

Antrag auf Seed-Money für das Forschungsprojekt: „Contesting the European Border Regime: How, Where and When Do Good Arguments Matter?“

1. Antragsteller

Prof. Dr. Jürgen Neyer

2. Beantragte Gesamtsumme

Application for a total amount of 102,512 € for the time period of one year.

3. Zusammenfassung von maximal 1.500 Zeichen (inkl. Leerzeichen)

The literature on asylum and migration is strongly inconsistent in assessing whether the EU ensures full respect for fundamental rights and freedoms not only for its citizens but also for refugees and asylum seekers. Whilst some argue that the EU tends to securitize its external frontiers, thus being inconsistent with its norms and values of democracy and human rights, others claim that it promotes progressively higher standards applicable to asylum seekers and refugees and greater liberalization of its asylum policy. The present approach aims at overcoming this inconsistency by conceptualizing the EU as a discourse-based multilevel governance-system in which cosmopolitan concerns resonate only at some levels of decision-making while protectionist concerns are dominant at others. We suggest that a major reason for the different degrees of responsiveness to cosmopolitan and protectionist arguments can be found in the institutional structure of the different layers of European governance and the different degrees of exposition to public scrutiny. The project will substantiate this argument by tracing the discursive institutional practices on various levels and detailing when, where and how justificatory practices matter in the legislation process. We will thus empirically assess the power of arguments and public contestation in the management of the European border regime.

4. Für die Drittmittelbeantragung vorgesehene Förderinstitution/en, Förderformate (Graduiertenkolleg, Forschergruppe, Verbundprojekt, Sonderforschungsbereich, Postdoc-Akademie etc.) und zu beantragende Fördersumme

For external funding we will apply at the Fritz Thyssen Foundation in the interdisciplinary field of “International Relations” or in the field “State, Economy and Society” for a project duration of 3 years. The project includes two research positions with doctoral degrees (TVL-E13), a student assistant, overhead costs and travel expenses. It amounts to a total of 500.000 €.

5. Thema des Projekts und dessen kurze inhaltliche Darstellung

The European asylum and border policy is not entirely protectionist or entirely cosmopolitan, but rather addresses both concerns depending on the level at which they are voiced. “The Union must resist tendencies to treat security, justice and fundamental rights in isolation from one another. They go hand in hand in a coherent approach to meet the challenges of today and the years to come” (COM/2010/0171). However, the literature in the field discusses the legislative developments in asylum and border policy either in terms of a “race to the bottom”

- where the policy outcome appears to be a mere least common denominator and where the interests of European citizens prevail over those of third-country nationals (Toshkov/de Haan 2013; Guild 2006) – or rather in terms of a progressive communitarization – arguing from a neo-functionalist perspective in favour of greater empowerment of the supranational structures contributing to a more liberal approach to asylum legislation (Kaunert/Léonard 2012; Acosta Arcarazo/Geddes 2013; Kaunert/Léonard/Hoffmann 2013). Thus the legislative developments in this issue-area, subject to almost exhaustive scholarship in the field, are regarded either as a preventive fortification against any ‘external intrusion’ (Guiraudon 2000; Huysmans 2006; Vollmer 2011) or rather as an improvement in legal standards applicable to refugees and asylum-seekers (Kaunert/Léonard 2012). The present approach de-aligns itself from both strains of literature assuming both interpretations to be limited to either one or another level of analysis – either intergovernmental, supranational or national – failing to recognise the existence and interdependence of the multiple levels of European decision-making.

The project adopts a multilevel governance approach which assumes that the European Border regime consists of four interconnected layers. The *intergovernmental layer* encompasses the decision-making surrounding the adoption of EU treaty law, the Union’s international legal obligations (Geneva Convention on Refugees, Charter of Fundamental Rights of the European Union) and the multiannual programmes adopted by the European Council. The *supranational layer* refers to the issuance of directives, regulations and decisions by the European Commission, the Council and the European Parliament, while the *national layer* concerns the transposition at the domestic level of the respective European norms. The *bilateral layer* of decision-making includes treaties and other international agreements signed by individual member states and third countries concerning readmission agreements or technical and logistical support for third countries. These four layers constitute different but interconnected arenas of policy-making. The intergovernmental layer plays a crucial role in agenda-setting and strategy developments and is partly supported and partly checked by the supranational institutions’ power to initiate formal legislation (the relevant legislation adopted at these two levels is included in the Annex 2). Because the EU has little implementation capacity on its own, it relies heavily on the member states to transpose and enforce European legislation, while the bilateral agreements signed between individual member states and third countries impact on policy choices and their implementation. On that account, the present analysis considers all the four levels – intergovernmental, supranational, national, and bilateral – to be crucial in understanding and interpreting European asylum policy-making. Rich analysis must not be limited to the supranational, the intergovernmental, national or the bilateral layer but integrates all four layers into an encompassing multilevel legal and political regime.

Multilevel governance analyses have become common in EU studies for describing policy-making. What is novel about the present approach, however, is its drawing on a theoretical model that allows connecting it to the “deliberative turn” in EU studies (Neyer 2006). We will follow this road by employing a theory of justification which holds that the policy output of political institutions is not only reflecting the preferences of their respective governmental, parliamentary or bureaucratic members (internal accountability) but is also sensitive to arguments voiced in the broader public discourse (external accountability). The degree to which external accountability is realized depends on a number of factors that relate most prominently to the institutional structure (Neyer 2012):

- the presence of a clearly identifiable addressee to whom concerns can be addressed,

- the endurance of legal rules that confer rights upon claimants and
- the existence of a public with the power to impose (political) sanctions.

We will thus analyse the European asylum and border policy and explain its simultaneous openness and closeness towards external input by describing the different degrees to which the four layers of European governance are externally accountable.

Theoretically speaking, the goal of the project is to empirically analyse in how far the concerns voiced by external stakeholders at each of the four levels make a difference in the legislation process of asylum and border policy. Our research question can thus be framed as follows: When, where and how do institutions respond to reasonable arguments in the field of asylum and border policy during deliberation in the EU and domestic fora? Taken together, border and asylum policies offer a well-rounded picture on European attitude towards the penetrability of its borders (for a more extensive discussion of our approach to border policing see section 6 below).

The research design

The research design builds on the idea that we can trace the development of pieces of legislation over time and are able to identify how (draft) legislation is affected by reasonable arguments raised in the broader public discourse. We conceptualize reasonable arguments as speech acts that (a) offer reasons for an adopted position and are (b) based on some prima facie normative or empirical evidence for articulated preferences. In this case, external accountability means that reasonable arguments are taken seriously, i.e. that the addressed political institutions assess their validity in an open and transparent way, this eventually leading to a change in policy output.

We will trace the legislative action at each of the four levels and compare them according to their responsiveness to cosmopolitan vs. protectionist concerns. The outcome of the project is a detailed and dynamic multilevel map of the political discourse inside and outside of formal political institutions along the lines of “fortress Europe” vs. “cosmopolitan Europe”.

(1) We will treat interventions as falling in the camp of “fortress Europe” if they argue in favour of a protectionist interpretation of the European asylum and border regime. The underlying idea is here that the EU must be highly selective in allowing third country nationals to enter the EU. Although it is generally accepted that poverty, war and miserable living conditions are legitimate reasons for many people to flee from their countries of birth, it is also emphasised that the capacity of the EU to integrate foreign citizens is limited. Economic reasons and the protection of the welfare system, difficulties to integrate foreign cultures, and requirements for security are used for justifying why any intuitive reflex to open the EU’s borders to all refugees is simply naïve. On the contrary, the success of the European model is assumed to be built on rather high and impermeable external borders.

(2) We will categorize interventions as following a cosmopolitan line of reasoning (“normative power Europe”) if they claim that the EU should be open to everybody who is suffering from prosecution (Art. 18 of the Charter of Fundamental Rights of the European Union). The world, in this perspective, is a world of cosmopolitan ideas where individuals are bearers of inalienable rights. The EU is perceived as being tasked with the duty to act as a “force for good” being bound by norms provided in international humanitarian law (Manners 2008).

The juxtaposition of the two ideal typical frames is probably much rougher than reality will tell. It is helpful for guiding the analysis, however, because it allows defining the two poles of a debate and helps to situating empirical interventions within an analytical spectre. For mapping the relevance of both types of arguments and their impact on the different layers of the European multilevel structure, we will proceed along three steps:

a) In a first step we will provide an inventory of reasonable arguments raised in the public debate on the substance of the European asylum and border regime and detail the timing and content of their claims to opening or closing the EU's border to refugees. The outcome of this step will be a mapping of the critical discourse on pertinent aspects of the European border and migration regime. An important challenge during the seed-money phase will be to identify most important stakeholders and to limit the empirical analysis to those aspects of the policy that are politically the most contested.

b) We will in a second step analyse in how far relevant draft legislation or packages of legislation have changed their political substance over time and become more protectionist or cosmopolitan. This step will produce a dynamic picture of legislative acts reflecting an opening and closing of the European borders. A study of the judgements in the EU Court of Justice and European Court of Human Rights would enable us a more comprehensive picture of the European legislation and practice in the field of asylum and border management.

c) In a third step we will bring public interventions and changes in the substance of (draft) legislation together. This step is the most demanding and will necessitate much interaction with external stakeholders and internal participants in legislative proceedings. In-depth interviews and the support of the scientific network in which the project is integrated will be necessary for collecting evidence that allows to draw causal linkages between causes and effects.

Once we have completed the preceding steps, we will be able to describe the European asylum regime as consisting of four different but interconnected layers of political discourse with a distinguishable responsiveness to cosmopolitan or protectionist claims. We will detail the avenues of reasonable arguments and the impact they have on actual policy making.

We also hope to contribute to the ongoing debate about "deliberative Europe": To which extent are European decision-making fora open to what kind of arguments? How does the asserted "force to argue" change policies? Is the openness to reasonable arguments limited to a few MEPs or MPs, is it located in the Commission or do good arguments need powerful governmental actors in order to have an effect?

Seed-Money Work Plan

It is clear that the empirical work laid out in this application cannot be implemented in twelve months. Within the seed-money period the analysis can only be done for a narrowly selected set of legal and political arguments at intergovernmental, supranational and national level. The one year period will grant us the possibility to conduct a pre-analysis of the applicability of our theoretical model to empirical cases and will allow us to select the relevant legal cases. The aim to be achieved by the end of the seed-money period is:

- (a) to further specify the analytical categories and the theoretical framework of the project,
- (b) to identify pertinent pieces of legislation and agreements (case selection),

- (c) to research for interview partners with regard to those pieces of legislation and
- (d) to finally prepare the application.

6. Bezug des Projekts zum Forschungsschwerpunkt “B/Orders in Motion”

Border studies are stating a disjuncture between a borderless world and an increased border securitization. In this sense conflicting logics of national borders and supranational unity appear that also influence the thematic policy field of the present study. Various aspects of borders are playing an important role in the project. The asylum policy of the EU touches and changes several borders directly and indirectly. First of all, the territorial frontiers between the European member states, effectively abolished through the Schengen process, are still existent for refugees. Furthermore, while abolishing the internal frontiers, the external frontier system is expanded by the foundation of the border control agency FRONTEX and European border surveillance system (EUROSUR). Besides those instruments, EU-member states conduct bilateral agreements to neighboring states (Lybia, Tunesia, etc.) with the ambivalent result that non-EU states are dealing with the refugee situation on their territory what may violate the right of every human being to apply for asylum on the territory of the EU. Those two dimensions – the inclusive and exclusive dimension of borders – are central to this research project. Furthermore, socially constructed borders between the European institutions and decision-makers (ECoJ, EP, EC, Council of the EU) on the one hand and the civil society organizations (represented by big NGOs like Amnesty International, Human Rights Watch, etc.) on the other hand will be analyzed in terms of justificatory practices and of cosmopolitan arguments that made it into the European legislative framework. The analysis will help to determine the extent to which the EU is de facto a cosmopolitan entity. The physical as well as communicative inclusion and exclusion of people play an important role in this regard and need to be further addressed as part of this research project.

The project deals with questions of the durability and permeability of borders. The durability of borders means the stability and longevity of borders and therefore refers to questions like if and how the European institutions and national governments try to ensure a restricted border management in the field of asylum and refugee policy. The permeability discusses the porosity of borders that separates insiders and outsiders and focuses, among other things, on individuals (e.g. migrants, refugees, asylum-seekers) who cross the border. The project is going to analyze the durability and permeability of borders in spatial as well as social terms and thus will contribute to an enhanced understanding of borders in the field of asylum and border policies within the European Union. The overlap of spatial and social borders in this field creates tensions and conflicts that need to be analyzed by a discursive approach taking into account justificatory processes at different levels of legislative decision-making.

7. Datenmanagementplan

The research objectives require processing of qualitative data not available from other sources. However, where available, the data derived from different research projects (for instance academic literature, scholarly reviews of relevant legislation, expert studies on refugee policies, civil society reports) will supplement the data collected as part of this project and will be used to triangulate the findings of this proposed study.

The present project involves collection and processing of data consisting largely of information already available to the public, namely court judgments and legislative acts on

the European level (treaties, directives, regulations, in their final form or published draft-proposals), on various national levels (national legal acts as published in the Official Journal) as well as on the international level (treaties, conventions, and representative articles in international and humanitarian law). Legislative online databases will be used to extract this type of data, while text-based documents will be used to subsequently process it (DOC files). Additionally, in order to ensure a comprehensible picture of the legislative developments in the area, the project will rely not only on published legal texts, draft-proposals and suggested amendments but also on available public debates, minutes of official meetings, public statements generally available in online archives of each respective institution (in video or text format - WMV or DOC respectively). Apart from legal texts and debate minutes, the research findings will draw heavily on semi-structured interviews with relevant decision-makers or stakeholders in the field in order to retrace the discourses of justification. The data will be collected and stored using digital audio recording (MP3 or WAV) and/or transcription of audio files (archived in DOC format).

A clear verbal explanation of the purpose, approach and dissemination strategy of the project will be provided to each interviewee. We will consider ethical and privacy issues that may prohibit sharing some or all of the interview-data. In order to protect the interviewee's security, privacy/confidentiality or other rights, we will sign a non-disclosure Agreement with the interviewee that specifies the conditions of publishing the interviews and data. According to this, we will blacken the parts containing sensitive information about the identity of the interviewees before publishing them. Decision-makers in the field are expected to speak in their official capacity or institutional roles and therefore the interviews with policy-makers will guarantee confidentiality only when this is requested.

With respect to copyright and intellectual property rights, the project's institutional partners will jointly own the data generated within the present research. All the sources will be appropriately cited and clearly acknowledged and permission will be sought from secondary sources to share their respective findings on a public website.

The project is not exclusively targeting an academic audience, but also, to a lesser extent, the general public. Therefore, in terms of data sharing, archiving, and long-term access, the project's objective is to develop an online platform that enables a transparent documentation of the progress for scientific as well as wider dissemination purposes. For the seed-money phase, the research will have a dedicated space on the university's website in order for the data gathered to be easily accessible and sharable; the partner institutions will be as well encouraged to host the data on their websites. Due to the relevance of the addressed subject on a European level, the platform as well as the project will be developed and conducted in English, in order to reach a broader audience and to enable and ensure dialogue with interested parties and stakeholders. During the development of the project, the data collected and generated will be sustainably accessible online, through a project's own platform. By pooling most of the relevant information on European asylum and border policies this project aims to establish access to the main political decisions, legislative acts, background information, and interviews in order to serve as an information platform in the field.

8. Beitrag des Projekts zur thematischen und strukturellen Profilierung der Europa-Universität Viadrina im Bereich "B/Orders in Motion"

The project will support and further the standing of the European University Viadrina within the research field of "B/Orders in Motion" in several respects: So far, no Viadrina-project deals with the formation and demise of borders in the field of migration and asylum policy.

This policy field is predestined for the analysis of borders in the social, spatial and temporal dimension. By analysing this topic, the Viadrina is going to cooperate with several of the best research groups in Germany (IMIS) and Europe (IMISCOE). In order to strengthen the visibility of the Viadrina in this regard, we will host a workshop during the seed-money-period where some of the best-known researchers in this field will come to Viadrina to discuss the research agenda. The anticipated outcome of the analysis is that the different border-related issues lead to new demarcation processes and discursively structure the inner and outer dimension of the EU. By funding this research project in the seed-money period, Viadrina can build a strong expertise in this very important policy field by integrating the political and legal dimension in one research project. Therefore the project helps to integrate the competences of different researchers at Viadrina and to enhance the scope of the research results by developing an online platform for interaction with the European public. Thus, Viadrina is profiling in the national and international outstanding research landscape and gains long-term expertise in this specific border related research field.

9. Ggf. vorgesehene Projektbearbeiter/innen in der Seed Money-Förderphase

- Luana Martin

is a research assistant and a doctoral candidate at the chair for "European and International Politics" at European University Viadrina. She studies post-accession Europeanization in Central and Eastern Europe and the nature and durability of changes that take place in the member states in response to EU leverage. Her doctoral research is focused on the EU's policy of conditionality and its impact on domestic legislative outcomes, providing an in-depth analysis of law and legal reasoning in one of EU's newest member states. She has research and teaching experience in the field of European integration and, most importantly, EU institutional structures and legislative processes. Together, her research and teaching background makes her an ideal candidate for this research project.

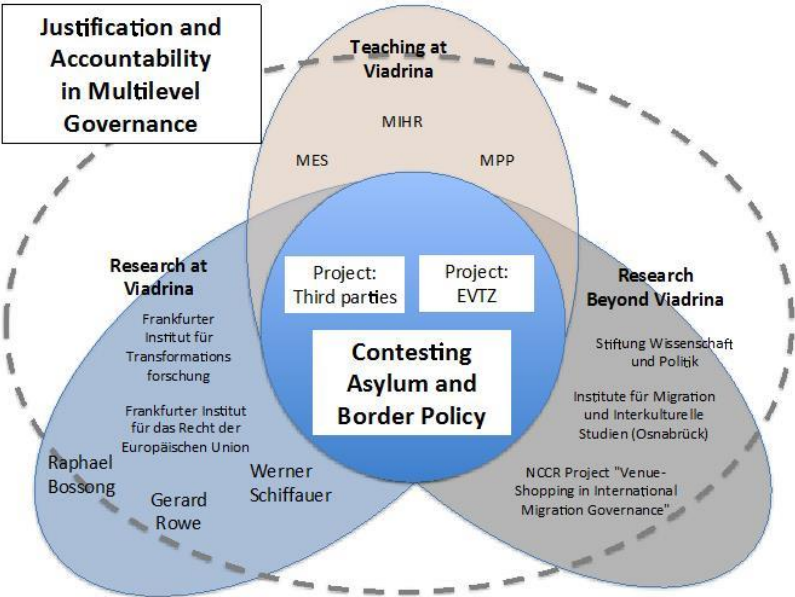
- Mitja Sienknecht

is a doctoral researcher at the chair for "European and International Politics" at European University Viadrina and a research associate of the project „The discursive construction of conflict and international organizational decision-making processes between normative frameworks of peacebuilding and securitization - the case of the UN Assistance Mission for Iraq (UNAMI)" at Bielefeld University, funded by the German Foundation for Peace Research. She will finish her doctoral studies by the end of this year. Her research focuses on European Foreign and Security Policy, the sociology of international relations, peace and conflict studies and inclusion and exclusion processes of minorities. She has teaching experiences in the field of European institutions and of European external relations. Together, her research and teaching background makes her an ideal candidate for this research project.

10. Kooperationspartner (intern und extern)

The project is part of a larger multidisciplinary research network centred on the analysis of "Justification and Accountability in Multilevel Governance". The overall idea of the network is to inquire into new ways of extending legitimate governance beyond national borders. It builds on a number of recent publications, which outline the research agenda in more detail (Neyer 2012 and 2013). The network combines regional, national and international experts

from a significant number of different scientific disciplines (economy, law, ethnology, political science). It consists of three layers that are organized around an inner core (graph, source: own illustration).



The core of the network connects the project to two other interdisciplinary research projects conducted by the applicant. A first project (together with Prof. Lars Kirchhoff and Prof. Albrecht Söllner) inquires into the role of independent third parties (arbitrators and mediators) in the settling of political and legal disputes. Issues of accountability and justificatory requirements firm prominently in this project. The second project on the analysis of European Associations of Territorial Cooperation, EVTZ (together with lawyers Prof. Mathias Pechstein and Prof. Carsten Nowak) links the concern for accountability mechanisms to the European regional policy and inquires into mechanisms for fostering good regional governance. The proposed project on European Asylum and Border policy completes this set of research activities by linking the analysis of institutional procedures to the broader question of the responsiveness of the EU to cosmopolitan and protectionist concerns. All three projects address the question of how accountability in multilevel governance structures can be fostered.

1. The first layer of the network connects the research on accountability mechanisms and justificatory requirements to neighbouring research activities at Viadrina. We will be, first of all, in close collaboration with the Frankfurt Institute for Transformation Studies (chaired by Prof. Timm Beichelt) and the Frankfurt Institute for the Law of the European Union (chaired by Prof. Christoph Brömmelmeyer). Both institutes deal with issues of pertinent importance for the analysis of justification and accountability in the EU. We will also closely collaborate with Prof. Werner Schiffauer, Prof. Gerard Rowe and Dr. Raphael Bossong (chairing a B/Orders in Motion project on the European Internal Security Order). All three are eminent experts in migration and asylum studies, human rights issues and the analysis of domestic security in the EU.
2. The second layer of the network links the research project to the broader national and international debate. During the first twelve months we plan to organize a workshop together with Dr. Stefan Angenendt from the *Stiftung Wissenschaft und Politik* in Berlin, Prof. Ulrich Schneckener from the *Institut für Migration und Transkulturelle Studien* at the University of

Osnabrück and with Prof. Sandra Lavenex from the University of Luzern who is chairing a NCCR Project on *Venue-Shopping in International Migration Governance*. All are imminent experts on asylum and border issues and form the hub of own research networks in the subject area.

3. The third layer connects our research activities to three study programs at Viadrina. We will offer the students of the three master programs European Studies (MES), Public Policy (MPP) and International Human Rights and Humanitarian Law (MIHR) the opportunity to write their theses in cooperation with our project. This layer aims at intensifying the link between research and teaching in the context of the B/Orders in Motion research framework and will further strengthen the integration of the project into Viadrina.

All three layers will be closely integrated by workshops at Viadrina and the collaborative presentation of first results on international conferences either during the seed-money period or after the full project has been accepted.

11. Finanzierungsplan für die Seed-Money-Förderung

ITEM	MONTHLY GROSS/ITEM	TOTAL BUDGET PERIOD
1. Staff		
Research associate (EG 13/2 TV-L, 65%) ¹		37.700€
Research associate (EG 13/2 TV-L, 100%) ²		58.300€
Subtotal 1		96.000€
2. Field Research		
	Price per Unit/ Number of Units	TOTAL Period
2.1 Field Research in Brussels (2x3 days/ 2 persons)		
02 Return flights Berlin-Brussels-Berlin	120,00€ / 2x	240,00€
06 days travel allowance	135,00€ / 6x	810,00€
06 International per diem (Belgium)	34,00€ / 6x	204,00€
02 Incidentals Brussels (Transportation, telephone, internet) @ 10 Euro per diem	10,00€	20,00€
Subtotal 2		1274,00€
3. Workshop		

¹ The salary includes employer's contribution to social security, special allowance (Sondervergütung für Dezember) and the possible salary increase up to 3%.

² The salary includes employer's contribution to social security, special allowance (Sondervergütung für Dezember) and the possible salary increase up to 3%. The postdoc full-time employment is conditional upon the successful completion of the doctoral study.

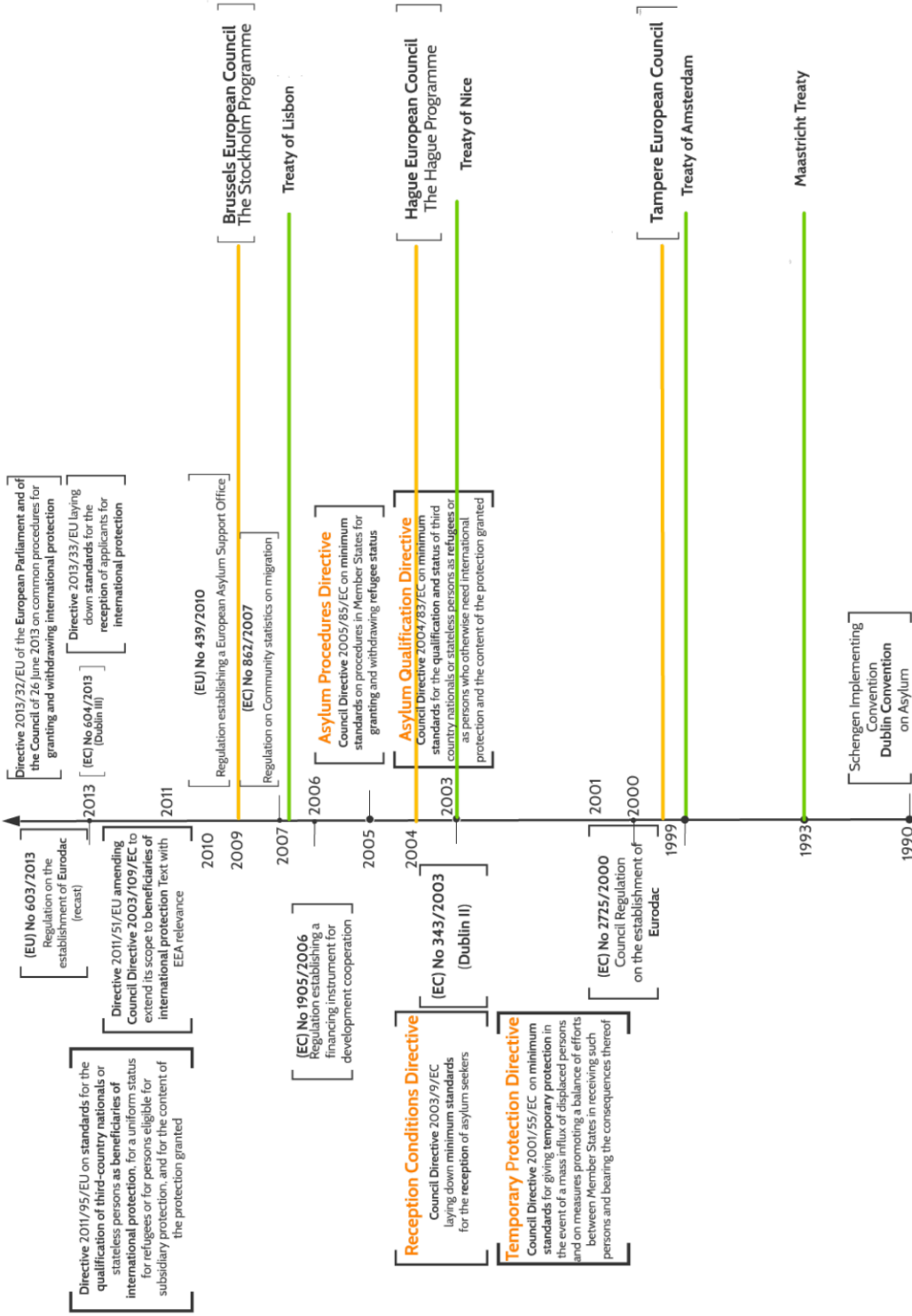
Meeting of project partners (Workshop with approx. 10 participants, venue: European University Viadrina)		
10 Return travel	200,00€ / 10x	2.000,00€
10 Overnight Stays	70,00€ / 10x	700,00€
15 Catering (lunch, coffee, biscuits) @ 35 Euro per diem	35,00€ / 15x	525,00€
Subtotal 3		2.900,00€
4. Material Expenses		
Software MAXQDA (01 student license)	118,00€	118,00€
Bücherbeschaffung	600,00€	600,00€
Sachkosten (Druckerpatrone, Telefonkosten, Workshop- Vorbereitung, Visitenkarten, etc.)	700,00€	700,00€
Subtotal 4		1.418,00€
5. Conferences		
Return Travel (2 persons)	200,00€/ 2x	400,00€
	120,00€/ 2x (BC 50)	240,00€
Overnight Stays (2 persons)	70,00€/ 4x	280,00€
Subtotal 5		920,00€
TOTAL SUM		102.512,00 €

Annex 1

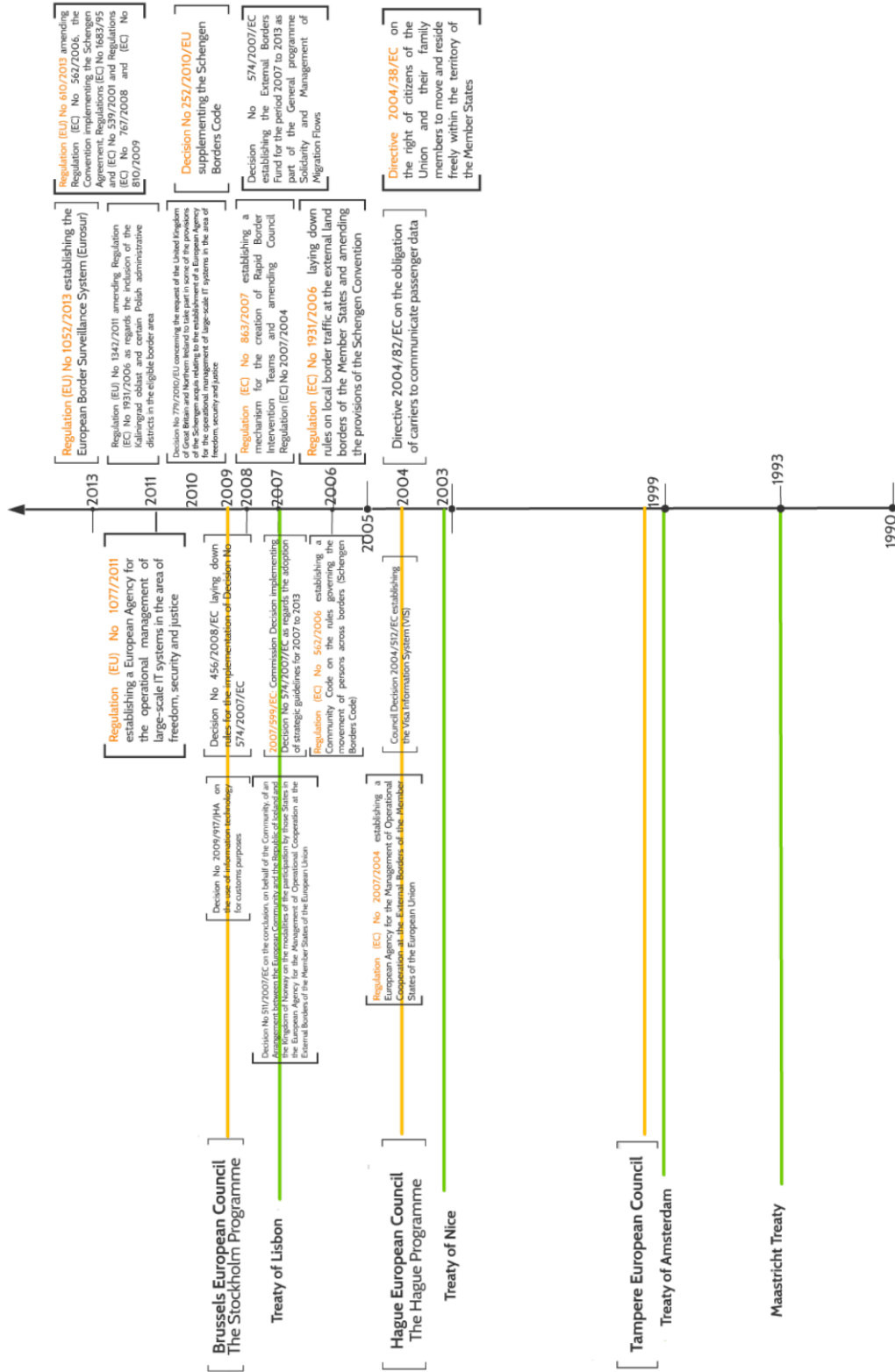
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Annex 2



Developments in Asylum Policy at EU Level



Developments in Border Legislation at EU Level