been driven by migration control priorities (Geddes 2008:183). As a senior Commission official notes, the absence of migration-related discussions at GAERC level means that foreign ministers and their staff ‘very often have not grasped the way they can integrate migration-related priorities with the overall agenda they are responsible for’. JHA officials have therefore done so in their place, ensuring that the signing of readmission agreements and strengthening of border management capacity are now key priorities in relations with migrant sending and transit countries (Lavenex 2006).

Third, the European Council’s apparent desire to foster a ‘logic of cooperation’ at JHA Council level has also been resisted. The Commission has complained that agreement of legislation requested by work programmes often ‘faces recurrent difficulties leading to numerous blockages’ (CEC 2006:12) and Stetter

notes, that the pre-1999 pattern of ‘incremental integration’ in the EU migration field has continued (2007:127).

Progress within the JHA Council has been hampered not only by disagreements on technical and political issues, but also by a reluctance to accept alterations to national systems (Stetter 2007:129). Just as ‘goodness-of-fit’ of new European legislation with institutionally embedded national bureaucratic practice can affect Member States’ records of compliance with EU law (Knill 1998), in JHA working groups national representatives have tended to resist major alterations to institutional practice even if their policy implications are minor. As an experienced British JHA working group member notes, for national representatives, the question ‘what effect is agreeing this going to have on my system?’ is constantly ‘at the very forefront in negotiators minds’.

Hence, while the JHA work programmes have provided significant impetus for the development of EU migration policies, despite the political authority of the European Council, their full implementation has met resistance at Council level. Are sincere differences in policy preference between HSG and JHA ministers in the Council the cause? Or are the calls in JHA work programmes for more liberal, development-sensitive migration policies mere ‘rhetoric’ (FECL 1999), with only the security-oriented output of the JHA Council representing the ‘true interests’ of Member State governments, as intergovernmentalist scholars may argue? If so, this rhetoric has proven costly for Member States, as it has granted the Commission and other political actors the mandate to push their own migration policy agenda at EU level (Lavenex 2006).

The next section will seek to answer these questions by analysing the adoption of JHA work programmes. The potential for migration issues to be reframed in summit negotiations will be assessed, and the action channels through which JHA Councils and European Councils are prepared will be compared to assess the potential for JHA ministers to be sidelined at summit level.

PART 2 - EXCLUDING POLICEMEN? JHA WORK PROGRAMMES AND THE EUROPEAN COUNCIL

2.1 REFRAMING EU MIGRATION POLICY AT SUMMIT LEVEL

The adoption of JHA work programmes momentarily breaks the policy monopoly of the JHA Council by introducing a new policy venue in the form of the European Council to EU migration policymaking. Of course, HSG enter the adoption process rather late, as work programmes are subject to months of preparation before adoption at summit level, during which numerous policy actors will attempt to structure final negotiations through the European Council's action channels. However, before looking more closely at the balance of power during this preparatory stage, we must determine which policy frames HSG will *potentially* be open to when negotiating JHA work programmes, as these will define the terms through which actors can attempt to structure later negotiations.

This section will argue that due to specific characteristics of the European Council as a policy venue, HSG at summit level may operate on policy frames different to those dominant in the JHA Council, creating inconsistencies between the national positions defended in these forums. Two fundamental differences between the European Council and JHA Council as policy venues can be identified which act as enabling conditions, making it possible (though not inevitable) that JHA interests will be sidelined.

First, there is the most obvious difference of *membership*. Because HSG are high-level decision-makers responsible for the full spectrum of government activities, the potential exists for them to approach JHA work programme negotiations operating

on policy frames different to those preferred by ‘policemen’ in charge of everyday migration policy.

Second, the greater level of *publicity* which summits attract compared to JHA Council sessions can also significantly increase the probability that reframing will occur. As Allison & Zeilkow argue, ‘press, interest groups, and public form concentric circles around’ all policy venues – ‘circles that demarcate the limits within which the [political] game is played’ (1999:296). The huge media interest in European Council meetings summits (Redmond 1996:56) means that the importance of public opinion as a variable to be considered during negotiations is greatly increased.

It will now be demonstrated how these enabling conditions may potentially play out to encourage HSG to adopt a more rights-oriented, more comprehensive, and more ambitious approach migration issues in JHA work programmes than interior ministry officials would prefer.

ii) A more rights-oriented approach

Interior ministries prefer operating in secretive political arenas because they permit the adoption of securitised policies without the danger of subsequent political controversy over immigrant rights (Guiraudon 2000). Overtly securitised public rhetoric is generally avoided even by JHA ministers due to fears of its potential to destabilise society and hold back the integration of Europe’s third country nationals (Boswell 2007). However, within the secretive and relatively unknown venue of the JHA Council, interior ministers are able to operate on their preferred security-oriented migration policy frames with little risk.

The European Council's publicity renders the exclusive prioritisation of securitarian objectives far more risky than at Council level. Depending on the fickle variable of the political mood of the time, JHA work programmes may avoid controversial rhetoric and signal their support for a more rights-based approach to EU immigration policy. Attempts by political actors such as extreme right parties or rights-campaigners to legitimise or discredit security-oriented approaches to migration in public discourse can impact on the readiness of HSG to adopt or avoid JHA ministries preferred policy frames in summit negotiations.

ii) A more comprehensive approach

Chief executives negotiating in the European Council must find synthesis between potentially conflicting policy priorities. JHA ministries will attempt to ensure that their preference for approaching migration primarily as a public order issue dominates also at summit level, in order to ensure that their migration control objectives are set as overall government priorities. However, potential also exists for the preferred migration policy frames of governmental actors who are excluded from everyday policymaking within the Council to 're-enter' the policy game. HSG may therefore endorse JHA work programmes containing initiatives which aim to harness the potential of migration policy initiatives to meet other governmental objectives and balance the preferred migration agendas of interior, foreign, economics and development ministries. As a senior Commission official notes, 'the synthesis between these different contributions can only be achieved at the level of the European Council'.

iii) A more ambitious approach

The huge public interest summits attract can encourage chief executives to use the adoption of JHA work programmes as an exercise in political communication in order to achieve non-migration related governmental priorities such as the elusive goal of raising public support for the EU. Extensive survey data has suggested that Europe's citizens are widely supportive of tackling migration at the European level (Lahav 2004), and archival evidence demonstrates an awareness of this among policymakers (see case study for details). If negotiators choose to exploit the potential of work programmes to demonstrate to citizens the 'added value' of EU political cooperation (Monar 2001b) rather than framing work programmes exclusively in terms of their functional migration policy implications, ambitions may be raised higher than cautious interior ministry officials would prefer.

The likelihood of reframing processes occurring is further increased by the nature of the HSG as high-level decision-makers. Chief executives are more likely to take decisions on the basis of personal political belief than lower level bureaucrats, who represent their organisation's stable institutional interests (Allison & Zeilkow 1999:277; Steinbruner 1974). In negotiating JHA work programmes, the institutional interests of interior ministries and the 'goodness-of-fit' of potential later laws with national practice will therefore be less prevalent in the minds of negotiators than at JHA Council level. Framing discussions exclusively in policy-oriented terms, they may therefore endorse initiatives with institutional implications that interior ministry officials will be loathe to accept.

2.2 – KEY PLAYERS IN JHA COUNCIL AND EUROPEAN COUNCIL ACTION CHANNELS

Whilst the potential exists for reframing processes to lead to the sidelining of JHA Council interests in final JHA work programme negotiations at summit level, the likelihood of this occurring will primarily depend on institutional factors. The action channels at Member State level and at European level through which JHA work programmes are prepared will therefore be analysed in order to determine which political actors will dominate frame competition and impose their preferred agendas prior to and during European Council summits.

It will be argued that at both levels, action channels empower actors likely to encourage the framing of debates in the European Council in terms that will disrupt the preferred approach of the JHA Council. Analysis will focus first on the Member State level, where the process of national position formulation prior to JHA Councils and European Councils will be compared. Thereafter, attention will shift to the European level. The Commission and Council Presidency will be highlighted as two actors who, to the potential detriment of the JHA Council, are ‘hooked in’ to relevant action channels.

2.2.1 Governmental Politics and National Position Formulation

All EU Member State governments possess central coordinating bodies, often within foreign ministries, which mediate between internal actors to ensure that coherent ‘national positions’ are formulated on each policy issue prior to Council negotiations (Hayes-Renshaw & Wallace 2006:230). However, working on the assumption that governments comprise multiple actors, the efficiency of such bodies can be questioned.

In the large majority of Member States, interior ministries are powerful players with a clear interest in immigration and asylum questions. Combined with the GAERC’s lack of interest in migration, this ensures that generally, national position formulation on immigration questions for the JHA Council is dominated by the European secretariats of interior ministries. Interviewees suggest that this dominance is reinforced by the secondment of national JHA officials to Member State permanent representations in Brussels, which ensures that interior ministries have ‘a man on the ground’ at all times.

In contrast, prior to European Council negotiations, central coordinating bodies and PM’s offices are more active, consulting with interested ministries but ultimately formulating national positions under the relevant HSG’s supervision (Werts 2008:76; Hayes-Renshaw & Wallace:233). PM’s *sherpas* and national ambassadors to the EU are generally key players. As high-level officials enjoying close personal relations with HSG, both of these categories of official are unlikely to frame European migration policy cooperation exclusively in the terms JHA officials prefer. Although their complete exclusion is most unlikely, the potential for interior ministries to be sidelined from the national preference formation process prior to European Council summits therefore exists.

Of course, mechanisms for migration policy formulation and EU policy coordination vary between Member States, and depend also on broader institutional factors such as the power of sub-national actors and parliaments over central government. These claims will therefore be tested on the UK and Germany to demonstrate their relevance in two different institutional settings. Germany is selected as an 'extreme case' as its federal structure and tradition of sectoralised policymaking mean that action channels and power relationships alter significantly depending on which European policy venue a national position is being prepared for. The UK on the other hand is selected to demonstrate that despite an institutional set-up which is extremely conducive to efficient EU policy coordination, power relationships between migration policy actors alter in subtle yet significant ways prior to EU summits.

Germany

In Germany, efficient preference formation prior to EU-level negotiations has been described as 'almost impossible' (Hüttman 2006:43). In setting negotiating lines for individual Councils, 'leading' sectoral ministries have enormous influence, partly because of the constitutional principle of ministerial autonomy (*Ressortprinzip*). In addition, the complex committee system through which policy coordination occurs prevents serious inter-ministerial negotiation until issues reach the most senior levels of government.

The situation for the German Federal Interior Ministry (BMI) is doubly complicated by the requirement that it seek the assent of the interior ministers of the 16 *Länder* before laws in the JHA Council can be agreed (Bulmer et al. 2000:14). Therefore, while the German interior minister enjoys some freedom from other ministries in producing her negotiating line, her position will likely be a lowest

common denominator outcome of what the Länder will accept. Hence in the JHA Council, Germany is likely to defend minimalist positions dominated by the restrictionist preferences of interior ministries.

European Council preparations in Germany follow a less rigid procedure which introduces new dominant players. The Chancellery, which lacks the resources to engage in everyday EU policymaking, assumes the strategic coordination of summit preparations (Bulmer et al. 2000:15). The Chancellor herself has final authority in defining the country's national position and is not institutionally bound to seek Länder agreement as European Council conclusions are not legally binding documents. Provided she or her sherpas take an active interest in JHA work programme negotiations, the potential clearly exists for the BMI to be sidelined.

United Kingdom

Unlike Germany, the UK possesses an extremely centralised preference formation system which is generally recognised as one of Europe's most efficient (Hüttman 2007:39). EU policy is coordinated by the UK permanent representation in Brussels, the Foreign and Commonwealth Office (FCO), and the European Secretariat of the Cabinet Office, who engage with each other and with other government ministries in a cooperative spirit (Allen 2002:256). Nevertheless, even the efficient UK system permits inconsistencies in national positions to arise.

In preparing JHA Council negotiating lines, national positions are formulated on the basis of regular cross-Whitehall consultations. However, the Home Office is 'lead department' and interviewed UK government officials note that its preference for a security-oriented approach to migration is rarely challenged as other ministries are sensitive to the dominance of negative portrayals of immigrants and asylum

seekers in the UK's media sphere (Gibney 2008:157). This, combined with what practitioners have described as a 'persistent reluctance' among many Home Office officials to thinking in European terms, make the UK likely to defend, restrictionist, minimalist positions in the JHA Council.

Although European Council preparations are handled by a similar set of players, power relationships alter. The Home Office suggests a negotiating line, but under the PM's supervision, its priorities must be incorporated with other agendas and decisions made on which to prioritise. The PM's advisers and other actors responsible for central coordination of EU policy who will be less sensitive to the Home Office's institutional interests and more open to attempts by other national and EU-level actors to reframe JHA work programme negotiations gain in influence. In the words of the UK's former EU Permanent Representative Sir Stephen Wall, 'at European Council level where not everything can be pushed for and package deals must be made, the interests of the Home Office are no longer absolute'.

2.2.2 Action Channels at the European Level

The drafting of JHA work programmes at European level begins well before summits, and conforms to the same general procedure followed in drafting all European Council conclusions, with the majority of the final text being agreed prior to summits through negotiations between a complex network of actors. The JHA Council and its working groups are intimately involved in the preparatory process and will try to frame later debates in their preferred terms. However, both the procedure through which JHA work programmes are prepared at European level and the institutional venue of the European Council provide opportunities for JHA interests to be sidelined.

Responsibility for coordinating work programme preparations falls on the Member State holding the Council Presidency. In order to iron out potential disagreements as early as possible, the Presidency conducts negotiations at various levels of the Council of Ministers, and often conducts a *tour des capitales* or holds other bilateral meetings with Member State representatives (Hayes-Renshaw & Wallace 2006:178). It is responsible for drafting discussion papers which structure negotiations, as well as the final draft of the work programme submitted to the European Council. In the completion of these tasks it is assisted by both the Council Secretariat and the Commission.

Prior to procedural reforms introduced in 2002, the Presidency would only release the final draft of European Council conclusions on the morning of the last day of summits, and HSG would themselves negotiate and amend the final text. However, now draft conclusions are issued four weeks prior to summits and are subject to extensive negotiations within Council groups (de Schoutheete 2006:43). Practitioners agree that this ‘sea change’ has rendered it more difficult for the European Council to produce highly ambitious, political conclusions, both in the JHA area and in other fields, as objections to specific points of detail in conclusions can be more easily raised by bureaucrats in the Council than within summits. Nevertheless, *final responsibility* for preparing summit conclusions rests with Member State ambassadors in COREPER and foreign ministers in the GAERC who, as mentioned above, will defend national positions formulated with greater input from PMs and will potentially frame the issues negotiated in different terms to the JHA officials.

Furthermore, both under the new and old procedure, the Council Presidency and the Commission are ‘hooked’ into relevant action channels. Both are likely to interpret the stakes involved in work programme negotiations in a manner which can

distort the JHA Council's restrictionist, cautious approach. The interests and relative influence of these actors will now be explored.

i) The European Council as the Presidency's Showpiece

Council Presidencies can be expected to set the agenda for JHA work programmes in the most ambitious terms possible. Both rationalist and sociological institutionalist analyses of the Presidency as an institution suggest this. The former highlight the reputational gains Presidencies enjoy if successful in brokering high-level agreements which are perceived to further the 'European interest'. The latter identify a strong 'effectiveness norm' which all Presidencies are expected to comply with (Elgström & Tallberg 2003). As Wallace & Hayes-Renshaw note, 'fairly or unfairly, the success or otherwise of European Council meetings has become one of the most important criteria by which Presidencies are now judged' (2006:178). The agreement of an ambitious JHA work programme under its chairmanship is therefore desirable for any Member State holding the Presidency.

As indicated above, the power provided by the institution of the Presidency to drive an ambitious agenda is significant. Although unable to force agreements on Member States, when faced with a situation where multiple potential successful outcomes to negotiations present themselves, the Presidency is able to select its preferred option as long it meets no outright objections (Elgström 2003). It can steer agreement in its preferred direction by harnessing its 'agenda-shaping powers' to frame the terms in which JHA work programmes and migration issues are conceptualised in discussion papers and by underlining or excluding certain issues from meeting agendas at all levels of the Council (Elgström 2003). And despite the 2002 reforms, the Presidency still has final responsibility for drafting texts, and

maintains much control in determining the level of involvement of the JHA Council in preparing the final drafts of work programmes.

Furthermore, the Presidency is one of the most influential actors within summit negotiations themselves (Tallberg 2008). The informational advantages which Presidents gain from bilateral meetings with Member States and preparing summits strengthen the negotiating positions of even small-state Presidencies.

Although Presidencies can safely be expected to be ambitious, the migration policy frames on which they operate will vary greatly between Member States. It must indeed be underlined that due to the power it possesses, the preferences of a Presidency make it the *key variable* in determining which political actors are successful in ensuring their preferred agendas dominate the final content of JHA work programmes. Who a Presidency talks to and listens to will be defined by the political priorities of its government, and will greatly influence the relative power of political actors in the action channels structuring final agreement at European Council level.

Therefore, the Presidency is likely to encourage a high level of ambition in JHA work programme preparations. However whether JHA interests are actually excluded depends on the priorities of the Presidency of the day, and whether it structures action channels so as to maximise the influence of the JHA Council or of other actors such as the HSG.

ii) The European Commission

The Commission potentially enjoys a significant amount of influence over JHA work programme content. Although its bargaining power is relatively weak (Tallberg 2008), as an independent institution, it is able to propose its own initiatives

both at the preparatory stage and in European Council negotiations. It also enjoys privileged access to the Presidency, and can influence the terms in which the latter chooses to frame relevant issues in negotiations and discussion papers. Practitioners unanimously agree that it is an ‘absolutely normal habit’ for Presidencies to work in full cooperation with the Commission in preparing all migration-related European Council conclusions. Two primary reasons exist for this.

Firstly, because the Commission is not legally bound to follow up on European Council conclusions and enjoys the exclusive right of initiative in the area of immigration and asylum, its support is necessary for JHA work programmes to be turned into law. If a Presidency wishes to maximise its agenda-setting powers and ensure later Commission proposals conform to European Council demands, it will therefore ensure the Commission’s preferences are considered in drafts (Elgström 2003:25).

Secondly, like the Council Secretariat, the Commission enjoys important leadership resources thanks to its expertise and its institutional memory (Beach 2004; Elgström 2001). JHA work programme preparations require negotiations between 27 Member States on a multitude of technical issues, and the probability that the Presidency will lack expertise or information on other Member States’ preferences is high. In this context, instrumental leadership by supranational institutions can prove vital in overcoming information deficiencies to provide the best possible outcome for all parties (Beach 2004:411). As a senior Commission official notes, ‘we are the stable, continuous factor, we have the institutional memory, and we have the knowledge about the perspectives’.

Much of the literature argues that the Commission has largely lost this ‘honest broker’ role to the Council Secretariat (Beach 2004:412; Hayes-Renshaw & Wallace

2006). However, interviewees suggest that the Commission has always been a trusted interlocutor of Member States in the preparation of JHA work programmes, and recent evidence suggests that its influence in this regard has grown in line with its increasing overall importance as a player in the EU migration policy field (Geddes 2008:6). In June 2009 the Commission issued a Communication outlining its own vision for the future of JHA policy in preparation of the Stockholm Programme (CEC 2009). According to practitioners, this Communication was produced at the specific request of the Swedish Presidency which committed to using it as a basis for later Council discussions, thereby *voluntarily* granting the Commission significant agenda setting powers over the next JHA work programme.

Hence the Commission is potentially an influential actor in drafting JHA work programmes, but what preferences will it defend, and which migration policy frames is it likely to employ? Quite clearly, as it is mandated to do by the Treaties, it will push for a high level of ambition in JHA work programmes both to expand its own powers and to transfer more competences from the national to the supranational level, thereby further the European project (Uçarer 2001).

In terms of its migration policy preferences, whilst the Commission has supported control-oriented policies desired by the JHA Council when necessary, it prefers 'a broader and more liberal comprehensive agenda' (Lavenex 2006:338). Jean-Louis de Brouwer, director at the Commission's DG for Justice, Freedom and Security (JFS), notes that the Commission's preference for comprehensive migration policies can be partly explained by the fact that it is a 'smaller, more integrated structure' than Member State governments, making it better able to ensure effective intra-DG migration policy coordination. The Commission has indeed become an

important source of innovative thinking on bridging the migration and development agendas through initiatives such as circular migration programmes (Geddes 2009).

Sociological institutionalist studies have explained the Commission's tendency towards rights-oriented migration policies by highlighting both the liberal preferences of Commission officials and the close ties between the staff of DG JFS and Brussels-based migrant rights campaigners (Favell 1998; Guiraudon 2003). The Commission has an interest in cooperating with the growing Brussels NGO community as it provides an alternative legitimising support base to national governments for its policies (Favell 1998:5). The links between Commission officials and NGO staff are surprisingly tight, with interviewees noting that friendships and career switches between the two are not uncommon. Hence migrant rights campaigners can enjoy indirect access to the action channels through which summit preparations flow thanks to their influence on the Commission.

To sum up, the Commission therefore enjoys significant leadership resources and provided the Presidency cooperates with it (which for reasons outlined above it is likely to), it can significantly impact on frame competition processes to the detriment of the JHA Council. As will be demonstrated in the following case study of the October 1999 Tampere European Council, if the Presidency and Commission see eye to eye and are prepared to sideline JHA Council interests, significant results may be achieved.

PART 3 – A CASE STUDY OF THE ADOPTION OF THE 1999 ‘TAMPERE MILESTONES’

According to the hypothesis formulated above, contextual conditions permitting, the action channels and institutions through which European Council JHA work programmes are prepared and adopted will empower political actors likely to distort the preferred agenda of the JHA Council, with final policy outputs advocating a more rights-oriented, comprehensive and ambitious approach to EU migration policy than the latter prefers. This claim will now be tested on a case study of the 1999 Tampere European Council.

Held only months after the entry into force of the Amsterdam Treaty, the Tampere summit was devoted exclusively to JHA issues and saw the adoption of the first JHA work programme (the Tampere Milestones). The Milestones aimed to fire the starting gun for the creation of the AFSJ by setting the necessary political and strategic guidelines at the level of HSG.

Tampere is well-suited to a case study. Most importantly, it was widely viewed as a success, hence setting an important *precedent* which, according to the interviewed Commission officials, has inspired both the Dutch and Swedish Presidencies in structuring the preparations and negotiations of the Hague and Stockholm Programmes. Furthermore, a sufficient amount of time has elapsed since the summit occurred for access to source material such as sensitive Council documents to be granted. Although Tampere was unusual in that it ostensibly focused only on JHA issues, such thematic summits differ little from ‘normal’ European Council meetings in terms of modes of functioning (de Schoutheete & Wallace 2002:3). The agenda of thematic summits also invariably becomes encumbered with

other issues, and at Tampere enlargement and the EU Fundamental Rights Charter were among extra topics crammed into the agenda.

Results of the Summit

The Tampere Milestones were remarkable both for their ambition and for their policy and normative orientations, which expanded significantly on the Amsterdam Treaty (Monar 2001a:291). For the first time, the development of a ‘comprehensive approach’ to migration was placed at the top of the policy agenda (Lavenex 2006:335). This was to require ‘combating poverty, improving living conditions and job opportunities, preventing conflicts...and ensuring respect for human rights’ in migrant source and transit countries (European Council 1999:741). The objectives of creating a Common European Asylum System (CEAS) and improving the legal status of the EU’s third country nationals were also set (Groenendijk 2001:233; Boccardi 2002). Furthermore, the Commission saw its competences grow, receiving the responsibility to maintain the JHA scoreboard and effectively being granted the sole right of initiative for CEAS legislation (Stetter 2007:81).

In terms of normative orientations, at Tampere HSG called for the EU to be ‘fully committed to the obligations of the Geneva Refugee Convention and other relevant human rights instruments’, notably stating that ‘it would be in contradiction with Europe’s traditions’ to deny entry to ‘those whose circumstances lead them justifiably to seek access to our territory’ (European Council 1999:739-740). For the first time, an emphatically rights-oriented discourse was introduced to EU asylum and immigration policy (Monar 2000:6;Boccardi 2002;Lavenex 2001).

The academic literature contains extensive analyses of the Tampere Milestones’ policy implications, but few attempts have been made to explain the

summit's remarkable outcome. On the basis of extensive archival evidence and interviews with key figures in the summit's preparations, the following analysis will attempt to address this shortcoming. Firstly, the conflicting agendas of the main actors (Presidency, Commission, Council Secretariat, migrant rights campaigners and JHA Council) who engaged in frame competition prior to the European Council meeting itself will be presented. Thereafter, analysis will focus on how relevant action channels structured their influence over the final outcome.

3.1 INTERESTS AND PREFERRED FRAMES OF KEY ACTORS

Presidency – Tampere fell during the first ever Finnish EU Presidency. The Presidency in general and the Tampere summit in particular were regarded by Finland as an EU ‘entrance exam’ and an opportunity to build a reputation as a reliable and efficient European partner (Tiilkainen 2003:104). The Finns therefore prioritised furthering the European interest over fulfilling issue-specific political objectives (Elgström & Tallberg 2003:194). As Finland’s permanent representative stated in an interview on the preparations for Tampere, ‘we have... felt the obligation as Presidency to be ambitious. It is the task of a Presidency to test ideas.’ (House of Lords 1999:56).

In order to encourage HSG to adopt a positive approach to negotiations, the Presidency framed Tampere primarily in terms of its potential to foster support among citizens for the AFSJ and demonstrate the ‘added-value’ EU action could provide in addressing high profile issues such as immigration and asylum. As early as March 1999, Finnish PM Lipponen sent a joint letter with the then EU President German Chancellor Schröder, emphasising ‘the need for Tampere to reach significant political

results in order to meet the growing legitimate expectations of our citizens' (House of Lords 1999:1).

The Presidency therefore wanted the summit to produce an ambitious set of JHA policy initiatives, and present these not as a 'shopping list' as in the Amsterdam Treaty, but as a comprehensive project using understandable language. Additionally, in line with Finland's more rights-oriented approach to immigration issues, it wished to avoid securitarian migration policy frames. Furthermore, it recognised that 'the overall objective of creating an AFSJ calls for an in-depth analysis and discussion on how the Union's action should be prioritised', and wished for a strategy to be set to ensure 'coherence, consistency and continuity' between the JHA agenda and external relations field in particular (Council 1999a:1).

A paper presented to JHA Council working groups demonstrates how the Presidency wished these ambitions to be realised. It formulated the general goal of 'an integrated, coherent, cross-pillar policy on immigration and asylum' (Council 1999b:2). The implementation of several large-scale policy initiatives was proposed, including turning the EU into a single 'asylum area', establishing 'a common approach for access to nationality and citizenship', and a developing a coherent strategy on illegal immigration (Council 1999b:3-6). In terms of normative orientations, the Finns argued aims should be guaranteeing 'full protection of displaced persons beyond the existing provisions of the Geneva Convention' and ensuring that combating illegal immigration should not 'lead to undermining the functioning of the asylum system' by denying access to EU territory (Council 1999b:5)

Commission – The Commission shared the Finnish Presidency’s goal of engaging citizens support for the AFSJ through ambitious conclusions, and its preference for a rights-oriented, comprehensive approach to migration. In a letter to Lipponen, Commission President Prodi requested that the Milestones ‘ensure a proper contribution from all the many ministries who can play a part in constructing an integrated immigration policy’ (Prodi 1999a:2). Furthermore, the Commission introduced several proposals which aimed both to enhance its own competences and corresponded to the Finns’ desire for demonstrating political resolve to citizens. Among these was Commissioner Vitorino’s idea for a scoreboard recording progress towards fulfilling JHA work programmes as a demonstration of commitment by HSG.

Council Secretariat – Although relatively neutral in terms of migration policy preferences, the Council Secretariat feared losing influence in the wake of the communitarisation of asylum and immigration policy. It therefore engaged in intense institutional rivalry with the Commission. As a senior Commission official notes, ‘even though the Council Secretariat did not formally have the right of initiative, it saw itself as being the brain behind the screen in preparing Member State initiatives’.

Migrant Rights Campaigners – The Tampere summit attracted a significant amount of attention from NGOs and international organisations concerned with protection of the rights of third country nationals, particularly those interested in refugee issues as asylum was expected to be high on the agenda. Campaigners were successful in coordinating their efforts and demands, unanimously calling the European Council to reaffirm its attachment to human rights instruments and ‘stake out the political space within which a protection-based approach to asylum could be anchored’ by

advocating basing future EU asylum law on a generous interpretation of the Geneva Convention (UNHCR 1999:1; ECRE 2000). The European Council on Refugees and Exiles (ECRE) which comprises almost 70 NGOs produced a proactive policy paper on which all its members based their lobbying in national capitals (ECRE 2000).

The timing of the Tampere summit proved advantageous to NGOs, as it occurred shortly after the Kosovo crisis during which Member States' decision to voluntarily accept intakes of Kosovar refugees had met a positive reception from European citizens and media. NGOs could point to this as proof of 'the general public's sense of solidarity with regards to refugees' (ECRE 2000:7) and hence challenge the appropriateness of control-oriented approaches to asylum in formulating the Tampere Milestones.

JHA Council – Although sensitive to the Finnish Presidency's aim of engaging citizens with the AFSJ, the JHA Council preferred a markedly different approach. The rights-based measures it proposed to avoid public accusations of 'Fortress Europe' went only so far as to support improving the legal status of legally residing third country nationals, which corresponded to interior ministries' aim of promoting migrant integration (Statewatch 1999:2). With the notable exceptions of the Netherlands and Sweden, the JHA Council attempted to frame debates on the Tampere Milestones in restrictionist terms, arguing that HSG should respond to Europe's citizens' desire for greater security rather than introducing liberal policies. As a Spanish government position paper argued, 'the will of the people must not be forced' in encouraging states to welcome displaced persons (1999:3).

The JHA Council therefore wished the Tampere Milestones to place the fight against illegal migration at the top of the political agenda. While a joint German-

French-UK paper which found broad support at a September 1999 JHA Council meeting in Turku trumpeted the benefits of immigration, it simultaneously advocated setting 'common procedures for withdrawal of residence permits and expulsion' and made no mention of adopting a more inclusive interpretation of the Geneva Convention in future EU asylum legislation (Statewatch 1999:2). Indeed, on this question, at a press conference in Tampere UK Home Secretary Jack Straw stated "our courts adopted a wide definition, I want a narrow definition" (Statewatch 1999:3).

In areas not corresponding to its control-oriented priorities, the JHA Council was reticent to agree to ambitious new policy initiatives. The development of 'cross-pillar' JHA policies was welcomed in JHA working group discussions, but only 'agreements with third countries on readmission and illegal employment' were identified as priorities for external action on migration (Council 1999c:2). Other ambitious Presidency proposals outlined above in areas such as asylum were widely greeted with 'scepticism' (Council 1999c:2). Hence the JHA Council's preferred approach differed markedly to that of other actors creating the potential for significant frame competition in setting the Tampere agenda.

3.2 ACTION CHANNELS STRUCTURING RELATIVE INFLUENCE ON THE TAMPERE EUROPEAN COUNCIL

As the Tampere European Council occurred prior to the introduction of the 2002 changes to European Council rules of procedure, the Finnish Presidency enjoyed much freedom in preparing the summit and drafting texts. It therefore structured action channels so as to favour the influence of those actors who shared its preferences. 95% of preparations were conducted through the so-called ‘Tampere Group’, which consisted of senior Finnish officials close to their PM, and members of both the Commission and the Council Secretariat (House of Lords 1999:46). The Tampere Group’s members and its preferred interlocutors subsequently enjoyed great influence over the policy formulation process.

Privileged Influence to Action Channels for Rights Campaigners

Both the Finnish Presidency and the Commission adopted an open approach to NGO and UN lobbying in determining how best to push a rights-based approach to immigration and asylum in the Tampere Milestones. UNHCR, which is regarded by the interviewed government representatives as a significant source of expertise, was a major player in Tampere’s preparations. UNHCR officials collaborated closely with the Tampere Group in Brussels, and according to UNHCR’s EU policy officer of the time, much of the rights-related language in the Tampere Milestones such as the call to base EU asylum law on a ‘full and inclusive’ definition of a refugee was indeed ‘UNHCR’s own’ (European Council 1999:741).

ECRE also lobbied EU officials in Brussels and met regularly with Commission officials. Its affiliate in Helsinki, the Finnish Refugee Advice Centre,

was particularly influential as it was able to capitalise on direct informal connections to the Finnish PM's office.

Dominance of the Tampere Group over JHA ministers

Fundamental to the result of the Tampere summit were the conscious attempts by the Finnish Presidency to block JHA ministers' efforts to set the Tampere agenda. Following months of discussions in the JHA working groups, the informal JHA Council of September 1999 produced a unambitious draft paper which it hoped would form the basis of European Council negotiations. But according to former Tampere Group member Jean-Louis De Brouwer,, 'what the Finnish presidency did very wisely was to throw that paper in the dustbin, and start redrafting a more punchy, political paper which became the Tampere Milestones'.

The Presidency therefore used JHA Council discussions only as a 'testing ground' for its ideas. As the Finnish permanent representative told Members of the House of Lords, the feedback from JHA ministers was used only to locate the 'grey area' between what was 'as ambitious as possible, but not unrealistic' (House of Lords 1999:56). Final responsibility for preparing Tampere instead remained with foreign ministers in the GAERC, who were presented with several discussion papers on ensuring cross-sectoral coordination between the JHA and external relations agendas (Council 1999a).

The Presidency constructed action channels so as to prioritise bi-lateral contacts and negotiated primarily with contact points in the personal offices of HSG, so as not to let JHA ministers 'take the ball back into their field'. Former Tampere Group head Antti Peltomaki notes that to maximise contacts with their desired interlocutors, the Presidency conducted 'two-and-a-half *tours des capitales* at the

level of civil servants and one at the level of PMs'. In national capitals, interior ministers and their civil servants were consulted by HSG who lacked the necessary expertise on EU asylum and immigration policy to negotiate without assistance. However, the extent to which JHA preferences were re-incorporated through interest aggregation at the national level varied greatly. The Presidency requested HSG to 'look to the horizons and not stick to the old battle lines' of JHA ministers, which according to Peltomaki created 'significant internal tensions' within several national governments.

Structuring Agreement

HSG were receptive to the Finn's efforts to inspire ambition by framing the Tampere Milestones as a citizen-oriented initiative. However fault-lines emerged over where precisely that ambition should lie. Britain, Spain and France favoured forward-thinking conclusions in the area of judicial cooperation, while Germany and most other Member States wanted the emphasis on asylum and immigration. Paris expressed particularly staunch opposition to political commitments in the asylum field.

The main conflicts on policy content were settled in the final weeks before the summit with the Finns accepting to lower their ambitions but sticking to their goals of a European Asylum System and a comprehensive, cross-pillar migration strategy. A final Helsinki drafting session was held with the Commission offering significant input to the immigration and asylum content of the Tampere Milestones. It therefore remained for the European Council in Tampere to engage only in 'fine-tuning' of the conclusions by deciding on the detailed content of political initiatives and the

appropriate level of commitment to human rights and the Geneva Convention in the language used.

The Tampere European Council - HSG under the spotlight

As noted above, the level of publicity within which a policy venue operates can alter the framing devices which its participants recognise as appropriate. The huge public interest which Tampere attracted (over 1200 journalists attended) and the nature of the public debate in the run-up to the summit did indeed significantly affect final policy output. Through targeted and effective campaigning, NGOs and rights campaigners had taken maximum advantage of the ‘Kosovo effect’ during summit preparations, monopolising the public debate. Almost all major newspaper reports in the run-up to the summit therefore mentioned the danger of Tampere contributing to the erection of a ‘Fortress Europe’ (e.g. Guardian 1999; FAZ 1999).

To maximise their influence, rights campaigners under the leadership of ECRE organised a ‘parallel summit’ held only a few hundred metres from the European Council in Tampere on the same days. An impressive list of speakers attended, including Finnish foreign minister Tarja Halonen who was presented with a message to safeguard the right to asylum which she delivered directly to the European Council (ECRE 2000). With journalists not allowed access to European Council proceedings, ECRE attracted much media attention.

The effect of NGO lobbying and the ECRE parallel summit on the framing process was to effectively scupper JHA ministers’ efforts to present the framing of migration in security-oriented terms and HSG’s primary ambition of using Tampere to engage citizens with the EU as a political project as compatible. As Chirac reminded his colleagues in the summit, its priority was to ‘uphold the idea of a Europe

which finally takes root in the hearts of the people' (Le Temps 1999). Overly security-oriented European Council conclusions would have resulted in newspaper reports on the summit filled with negative quotes condemning 'Fortress Europe' from the army of NGO workers ECRE had assembled to address journalists. As ECRE's summit organiser Friso Roscam Abbing argues, 'we were an unavoidable factor... we changed the climate ensuring that governments could not take a too repressive tone'. Indeed, Prodi warned the European Council that 'there will be no shortage of commentators waiting eagerly to write about Tampere as the "repressive summit"' (Prodi 1999b).

With all Member States except the UK and Netherlands having excluded JHA ministers from their delegations, the summit's contextual setting was nigh-on perfect for adoption of the type of conclusions which the Tampere Group preferred. Indeed, while the affirmations of support for a comprehensive approach to migration sensitive to human rights, development and political issues contained in the Tampere Milestones have been dismissed as 'window-dressing' (FECL 1999), both the Finnish Presidency and Commission were instrumental in maximising the context to realise their sincere preference for such an approach. Lipponen successfully defended the conclusion's language against objections from France and Germany.

Regarding the Tampere Milestone's immigration and asylum policy content, negotiations within the European Council were 'relatively conflict free' (European Report 1999). Following a final late-night drafting session after the first day of discussions, the Presidency finally released its draft on the morning of the second day, minimising the potential for disagreements to be voiced. France succeeded in changing the name of the future European Asylum System, ensuring the prefix 'Single' was replaced with the less ambitious 'Common'. Interviews suggest however

that generally the European Council engaged only in ‘fine-tuning’ of the Presidency draft.

At the final press conferences, PMs attempted to maximise the PR-effect of their agreement. Chirac hailed a ‘historic agreement’, while Schröder claimed the AFSJ and Tampere Milestones were ‘a similarly ambitious project to the creation of a European single market and monetary union’ (Süddeutsche Zeitung 1999). Among NGO workers a ‘too-good-to-be-true’ sentiment prevailed thanks to pleasant surprise at the summit’s outcome. The HSG therefore succeeded in neutralising potential criticisms and achieved their objective of dominating headlines for positive rather than negative reasons.

CONCLUSION

This paper has argued that the adoption of JHA work programmes provides an opportunity for control over EU immigration and asylum policy to be briefly wrestled away from ‘policemen’ in the JHA Council at a vital moment in the policy process. Despite the 2002 amendments to European Council preparations, the institutional factors which rendered the Tampere agreement possible remain largely prevalent, and the meeting set an important precedent for continuing HSG involvement in the JHA area.

The potential mismatch between European Council and JHA Council priorities can therefore offer some explanation for slow JHA scoreboard completion. Furthermore, it provides new evidence of the European Council’s importance as a ‘motor of integration’. Even if some European Council members may not sincerely wish for ambitious, rights-oriented immigration and asylum work programmes to become reality, by accepting them they give the Commission, NGOs and integrationist Member States the political space required to push the JHA Council towards further communitarisation.

The findings presented here also provide further evidence of the considerable power enjoyed by Council Presidencies in preparing summits. Indeed, the relative influence of JHA ministers on work programme negotiations will depend to a large extent on who the Presidency decides to consult and its preferred migration policy frames.

Finally, this study has demonstrated the potential of framing studies to improve our understanding of actor’s preferences in negotiations. While lacking the parsimony of rationalist approaches such as liberal intergovernmentalism, framing is both more policy-sensitive and actor-oriented. When combined with a sensitivity to

the institutional rules which structure political conflicts, it is ideally suited for the study of political conflict within the Council structures and the European Council (Daviter 2007).

Appendix: List of Interviewees

The titles or functions of the interviewees are given as they are relevant for the project:

Jean-Louis De Brouwer, Head of Unit/Director for Immigration and Asylum at European Commission DG for JFS (1999-), Commission representative in 'Tampere Group', 14 July 2008 and 13 July 2009

Phil Douglas, Head of European Asylum Policy Unit at UK Home Office (2000-2003), First Secretary for Migration at UK Representation to the EU (2006-2009), 15 July 2008

Judith Kumin, Head of UNHCR Brussels Office (2004-), 31 July 2008

Roger Liddle, EU Adviser to UK PM Tony Blair (1997-2004), 28 March 2008

Annti Peltomaki, Head of EU Secretariat in office of Finnish PM (1998-2006) and member of 'Tampere Group', 19 August 2008

Friso Roscam Abbing, ECRE Head of EU Affairs (1994-2000), member of asylum policy unit within DG JFS of European Commission (2000-2004), Cabinet Member of EU Commissioner for Justice, Freedom and Security (2004-), 15 July 2008

Kristina Stenman, Director of Finnish Refugee Advice Centre during Tampere European Council, 05 August 2008

Anniki Vanamo-Alho, JHA Adviser at Finnish Representation to the EU (2006-), 15 July 2008

Johannes van der Klaauw, Head of EU Affairs at UNHCR Brussels Office during Tampere European Council, 4 July 2008

Sir Stephen Wall, UK Permanent Representative to the EU (1995-2000), EU policy adviser to Tony Blair (2000-2004), 17 July 2008

Bibliography

- Ackers, D. (2005), 'The Negotiations on the Asylum Procedures Directive', in:
European Journal of Migration and Law, no. 7, pp. 1-33
- Allen, D. (2002), 'The United Kingdom', in: Hocking, B. Spence, D. (eds.),
Foreign Ministries in the European Union: Integrating Diplomats,
Basingstoke: Palgrave MacMillan, pp. 250-272
- Allison, G. & Zelikow, P. (1999), *Essence of Decision: explaining the Cuban
Missile Crisis*, New York, Harlow: Longman
- Baumgartner, F. and Jones, B. (1993) *Agendas and Instability in American
Politics*, Chicago: Chicago University Press
- Beach, D. (2004), 'The unseen hand in treaty reform negotiations: the role and
influence of the Council Secretariat', in: *Journal of European Public Policy*,
vol. 11, no.3, pp. 408-439
- Boccardi, I. (2002), *Europe and refugees: towards an EU asylum policy*, The
Hauge; London; Kluwer Law International
- Boswell, C. (2007), 'Migration Control in Europe After 9/11: Explaining the
Absence of Securitization', in: *Journal of Common Market Studies*, vol. 45,
no. 3, pp. 589-610
- Bulmer et al (2000), *Das Entscheidungs- und Koordinationssystem deutscher
Europapolitik: Hindernis für eine neue Politik?*, at: [http://www.uni-
koeln.de/wiso-
fak/powi/wessels/DE/PUBLIKATIONEN/texte/entscheidung.pdf](http://www.uni-koeln.de/wiso-fak/powi/wessels/DE/PUBLIKATIONEN/texte/entscheidung.pdf) (accessed
12 August 2008)

- Commission of the European Communities (CEC) (2006), *Communication from the Commission to the Council and the Parliament - Implementing the Hague Programme: The Way Forward*, COM(2006)331 final, Brussels, 28 June 2006
- CEC (2009), *Communication from the Commission to the European Parliament and the Council – An area of freedom, security and justice serving the citizen*, COM(2009) 262/4, Brussels, 10 June 2009
- Collett, E. (2008), *The EU Immigration Pact – from Hague to Stockholm, via Paris*, European Policy Centre, Policy Brief, October 2008
- Council of the European Union (1999a), *Enhanced and more coherent external action of the Union in the field of JHA*, 11617/1/99, 6 October 1999
- Council of the European Union (1999b), *Note from the Finnish Presidency to the Strategic Committee on Immigration, Frontiers and Asylum: ‘Preparation of the European Council of Tampere-Asylum and Immigration Issues’*, 10015/99 LIMITE ASIM 31, Brussels, 9 July 1999
- Council of the European Union (1999c), *Outcome Of Proceedings, Strategic Committee on Immigration, Frontiers and Asylum, 26 July 1999*, 11962/99 LIMITE ASIM 43, Brussels, 13 December 1999
- Council of the European Union (2004), *Brussels European Council 4/5 November 2004 – Presidency Conclusions*, 14292/1/04 Rev 1
- Daviter, F. (2007), 'Policy Framing In The European Union', in: *Journal of European Public Policy*, vol.14, no. 4, pp. 654-666
- de Schoutheete, P. (2006), 'The European Council', in: Peterson, J., Shackleton, M. (eds.), *The Institutions of the European Union*, Oxford: OUP

de Schoutheete, P. & Wallace, H. (2002), *The European Council*, Paris: Notre Europe

ECRE (2000), *The ECRE Tampere Dossier - A Compilation of Non and Inter-Governmental Observations on the Special Meeting of the European Council on the Establishment of an Area of Freedom, Security and Justice, 15/16 October 1999, Tampere, Finland and a selection of Presentations made at the "ECRE EU Tampere Summit Parallel Meeting"*, at: http://www.ecre.org/resources/responses_recommendations/329 (accessed 13 June 2008)

Elgström, O. (2003), "The Honest Broker"? The Council Presidency as a mediator', in: Elgström, Ole (ed.), *European Council Presidencies: A Comparative Perspective*, London; New York; Routledge, pp. 87-103

Elgström, O. & Tallberg, J. (2003), 'Conclusion: rationalist and sociological perspectives on the Council Presidency', in: Elgström, Ole (ed.), *European Council Presidencies: A Comparative Perspective*, London; New York; Routledge, pp. 87-103

European Council (1999), 'Tampere European Council Presidency Conclusions 15 and 16 October 1999', in: *International Journal of Refugee Law*, vol. 11, no. 4, pp. 738-752

European Report (1999), 'Justice and Home Affairs: Member States Urge Commission To Make Full Use Of Options Offered By Treaty', in: *European Report*, 20.10.1999

Favell, A. (1998), 'The Europeanisation of immigration politics', in: *European Integration Online Papers*, vol. 2, no. 10, at: <http://eiop.or.at/eiop/texte/1998-010a.htm> (accessed 1 August 2008)

- Fortress Europe Circular Letter (FECL) (1999), 'Tampere Summit: An Exercise in Window Dressing', in: *FECL*, no. 59, December 1999
- Frankfurter Allgemeine Zeitung (FAZ) (1999), 'Wird das hässliche Bild der Festung Europa zu sehen sein?', in: *FAZ*, 16 October 1999
- Geddes, A. (2008), *Immigration and European Integration – Beyond Fortress Europe?*, Manchester: Manchester University Press
- Geddes, A. (2009), 'Migration as Foreign Policy? The External Dimension of EU Action on Migration and Asylum', in *Swedish Institute for European Policy Studies*, Report No. 2, April 2009
- Gibney, M. (2008), 'Asylum and the Expansion of Deportation in the United Kingdom', in: *Government and Opposition*, vol. 43, n. 2
- Gomez & Peterson (2001), 'The EU's Impossibly Busy Foreign Ministers: "No One is in Control"', in: *European Foreign Affairs Review*, no. 6, pp. 53-74
- Guild, Elspeth (2005). 'Changing the Ground Rules. Reframing Immigration, Asylum and Security in the European Union', in Verdun, A. and Osvaldo, C. (eds.), *Institutional and Policy-making Challenges to the European Union in the Wake of Eastern Enlargement*, Manchester: Manchester University Press, pp. 134–150
- Guiraudon, V. (2000), 'European Integration and Migration Policy: Vertical Policy-Making as Venue Shopping', in *Journal of Common Market Studies*, vol. 38, no. 2, pp. 251-271
- Guiraudon, V. (2003), 'The Constitution of a European immigration policy domain: a political sociology approach', in: *Journal of European Public Policy*, vol. 10, no. 2, pp. 263-282

- Guardian (1999), 'Security First Say the Bureaucrats; The Law and Order Summit Looks Set to Trample on Civil Liberties', in: *The Guardian*, July 19 1999, p. 16
- Groenendijk, K. (2001), 'Security of Residence and Access to Free Movement for Settled Third Country Nationals under Community Law', in: Guild, E., and Harlow, C., (eds.), *Implementing Amsterdam – Immigration and Asylum Rights in EC Law*, Oxford – Portland: Hart Publishing, pp. 225-239
- House of Lords (1999), *Prospects for the Special Tampere European Council - Minutes of Evidence Taken Before the European Communities Subcommittee*, HL 19th report, 27 July 1999
- Huysmans, J. (2000) 'The EU and the securitization of migration', *Journal of Common Market Studies*, vol. 38, no. 5,; 751–78.
- Hüttman, M. G. (2007), 'Die Koordination der Deutschen Europapolitik', in: *Aus Politik und Zeitgeschichte*, no. 10, pp. 39-45
- Knill, C. (1998), 'European Policies: The Impact of National Administrative Traditions', in: *Journal of Public Policy*, vol. 18, no. 1, pp. 1-28
- Lahav, G. (2004), *Immigration and Politics in the New Europe; Reinventing Borders*, Cambridge: Cambridge University Press
- Lavenex, S. (2001), 'The Europeanization of Refugee Policies: Normative Challenges and Institutional Legacies', in: *Journal of Common Market Studies*, vol. 39, no. 5, pp. 851-874
- Lavenex, S. (2006), 'Shifting Up and Out: The Foreign Policy of European Immigration Control', in: *West European Politics*, vol. 29, no. 2, pp. 329-350

- Le Temps (1999), 'Les Quinze planchent sur une politique unifiée d'asile et d'immigration', in : *Le Temps*, 16 October 1999
- Moravcsik, A. (1998), *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*, London; UCL Press
- Lavenex, S. & Wallace, W. (2005), 'Justice and Home Affairs', in: Wallace & Wallace & Pollack (eds.), *Policy-Making in the European Union*, Oxford: OUP
- Monar, J. (2000), *Justice and Home Affairs in a Wider Europe: The Dynamics of Inclusion and Exclusion*, ESRC 'One Europe or Several?' Programme Working Paper 07/00
- Monar, J. (2001a), 'Justice and Home Affairs after Amsterdam', in: Monar, J. & Wessels, W. (eds.), *The European Union after the Treaty of Amsterdam*, London and New York: Continuum, pp. 267-296
- Monar, J. (2001b), 'The Dynamics of Justice and Home Affairs: Laboratories, Driving Factors, and Costs', in: *Journal of Common Market Studies*, vol. 39, no. 4, pp. 747-764
- Prodi, R. (1999a), *Letter from Romano Prodi to Paavo Lipponen on the Tampere European Council*, 23 September 1999
- Prodi, R. (1999b), *Commission President, Romano Prodi, at the Special Meeting of the European Council, Tampere*, available at: <http://presidency.finland.fi/default.html> (accessed 25 August 2008)
- Redmond, J. (1996), 'From "European Community Summit" to "European Council": The Development and Role of Summitry in the European Union', in: Dunn, I. (ed.), *Diplomacy at the highest level: the evolution of international summitry*, Basingstoke: Macmillan

- Spanish Government (1999), *A Spanish Contribution to the Preparation of the European Council in Tampere*, 19 July 1999
- Statewatch (1999), 'The Story of Tampere: An Undemocratic Process Excluding Civil Society', in: *Statewatch Bulletin*, vol. 9, no. 5, pp. 1-3
- Stetter, S. (2007), *EU Foreign and Interior Policies*, London: Routledge
- Steinbruner, J. (1974), *The Cybernetic Theory of Decision: New Dimensions of Political Analysis*, Princeton: Princeton University Press
- Süddeutsche Zeitung (1999), 'Ein erster Schritt auf einem langen Weg', in: *Süddeutsche Zeitung*, 18 October 1999
- Tallberg (2008), 'Bargaining Power in the European Council', in: *Journal of Common Market Studies*, Vol. 46, No. 3, pp. 685-708
- Tiilikainen, T. (2003), 'The Finnish Presidency of 1999: pragmatism and the promotion of Finland's position in Europe', in: Elgström, O. (ed.), *European Council Presidencies: A Comparative Perspective*, London; New York; Routledge, pp. 104-119
- Ucarer, E: (2001), 'From the Sidelines to Center Stage: Sidekick No More? The European Commission in Justice and Home Affairs', in: *European Integration Online Papers*, vol. 5, no. 5, at: <http://eiop.or.at/eiop/texte/2001-005a.htm> (accessed 12 August 2008)
- UNHCR (1999), *Setting the European Asylum Agenda: UNHCR Recommendations to the Tampere Summit*, 23 July 1999
- Weiss, J.A. (1989) 'The powers of problem definition: the case of government paperwork', in: *Policy Sciences*, vol. 22, no.2, pp. 97-121
- Werts, J. (2008), *The European Council*, London: John Harper Publishing