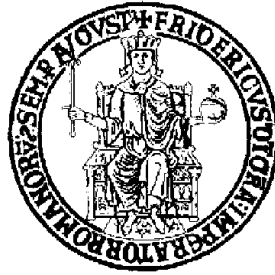


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AND ASYLUM**

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TO MY MOTHER...

*Once you said to me: "God give you everything you desire, as you deserve it"
Thank you, Mum, today one of my dreams has come true*

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INTRODUCTION

'Addressing the crisis of displacement within and from Iraq is a massive and continuing challenge, which remains unmet in part due to the shocking lack of political will from European countries [...] Europe's response to the crisis of displaced Iraqis has been hugely inadequate with European governments failing to fairly share the responsibility for Iraqi refugees with one another and with other countries around the world [...] At the same time EU Member States have focused on preventing refugees' access to their territory, including Iraqis, through the development of ever stricter border controls that do not distinguish asylum seekers from other persons arriving at the border[...]

UNHCR, March 2008

Research Questions & Corpus

The United Nations High Commissioner for Refugees (UNHCR)'s statement (March 2008) is the starting point of this research, based on the general assumption that the European Union has not yet developed an effective legislation aimed at protecting refugees and asylum seekers as Member States failed to share a common policy to receive migrants.

In particular, the research question of this study is grounded on the assumption that this lack of effectiveness is mainly due to vagueness in the language of EU Directives, deliberately employed to legislate in favour or against migrants' rights.

The analysis of linguistic and legal vagueness to discuss the migratory phenomenon will be preceded by a general overview of EU policy on this issue through the investigation of Presidency Conclusions of EU Councils, where

immigration is discussed along with other phenomena. At this stage, particular attention will be paid to the co-text of crucial lexical choices (i.e. *immigration*, *migration*) and evaluative language that have appeared to be functional to revealing EU political attitude towards the immigration issue.

The last part of the research is devoted to the investigation of Directives on illegal immigration, in order to explore vagueness in relation to the same points investigated in Directives on legal immigration with a view to further explore ideological implications in the EU attitude towards such opposing issues.

As far as the documents investigated are concerned, three corpora have been collected. The first corpus includes the Presidency Conclusions of the European Councils from 1999 to 2008:

- Presidency Conclusions of European Tampere Council (1999);
- Presidency Conclusions of Laeken European Council (2001);
- Presidency Conclusions of Thessaloniki European Council (2003);
- Presidency Conclusions of Brussels European Council (2004);
- Presidency Conclusions of EU Councils from 2005 to 2008.

It is necessary to point out that while the Councils from 1999 to 2004 mainly concern immigration, the Councils from 2004 to 2008 can be considered general Councils where also immigration and asylum matters are discussed.

The second corpus investigated includes EU Directives on migrants' rights:

- Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof;
- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification;
- Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers;
- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted;
- Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

Finally, the third corpus includes EU Directives on illegal immigration:

- Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals;
- Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985;
- Council Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

Methodology

The methodological framework is mainly provided by studies on vagueness in normative texts (Endicott 2001; Bhatia / Engberg / Gotti / Heller 2005; Engberg / Heller 2008). Particular attention is devoted to theories on the semantics and vagueness of adjectives (Pinkal 1995; Fjeld 2005). As a matter of fact, a number of vague adjectives co-occurring with nouns denoting specific rights seem to affect the linguistic clarity of the whole phrase and weaken the legal efficacy of the granting of the rights themselves.

Studies on vagueness and ambiguity in modal auxiliary verbs (Caliendo 2004a; Bhatia / Candin / Engberg (eds) 2008; Williams 2005, 2007) have also been taken into account, since linguistic structures where modal auxiliary verbs occur, have often appeared to convey kind of indeterminacy in the direction of a depersonalized discourse on immigration and asylum. For this purpose, an investigation of vagueness related to modality will also be provided.

The concept of vagueness has been also examined in Directives on illegal immigration and asylum in order to investigate a potentially different attitude of the EU when imposing prohibitive measures against this phenomenon.

The investigation is preceded by an analysis of the general political attitude of the EU towards immigration. In particular, in order to provide an overview of the lexical choices employed in the EU political discourse on immigration, studies on evaluation (Hunston / Thompson 2000 among others) have been taken into account. In particular, the investigation of the co-text of specific evaluative lexis will be aimed at analysing ideologies that might be concealed in EU institutional discourse. As to this point, since one of the main aims of this research is to analyse the relationship between EU policy on immigration and ideologies bearing legal consequences on the implementation of

specific rights, studies on ideology and discourse have been taken into account (Fairclough 1989, 2003; van Dijk, 2000, 2003). In particular, these studies represent a fundamental theoretical framework in order to understand how and to what extent ideological implications are accountable for vagueness in the Directives and how power roles can be operationalised through vagueness.

All the theoretical assumptions are defended through the employment of the software AntConc 3.2.1, it was mainly employed to investigate the co-text of specific words and phrases. Notwithstanding, it was also employed to search results from a Reference Corpus deliberately built in order to give evidence of some assumptions. In particular, the Reference Corpus includes Directives on very different issues from the ones characterizing the Directives investigated (e.g. *radio interference of vehicles, compensation to crime victims, introduction of organisms harmful to plants, etc.*) but belonging to the same time span (2001-2005). Dissimilarity in the topics was aimed at further exploring specific features of the Directives on immigration and asylum.

1 - LEGISLATIVE BACKGROUND

1.1 - INTERNATIONAL PROTECTION OF THE RIGHT OF ASYLUM

1.1.1 - THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

One of the first documents where immigrants' rights are introduced is the Universal Declaration of Human Rights which was adopted and proclaimed by the General on 10 December 1948. In particular, Article 14 includes the right to seek asylum:

Everyone has the right to seek and to enjoy in other countries asylum from persecution. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 14(2) of the Universal Declaration represents an 'exclusion' provision, as it expresses the concept that certain persons who flee persecution can be denied international protection as refugees because of their involvement in serious crimes. The notion that such persons are unworthy of international protection and assistance as refugees emerged during the Second World War. As in the Constitution of the International Refugee Organization of 1946 and subsequent provisions in the 1950 Statute of the Office of the United Nations High Commissioner for Refugees and the 1951 Convention relating to the Status of Refugees, Article 14(2) of the Universal Declaration reflects the concern that those involved in war crimes, crimes against humanity, and crimes against peace, or more generally acts contrary to the purposes and principles of the United

Nations should not be allowed to enjoy such protection, and that common law criminals should be surrendered under applicable extradition agreements. A review of the drafting history of these provisions also reveals how the concept of exclusion from international refugee protection was shaped by an understanding of the concept of asylum, which was viewed as the right of States not to extradite certain persons. The adoption of the Refugee Convention resulted in a significantly different legal framework for determining whether or not an individual should be granted, or excluded from, international protection against persecution, which entailed, among other things, a separation of the criteria governing exclusion from those applicable to extradition. Subsequent developments in international human rights law and other pertinent areas of international law also had an impact on the interpretation and application of exclusion provisions. As a matter of fact, the aim and content of the limitations to the right of asylum provided for in Article 14(2) of the Universal Declaration should be read in the light of Article 1F of the Refugee Convention as well as other relevant standards under international law.

1.1.2 - THE GENEVA CONVENTION ON REFUGEES (1951)

The United Nations Convention Relating to the Status of Refugees is an international Convention that defines the term 'refugee', and sets out the rights of individuals who are granted asylum and the responsibilities of nations that grant asylum. The Convention also establishes which people do not qualify as refugees, such as war criminals. It also provides for some visa-free travelling for holders of travel documents issued under the Convention. It was approved at a special United Nations conference on 28 July 1951. It was initially aimed at protecting European refugees after World War II but a 1967 Protocol removed the

geographical and time limits, expanding the Convention's scope. The Convention was approved in Geneva and is often referred to as "the Geneva Convention", although it cannot be listed along with other Geneva Conventions specifically dealing with war crime.

Denmark was the first state to ratify the treaty (on 4 December 1952) and there are now 147 signatories to either one or both the Convention and Protocol. In the aftermath of the Second World War, refugees and displaced persons were high on the international agenda. At its first session in 1946, the United General Assembly recognized not only the urgency of the problem but also the cardinal principle that “no refugees or displaced persons who have finally and definitely [...] expressed valid objections to returning to their countries of origin [...] shall be compelled to return [...]” (Resolution 8 (I) of 12 February 1946). The United Nations’ first post-war response was a specialized agency, the International Refugee Organization (IRO, 1946-1952), but despite its success in providing protection and assistance and facilitating solutions, it was expensive and also caught up in the policy of the Cold War. It was therefore decided to replace it with a temporary, initially non-operational agency, and to complement the new institution with revised treaty provisions on the status of refugees.

The historical context also helps to explain both the nature of the Convention and some of its apparent limitations. The Charter of the United Nations had identified the principles of sovereignty, independence, and non-interference within the reserved domain of domestic jurisdiction as fundamental to the success of the Organization (see Article 2 of the Charter of the United Nations). In December 1948, the General Assembly adopted the Universal Declaration of Human Rights, which recognized that “Everyone has the right to seek and to enjoy in other countries asylum from persecution” (Article 14, Paragraph 1), although the individual was only then beginning to be seen as the

beneficiary of human rights in international law. These factors are important to an understanding of both the manner in which the 1951 Convention was drafted (that is, initially and primarily as an agreement between States as to how they should treat refugees), and the essentially 'reactive' nature of the international legislation on refugee protection (that is, the system is triggered by a cross-border movement, so that neither prevention nor the protection of internally displaced persons come within its range).

A key-role in drafting the Convention was played by the United Nations High Commissioner.

After extensive discussions in its Third Committee, the General Assembly moved to replace IRO with a subsidiary organ (under Article 22 of the Charter of the United Nations), and the Office of the United Nations High Commissioner for Refugees was set up (Resolution 428 (V) of 14 December 1950) with effect from 1 January 1951. Initially due to last three years, the High Commissioner's mandate was regularly renewed thereafter for five-year periods until 2003, when the General Assembly decided "to continue the Office until the refugee problem is solved" (Resolution 58/153 of 22 December 2003, Para. 9).

The High Commissioner's primary responsibility, set out in Paragraph 1 of the Statute annexed to Resolution 428 (V) of 14 December 1950, is to provide "international protection" to refugees and, by providing assistance to Governments, to seek "permanent solutions for the problem of refugees". Its protection functions specifically include "promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto" (Paragraph 8 (a) of the Statute).

A year earlier, in 1949, the United Nations Economic and Social Council had appointed an Ad Hoc Committee to fulfil the following aim:

[...] consider the desirability of preparing a revised and consolidated convention relating to the international status of refugees and stateless persons and, if they consider such a course desirable, draft the text of such a convention.

The Ad Hoc Committee decided to focus on the refugee (stateless persons were eventually included in a second Convention, the 1954 Convention relating to the Status of Stateless Persons), and duly produced a draft convention.

Its provisional draft identified a number of categories of refugees, such as the victims of the Nazi or Falangist regimes and the ones recognized under previous international agreements, and also adopted the general criteria of “well-founded fear of persecution and lack of protection” (see United Nations doc. E./AC.32/L.6, 23 January 1950).

In August 1950, the Economic and Social Council returned the draft for further review, before consideration by the General Assembly, and then finalized the Preamble and refugee definition. In December 1950, the General Assembly decided to convene a Conference of Plenipotentiaries to finalize the Convention (Resolution 429 (V) of 14 December 1950).

The Conference met in Geneva from 2 to 25 July 1951 and took as its basis for discussion the draft which had been prepared by the Ad Hoc Committee on Refugees and Stateless Persons, save that the Preamble was the one adopted by the Economic and Social Council, whereas Article 1 (definition) was recommended by the General Assembly and annexed to Resolution 429 (V). While adopting the final text, the Conference also unanimously adopted a Final Act, including five recommendations covering travel documents, family unity, non-governmental organizations, asylum, and application of the Convention beyond its contractual scope.

In spite of the intended complementarity between the responsibilities of the UNHCR and the scope of the new Convention, a marked difference already

existed: the mandate of the UNHCR was universal and general, unconstrained by geographical and temporal limitations, while the definition forwarded to the Conference by the General Assembly, reflecting the reluctance of States to sign a ‘blank cheque’ for unknown numbers of future refugees, was restricted to those who became refugees by reason of events occurring before 1 January 1951 (and the Conference was to add a further option, allowing States to limit their obligations to refugees resulting from events occurring ‘in Europe’ before the critical date).

1.1.2.1 - Persecution and Reasons for Persecution

Although the risk of persecution is central to the refugee definition, the term ‘persecution’ itself was not defined in the 1951 Convention. Articles 31 and 33 refer to those people whose life or freedom ‘was’ or ‘would be’ threatened; therefore, it includes the threat of death, or the threat of torture, or cruel, inhuman or degrading treatment or punishment. A comprehensive analysis today will require the general notion to be related to developments within the broad field of human rights (cf. 1984 Convention against Torture, Article 7; 1966 International Covenant on Civil and Political Rights, Article 3; 1950 European Convention on Human Rights; Article 6; 1969 American Convention on Human Rights, Article 5; 1981 African Charter of Human and Peoples’ Rights).

Fear of persecution and lack of protection are themselves interrelated elements. The persecuted clearly do not enjoy the protection of their country of origin, while evidence of the lack of protection on either internal or external level may create a presumption as to the likelihood of persecution and to the well-foundedness of any fear. However, there is no necessary linkage between persecution and Government authority. A Convention refugee, by definition, must be unable or unwilling to avail himself/herself of the protection of the State

or Government, and the notion of inability to secure the protection of the State is broad enough to include a situation where the authorities cannot or will not provide protection, for example, against the persecution of non State actors.

The Convention requires that the persecution is feared for reasons of “race, religion, nationality, membership of a particular social group (added at the 1951 Conference), or political opinion”. This language, which recalls the language of non-discrimination in the Universal Declaration of Human Rights and subsequent human rights instruments, provides an insight into the type of individuals and groups which are considered relevant to refugee protection. Persecution for the above stated reasons implies a violation of human rights of particular gravity; it may be the result of cumulative events or systemic mistreatment, but equally it could also comprise a single act of torture.

Persecution under the Convention is thus a complex of reasons, interests and measures. The measures affect or are directed against groups or individuals for reasons of race, religion, nationality, membership of a particular social group, or political opinion. These reasons in turn show that the groups or individuals are identified by reference to a classification which ought to be irrelevant to the enjoyment of fundamental human rights.

The Convention, however, does not only state who a refugee is. It goes further and sets out the conditions under which refugee status cannot be recognised (Art. 1 C; for example, in the case of voluntary return, acquisition of a new, effective nationality, or change of circumstances in the country of origin). For particular, political reasons, the Convention also puts Palestinian refugees outside its scope at least while they continue to receive protection from other United Nations agencies (Article 1D), and excludes persons who are treated as nationals in their State of refuge (Article 1E). Finally, the Convention definition categorically excludes from the benefits of refugee status anyone who there are

serious reasons to believe has committed a war crime, a serious non-political offence prior to admission, or acts contrary to the purposes and principles of the United Nations (Article 1F). From the very beginning, therefore, the 1951 Convention has included a number of clauses sufficient to ensure that the serious criminal and terrorist do not benefit from international protection.

Article 1A, Paragraph 1 of the 1951 Convention applies the term ‘refugee’, first, to any person considered a refugee under earlier international arrangements. Article 1A, Paragraph 2, read now together with the 1967 Protocol and without time limits, then offers a general definition of the refugee which includes any person who is outside their country of origin and unable or unwilling to return there or to avail themselves of its protection, on account of a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular group, or political opinion:

For the purposes of the present Convention, the term “refugee” shall apply to any person who:

- (1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization; Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;
- (2) As a result of events occurring before 1 January 1951 and owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (Geneva Convention on Refugees, Art.1)

Stateless persons can also be considered refugees, where the country of origin (citizenship) is understood as “the country of former habitual residence”. Those who possess more than one nationality will only be considered ‘refugees’ within the Convention if such other nationality or nationalities do not provide protection. The refugee must be outside his or her country of origin, and s/he may not necessarily have fled by reason of fear of persecution, or even have actually been persecuted. The fear of persecution can also emerge during an individual’s absence from his/her home country, for example, as a result of political change.

1.1.2.2 - Non Refoulement

Besides identifying the essential characteristics of a refugee, the Member States also accept a number of specific obligations which are crucial to achieving the goal of protection, and thereafter an appropriate solution.

Foremost among these is the principle of *non-refoulement*. As set out in the Convention, this prescribes broadly that no refugee should be returned in any manner whatsoever to any country where he or she would be at risk of persecution (see also Article 3, 1984 of the Convention against Torture, which extends the same protection where there are substantial grounds for believing that a person to be returned would be in danger of being tortured). The word *non-refoulement* derives from the French *refouler*, which means to drive back or repel. The idea that a State ought not to return persons to other States in certain circumstances is first referred to in Article 3 of the 1933 Convention relating to the International Status of Refugees, under which the contracting parties undertook not to remove resident refugees or keep them from their territory, “by application of police measures, such as expulsions or non-admittance at the frontier (*refoulement*)”, unless dictated by national security or public order. Each

State undertook, “in any case not to refuse entry to refugees at the frontiers of their countries of origin”.

The 1933 Convention was not widely ratified, but a new era began with the General Assembly’s 1946 endorsement of the principle that refugees with valid objections should not be compelled to return to their country of origin. The Ad Hoc Committee on Statelessness and Related Problems initially proposed an absolute prohibition on *refoulement*, with no exceptions (United Nations Economic and Social Council, Summary Record of the twentieth meeting, Ad Hoc Committee on Statelessness and Related Problems, First Session, United Nations doc. E/AC.32/SR.20, (1950), 11-12, Paras. 54 and 55). The 1951 Conference of Plenipotentiaries specified the principle, however, by adding a paragraph to deny the benefit of *non-refoulement* to the refugee whom there are “reasonable grounds for regarding as a danger to the security of the country [...], or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.” Apart from such limited situations of exception, however, the drafters of the 1951 Convention made it clear that refugees should not be returned either to their country of origin or to other countries in which they would be at risk.

1.1.2.3 - The Convention Standards of Treatment

In addition to the core protection of *non-refoulement*, the 1951 Convention prescribes freedom from penalties for illegal entry (Article 31), and freedom from expulsion, save on the most serious grounds (Article 32). Article 8 seeks to exempt refugees from the application of exceptional measures which might otherwise affect them by reason only of their nationality, while Article 9 preserves the right of States to take “provisional measures” on the grounds of national security against a particular person, but only “pending a determination

by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in the interests of national security”.

States have also agreed to provide certain facilities to refugees, including administrative assistance (Article 25); identity papers (Article 27), and travel documents (Article 28); granting permission to transfer assets (article 30); and facilitating naturalization (Article 34).

Given the further objective of a solution (assimilation or integration), the Convention concept of ‘refugee status’ thus offers a point of departure in considering the appropriate standard of treatment of refugees within the territory of Contracting States. It is at this point, where the Convention focuses on matters such as social security, rationing, access to employment and liberal professions, that it betrays its essentially European origin; it is here, in the articles dealing with social and economic rights, that one still finds the greatest number of reservations, particularly among developing States.

The Convention proposes, as a minimum standard, that refugees should receive at least the treatment which is generally accorded to aliens. Most-favoured-nation treatment is called for in respect of the right of association (Article 15), and the right to engage in wage-earning employment (Article 17, Paragraph 1). The latter is of major importance to the refugee in search of an effective solution, but it is also the provision which has attracted most reservations. Many States have emphasized that the reference to most-favoured-nation should not be interpreted as entitling refugees to the benefit of special or regional customs, or economic or political agreements.

National treatment, that is, treatment not different from that accorded to citizens, is to be granted in respect of a wide variety of matters, including the freedom to practice religion and as regards the religious education of children (Article 4); the protection of artistic rights and industrial property (Article 14);

access to courts, legal assistance, and exemption from the requirement to give security for costs in court proceedings (Article 16); rationing (Article 20); elementary education (Article 22, Paragraph 1); public relief (Article 23); labour legislation and social security (Article 24, Paragraph 1); and fiscal charges (Article 29). Article 26 of the Convention prescribes such freedom of movement for refugees as is accorded to aliens generally in the same circumstances. Eleven States have made reservations, eight of which expressly retain the right to designate places of residence, either generally, or on grounds of national security, public order (*ordre public*) or the public interest.

1.1.2.4 - Reservations

While reservations are generally permitted under both the Convention and the Protocol, the integrity of certain articles is absolutely protected, including Articles 1 (definition); 3 (non-discrimination); 4 (religion); 16, Paragraph 1 (access to courts); and 33 (*non-refoulement*). Under the Convention, reservations are further prohibited with respect to Articles 36 to 46, which include a provision entitling any party to a dispute to refer the matter to the International Court of Justice (Article 38). The corresponding provision of the 1967 Protocol (Article IV) may be the subject of reservation, and some have been made; however, until August 2008), however, no State sought to make use of the dispute settlement procedure.

1.1.2.5 - Cooperation with UNHCR

The General Assembly identified a protection role for the High Commissioner, particularly in relation to international agreements on refugees. States parties to the 1951 Convention/1967 Protocol accepted specific obligations in this regard,

agreeing to cooperate with the Office and in particular to “facilitate its duty of supervising the application of the provisions” of the Convention and Protocol (Article 35 of the Convention; Article II of the Protocol).

Treaty oversight mechanisms, such as those established under the 1966 International Covenant on Civil and Political Rights, the 1984 United Nations Convention against Torture and the 1989 Convention on the Rights of the Child, have distinct roles, which may include both the review of national reports and the determination of individual or inter-State complaints. UNHCR does not possess these functions, and the precise nature of the obligation of States is not always clear, although together with the statutory role entrusted to UNHCR by the General Assembly, it is enough to give the Office a sufficient legal interest (*locus standi*) in relation to States’ implementation of their obligations under the Convention and Protocol. States generally do not appear to acknowledge that UNHCR has the authority to lay down binding interpretations of these instruments. However, it is arguable that the position of the UNHCR generally on the law or specifically on particular refugee problems should be considered in good faith.

In practice, States commonly associate UNHCR with decision-making relating to refugees, and UNHCR provides regular guidance on issues of interpretation. Its *Handbook on Procedures and Criteria for Determining Refugee Status*, published in 1979 at the request of States members of the UNHCR Executive Committee, is regularly relied on as authoritative, if not binding, and more recent guidelines are also increasingly cited in refugee determination procedures.

1.1.3 - THE 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES

Instead of an international conference under the auspices of the United Nations, the issues related to the Geneva Convention were addressed to at a colloquium of some thirteen legal experts which met in Bellagio, Italy, from 21 to 28 April 1965. The Colloquium did not favour a complete revision of the 1951 Convention, but opted, instead, for a Protocol by way of which States parties would agree to apply the relevant provisions of the Convention, although not necessarily becoming party to that treaty. The approach was approved by the UNHCR Executive Committee and the draft Protocol was referred to the Economic and Social Council for transmission to the General Assembly. The General Assembly took note of the Protocol (the General Assembly commonly ‘takes note’ of, rather than adopt or approve, instruments drafted outside the United Nations system), and requested the Secretary-General to transmit the text to States with a view to enabling them to accede (Resolution 2198 (XXI) of 16 December 1966). The Protocol required six ratifications and it duly entered into force on 4 October 1967.

The Protocol is often referred to as amending the 1951 Convention; however, it did not achieve such thing. The Protocol is an independent instrument and not a revision within the meaning of Article 45 of the Convention. States parties to the Protocol, which can be ratified or acceded to by a State without becoming a party to the Convention, simply agree to apply Articles 2 to 34 of the Convention to refugees defined in Article 1, as if the dateline were omitted (Article I of the Protocol). Cape Verde, Swaziland, the United States of America and Venezuela only acceded to the Protocol, while Madagascar, Monaco, Namibia and St. Vincent & the Grenadines are party only to the Convention; Congo, Madagascar, Monaco, and Turkey, instead, have retained the

geographical limitation. Article II on the cooperation of national authorities with the United Nations is equivalent to Article 35 of the Convention, while the few remaining Articles (just eleven in all) add no substantive obligations to the Convention regime.

The Convention is sometimes portrayed today as a relic of the cold war and inadequate in the face of new refugees from ethnic violence and gender-based persecution. It is also said to be insensitive to security concerns, particularly terrorism and organized crime, and even redundant, given protection now due in principle to everyone under international human rights law.

The Convention does not deal with the question of admission, and neither does it oblige a State of refuge to accord asylum as such, or provide for the sharing of responsibilities (for example, by prescribing which State should deal with a claim to refugee status). The Convention also does not address the question of causes of flight, or make provision for prevention; its scope does not include internally displaced persons, and it is not concerned with the better management of international migration. At the regional level, and despite the 1967 Protocol, refugee movements have necessitated more focused responses, such as the 1969 OAU/AU Convention on the Specific Aspects of Refugee Problems in Africa and the 1984 Cartagena Declaration; whereas in Europe, the development of protection doctrine under the 1950 European Convention on Human Rights has led to the adoption of provisions on subsidiary or ‘complementary’ protection within the legal system of the European Union.

Nevertheless, within the context of the international refugee legislation – which brings together States, UNHCR and other international organizations, the UNHCR Executive Committee, and non-governmental organizations, among others – the Convention continues to play an important role in the protection of refugees, in the promotion and provision of solutions for refugees, in ensuring the

security of States, sharing responsibility, and generally promoting human rights. A Ministerial Meeting of States Parties, convened in Geneva in December 2001 by the Government of Switzerland to mark the fiftieth anniversary of the Convention, expressly acknowledged the continuing relevance and resilience of these international rights and principles.

In many States, judicial and administrative procedures for the determination of refugee status have established the necessary legal link between refugee status and protection, contributed to a broader and deeper understanding of key elements in the Convention refugee definition, and helped to consolidate the fundamental principle of *non-refoulement*. While initially concluded as an agreement between States on the treatment of refugees, the 1951 Convention has inspired both doctrine and practice in which the language of refugee rights is entirely appropriate.

It was no failure in 1951 not to have known precisely how the world would evolve; on the contrary, it may be counted a success that the drafters of the 1951 Convention were in fact able to identify, in the concept of a well-founded fear of persecution, the enduring, indeed universal, characteristics of the refugee, and to single out the essential, though never exclusive, reason for flight. That certainly has not changed, even if the scope and extent of the refugee definition have matured under the influence of human rights, and even as there is now increasing recognition of the need to enhance and ensure the protection of individuals still within their own country.

1.2 - EUROPEAN LEGISLATION ON ASYLUM

1.2.1 - FROM THE TREATY OF ROME (1957) TO THE MAASTRICHT TREATY (1992)

The issue of immigration within Europe centres upon the rights afforded to European Citizens. In 1957, the European Economic Community signed a treaty affording European citizens the freedom of movement within the European Community. The Treaty of Rome was a means to promote labour mobility within Europe and most importantly workers' rights were afforded to their families as well. The Treaty of Rome was the basis for the establishment of a European immigration policy, but from that time until the 1990s a common immigration policy was not issued. The issue of immigration was only addressed to on a European level and in relation to the Treaty of Rome; the European Community gave workers more freedom in order to create a work force for Europe. The European Union allowed nation states to handle migration flows individually and therefore final decisions concerning immigration lay with nation states. Thus, Nation states had their own immigration agenda, which allowed them to exert control over immigration issues.

In 1986, the Single European Act enhanced the Treaty of Rome by making the European Union an area without borders and therefore giving European Citizens the incentive to relocate. This legislation was extended to go beyond the economic considerations of the Treaty of Rome in 1990. The European Council eliminated the importance of employment as a criteria for relocation and this became the basis for European Citizenship.

Subsequently, under the Maastricht Treaty of 1992, the concept of citizenship of the European Union was created and this gave European Citizens more freedom. The main aim of the Treaty was to create a European identity that incorporated national identities without diminishing their value.

Furthermore, this was a progressive attempt to control European migration flows. It aimed to create a common admission policy and, most importantly, it reassessed the status of non-European citizens. This policy attempted to go beyond the borders of European legislation (e.g. Schengen Agreement 1985).

1.2.2 - THE SINGLE EUROPEAN ACT (1986)

Before proceeding in the analysis of other important documents on immigration and asylum, it is necessary to examine the documents introduced above in detail. The Single European Act of 1986 established as a goal of the Community the creation of an internal market, which would "comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured". Nevertheless, there were disagreements over whether freedom of movement for persons required the abolition of controls on persons at internal borders. The Commission, in a Communication in May 1992, maintained that free movement within the internal market should apply not only to goods but to all persons regardless of nationality. But a General Declaration annexed to the Final Act of the Single European Act stated that the provisions of the Act establishing the internal market would not affect "the right of Member States to take such measures as they consider necessary for the purpose of controlling immigration from third countries". A further Political Declaration (1985) provided that:

In order to promote the free movement of persons, the Member States shall co-operate, without prejudice to the powers of the Community, in particular as regards the entry,

movement and residence of nationals of third countries. (Political Declaration by the Governments of the Member States on the free movement of persons, Final Act, 2)

This suggested that the free movement of legally resident third country nationals within the Community was essentially a matter for inter-governmental co-operation. Furthermore, any internal market measure relating to the free movement of persons would have to be adopted unanimously. These factors enabled the United Kingdom, in particular, to resist the Commission's interpretation of free movement within the internal market.

1.2.2.1 The Schengen area

The Community right to 'free movement' has remained limited to nationals of Member States. However, in a separate, if related, development, the introduction and expansion of the 'Schengen area' — originally an inter-governmental arrangement between France, Germany and the Benelux countries (Belgium, the Netherlands and Luxembourg) — have resulted in the removal of controls at internal borders throughout most of the EU countries. The Schengen Agreement, signed in the village of that name in Luxembourg on 14 June 1985, was later fleshed out by the 1990 Schengen Implementing Convention[4]. In the words of our Report Incorporating the Schengen Acquis into the European Union, the States concerned were "frustrated by the Community's failure to lift internal frontier controls on persons", and therefore decided to establish their own independent framework. The principal aim of the Schengen Agreement and Convention was to abolish checks at the internal borders within the Schengen area by transferring them to the external frontiers (an aim achieved for the first group of members in 1995). To achieve this, wide-ranging 'flanking' measures were required, covering such matters as asylum, visa and immigration policies,

police co-operation and the exchange of information. Since 1985 all the Member States with the exception of the United Kingdom and Ireland, had opted fully to join the Schengen system. Agreement was reached at the Amsterdam Inter-Governmental Conference to incorporate the so-called Schengen 'acquis' into the framework of the EU Treaties. Thus, most of the provisions of the acquis concerned with the free movement of persons were allocated a legal base in a new Title IV of the EC Treaty (TEC) on visas, asylum, immigration and other policies related to the free movement of persons. Provisions of the acquis dealing with police and judicial co-operation in criminal matters were allocated a legal base in Title VI of the Treaty on European Union (TEU). Incorporation of the Schengen acquis was made possible by a Protocol on the position of the United Kingdom and Ireland recognising their special status as non-Schengen members. Both countries had a general opt-out of any Community measure based on Title IV of the EC Treaty; they had a right, case by case, to choose to opt in. The Protocol and opt-out were designed to grant the United Kingdom the right to exercise at its 'internal' border with other Member States such controls as it considered necessary on persons seeking entry in the United Kingdom.

Shortly after the entry into force of the Amsterdam Treaty, the United Kingdom decided to participate in certain aspects of the incorporated Schengen acquis. The Government expressed particular interest in the Schengen provisions on law enforcement and criminal judicial co-operation as well as the Schengen Information System. The United Kingdom would seek to develop co-operation with EU partners on asylum and immigration policy "where it does not conflict with our frontiers-based system of control". A Council Decision agreeing the terms of the United Kingdom's participation in issues of the Schengen acquis (excluding provisions on entry to, residence and free movement within the Schengen area) was formally adopted in May 2000. The Irish Government has

since then made an application for participating in the Schengen acquis, which broadly mirrors the terms of the application made by the United Kingdom.

1.2.2 - THE DUBLIN CONVENTION (1994)

The main aim of the Dublin Convention (1994) was to determine the Member State responsibility for examining an application for asylum. The application of this Convention was to ensure that every asylum-seeker's application should be examined by a Member State, unless a 'safe' non-Member country could be considered responsible. This would avoid situations of refugees being shuttled from one Member State to another, with none accepting responsibility, as well as multiple serial or simultaneous applications. In the Convention, some main words and phrases related to the immigration issue were provided:

For the purposes of this Convention:

"alien" means any person other than a national of a Member State;

"application for asylum" means a request whereby an alien seeks protection from a Member State under the Geneva Convention, by claiming refugee status (Article 1);

"applicant for asylum" means an alien who has made an application for asylum in respect of which a final decision has not yet been taken;

"examination of an application for asylum" means all the measures for the examination of and decisions on an application for asylum;

"residence permit" means any authorisation issued by the authorities of a Member State allowing an alien to stay in its territory;

"entry visa" means authorisation by a Member State to enable an alien to enter its territory.

(The Dublin Convention, Art. 1)

Under the Dublin Convention, the Member States reaffirmed the obligations accepted under the Geneva Convention, as amended by the New York Protocol, with no geographical restrictions, and their commitment to co-operating with the services of the United Nations High Commissioner for Refugees (Article 2). They also undertook to examine the application of any alien who applied at the border or in their territory to any one of them for asylum (Article 3(1)).

Some general criteria were adopted to determine which Member State was responsible for examining the application. In particular,

Article 4

Where the applicant for asylum has a member of his family who has been recognized as having refugee status within the meaning of the Geneva Convention, as amended by the New York Protocol, in a Member State and is legally resident there, that State shall be responsible for examining the application, provided that the persons concerned so desire. The family member in question may not be other than the spouse of the applicant for asylum or his or her unmarried child who is a minor of under eighteen years, or his or her father or mother where the applicant for asylum is himself or herself an unmarried child who is a minor of under eighteen years.

The following Article concerned, instead, responsibility for the examination of an application related to possession of a valid residence permit:

Article 5

1. Where the applicant for asylum is in possession of a valid residence permit, the Member State which issued the permit shall be responsible for examining the application for asylum.
2. Where the applicant for asylum is in possession of a valid visa, the Member State which issued the visa shall be responsible for examining the application for asylum, except in the following situations:

(a) if the visa was issued on the written authorization of another Member State, that State shall be responsible for examining the application for asylum. Where a Member State first consults the central authority of another Member State, inter alia for security reasons, the agreement of the latter shall not constitute written authorization within the meaning of this provision.

(b) where the applicant for asylum is in possession of a transit visa and lodges his application in another Member State in which he is not subject to a visa requirement, that State shall be responsible for examining the application for asylum.

(c) where the applicant for asylum is in possession of a transit visa and lodges his application in the State which issued him or her with the visa and which has received written confirmation from the diplomatic or consular authorities of the Member State of destination that the alien for whom the visa requirement was waived fulfilled the conditions for entry into that State, the latter shall be responsible for examining the application for asylum. [...]

A further specification related to possession of a residence permit was found in the Paragraphs 3 and 4 of the same Article:

3. Where the applicant for asylum is in possession of more than one valid residence permit or visa issued by different Member States, the responsibility for examining the application for asylum shall be assumed by the Member States in the following order:

(a) the State which issued the residence permit conferring the right to the longest period of residency or, where the periods of validity of all the permits are identical, the State which issued the residence permit having the latest expiry date;

(b) the State which issued the visa having the latest expiry date where the various visas are of the same type;

(c) where visas are of different kinds, the State which issued the visa having the longest period of validity, or, where the periods of validity are identical, the State which issued the visa having the latest expiry date. This provision shall not apply where the applicant is in possession of one or more transit visas, issued on presentation of an entry visa for another Member State. In that case, that Member State shall be responsible.

4. Where the applicant for asylum is in possession only of one or more residence permits which have expired less than two years previously or one or more visas which have expired less than six months previously and enabled him or her actually to enter the territory of a Member State, the provisions of paragraphs 1, 2 and 3 of this Article shall apply for such time as the alien has not left the territory of the Member States.

Where the applicant for asylum is in possession of one or more residence permits which have expired more than two years previously or one or more visas which have expired more than six months previously and enabled him or her to enter the territory of a Member State and where an alien has not left Community territory, the Member State in which the application is lodged shall be responsible.

Conversely, Article 6 of the Convention specified cases when applicants illegally crossed the border into a Member State:

Article 6

When it can be proved that an applicant for asylum has irregularly crossed the border into a Member State by land, sea or air, having come from a non-member State of the European Communities, the Member State thus entered shall be responsible for examining the application for asylum.

That State shall cease to be responsible, however, if it is proved that the applicant has been living in the Member State where the application for asylum was made at least six months before making his application for asylum. In that case it is the latter Member State which is responsible for examining the application for asylum.

However, any Member State, even if it was not responsible under the criteria laid down in the Convention, might, for humanitarian reasons, examine an application for asylum at the request of another Member State.

Furthermore, the Member State responsible was required to complete the examination of the application for asylum and take charge of the applicant throughout this period (Articles 10 and 11)

1.2.3 - THE TREATY OF AMSTERDAM (1997)

The Treaty of Amsterdam - commonly known as the Amsterdam Treaty and amending the Treaty of the European Union, the Treaties establishing the European Communities and certain related acts -, was signed on 2 October 1997, and entered into force on 1 May 1999. It made substantial changes to the Treaty on European Union, which had been signed at Maastricht in 1992. The Amsterdam Treaty paid special attention to citizenship and the rights of individuals, in an attempt to achieve more democracy in the shape of increased powers for the European Parliament, a new title on employment, a Community area of freedom, security and justice, the beginnings of a common foreign and security policy (CFSP) and the reform of the institutions in the run-up to enlargement.

The Treaty was the result of many long-lasting negotiations which had begun in Messina, Sicily on 2 June 1995, nearly forty years after the signing of the Treaties of Rome, and reached completion in Amsterdam on 18 June 1997. Following the formal signing of the Treaty on 2 October 1997, the Member States engaged in an equally long and complex ratification process. The European Parliament endorsed the Treaty on 19 November 1997, and after two referenda and thirteen decisions by national parliaments, the Member States finally concluded the procedure. The Treaty of Amsterdam comprises 13 Protocols, 51 Declarations adopted by the Conference and 8 Declarations by Member States plus amendments to the existing Treaties set out in 15 Articles. Article 1 (containing 16 Paragraphs) amends the general provisions of the Treaty on European Union and covers the CFSP and cooperation in criminal and police matters. The next four Articles (70 Paragraphs) amend the EC Treaty, the European Coal and Steel Community Treaty (which expired in 2002), the

Euratom Treaty and the Act concerning the election of the European Parliament. The final provisions contain four Articles. The new Treaty also set out to simplify the Community Treaties, deleting more than 56 obsolete articles and renumbering the rest in order to make the whole more legible. By way of example, Article 189b on the codecision procedure became Article 251. The most pressing concerns of ordinary Europeans, such as their legal and personal security, immigration and fraud prevention, were all dealt with in other chapters of the Treaty. In particular, the EU was able to legislate on immigration, civil law or civil procedure, in so far as this was necessary for the free movement of persons within the EU. At the same time, intergovernmental cooperation was intensified in the police and criminal justice field so that Member States could coordinate their activities more effectively.

The Schengen Agreements have now been incorporated into the legal system of the EU; however, Ireland and the UK remained outside the Schengen agreement (see Common Travel Area for details). The Treaty laid down new principles and responsibilities in the field of the common foreign and security policy, with the emphasis on projecting the EU's values to the outside world, protecting its interests and reforming its modes of action. The European Council would lay down common strategies, which would then be put into effect by the Council acting by a qualified majority subject to certain conditions. In other cases, some States might choose to abstain 'constructively', i.e. without actually preventing decisions being taken. The Treaty introduced a High Representative for EU Foreign Policy who, together with the Presidents of the Council and the European Commission, puts on EU policy in the outside world a 'name and a face'. Although the Amsterdam Treaty did not provide for a common defence, it did increase the EU's responsibilities for peacekeeping and humanitarian work, in particular by forging closer links with Western European Union. As for the

institutions, there were two major reforms concerning the co-decision procedure (the legislative procedure involving the European Parliament and the Council), affecting its scope – most legislation was adopted by the co-decision procedure – and its detailed procedures – with Parliament playing a much stronger role. The President of the Commission would also have to earn the personal trust of Parliament, which would give him the authority to lay down the Commission's policy guidelines and play an active role in choosing the Members of the Commission by deciding on their appointment by common accord with the national governments. These provisions made the Commission more politically accountable, particularly *vis-à-vis* the European Parliament. Finally, the new Treaty opened the door, under very strict conditions, to closer cooperation between the Member States. Closer cooperation was established, on a proposal from the Commission, in cases where it was not possible to take joint action, provided that such steps did not undermine the coherence of the EU in dealing with the rights and equality of its citizens.

The Amsterdam Treaty did not settle all institutional questions once and for all. Work is still in progress on reforming the institutions to make them capable of operating effectively and democratically in a much enlarged European Union. The most pressing issues here are the composition of the Commission, the weighting of Member States' votes, and qualified majority voting. These questions were addressed to the Treaty of Lisbon.

The Treaty of Amsterdam transferred the free movement of persons from the third to the first pillar:

The concept of "pillars" is commonly used in relation to the Treaty on European Union.

Three pillars form the basic structure of the European Union. In particular,

- the Community pillar, corresponding to the three Communities: the European Community, the European Atomic energy Community (Euratom) and the Former European coal and Steel Community (ECSC) (first pillar);
- the pillar devoted to the common foreign and security policy, which comes under Title V of the EU Treaty (second pillar);
- the pillar devoted to police and judicial cooperation in criminal matters, which comes under Title VI of the EU Treaty (third pillar).

The three pillars function on the basis of different decision-making procedures: the Community procedure for the first pillar, and the intergovernmental procedure for the other two. In the case of the first pillar, only the Commission can submit proposals to the Council and Parliament, and a qualified majority is sufficient for a Council act to be adopted. In the case of the second and third pillars, this right of initiative is shared between the Commission and the Member States, and unanimity in the Council is generally necessary.

(adapted from the online source:

http://europa.eu/scadplus/glossary/eu_pillars_en.htm)

Thus, with the Treaty of Amsterdam more attention seemed to be devoted to the immigration and its harmonization process and Europe seemed to build a stronger legislative ‘identity’ in relation to this issue.

2 - POLITICAL PERSPECTIVE OF THE EU: AREA OF FREEDOM, SECURITY AND JUSTICE

2.1 - FROM THE TAMPERE COUNCIL (1999) TO THE BRUSSELS COUNCIL (2004)

Asylum and management of migration flows have been considered crucial issues in a wider area (i.e. the area of freedom, security and justice) with the aim of granting safety and freedom to the UE Member States.

One of most important Departments devoted to this issue is the Directorate-General for Justice, Freedom and Security, which is one of the 36 European Commission Departments. The European Commission makes proposals for EU legislation and monitors how such legislation is implemented once it has been adopted by the EU Council of Ministers. However, in the area of Justice, Freedom and Security – a new area in the European Union competence – the European Commission shares its right to make legislative proposals with the Member States. Its role is to ensure that the whole European Union is an area of freedom, security and justice. Its specific tasks and responsibilities are laid down by the Treaty of Rome (1957) (see Part Two, Articles 17-22; Part Three, Title III, Articles 39-47), the Treaty of Amsterdam (1999) and the Conclusions of the European Council (1999).

Following the entry into force of the Treaty of Amsterdam on 1 May 1999 and the European Council at Tampere in October 1999, the European Union committed itself to developing a common policy on immigration and asylum to ensure more effective management of migration flows to the EU. This commitment emphasises fair treatment of third country nationals, partnership

with countries of origin, and a balanced approach to migration management, as well as the development of a common European asylum system.

In its Conclusions the Laeken European Council of December 2001 invited the Commission “to establish a system for exchange of information on asylum, migration and countries of origin”. In response to the need for more and better information on migratory issues, a new budget line (budget line 18 03 05) was included in the 2002 budget of the European Communities as a pilot project with the aim to set up a 'European Migration Monitoring Centre' and improve statistics in the field of migration and asylum. Owing to the delay in setting up the network, activities funded under the 2002 budget line effectively began in 2003 and since then there has been a one year difference between the budget line year and the implementation year. The project, which eventually took the name “European Migration Network”, continued from 2003, as a preparatory action until 2006 (budget line year 2005).

At the Thessaloniki European Council of June 2003 the Heads of State and Government recognised the “importance of monitoring and analysing the multidimensional migration phenomenon” and endorsed the creation of the European Migration Network. They also supported examining the possibility to create a permanent structure in the future.

Endorsed by the European Council in November 2004, the Hague Programme was built upon the framework of the Tampere programme to advance a new agenda on freedom, security and justice within the EU.

The continuous development since the entry into force of the Treaty of Amsterdam of common European policies in the areas of migration and asylum needed to be supported by comparable, reliable and objective information and data, at national and European level.

Following the discussion on immigration and asylum by the Member States in EU Councils, EU Directives aiming at protecting migrants' rights came into force, and in particular:

- Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

- Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

- Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

At the same time, Measures against illegal immigration were also adopted, as described (see sections 2.2 and 2.3).

2.2 - 2004-2008: CHANGING POLITICAL ATTITUDE: FROM PROTECTION OF REFUGEES' RIGHTS TO PROTECTION OF MEMBER STATES

On 28 February 2002, the EU Council of ministers adopted a comprehensive plan to combat illegal immigration and trafficking of human beings in the European Union. In particular, on 28 November 2002, the Council adopted a Return action programme which suggested developing a number of short, medium and long term measures, including common EU-wide minimum standards or guidelines, in the field of return of illegal residents. In September 2005 the Commission adopted a proposal for a Directive on common standards and procedures in Member States for returning illegally staying third-country nationals to fully implement the Return Action Programme agreed upon in 2002.

The objective of this proposal was to provide for clear, transparent and fair common rules concerning return, removal, use of coercive measures, temporary custody and re-entry while taking into full account the respect for human rights and fundamental freedoms of the persons concerned. In July 2006 the Commission adopted a Communication on policy priorities in the fight against illegal immigration of third-country nationals which was built upon on the guiding principles and EU achievements and further develop new priorities. It followed a comprehensive approach, striking a balance between security and basic rights of individuals and thus addresses measures at all stages of the illegal immigration process. On 16 December 2008, the European Parliament and the Council of the European Union adopted Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals.

2.3 - THE EU PACT (2008)

One of the most important documents aimed at combating illegal immigration was the EU Pact (2008), proposed by France to the 27 members of the European Union. It was an agreement on immigrants and refugees that put a clear emphasis on policing. Under this pact – so far a political accord rather than a binding legal document – the EU Member States pledged to expel illegal immigrants from the European soil, to strengthen border controls and to seek a joint asylum policy by 2012. President Nicolas Sarkozy of France, a former interior minister who clamped down on illegal immigration in his own country, made migration a major issue of his six-month French presidency of the EU. The pact was designed to align immigration more closely with the needs of the European labour market, acknowledging that the Continent needed foreign workers to make up for a shrinking population. It was also intended to bring harmony to the multitude of EU asylum practices, a goal that human rights groups have long lobbied for. However, with its emphasis on increased border controls, the pact was likely to reinforce the image of a Fortress Europe.

The EU Pact established that: "The European Union does not have the means to decently welcome all the migrants who hope to find a better life there". This aroused different reactions. The Argentine president, Cristina Fernández de Kirchner, said the new rule evoked "times of xenophobia" in Europe, while the Venezuelan president, Hugo Chávez, threatened to stop selling oil to the EU. France, where Sarkozy required enforcement agencies to fill a quota for deportations – 26,000 in 2008 – had to water down an initial proposal in order to win Spanish and German support.

Madrid rejected the idea of an integration contract, which would require would-be immigrants to embrace European values, among other things. Germany

opposed the creation of a European asylum agency with the power to decide refugee status.

Nevertheless, there appeared to be consensus on many of the tougher proposals, designed to police the EU frontiers at a time when 24 members of the Union had eliminated border controls within its borders.

Ministers committed their countries to expanding the role and budget of Frontex, the EU border control agency, particularly along the bloc's eastern land frontier and along the Mediterranean in the south. By 2012, visitors to the EU will need biometric visas.

The pact encouraged EU states to strike agreements with third countries for the readmission of migrants expelled from Europe.

The pact also rules out mass amnesties for illegal immigrants, a practice that has been sharply criticized by France. Sarkozy has complained that immigrants who gain legal entry into one country can then move freely into the 23 other EU countries that are members of the border-free Schengen zone.

The United Nations refugee agency welcomed the move toward a unified European asylum procedure. It pressed European governments to ensure that refugees receive "fair and equal treatment" across the whole EU.

3 - EU POLITICAL ATTITUDE TOWARDS IMMIGRATION AND ASYLUM: A LINGUISTIC INVESTIGATION OF PRESIDENCY CONCLUSIONS OF THE EU COUNCILS (1999-2004)

3.1 - POLICY AND IDEOLOGY

An analysis of relationships between policy and ideological implications in the EU attitude towards the immigration issue may help interpret and analyse specific lexical choices and discourse structures. On the other hand, a linguistic investigation may reveal the ideological ‘point of view’ of an institution on immigration. As a matter of fact, language can be considered a socially conditioned process, “[...] conditioned that is by other (non-linguistic) parts of society” (Fairclough 1989: 22). The concept of ‘discourse’ itself seems to be strongly related to the social dimension and social practice. The latter implies “[...] a dialectical relationship between a particular discursive event and the situation(s), institution(s) and social structure(s) which frame it [...]” (Weiss / Wodak 2003: 13).

Thus, ideologies can be considered as “ [...] representations of aspects of the world which can be shown to contribute to establishing, maintaining and changing social relations of power, domination and exploitation”. (Fairclough 2003: 9)

The assumption concerning the relationship between policy and ideology is that language is a part of society, as it is a social process and a socially conditioned process:

[...] there is not an external relationship ‘between’ language and society, but an internal and dialectical relationship. Language is a part of society; linguistic phenomena are social phenomena of a special sort, and social phenomena are (in part) linguistic phenomena. (Fairclough 1989: 23)

Thus, the notion of language as a form of action which is “socially shaped and socially constitutive” allows us to think of any text as constitutive of social identity, social relations and systems of knowledge and beliefs (Fairclough 1992).

Linguistic choices can be viewed as the result of a selection which depends on a view of the world:

When a definition is given, the selection of what is defined, i.e. the *definiendum*, has an ideological value, it implies that the arguer wants to give special relevance to the concept.” (Antelmi 2007: 106).

Definitions, along with adjectives and adverbials, can be viewed to be functional to the expression of evaluation and stance with regard to reality (D’Avanzo / Polese forthcoming).

The aim of this section is to investigate lexical choices employed in EU Councils on immigration and asylum. Particular attention will be devoted to possible ideological implications in EU policy through an analysis of collocations of some key words like ‘immigration’, ‘refugees’ and ‘migration’. More particularly, evaluative language will be taken into account and considered as a means to reveal EU political attitude towards immigration and asylum.

3.2 - EVALUATION

Before investigating evaluative language characterizing the European Councils, it is necessary to highlight the importance of evaluation in language analysis.

‘Evaluation’ seems to perform three main functions:

- (1) to express the speaker’s or writer’s opinion, and in doing so to reflect the value system of that person and their community;
- (2) to construct and maintain relations between the speaker or writer and hearer or reader;
- (3) to organize the discourse.

(Hunston / Thompson 2000: 6)

What is interesting here is evaluation related to communication of a system of values, as the latter may reveal ideologies characterising institutional discourse (in our case, the EU). As a matter of fact, evaluative language is strongly related to ideologies:

Every act of evaluation expresses a communal value-system, and every act of evaluation goes towards building up that value-system. This value-system in turn is a component of the ideology which lies behind every text. Thus, identifying what the writer thinks reveals the ideology of the society that has produced the text.

(Hunston / Thompson 2000: 6)

Thus, the general assumption here is that EU’s ‘view’ on immigration and asylum is conveyed through evaluative language choices employed in dealing with those issues.

3.3 - THE PRESIDENCY CONCLUSION: FEATURES OF TEXTUALITY

The investigation concerns the European Councils from 1999 to 2008. It is necessary to point out that while the Councils from 1999 to 2004 mainly concern immigration, the ones from 2004 to 2008 can be considered general Councils where also immigration and asylum matters are discussed.

The European Council can be considered an important instrument to define general European guidelines on some different issues. As a matter of fact, it provides the Union with the necessary impetus for its development and defines the general guidelines (Art. 4 of the Treaty on European Union 1992). The European Council gathers together the Heads of State or Government of the Member States of the European Union and the President of the Commission. It came into being in 1974 and was given formal status by the Single European Act (1986). It meets at least once every six months under the chairmanship of the Head of State or Government of the Member State that holds the Presidency of the Council of the European Union, which rotates twice a year. Presidency Conclusions are published after each meeting. They are reports where some crucial issues discussed during the Councils are summarized:

The European Council shall submit to the European Parliament a report after each of its meetings and a yearly written report on the progress achieved by the Union (Treaty of the European Union, Art.4)

In particular, the corpus investigated includes:

- the Presidency Conclusions of European Tampere Council (1999);
- the Presidency Conclusions of Laeken European Council (2001);
- the Presidency Conclusions of Thessaloniki European Council (2003);
- the Presidency Conclusions of Brussels European Council (2004);

- the Presidency Conclusions of the Councils from 2005 to 2008¹

3.4 - EVALUATION IN DEALING WITH IMMIGRATION AND ASYLUM

In order to analyse evaluation related to lexical choices, an investigation of the co-text of some important words is provided. In all the Councils under examination, the word *immigration* mainly co-occurs with the adjective *illegal*:

Total number of Tokens	Total number of Types
144175	6769

Table 1. Total number of Tokens and Types of all the Councils in the corpus.

1	23	illegal immigration
2	9	immigration and
3	9	immigration policy
4	5	and immigration
5	4	common immigration
6	4	Immigration Liaison
7	3	the Immigration
8	2	effective immigration
9	2	immigration is
10	2	immigration requires
11	2	immigration, and
12	2	immigration, border
13	2	immigration, taking
14	2	immigration. By
15	2	immigration. The
16	2	in immigration
17	2	on immigration
18	2	that immigration
19	1	asylum, immigration
20	1	data, immigration
21	1	II. IMMIGRATION
22	1	immigration liaison

Table 2. Clusters of ‘immigration’ in all the Councils.

¹ From now onwards they will be referred to as EU Councils.

If we consider the clusters of all the Councils where the adjective *illegal* mainly co-occurs with the word *immigration*, we can assert that a particular interest is shown towards immigration as a problem, a criminal phenomenon rather than a resource. Furthermore, negative evaluation seems to emerge from an investigation of the co-text where the phrase *illegal immigration* is found. Thus, in order to investigate ‘evaluative language’ related to immigration, some concordances of the word *immigration* are reported:

1	he Union to develop common policies on asylum and immigration, while taking
2	stent control of external borders to stop illegal immigration and to combat
3	n campaigns on the actual possibilities for legal immigration, and for the
4	cial is determined to tackle at its source illegal immigration, especially by

Figure 1. Concordances of ‘immigration’ (Tampere Council 1999).

1	4 and 15 December 2001 A true common asylum and immigration policy 38.
2	soon as possible, a common policy on asylum and immigration, which will ma
3	its Member States. 40. A true common asylum and immigration policy implies
4	basis of the Commission communication on illegal immigration and the smuggl
5	ill help in the fight against terrorism, illegal immigration networks and t
6	crime, drug trafficking, terrorism and illegal immigration. SN 300/1/0
7	stablished on social policy, employment, asylum, immigration, police, just

Figure 2. Concordances of ‘immigration’ (Laeken Council 2001).

1	nt approach, covering policies to combat illegal immigration and, in cooper
2	aim of saving lives at sea and tackling illegal immigration. • Establish
3	l immigration. • Establish regional networks of Immigration Liaison Office
4	possible in 2006, and present reports on illegal immigration and traffick

Figure 3. Concordances of ‘immigration’ (Brussels Councils 2005).

1	ith respect to external border controls, asylum, immigration and the prevent
---	--

2	Chapter 2 (policies on border checks, asylum and immigration), Chapter 3 (j
3	ect of the Commission's communication on a common immigration policy. It too
4	ed migration flows and the fight against illegal immigration. The European C
5	veness and public finances, whilst stressing that immigration is no substit
6	o substitute for structural reform. An effective immigration policy should b
7	ing third-country workers. 21. Combating illegal immigration requires con
8	ration, manage legal migration and combat illegal immigration. By this we sh
9	among Member States in the fight against illegal immigration, taking account
10	ing policies for extended European solidarity in immigration, border control

Figure 4. Concordances of ‘immigration’ (Brussels Councils 2007).

As confirmed by the occurrences in Table 2 and Figures 1-4, the word *immigration* mainly co-occurs with the adjective *illegal*. Moreover, some verbs that are negatively connoted are employed: *fight*, *combat*, *tackle*. As a matter of fact, ‘illegal immigration’ is considered a criminal phenomenon to be fought and strongly associated with other criminal phenomena. This is reinforced by other elements in the co-text where this phrase occurs:

- (1) The European Council is determined *to tackle at its source illegal immigration*, especially by combating those who engage in trafficking in human beings and economic exploitation of migrants. (Tampere Council 1999).²

The strongly evaluative and subjective meaning of *tackle* is enhanced by the adverbial phrase *at its source*. In the Macmillan Dictionary (2007), *to tackle* can be mainly found to co-occur with nouns like *challenge*, *crisis*, *issue*, *problem*, which denote negative or problematic phenomena. The negative evaluation is further conveyed by the relationship between ‘immigration’ and other issues, such as *trafficking in human beings* and *economic exploitation of migrants* and by the syntactic structure where *illegal immigration* occurs. As a matter of fact, in example (1), *immigration* occurs in a final clause, where the main aim (*to tackle illegal immigration*) is achieved by fighting other criminal phenomena, such as

² From now onwards, Italics will be added in the examples

trafficking in human beings and *exploitation of migrants*, which are expressed by an instrumental clause introduced by the prepositional phrase *by combating*. The verb ‘combat’ is much more negatively connoted than ‘tackle’, being typical of war language.

In other instances, the phrase *illegal immigration* still co-occurs along with other criminal phenomena:

(2) Better management of the Union’s external border controls will help in the fight against *terrorism, illegal immigration networks and the traffic in human beings*. (Laeken Council 2001)

(3) Progress on measures agreed in the Hague Programme aimed at addressing problems such as *illegal immigration, trafficking of human beings, terrorism and organised crime* while guaranteeing respect for fundamental freedoms and rights will be assessed in December 2006. (Brussels Council 2006)

As can be observed in the instances above, *immigration* is considered on a par with *trafficking of human beings, terrorism, and organised crime*. They are linked through punctuation, in coordinated structures, which make them criminal phenomena to be equally faced and fought.

3.5 - MIGRATION VS. IMMIGRATION

A similar perspective seems to emerge from an analysis of the word *migration*:

1	41	migration and
2	33	of migration
3	24	on migration

4	15	migration policy
5	14	migration issues
6	11	between migration
7	11	illegal migration
8	11	migration flows
9	10	European migration
10	10	legal migration
11	10	Migration and
12	9	and migration
13	8	migration in
14	8	the migration
15	7	managed migration
16	6	as migration
17	6	on Migration
18	6	that migration
19	5	to migration
20	5	to Migration
21	4	comprehensive migration
22	4	for migration
23	4	International Migration

Table 3. Clusters of ‘migration’ in all the Councils in the corpus.

As can be noticed from the clusters in Table 3, *migration* very often co-occurs with the linker *and*. It is a phenomenon which has to be managed, debated and fought like other criminal phenomena:

- (4) The citizens of Europe rightly expect the European Union, while guaranteeing respect for fundamental freedoms and rights, to take a more effective, joint approach to cross-border problems such as *illegal migration and trafficking in and smuggling of human beings*, as well as to terrorism and organised crime. (Brussels Council 2004)

In the Councils, *migration* seems to be preferred to *immigration*:

Frequency of <i>immigration</i>	Frequency of <i>migration</i>
48	213

Table 4. Frequency of ‘immigration’ and ‘migration’ in all the Councils in the corpus.

According to the Macmillan Dictionary (2007), the two words convey two slightly different meanings:

Migration: *the process by which people or animals migrate to another place or country;*

Immigration: *the process in which people enter a country in order to live there permanently.*

As to verbs, ‘migrate’ is employed to denote the movement of people who decide to go to other places or countries. Conversely, the verb ‘enter’ is employed to refer to people who decide to live in a place permanently. Thus, the much higher frequency of ‘migration’ over ‘immigration’ in the Councils shows a preference for fighting a phenomenon before it may be too difficult to eradicate it.

3.6 - A DIACHRONIC INVESTIGATION OF ‘IMMIGRATION’/ ‘MIGRATION’ IN EU PRESIDENCY CONCLUSIONS

A further step in this section is to investigate the co-text of the words *migration* and *immigration* diachronically starting from the Tampere Council (1999) up to the latest Councils in 2008. More particularly, the aim is to analyse the evaluative language employed by the EU Member States concerning immigration and people involved in the phenomenon in the course of time:

1	he Union to develop common policies on asylum and immigration, while taking i
2	stent control of external borders to stop illegal immigration and to combat
3	n campaigns on the actual possibilities for legal immigration, and for the
4	cial is determined to tackle at its source illegal immigration, especially by

Figure 5. Concordances of 'immigration' (Tampere Council 1999).

1	4 and 15 December 2001 A true common asylum and immigration
2	soon as possible, a common policy on asylum and immigration,
3	its Member States. 40. A true common asylum and immigration
4	basis of the Commission communication on illegal immigration
5	will help in the fight against terrorism, illegal immigration
6	d crime, drug trafficking, terrorism and illegal immigration.
7	established on social policy, employment, asylum, immigration,

Figure 6. Concordances of 'immigration' (Laeken Council 2001).

1	all meetings of the Conference as observers. II. IMMIGRATION,
2	o: The development of a common policy on illegal immigration,
3	priate legal instrument formally establishing the Immigration
4	do not cooperate with the EU in combating illegal immigration,
5	n Europe, in order to map EU-wide migration data, immigration

Figure 7. Concordances of 'immigration' (Thessaloniki Council 2003).

1	oping a coordinated policy with regard to asylum, immigration and external
2	period: the foundations for a common asylum and immigration policy have be
3	l employment can act as a pull factor for illegal immigration and can lead t
4	d refugee protection, prevent and combat illegal immigration, inform on leg
5	1.7.1 Border checks and the fight against illegal immigration The European
6	e Commission to ensure the firm establishment of immigration liaison networ
7	ration flows, including the fight against illegal immigration should be stre
8	ity of EU information systems in tackling illegal immigration and improving b
9	ilitating legitimate travel and tackling illegal immigration through furth
10	n the chairpersons of the Strategic Committee on Immigration, Frontiers and

Figure 8. Concordances of 'immigration' (Brussels Council 2004).

1	nt approach, covering policies to combat illegal immigration and, in coope
2	aim of saving lives at sea and tackling illegal immigration. • Establish r
3	l immigration. • Establish regional networks of Immigration Liaison Offic
4	possible in 2006, and present reports on illegal immigration and trafficki

Figure 9. Concordances of 'immigration' (Brussels Councils 2005).

1	me aimed at addressing problems such as illegal immigration, trafficking of
2	ion on future priorities in the field of illegal immigration and follow-up
3	among Member States in the fight against illegal immigration, taking account
4	ing policies for extended European solidarity in immigration, border control
5	ng operational means, reinforcing links with the Immigration Liaison Officer

Figure 10. Concordances of 'immigration' (Brussels Councils 2006).

1	ith respect to external border controls, asylum, immigration and the preven
2	Chapter 2 (policies on border checks, asylum and immigration), Chapter 3 (j
3	ect of the Commission's communication on a common immigration policy. It look
4	ed migration flows and the fight against illegal immigration. The European C
5	veness and public finances, whilst stressing that immigration is no substit
6	o substitute for structural reform. An effective immigration policy should b
7	ing third-country workers. 21. Combating illegal immigration requires conce
8	ration, manage legal migration and combat illegal immigration. By this we sh
9	among Member States in the fight against illegal immigration, taking account
10	ing policies for extended European solidarity in immigration, border contrl
11	ng operational means, reinforcing links with the Immigration Liaison Officer

Figure 11. Concordances of 'immigration' (Brussels Councils 2007).

1	by the Commission of its Communication "A common immigration policy for Eu
2	forward to the forthcoming proposal of a pact on immigration and asylum by
3	by the Commission of its Communication "A common immigration policy for Eur
4	forward to the forthcoming proposal of a pact on immigration and asylum by

Figure 12. Concordances of 'immigration' (Brussels Councils 2008).

As can be observed from Figures 5-12, no substantial difference can be inferred in the course of time, as the verbs most regularly collocating with ‘immigration’ in all the Councils belong to the same semantic field. In particular, the verbs *combat*, *fight* and, *tackle* with a highly negative connotation and belonging to the war semantic field are employed, as emerged from analysis in section 3.4. It can be noticed that there is no negative adjective in the concordances of *immigration* in the Brussels Councils 2008, but reference to the forthcoming EU Pact, a document where illegal immigration would be widely discussed (see Section 2.3). As a matter of fact, under this Pact, EU nations commit themselves to eradicating illegal immigration from Europe and to strengthening border controls.

As far as the diachronic investigation of *migration* is concerned, the context of this word is shown in the concordances in Figures 13-16:

1	ed here in Tampere.A. A COMMON EU ASYLUM AND MIGRATION POLICY 10. The separ
2	separate but closely related issues of asylum and migration call for the develo
3	European Union needs a comprehensive approach to migration addressing politica
4	ort of the High Level working Group on Asylum and Migration set up by the Council
5	ate in which they are resident. IV. Management of migration flows 22. The Europe
6	tresses the need for more efficient management of migration flows at all their s

Figure 13. Concordances of ‘migration’ (Tampere Council 1999).

1	ean system for exchanging information on asylum, migration and countries of ori
2	y, action against cross-border crime, control of migration flows and reception

Figure 14. Concordances of ‘migration’ (Laeken Council 2001).

1	lopment of a common European policy on asylum and migration. EN
2	9. Given the top political priority ascribed to migration, there is a mark
3	as a two-way process in order to combat illegal migration and to explore le

4	to combat illegal migration and to explore legal migration channels under sp
5	ird countries 19. In the context of integrating migration issues in our U
6	and actions with third countries in the field of migration should be part of
7	in need of protection, in the context of broader migration movements, and de
8	es the Commission to present an Annual Report on Migration and Integration i
9	nd Integration in Europe, in order to map EU-wide migration data, immigration
10	icy initiatives for more effective management of migration in Europe. EN
11	of monitoring and analysing the multidimensional migration phenomenon, t
12	Council welcomes the establishment of a European Migration Network and

Figure 15. Concordances of ‘migration’ (Thessaloniki Council 2003).

1	pproach to cross-border problems such as illegal migration and trafficking in a
2	y fundamental rights and citizenship, asylum and migration, border management,
3	pproach to cross-border problems such as illegal migration, trafficking in and
4	national treaties to persons in need, to regulate migration flows and to control
5	-semitism, racism and xenophobia. 1.2 Asylum, migration and border policy
6	ylum, migration and border policy International migration will continue. A com
7	A comprehensive approach, involving all stages of migration, with respect to th
8	of migration, with respect to the root causes of migration, entry and admission
9	working relations between those responsible for migration and asylum policies
10	The ongoing development of European asylum and migration policy should be bas
11	opment of a common policy in the field of asylum, migration and borders started
12	dom, subject to the Nice Treaty, except for legal migration. 1.3 A Common
13	ubmitted by the Commission in 2005. 1.4 Legal migration and the fight again
14	and the fight against illegal employment Legal migration will play an import
15	tcome of discussions on the Green Paper on labour migration, best practices in M
16	the Commission to present a policy plan on legal migration including admission
17	ernet. 1.6 The external dimension of asylum and migration 1.6.1 Partnership
18	6.1 Partnership with third countries Asylum and migration are by their very na
19	, in their efforts to improve their capacity for migration management and ref
20	illegal immigration, inform on legal channels for migration, resolve refugee sit
21	an Council recognises that insufficiently managed migration flows can result in
22	ion to continue the process of fully integrating migration into the EU's exist
23	es the Commission to complete the integration of migration into the Country and
24	. 1 COM (2004) 410 final Policies which link migration, development coopera
25	e EU, to enable these countries better to manage migration and to provide adeq
26	systems, border control and wider cooperation on migration issues will be prov
27	ensifying cooperation and dialogue on asylum and migration with neighbourino
28	a common readmission policy. 1.7 Management of migration flows 1.7.1 Border
29	trics and information systems The management of migration flows, including the
30	eal partnership in external relations, including migration-related issues. 2.

Figure 16. Concordances of ‘migration’ (Brussels Council 2004).

Through the investigation of the co-text of the Councils from 1999 to 2004, it is possible to infer that migration seems to be growingly perceived as a phenomenon that has to be analysed ever more efficiently. As a matter of fact, the word *migration* can be found to co-occur with words and phrases conveying the need to intensify cooperation among Member States on this issue but also to develop and manage this process. This concept is conveyed through the employment of comparative phrases such as *to enable these countries **better** to manage migration, border control and **wider** cooperation, **more effective** management of migration flows, **more efficient** management of migration flows* (bold added). Moreover, also the verbs *to map, to explore, to improve* seem to convey the need to better understand the migration phenomenon in order to improve a common immigration policy:

1	ncil on 21 November 2005. IV. GLOBAL APPROACH TO MIGRATION 8. The European Cou
2	ropean Council notes the increasing importance of migration issues for the EU a
3	hird countries, harnessing the benefits of legal migration. It recalls that mig
4	the benefits of legal migration. It recalls that migration issues are a central
5	ogue and cooperation with all those countries on migration issues, including re
6	o respond to the opportunities and challenges of migration, as outlined in the
7	es the importance of tackling the root causes of migration, for example through
8	rity Actions for Responding to the Challenges of Migration and adopts the "Glob
9	of Migration and adopts the "Global approach to migration: Priority actions f
10	/16 December 2005 ANNEX I GLOBAL APPROACH TO MIGRATION: PRIORITY ACTIONS
11	rity actions for responding to the challenges of migration: first follow-up to
12	s, which form part of ongoing work to ensure that migration works to the benefit
13	concerned. Action must be taken to reduce illegal migration flows and the loss o
14	or refugees, and build capacity to better manage migration, including through m
15	maximising the benefits to all partners of legal migration, while fully resp
16	report of the Global Commission on International Migration, and prepare for the
17	on, and prepare for the UN High Level Dialogue on Migration and Development that
18	ogue and cooperation with Africa • Work to make migration a shared priority f
19	Conference in Morocco in 2006 and a conference on migration and development in B
20	s in March 2006. • Explore the feasibility of a migration routes initiative f
21	dy to improve understanding of the root causes of migration to underpin the Ton
22	s to highlight the risks associated with illegal migration and raise awareness
23	raise awareness about available legal channels for migration. Work with neighbo

24	untries • Hold a EuroMed Ministerial meeting on migration in 2006. • Engage M
25	e mentioned below, to prevent and combat illegal migration and trafficking in h
26	in human beings, build capacity to better manage migration, and explore how be
27	d explore how best to share information on legal migration and labour market op
28	rtunities, for example through the development of migration profiles and throug
29	to take forward cooperation on the basis of the migration provisions of the EC
30	ude the work to agree the EU-Libya Action Plan on migration as early as possibl
31	initiating dialogue and cooperation with Libya on migration issues, and impleme
32	d management of migratory flows, building on the migration component of the reg
33	rican countries in the framework of the possible migration routes initiative.
34	il welcomes the increased priority being given to migration and the Commission
35	ial assistance in areas concerning or related to migration in respect of its re
36	rica, with a view to tackling the root causes of migration. The European Cou
37	6, including actions promoting synergies between migration and development. Ad
38	cooperation with third countries in the areas of migration and asylum under t
39	form; education and socio-cultural exchanges; and migration, social integration,

Figure 17. Concordances of 'migration' (Brussels Council 2005).

1	e Hague Programme of November 2004 whereby legal migration could play an impor
2	es note of the Commission's Policy Plan on Legal Migration presented in Decem
3	s to combat organised crime, corruption, illegal migration and terrorism. The E
4	ss with third countries of origin and transit in migration issues, in particula
5	sive approach. Developing the Global Approach to Migration agreed in December 2
6	the Commission on the Hampton Court follow-up to migration and security to be
7	derlines the priority of enhancing cooperation on migration with African and ne
8	ng countries and calls for a balanced dialogue on migration with African States
9	frican Union through a pan-African conference on migration and development; -
10	ACP (African, Caribbean and Pacific) dialogue on migration (on the basis of Art
11	agement to hold a EUROMED Ministerial Meeting on Migration Management and to hi
12	ration Management and to highlight cooperation on migration as an important par
13	ls on implementation of AENEAS funded projects on migration, providing financial
14	sure more effective management of all aspects of migration flows; 10633/1/06
15	thcoming UN High-Level Dialogue on International Migration and Development and
16	ition that integrates the development aspects of migration in a coherent manner
17	forward on the Commission's Policy Plan on Legal Migration. 9. The European C
18	tives to put in place an EU-Africa partnership on migration and development. The
19	7. In that context the European Council discussed migration and the improvement
20	h as cross-border crime and terrorism as well as migration. At the same time, m
21	form process are made. A comprehensive European Migration Policy 21. The Eu
22	The European Council underlines the importance of migration issues for the EU an
23	. Addressing both challenges and opportunities of migration for the benefit of
24	the start of the 21st century. 22. The European migration policy builds on the

25 ague Programme of 2004 and the Global Approach to Migration adopted in 2005. It
 26 nting the Global Approach have demonstrated that migration needs to be address
 27 way in the framework of the EU/Africa dialogue on migration and development, on
 28 process, including the Ministerial Conference on Migration in 2007. In order to
 29 on Migration in 2007. In order to strengthen the migration dialogue, specific E
 30 nt to key African countries during 2007, - the migration and development agen
 31 ts, with a view to addressing the root causes of migration, 16879/1/06 REV 1
 32 - Member States and the Commission will integrate migration and development is
 33 e countries of origin and transit to incorporate migration issues in their nati
 34 ies, and support capacity building for effective migration management, includin
 35 luding through establishment of country-specific migration profiles. The new ge
 36 corporate, where relevant, the connection between migration and development. In
 37 e Commission's initiative for an EU Programme on Migration and Development in A
 38 ing, - country-specific cooperation platforms on migration and development will
 39 s relevant international organisations to manage migration in a more coherent m
 40 ber 2006 UN High Level Dialogue on International Migration and Development will
 41 l be ensured; the EU will take a lead in placing migration and development iss
 42 irst meeting of the Global Forum on International Migration and Development in
 43 s area, consideration will be given to how legal migration opportunities can be
 44 s and means to facilitate circular and temporary migration will be explored; th
 45 enhanced in order for it to be able to meet the migration challenges at the EU
 46 scope for action to be taken to counter illegal migration by sea, 16879/1
 47 itarian assistance; d) develop, as far as legal migration is concerned, well-m
 48 far as legal migration is concerned, well-managed migration policies, fully res
 49 within the framework of the Policy Plan on Legal Migration of December 2005 sh
 50 ion on measures taken in the areas of asylum and migration, in line with the mu
 51 rces available for implementing the comprehensive migration policy by full use
 52 important resources to underpin the comprehensive migration policy, as will the
 53 nt with ACP partners, help address root causes of migration through long-term d
 54 back on the implementation of the comprehensive migration policy in good time

Figure 18. Concordances of 'migration' (Brussels Council 2006).

1 7. In that context the European Council discussed migration and the improvement
 2 h as cross-border crime and terrorism as well as migration. At the same time, m
 3 form process are made. A comprehensive European Migration Policy 21. The Eur
 4 The European Council underlines the importance of migration issues for the EU an
 5 . Addressing both challenges and opportunities of migration for the benefit of
 6 the start of the 21st century. 22. The European migration policy builds on the
 7 ague Programme of 2004 and the Global Approach to Migration adopted in 2005. It
 8 nting the Global Approach have demonstrated that migration needs to be adresse
 9 way in the framework of the EU/Africa dialogue on migration and development, on
 10 process, including the Ministerial Conference on Migration in 2007. In order t

11 on Migration in 2007. In order to strengthen the migration dialogue, specific E
 12 nt to key African countries during 2007, - the migration and development agen
 13 ts, with a view to addressing the root causes of migration, 16879/1/06 REV 1
 14 - Member States and the Commission will integrate migration and development iss
 15 e countries of origin and transit to incorporate migration issues in their nati
 16 ies, and support capacity building for effective migration management, include
 17 luding through establishment of country-specific migration profiles. The new ge
 18 corporate, where relevant, the connection between migration and development. In
 19 e Commission's initiative for an EU Programme on Migration and Development in A
 20 ing, - country-specific cooperation platforms on migration and development will
 21 s relevant international organisations to manage migration in a more coherent m
 22 ber 2006 UN High Level Dialogue on International Migration and Development will
 23 l be ensured; the EU will take a lead in placing migration and development issu
 24 irst meeting of the Global Forum on International Migration and Development in
 25 s area, consideration will be given to how legal migration opportunities can be
 26 s and means to facilitate circular and temporary migration will be explored; th
 27 enhanced in order for it to be able to meet the migration challenges at the EU
 28 scope for action to be taken to counter illegal migration by sea, 16879/1/06
 29 itarian assistance; d) develop, as far as legal migration is concerned, well-m
 30 far as legal migration is concerned, well-managed migration policies, fully res
 31 within the framework of the Policy Plan on Legal Migration of December 2005 sho
 32 ion on measures taken in the areas of asylum and migration, in line with the mu
 33 rces available for implementing the comprehensive migration policy by full use
 34 important resources to underpin the comprehensive migration policy, as will the
 35 nt with ACP partners, help address root causes of migration through long-term d
 36 back on the implementation of the comprehensive migration policy in good time
 37 progress in developing a comprehensive European migration policy based on comm
 38 les, capable of taking account of all aspects of migration (the migration and d
 39 taking account of all aspects of migration (the migration and development age
 40 genda, as well as internal aspects such as legal migration, integration, protec
 41 ntrol, readmission and the fight against illegal migration and human traffickin
 42 omed partners, as part of the Global Approach to Migration and calls for work o
 43 f 16 May 2007 on applying the Global Approach to Migration to the eastern and s
 44 e the timely implementation of the comprehensive migration policy. 17. The Eur
 45 ser cooperation with third countries in managing migration flows. Specific part
 46 anaging migration flows. Specific partnerships on migration with third countries
 47 h third countries could contribute to a coherent migration policy which combin
 48 easures aimed at facilitating well- managed legal migration opportunities and th
 49 eir labour markets - with those fighting illegal migration, protecting refugees
 50 otecting refugees and tackling the root causes of migration while at the same t
 51 er explored as well as possibilities for circular migration in the light of the
 52 rs are contributing to the fight against illegal migration and to saving lives
 53 realising, as part of the comprehensive European migration policy, the Common E
 54 the state of implementation of the comprehensive migration policy at its next m
 55 ess on the application of the Global Approach to Migration to Africa and the Me

56	ess on the application of the Global Approach to Migration to the eastern and s
57	nt, energy and transport, environmental policies, migration and inter-cultural
58	on Extending and Enhancing the Global Approach to Migration 10746/07 Streng
59	bjective of the European Union, global stability, migration, energy and climate
60	16. Further developing a comprehensive European migration policy complementing
61	e challenges and harness the opportunities which migration represents in a new
62	ies remains vital for the purpose of well-managed migration flows and the fight
63	e in the implementation of the Global Approach to Migration with regard to Afri
64	he second Euro- African ministerial conference on migration and development in 2
65	cember 2007 on mobility partnerships and circular migration and welcomes in tha
66	2008. The recent Euro-Med Ministerial meeting on Migration contributed to furth
67	with the Mediterranean partners in all areas of migration. The European Council
68	frica Summit of a Joint Strategy which identifies migration as an area of mutu
69	to the Joint Strategy contains a partnership on migration, mobility and empl
70	usions of 19 November 2007 on coherence between migration and development poli
71	ecember 2007 19. There is a close link between migration, employment and the
72	and Jobs. The European Council acknowledges that migration can have a signific
73	shortages and labour market requirements. Labour migration shall fully respect
74	14 December 2007 22. The proper management of migration flows also requires
75	s a pivotal element of the comprehensive European migration policy. The Europea
76	ean Council calls for better coordination between migration and integration pol
77	ss the opportunities, benefits and challenges of migration in a pluralistic Eur
78	ule of law, fighting organised crime and illegal migration, and increasing the
79	nnium Development Goals, Energy, Climate Change, Migration, Mobility and Emplo
80	airs as well as in other important fields such as migration. The European Coun
81	EU with this Mediterranean country, including on migration issues. 75. The Eu
82	ights safeguarded. In the era of globalisation, migration is a challenge which
83	e are further developing a comprehensive European migration policy in order to

Figure 19. Concordances of ‘migration’ (Brussels Councils 2007).

1	he purpose of developing a comprehensive European migration policy. Since then,
2	rder to increase the efficiency and coherence of migration policies. In this co
3	pean Council emphasises the interlinkages between migration, employment and dev
4	e of combating the major pull factors of illegal migration. It calls on the Cou
5	s of 16 June on enhancing the Global Approach to Migration, the European Council
6	rtnership and cooperation with third countries on migration issues in a geogr
7	the development of concrete instruments such as migration missions, cooperatio
8	cooperation platforms, mobility partnerships and migration profiles. In this re
9	he purpose of developing a comprehensive European migration policy. Since then,
10	rder to increase the efficiency and coherence of migration policies. In this co
11	pean Council emphasises the interlinkages between migration, employment and dev

12	e of combating the major pull factors of illegal migration. It calls on the Co
13	s of 16 June on enhancing the Global Approach to Migration, the European Council
14	rtnership and cooperation with third countries on migration issues in a geograph
15	the development of concrete instruments such as migration missions, cooperatio
16	cooperation platforms, mobility partnerships and migration profiles. In this re

Figure 20. Concordances of ‘migration’ (Brussels Councils 2008).

In the Councils from 2005 to 2008, apart from verbs and adjectives conveying the need to improve a common migration policy (*further developing European migration policy, enhancing the Global Approach to migration, to increase the efficiency and coherence of migration policies*) (bold added), occurrences of nouns with a positive connotation, such as *benefits, challenges, possibilities* and reference to a Global Approach to Migration (2006) seem to point at a more favourable attitude towards migration. As a matter of fact, the Project

brings together migration, external relations and development policy to address the broad migration agenda in an integrated, comprehensive and balanced way in partnership with third countries’ (<http://europa.eu/rapid/pressReleasesAction>).

3.7 - THE PHENOMENON VS. PEOPLE INVOLVED IN THE PHENOMENON

Another point investigated is the use of words referring to people involved in the migratory phenomenon. In all the Councils in the corpus, it is possible to notice a higher frequency of words related to the phenomenon (*migration* and *immigration*) rather than to people involved in the phenomenon itself:

WORD	FREQUENCY
Migration	206
Immigration	45

Refugees	17
Migrants	16
Displaced persons	5
Immigrants	4
Asylum seekers	3

Table 5. Frequency of words in the European Councils in the corpus on immigration.

As can be noticed in Table 5, the words *migration* and *immigration* are more frequent than the words referring to people involved in the phenomena. Moreover a higher frequency of the word *migrants* over *immigrants* seems to be consistent with the findings of the word *migration* over *immigration*, showing the will of the Union to combat the migratory phenomenon before it may be too difficult to defeat it.

3.8 - EVALUATION IN EU COUNCILS

The analysis of the EU Councils reveal a kind of ‘stereotyped language’ employed to discuss migration and immigration issues, that is, no substantial diachronic difference concerning lexical choices related to *migration* and *immigration* can be identified.

In particular, *immigration* is related to ‘negatively connoted’ phenomena and *migration* to the need to improve migratory policy. The introduction of some changes (absence of a negative connotation in the Councils 2008 and ‘positively connoted’ lexis in the Councils 2005-2008) seem to be due to the adoption of other political instruments by the EU aimed at managing negative and positive

aspects of the phenomenon (the EU Pact vs. The Global Approach to Migration) (see sections 3.2 and 3.7).

Thus, no innovative “discourse strategy” about migration seems to be adopted in the Councils and the internal dialectical relationship with this social phenomenon (Fairclough 1989) seems to be ‘characterized’ by a kind of ‘immobility’.

4 - EU ATTITUDE TOWARDS LEGAL IMMIGRATION AND ASYLUM: VAGUENESS IN DIRECTIVES (2001-2005)

4.1 - DIRECTIVES: TEXTUAL ORGANISATION

Before investigating the concept of vagueness in Directives on legal immigration, it is necessary to introduce some crucial points on the Directive as a text type.

From a legal perspective, Directives are legally binding texts. As claimed by Strozzi (2005: 198),

Le direttive presentano la caratteristica di vincolare gli Stati membri cui sono dirette per quanto riguarda il risultato da raggiungere, lasciandoli tuttavia liberi quanto alla scelta della forma e dei mezzi necessari per conseguirlo. [...] la direttiva è lo strumento prescritto per l'armonizzazione delle disposizioni legislative e regolamentari degli Stati Membri.

Directives are binding on the Member States as to the aims to be fulfilled. Notwithstanding, the Member States are free to choose forms and methods to pursue them. [...] A Directive is the instrument aimed at harmonizing legislative and regulatory provisions of the Member States. (My translation)

Thus, the Member States are obliged to achieve the same results, by adapting the rules established by the EU to domestic law. Notwithstanding, they can choose the necessary means to apply the EU law. Directives give the Member States a deadline for the implementation of the intended outcome. Occasionally the laws of a Member State may already comply with this outcome and the state involved would only be required to keep their laws in place, but more commonly the Member States are required to make changes to their legislative framework —

this process is commonly referred to as ‘transposition’ — in order for the Directive to be implemented correctly. If a Member State fails to enact the required national legislation, or if the national legislation does not adequately comply with the requirements of the Directive, the European Commission may initiate legal action against the Member State in the European Court of Justice. This may also happen when a Member State has transposed a Directive in theory but has failed to abide by its provisions in practice. On 1 May 2008 1,298 such cases were opened before the Court.

Thus, the main features of Directives can be summarized as follows (Polese 2006: 95):

DIRECTIVES and FRAMEWORK DECISIONS: PRESCRIPTIVE RULES

- a final goal prescribed by the Authority to be performed by a given deadline;
- a normative message;
- requiring national implementation;
- allowing the Member State to choose the legal instrument.

Notwithstanding, the fact that Directives were not originally thought to be binding before they were implemented by Member States, the European Court of Justice developed the doctrine of direct effect where unimplemented or badly implemented Directives can actually have direct legal force:

Gli effetti diretti si verificano, in primo luogo, quando la direttiva imponga ai destinatari solo obblighi negativi, di non tenere un determinato comportamento: in tal caso l’osservanza dell’obbligo si impone in modo immediato, assoluto e incondizionato, senza richiedere alcun provvedimento positivo di attuazione da parte degli Stati membri [...] (Strozzi 2005: 203).

Directives have a direct effect when they impose negative obligations on addressees. In such cases, the Member States are compelled to comply with the obligation promptly and unreservedly, without any implementing measure (My translation).

4.1.1. - STRUCTURE OF DIRECTIVES

Directives, as other European legislative instruments, are characterized by standardized formulas (Garzone 2002, Caliendo 2004b). In particular, seven opening and closing sections can be identified:

- a) the title of the document, followed by the issue date in the *Official Journal*;
- b) the name of the institution enacting the piece of legislation (the Commission or the Council, which can enact alone or together with the Parliament);
- c) the “citation” formula starting with *Having regard to* (IT *Visto*), which always refers to a previous Treaty or Convention and confers sound legal basis to the document;
- d) the section opened by *Whereas* (IT *Considerando*), also called the “recital”. This introduction provides the general motivations on which the legal act is grounded;
- e) a formula varying in content according to the type of document. For instance, *Has decided as follows* (IT *Ha adottato la presente Decisione*) anticipates the Articles of the Decision, while in Regulations and Directives the wording used is *Has adopted this Regulation/Directive* (IT *Ha adottato il presente Regolamento / la presente Direttiva*);
- f) the Articles, which vary in number and represent the provisions of the legislative instrument;
- g) the date and place of signature, sometimes followed by a number of Annexes containing tables, references or technical information.

(Caliendo 2004b: 164-166)

In the investigation of Directives, their structure will be held in due consideration when analysing linguistic phenomena, as some of them are strongly dependent on their textual features and functions.

4.2 - DIRECTIVES ON LEGAL IMMIGRATION AND ASYLUM

The Directives investigated are aimed at the following general aims: to level the asylum playing field and lay the foundations for a Common European Asylum System on which to build further structures to safeguard the EU as a single asylum space and ensure that the EU citizens could have confidence in a system that gives protection to those who required it and deals fairly and efficiently with those without protection requirements. However, EU policy and legislation did not reveal as effective as expected. For example, Europe's response to the crisis of displaced Iraqis has been hugely inadequate with European governments failing to fairly share the responsibility for Iraqi refugees with one another and with other countries around the world. Thus, one of the aims of this study is to investigate to what extent the language employed in the Directives has contributed to failure of adoption of common procedures for granting refugees civil and human rights. Particularly, vagueness of lexis and legal concepts will be investigated.

The Directives under examination include:

- Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.
- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

- Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.
- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.
- Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

One main aspect with reference to structure and functions of Directives is their vagueness and / or ambiguity

4.3 - VAGUENESS IN LEGAL TEXTS

Vagueness in normative texts is a crucial issue.

People may not necessarily and not always be aware of vagueness in language use, while in other cases they choose deliberately to be vague. This holds particularly true for the use of vagueness in normative texts which are usually taken to have a high degree of precision. (Bhatia / Engberg, / Gotti / Heller 2005: 9)

As a matter of fact, a legal text has to satisfy two main requirements: it has to be determinate and precise on the one hand but on the other hand it has to offer a wide enforceability, that is, it has to include every situation. Thus, law cannot ‘afford’ to be vague and/or ambiguous, as it has to limit its possible interpretations.

Notwithstanding, some scholars consider vagueness a common feature of legal texts. As Endicott (2000: 1) remarks, “Law is very commonly vague, so that the requirements of the law in particular cases are frequently indeterminate”.

The assumption of scholars who support the latter point is based on the fact that indeterminacy and vagueness are considered as

inherent characteristics of law for reasons of efficiency of statutes and in order to achieve a maximum degree of all-inclusiveness. Consequently, the language used in statutes must contain elements leading to semantic indeterminacy [...]. Accepting vagueness and indeterminacy as inherent features of normative texts therefore has an impact on the position to be taken regarding the ideals of good law (Bhatia / Engberg / Gotti / Heller 2005: 14).

4.4 - VAGUENESS VS. AMBIGUITY

Firstly, it is necessary to distinguish between the concepts of ‘vagueness’ and ‘ambiguity’ in legal texts. A legal utterance can be considered ‘vague’ if the receiver cannot decide its true value in every contexts. An example is the phrase *a sufficient cause*, where

[...] the adjective sufficient is indeterminate, as we may not in all cases decide the truth value of utterances in which the adjective is used. But there might be cases in which the participants in specific contexts may not need more information in order to decide whether something is sufficient (Bhatia / Engberg / Gotti / Heller 2005: 12).

Conversely, some legal utterances are *ambiguous*, as they are not precise. This means that the receiver is aware that they refer to some alternatives. Thus, an ambiguous utterance normally leads to ‘communicative underdeterminacy’, that is, it includes less information than expected and needed in a given situation. A further distinction between ‘legal indeterminacy’ and ‘linguistic indeterminacy’ is

provided by Endicott (2000: 9), who refers to the former when a question of law, or how the law applies to facts, has no single right answer. Conversely, ‘linguistic indeterminacy’ refers to unclarity in the application of linguistic expressions that could lead to legal indeterminacy. The latter has also been called ‘vagueness’. In short,

[...] a vague word has one meaning (and its application is unclear in some cases); an ambiguous word has more than one meaning (and it may be unclear, in some cases, which is in use)”. (Endicott 2000: 54)

The difference between *vagueness* and *ambiguity* is further specified by Engberg (2008: 147):

The difference between these two types of semantic indeterminacy lies in the fact that ambiguous expressions call for precision. Normally speaking, more precision is expected when the receiver knows that the utterance refers to a limited number of alternatives but does not know specifically what these are, as in the cited deictic expression (*this Act*) or in the request to hand over a document; the receiver requires this knowledge for an adequate understanding of the sentence. Vague expressions, on the other hand, do not necessarily require precision to be adequately understood by the receiver.

What is relevant here is the investigation of the concept of vagueness and its application to the lexis employed in the Directives.

4.5 - ‘STRONG’ VS. ‘WEAK’ VAGUENESS

Starting from a potential vagueness of some adjectives employed in the corpus investigated, in this section a distinction will be assumed between ‘weak’ and ‘strong’ vagueness. More particularly, what is argued here is the existence of a possible distinction between a kind of vagueness mainly depending on the text type and socio-pragmatic context taken into account and referring to means and

methods that each Member State is allowed to choose to implement EU measures ('weak' vagueness), and another type of vagueness, which is mainly related to an actual legal effect on defining migrants and granting them specific rights ('strong' vagueness).

4.5.1 - 'WEAK' VAGUENESS: DETERMINING 'TIME' IN RELATION TO THE GRANTING OF RIGHTS

'Time' may be included in the area of 'free choice' conceded to the Member States, as they seem to have enough freedom to decide 'when' implementing specific rights within the time span given by the deadline provided. In the corpus investigated, reference to time is not always precise, but precision alternates with vagueness. More particularly, time adverbial phrases seem to be vague as in the following examples:

- (5) The Member States shall *as soon as possible* take measures to ensure the necessary representation of unaccompanied minors enjoying temporary protection by legal guardianship, or, where necessary, representation by an organization which is responsible for the care and well-being of minors, or by any other appropriate representation (Council Directive 2001/55/EC, Art. 16).
- (6) Member States, protecting the unaccompanied minor's best interests, shall endeavour to trace the members of his or her family *as soon as possible* (Council Directive 2003/9/EC, Art. 19).
- (7) Member States, protecting the unaccompanied minor's best interests, shall endeavour to trace the members of the minor's family *as soon as possible*. (Council Directive 2004/83/EC, Art. 30,5).

In (5), (6) and (7), the phrase *as soon as possible* is mainly referred to the time required to ensure some rights (“representation of unaccompanied minors by legal guardianship”, “trace the members of the minors’ family”).

(8) The Member States shall, regularly and *as quickly as possible*, communicate data concerning the number of persons enjoying temporary protection and full information on the national laws, regulations and administrative provisions relating to the implementation of temporary protection. (Council Directive 2001/55/EC, Art. 27).

(9) Member States shall require applicants to inform the competent authorities of their current address and notify any change of address to such authorities *as soon as possible* (Council Directive 2003/9/EC, Art. 7). (Italics added)

(10) Member States may consider it the duty of the applicant to submit *as soon as possible* all elements needed to substantiate the application for international protection. (Council Directive 2004 /83/EC, Art.4)

In (8), (9) and (10), *as soon as possible/as quickly as possible* is referred to the time within which applicants have to communicate some information to competent authorities. In (10), time seems to be crucial, as substantiation of the application for international protection depends upon it. Thus, vagueness here seems to seriously compromise the acquisition of a right (international protection).

A crucial point here is understanding why these phrases can be considered ‘vague’. Vagueness could be defined through referring to two main categories - Incommensurability and Immensurability. The former is “ [...] a relation that holds between X and Y, if and only if it is impossible to measure both X and Y on some common scale” (Endicott 2000: 41). Immensurability is very similar to

Incommensurability, but, the former is conceived as an invented word to “[...] describe criteria of application that do not correspond to a scale. ‘Immensurability’ is the property that something has if and only if it can be assessed in some respect in which it cannot be measured” (Endicott 2001: 46).

Thus, the phrases *as soon as possible/as quickly as possible* are vague because it is not possible to measure time, as *soon* is not clarified or further specified by *possible*. Thus, both *soon* and *possible* could be included in the category of Immensurability. As a matter of fact, no criteria to establish a precise scale are provided to clearly understand the time span within which what is established by law is to be implemented. In some other instances, the phrase *as soon as possible* is followed by the a time clause based on the structure *after + noun + verb phrase*:

- (11) Member States shall provide persons recognised as being in need of international protection, *as soon as possible after the respective protection status has been granted*, with access to information, in a language likely to be understood by them, on the rights and obligations relating to that status. (Council Directive 2004/83/EC, Art. 22).
- (12) *As soon as possible after their status has been granted*, Member States shall issue to beneficiaries of subsidiary protection status a residence permit which must be valid for at least one year and renewable, unless compelling reasons of national security or public order otherwise require. (Council Directive 2004/83/EC, Art. 24)
- (13) *As soon as possible after the granting of refugee or subsidiary protection status*, Member States shall take the necessary measures, to ensure the representation of unaccompanied minors by legal guardianship or, where necessary, by an organisation responsible for the care and well-being minors [...]. (Council Directive 2004/83/EC, Art. 30)

A similar structure has been found to be introduced by *immediately*:

- (14) Member States shall authorise beneficiaries of refugee status to engage in employed or self-employed activities subject to rules generally applicable to the profession and to public service, *immediately after the refugee status has been granted*. (Council Directive 2004/83/EC, Art. 26)
- (15) Member States shall authorise beneficiaries of subsidiary protection status to engage in employed or self-employed activities subject to rules generally applicable to the profession and to the public service *immediately after the subsidiary protection status has been granted*. (Council Directive 2004/83/EC, Art. 26, 3).

More precision has, instead, been provided in the following instances:

- (16) Member States shall inform asylum seekers, *within a reasonable time not exceeding fifteen days after they have lodged their application for asylum* with the competent authority, of at least any established benefits and of the obligations with which they must comply relating to reception conditions (Council Directive 2003/9/EC, Art. 5).

As shown in (16), the vague phrase *within a reasonable time* is further specified by a more precise reference to time (*not exceeding fifteen days*).

A similar behaviour has been observed in the following instance:

- (17) The competent authorities of the Member State shall give the person, who has submitted the application, written notification of the decision *as soon as possible* and, in any event, *no later than nine months from the date on which the application was lodged*. (Council Directive 2003/86/EC, Art.5).

In (17), the vague phrase *as soon as possible* is followed by the long but more precise phrase *no later than nine months from the date on which the application was lodged*. Thus, in (16) and (17), the vague phrase seems to be disambiguated by a more determinate reference to time. Time expressions have been also found in other cases, much more precise and clear:

- (18) Member States shall ensure that, *within three days* after an application is lodged with the competent authority, the applicant is provided with a document issued in his or her own name certifying his or her status as an asylum seeker or testifying that he or she is allowed to stay in the territory of the Member State while his or her own application is pending or being examined. (Council Directive 2003/9/EC, Art. 6)
- (19) Member States may require the refugee to meet the conditions referred to in Article 7 (1) if the application for family reunification is not submitted *within a period of time of three months after the granting of the refugee status*. (Council Directive 2003/86/EC, Art. 12)
- (20) Member States may require the sponsor to have stayed lawfully in their territory *for a period not exceeding two years*, before having his / her family members join him / her. By way of derogation, where the legislation of a Member State relating to family reunification in force on the date of adoption of this Directive, takes into account its reception capacity, the Member State may provide *for a waiting period of no more than three years between submission of the application* for family reunification and the issue of a residence permit to the family members. (Council Directive 2003/86/EC, Art. 8)

In some other cases, vagueness is strengthened by a sequence of vague prepositional phrases:

- (20) Member States may exceptionally set modalities for material reception conditions different from those provided for in this Article, *for a reasonable period* which shall be *as short as possible*, [...] (Council Directive 2003/9/EC, Art. 14).

The phrase *for a reasonable period* seems to be specified by the relative clause *which shall be as short as possible*. Actually, time in the relative clause is not specified by the phrase *as short as possible*, as this is vague as well and it is not possible to understand how short time will have to be.

In short, when it occurs, precisification relies on vague modifiers (*for a reasonable period* [...], *as short as possible* [...]).

Thus, vagueness in time expressions (*as soon as possible, as quickly as possible, or immediately after [...]*) characterises the actions of Member States when granting forms of protection to beneficiaries of refugee status.

4.5.2 - 'WEAK' VAGUENESS: THE LEGAL CONCEPT 'NECESSARY/ APPROPRIATE MEASURES'

Vagueness of the legal concept *necessary / appropriate measure* is very frequent in the Directives. However, before investigating vagueness in noun phrases, it is necessary to establish the conditions for identifying a phrase as 'vague'. Referring to vagueness of sentences, Pinkal (1995: 40), asserts that "An expression is semantically indefinite if it is responsible for the semantic indefiniteness of sentences in which it occurs as a subexpression". In the texts investigated, two adjectives mainly co-occur with the word *measures*, as can be observed in Table 6:

1	11	measures to
2	5	adopt measures
3	5	measures promoting
4	4	and measures
5	4	appropriate measures
6	4	measures, in
7	4	measures, they
8	4	necessary measures
9	4	of measures
10	4	take measures
11	4	the measures
12	3	measures in
13	3	measures necessary
14	3	on measures
15	3	these measures
16	2	integration measures
17	2	measures relating
18	2	measures shall
19	1	adequate measures
20	1	all measures
21	1	by measures
22	1	flanking measures
23	1	implementing measures
24	1	judicial measures
25	1	measures after
26	1	measures against
27	1	measures aimed
28	1	measures are
29	1	measures combating
30	1	Measures concerning
31	1	measures concerning
32	1	measures governing
33	1	measures on
34	1	measures provided
35	1	measures referred
36	1	measures so
37	1	measures that
38	1	measures where

39	1	measures which
40	1	measures, including
41	1	measures, to
42	1	or measures
43	1	protective measures
44	1	restrictive measures

Table 6. Clusters of ‘measures’ in Directives

As can be seen from the clusters above and the following concordances, the adjectives *necessary* and *appropriate* mainly co-occur with *measures*, but other adjectives are also employed, such as *restrictive*, *adequate*, *flanking*, *protective*:

1 nd immigration, and for the adoption of measures relating to asylum, immigra
2 r States shall as soon as possible take measures to ensure the necessary represe
3 r States shall as soon as possible take measures to ensure the necessary represe
4 es shall: (a) as soon as possible take measures to ensure that a representative
5 ision should be made for principles and measures governing the return to the cou
6 ; or (b) be an accumulation of various measures, including violations of human
7 unity provides both for the adoption of measures aimed at ensuring the free move
8 he Commission, take all the appropriate measures to establish direct cooperation
9 the Community, the Community may adopt measures in accordance with the principl
10 the Community, the Community may adopt measures, in accordance with the princip
11 return to the country of origin and the measures to be taken by Member States in
12 eturn to their country of origin and of measures promoting a balance of effort b
13 nt to this Directive and shall take all measures necessary to ensure that they a
14 influx of displaced persons and to take measures to promote a balance of effort
15 n * Display the national implementing measures MNE * Instruments cited:
16 kosovo crisis in order to establish the measures in accordance with the Treaty.
17 ferred to in Article 12 the integration measures referred to in the first subpar
18 a mass influx of displaced persons and measures promoting a balance of efforts
19 administrative, police, and/or judicial measures which are in themselves discrim
20 ommunity level, the Community may adopt measures, in accordance with the princip
21 ommunity level, the Community may adopt measures, in accordance with the princip
22 ommunity level, the Community may adopt measures in accordance with the principl
23 conditions" shall mean the full set of measures that Member States grant to asy

24 21 1. The Member States shall take the measures necessary to make possible the
25 1. Member States shall take appropriate measures to ensure that authorities and
26 s Member States shall take appropriate measures to maintain as far as possible
27 22 1. The Member States shall take the measures necessary to ensure that the en
28 ry nationals to comply with integration measures, in accordance with national la
29 rights of third country nationals. (2) Measures concerning family reunificatio
30 mass influx of displaced persons and on measures promoting a balance of efforts
31 mass influx of displaced persons and on measures promoting a balance of efforts
32 mass influx of displaced persons and on measures promoting a balance of efforts
33 ssibility of legal remedy or protective measures where the remedy pursuant to pa
34 on the ground or the inadequacy of such measures; (c) information received from
35 erson concerned. Exclusion decisions or measures shall be based on the principle
36 f persons, in conjunction with flanking measures relating to external border con
37 such persons. (9) Those standards and measures are linked and interdependent f
38 d of protection. CHAPTER V Return and measures after temporary protection has
39 Member States shall adopt the necessary measures to provide asylum seekers with
40 Member States shall take the necessary measures concerning the conditions of re
41 Member States shall take the necessary measures, to ensure the representation o
42 Member States shall adopt the necessary measures to provide persons enjoying tem
43 efugee status should be complemented by measures on subsidiary forms of protecti
44 2. When the Member States adopt these measures, they shall contain a reference
45 of. When the Member States adopt those measures, they shall contain a reference
46 th the Commission, take all appropriate measures to establish direct cooperation
47 fies the possible taking of restrictive measures against applications for famil
48 ing by the Member State concerned. Such measures shall be implemented with the a
49 of. When the Member States adopt these measures, they shall contain a reference
50 United Nations Resolutions relating to measures combating terrorism, which decl
51 CHAPTER VI Solidarity Article 24 The measures provided for in this Directive
52 hereof. When Member States adopt these measures, they shall contain a reference

Figure 21 -Concordances for ‘measures’ in Directives.

In order to further investigate the co-text of the word *measures*, some instances are provided, where the most frequent adjectives (*necessary* and *appropriate*) have been employed:

- (21) Member States shall adopt the *necessary measures* to provide asylum seekers with the document referred to in paragraph 1 [...]. (Council Directive 2003/9/EC, Art. 6, 4).
- (22) Member States shall as soon as possible take *measures* to ensure the necessary representation of unaccompanied minors by legal guardianship [...] (Council Directive 2003/9/EC, Art. 19, 1)
- (23) Member States shall take *appropriate measures* to ensure that authorities and organizations implementing this Directive have received the necessary basic training with respect to the needs of both male and female applicants. (Council Directive 2003/9/EC, Art. 24, 1)
- (24) The Member States shall adopt the *necessary measures* to provide persons enjoying temporary protection with residence permits for the entire duration of the protection. (Council Directive 2001/55/EC, Art. 8, 1)
- (25) The Member States shall take the *necessary measures* concerning the conditions of residence of persons who have enjoyed temporary protection and who cannot, in view of their state of health, reasonably be expected to travel. (Council Directive 2001/55/EC, Art. 23)

Two main reasons could be pointed out here to assert the vagueness of the noun *measure* and the phrases *necessary measures* / *appropriate measures*. Firstly, particular attention has to be paid to the adjectives (*appropriate*, *necessary*, etc..) employed. Pinkal (1995: 52) classifies adjectives according to their

‘precisification’ qualities: “Possible precisifications provide internal structure to the meanings of indefinite expressions [...]”. Thus, a primary distinction needs to be made between two main groups – ‘referential’ and ‘non-referential’ adjectives. The former includes adjectives such as *rectangular* or *married*, which have stable domains of definite applicability; the latter includes adjectives such as *large* or *fast*, which can be ‘specified’ by a precisification process. These adjectives are also defined ‘degree adjectives’, i.e. indefinite expressions of a relative type. The opposing category includes ‘borderline indefinite adjectives’, which comprises adjectives such as *healthy*, *sick*, *sweet*, and which have, as a main feature, fuzzy boundaries. Following this view, the adjectives investigated could be classified as borderline indefinite adjectives, as it is not possible to determine or control their interpretation.

(Fjeld 2005), instead, classifies adjectives commonly employed in normative texts according to their main semantic properties:

General qualities adjectives convey a general quality. This category includes adjectives such as *good*, *bad*, *useful*, etc. .

Modal adjectives express modal force, such as necessity and desirability. Some example are *necessary*, *expedient*, *unpractical*, etc. .

Relational adjectives convey relationship between nouns and fixed standards. Adjectives such as *(un)suitable*, *(in)sufficient*, *(in)appropriate* can be included into this category .

Ethic adjectives are semantically related to moral code or ethical standard. This category include adjectives such as *right*, *equitable*, *responsible*, etc. .

Consequence adjectives represent different degrees of consequence expressed by the modified noun. The adjectives *crucial*, *critical*, *serious*, *considerable* belong to this category.

Evidence adjectives express degrees of accordance between conditions and conclusions. Adjectives such as *natural*, *unlikely*, *marked* characterize this category.

Frequency adjectives represent one of the most complicated categories of adjectives.

Owing to their complexity, **Frequency adjectives** are further specified, as a matter of fact, “[...] They denote the evaluation of the appearance of the noun related to some kind of a quantitative norm: widespread, common, normal, usual, special, deviant” (Fjeld 2005: 165)

All these adjectives can be considered multidimensional adjectives with “not-fixed and stable dimensions”.

Following Fjeld (2005), the adjectives *appropriate* and *adequate* can be classified as Relational adjectives. As a matter of fact, they convey indisputable standards or requirements. Conversely, the adjective *necessary* belongs to the Modal category. Evaluative adjectives can be classified not only according to their positive / negative dimension, but also according to their modal force. More particularly, “The modal adjective with the highest modal strength is *necessary*; there are more requirements needed to qualify something as *necessary* than as *advisable*” (Fjeld 2005: 167). Thus, it is not always easy to understand why or when something is necessary.

In order to further examine the value of the adjectives *appropriate* and *necessary* in the Directives investigated, a comparison has been made with a Reference Corpus which includes twenty Directives on various subjects other than immigration and asylum but within the same time span (2001-2005). Thus, clusters of *measures* in the Reference Corpus have been provided:

1	7	measures to
2	6	measures in
3	6	necessary measures
4	5	measures, they
5	5	the measures
6	5	these measures
7	4	to measures
8	3	adopt measures
9	3	appropriate measures
10	3	measures necessary
11	3	measures taken
12	2	measures equivalent
13	2	measures for
14	2	national measures
15	2	of measures
16	2	on measures
17	2	such measures
18	2	The measures
19	1	and measures
20	1	Any measures
21	1	apply measures
22	1	control measures
23	1	documented measures
24	1	financial measures
25	1	measures against
26	1	measures aimed
27	1	measures are
28	1	measures Article
29	1	measures being
30	1	measures contained
31	1	measures envisaged
32	1	measures must
33	1	measures set
34	1	measures significantly
35	1	Measures such
36	1	Measures to
37	1	measures, in
38	1	measures, such
39	1	measures. The
40	1	measures. This
41	1	movement. Measures
42	1	protective measures
43	1	relevant measures
44	1	requisite measures
45	1	Such measures

Table 7. Clusters of ‘measures’ in the Reference Corpus.

As shown in Table 7, the word *measures* mainly co-occurs with the adjective *necessary* in the Reference corpus while the adjective *appropriate* co-occurs with a lower frequency.

In order to confirm these data, the frequency of *necessary* / *appropriate measures* in both corpora has been provided:

Total number of Tokens in the Directives on Migrants’ rights	Total number of Tokens in the Reference corpus
37243	114915

Table 8. Total number of tokens in Directives on Migrants’ rights and in the Reference corpus

	Directives on Migrants' rights	Reference corpus
<i>Appropriate measures</i>	4	3
<i>Necessary measures</i>	4	6

Table 9. Frequency of *appropriate measures* / *necessary measures*.

As shown in Tables (8) and (9), a higher frequency of *appropriate measures* can be found in the Directives on Migrants' rights. Conversely, a higher frequency of *necessary measures* is found in the Reference Corpus. While *appropriate* is a Relational adjective, *necessary* belongs to the category of Modal adjectives. Thus, taking into account the number of occurrences vs. the number of tokens in the two corpora, the EU appears to rely on appropriateness when imposing obligations related to immigration and on necessariness when dealing with issues other than immigration. This is consistent with the findings resulting from an analysis of the modal value of *should* (see section 4.6.1) and ideological implications in EU discourse (see section 3.1). By this device, the Member States are conceded freedom and power in making choices as to the methods for complying with the norms in the Directives as requested.

Another perspective concerning vagueness of the phrases investigated is strongly related to the pragmatic concept of 'context' taken into account. Particularly, a distinction has to be made between the speaker's perspective and the hearer's perspective. A speaker is usually sure of what he/she means, as he/she is clear about the assumptions that he/she makes. Conversely, the hearer's perspective is wider:

[...] the hearer's state of information ranges from "fully informed" to "fully uninformed", thus the hearer's contexts include the speaker's contexts to a certain extent as a special case. (Pinkal 1995: 67-68)

In the Directives, the 'speaker' is the EU, which lays obligations on the Member States to fulfil some goals, such as *to ensure the necessary representation of unaccompanied minors by legal guardianship, to ensure that authorities and other organizations implementing this Directive have received the necessary basic training with respect to the needs of both male and female applicants, etc.*

Since the Member States are allowed to choose the form and instruments to implement *necessary / appropriate measures*, vagueness here seems to be not as strong as expected, if we take into account the interactional value of the text type investigated. Moreover, the sentences where the vague phrase can be found are structured as follows: Noun-Phrase (*Member States*) + verb phrase (*shall + adopt / take*) + vague phrase (*necessary / appropriate measures*) + final clause (*to provide asylum seekers with; to ensure the necessary representation; to ensure that authorities and other organizations implementing this Directive have received the necessary basic training, etc.*). This structure suggests that the provision established by the EU is clearly expressed, as the aims are conveyed by such verbs as *to ensure, to provide, etc.*, which call for precision and effectiveness. Thus, the phrases, which are apparently vague from a linguistic point of view, are not vague from a pragmatic perspective.

This kind of vagueness is of a 'weak' type in the sense that it does not have an actual effect on the granting of specific rights, as it mainly refers to means and methods that each Member State is allowed to choose to comply with the Directives..

4.5.3 - 'STRONG' VAGUENESS': DEFINING IMMIGRANTS

Both the words *immigrant* and *migrant* are commonly employed in everyday language and have not been defined in legal discourse. Thus, apart from these two words, attention has been focused on other phrases / words, denoting people possessing a precise legal status. More particularly, the definitions of *asylum seeker*, *displaced persons* and *refugees* have been taken into account, as some vagueness seems to be present in the recognition of their status:

ASYLUM SEEKER: “ ‘Applicant’ or ‘asylum seeker’ shall mean a third country national or a stateless who has made an application for asylum in respect of which a final decision has not yet been taken”. (Council Directive 2003/9/EC, Art. 2). This definition does not turn out to be vague. Conversely, particular attention has to be paid to the definitions of *refugee* / *displaced person*:

REFUGEE:

A first definition of a *refugee* appeared in Geneva Convention on Refugees (1951). It has been reported as follows:

(26) For the purposes of the present Convention, the term “refugee” shall apply to any person who:

- (1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization; Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

- (2) As a result of events occurring before 1 January 1951 and owing to *well founded fear* of being persecuted for reasons of race, religion, nationality, membership of a *particular* social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

What is interesting here is the vagueness of the adjectives *well-founded* and *particular* co-occurring with the words *fear* and the phrase *social group* respectively. More particularly, the adjectives *well-founded* and *particular* seem to cover a wide range of meanings. According to Pinkal (1995), the adjective *particular* can be classified as a borderline indefinite adjective, as it has, as a main feature, fuzzy boundaries. Thus, it is not possible to identify a *social group* exactly, as the qualifying adjective *particular* has a strong evaluative meaning and its meaning varies according to the point of view of the speaker.

The concept of ‘refugee’ was further specified in the Directive 2004/83/EC, Art. 10:

- (27) The concept of race shall in particular include considerations of colour, descent, or membership of a *particular* ethnic group; [...] a group shall be considered to form a particular social group where in particular: members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so *fundamental* to identity or conscience that a person should not be forced to renounce at [...].

As shown by the example above, adjectives with an indefinite and a strong evaluative meaning are still used. In particular, the adjective *particular* is referred to an ethnic group, which is mentioned to better explain what is meant when referring to the concept of *race*. Conversely, the adjective *fundamental* refers to

conditions for establishing that a person belongs to a social group. Both of them are indefinite and characterized by a very strong evaluative meaning.

Thus, although the EU's attempt at better specifying the concept of membership to a particular social group, vagueness seems to be persistent.

DISPLACED PERSON

Displaced persons are defined as “third country-nationals or stateless persons who have had to leave their country or region of origin [...]”, in particular:

- (28) [...] persons who have fled areas of armed conflict or endemic violence; persons at *serious* risk of, or who have been the victims of, systematic or generalised violations of their human rights. (Council Directive 2001/55/EC, Art. 2)

The adjective *serious* belongs to the category of ‘Consequence adjectives’ (see Fjeld 2005), representing different degrees of consequence expressed by the modified noun. As it has a strong evaluative meaning, it can be classified as an indefinite adjective. Its meaning can vary according to the personal point of view of the speaker.

4.5.4 - ‘STRONG’ VAGUENESS: GRANTING RIGHTS

Indefinite adjectives seem to be employed also when granting specific rights to immigrants, as in the following instances:

- (29) As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no *well-founded* fear of being persecuted or no real risk of suffering *serious* harm and the applicant can

reasonably be expected to stay in that part of the country. (Council Directive 2004/83/EC, Art. 8)

This Article refers to conditions to determine when an applicant is excluded from international protection. The employment of the adjective *well-founded* co-occurring with the word *fear* makes it very arduous to establish when fear can be ‘judged’ *well-founded* and understand when the conditions of being persecuted are satisfied. In the Article below, conditions determining exclusion from being a refugee are provided:

(30) A third country national or stateless person is excluded from being a refugee where there are *serious* reasons for considering that:

(a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he or she has committed a *serious* non-political crime outside the country of refuge prior to his or her admission as a refugee, which means the time of issuing a residence permit based on the granting of refugee status; particularly *cruel* actions, even if committed with an allegedly political objective, may be classified as *serious* non-political crimes. (Council Directive 2004/83/EC, Art. 12)

The adjectives *serious* and *cruel* co-occurring with the phrase *non-political crime* and the word *actions*, respectively, refer to conditions determining exclusion from being a refugee. Also in these instances, indefinite adjectives with a strong evaluative meaning have been employed. The same type of adjectives can be found in the following Articles:

(31) Article 16

Cessation

A third country national or a stateless person shall cease to be eligible for subsidiary protection when the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required.

In applying paragraph 1, Member States shall have regard to whether the change of circumstances is of such a *significant* and non-temporary nature that the person eligible for subsidiary protection non longer faces a real risk of serious harm. (Council directive 2004/83 / EC, Art. 16, 2)

The Article above refers to change of circumstances, which causes non-eligibility for subsidiary protection. It is extremely difficult to establish when changes of circumstances can be considered *significant*.

Adjectives with the same value can be found in some Articles aimed at granting specific rights:

(32) The Member States shall ensure that persons enjoying temporary protection have access to *suitable* accommodation or, if necessary, receive the means to obtain housing. (Council Directive 2001/55/EC, Art. 13)

(33) When applying this Article, the Member States shall taken into consideration the *best* interests of the child. (Council Directive 2001/55/EC, Art. 15)

(34) The Member States shall provide necessary medical or other assistance to persons enjoying temporary protection who have *special* needs, such as unaccompanied minors or persons who have undergone torture, rape or other *serious* forms of psychological, physical or sexual violence. (Council Directive 2001/55/EC, Art. 13)

(35) Member States may decide on the residence of the asylum seeker for reasons of public interest, public order, or, when necessary, for the swift processing and

effective monitoring of his or her application. When it proves necessary, for example for legal reasons or reasons of public order, Member States may confine an applicant to a *particular* place in accordance with their national law (Council Directive 2003/9/EC, Art. 7)

This kind of vagueness can be said to be ‘strong’, as it is mainly related to an actual effect on the granting of specific rights.

In short, what is assumed in this section is that ‘Weak’ vagueness is mainly due to the text type and its pragmatic dimension (e.g. Member States’ freedom to choose forms and methods to implement Directives), while ‘Strong’ vagueness can be conceived as indeterminacy, where some ideological implications both in legal definitions of migrants and the granting of migrants’ rights are implied. As a matter of fact, it is mainly conveyed through ‘borderline indefinite adjectives with a strong evaluative meaning’ modifying nouns and phrases, which make the legal efficacy of the granting of rights somehow ‘weak’.

4.6 - VAGUENESS AND MODALITY

In order to investigate modality in the Directives, it is necessary to distinguish between two main types of rules –prescriptive and constitutive rules:

Prescriptive rules [...] are normative and require procedural stages (imposition, recognition, implementation). The language is regulatory and prescriptive, instructing the addressee(s), and is characterised by the presence of the animate recipient of the obligation (e.g. Member States shall). (Polese 2006)

Constitutive rules have immediate legal effects, so their language has a performative value because a command is not only prescribed but also performed. Prescriptive rules do not have an immediate legal effect (cf. Carcaterra 1994: 219-231). As already mentioned, Directives are prescriptive rules requiring national implementation, as Member States are allowed to choose the legal instrument to fulfil the aims prescribed by the Authority.

In EU legislation, prescriptive values are mainly conveyed by the auxiliary verbs *shall*, *should* and *must* expressing assorted levels of obligation (Caliendo 2004: 3)³:

TEXT TYPE	SHALL	SHOULD	MUST
Regulations	10 ptw	3 ptw	0.6 ptw
Decisions	10 ptw	2 ptw	0.6 ptw
Directives	13 ptw	3 ptw	1.3 ptw
Framework decisions	13 ptw	2 ptw	0.5 ptw

Table 10- Distribution of modal verbs in the corpus per thousand words (ptw) (Adapted from Caliendo 2004: 244).

³ This study included a corpus made up of all the documents enacted by the Council of Europe, autonomously or jointly with the European Parliament over a time-span of almost 4 years-from 1st July 1999 to December 2002.

In the corpus investigated, the most frequent modal auxiliary verbs are:

MODAL	FREQUENCY
SHALL	472
MAY	226
SHOULD	96
CAN	41
WILL	22
MUST	17
COULD	5

Table 11. Frequency of modal auxiliary verbs in the Directives investigated sorted in order of frequency.

As can be seen from Table 11, the most frequent modal is *shall*, followed by *may* and *should*, and all the other modals with a much lower frequency. This result is consistent with some previous studies according to which the most frequent modals are those conveying obligation and permission, (i.e. *shall*, *may* and *should*) (see Caliendo 2003: 244). In order to better investigate the co-text of the three most frequent modal auxiliary verbs, and more particularly vagueness related to the discourse of granting rights, clusters of *shall*, *may* and *should* are reported (Tables 9, 10,11):

1	190	States shall
2	98	shall be
3	72	shall ensure
4	36	shall not
5	20	Directive shall
6	20	shall take
7	16	shall apply
8	14	they shall
9	12	Commission shall
10	12	shall mean
11	12	State shall
12	11	and shall
13	11	concerned shall
14	11	shall have
15	10	shall include
16	10	shall report
17	9	shall provide

18	9	They shall
19	8	shall grant
20	8	which shall
21	7	shall authorise
22	7	shall communicate
23	7	shall in
24	6	protection shall
25	6	shall allow
26	6	shall also
27	6	shall bring
28	5	application shall
29	5	child shall
30	5	shall contain
31	5	shall enter
32	5	shall forthwith
33	5	shall make
34	5	shall propose
35	4	asylum shall
36	4	Decision shall
37	4	information shall
38	4	minors shall
39	4	or shall
40	4	reference shall
41	4	shall consider
42	4	shall issue
43	4	shall lay
44	4	shall notify
45	4	shall revoke
46	4	shall send
47	3	applicant shall
48	3	Chapter shall
49	3	conditions shall
50	3	Council shall

Table 12. Clusters of ‘shall’ in the EU Directive corpus.

As can be seen from Table 12, the modal auxiliary verb *shall* mainly co-occurs with *States* to the left and to the right. The high frequency of *States* to the left side is consistent with previous studies according to which deontic modality is mainly focused on agent-orientedness (Garzone 2001: 165; Caliendo 2004:). What is interesting here is the co-occurrence of the most frequent phrases (‘*States shall*’, ‘*shall be*’) within the discourse on immigration and asylum. Thus, the following examples are provided:

- (36) *Member States shall apply temporary protection* with due respect for human rights and fundamental freedoms and their obligations regarding non-refoulement. (Council Directive 2001/55/EC, Art.3)

(37) [...] *The views of the child shall be taken into account* in accordance with the age and maturity of the child. (Council Directive 2001/55/EC, Art.16).

As can be seen in (36) and (37), two main structures with *shall* related to the granting of rights are: ‘*Member States + shall + verb + phrase denoting a right*’ and ‘*Phrase denoting a right + shall + verb in the passive voice*’.

In some other instances, persons to whom the rights are granted are found in the structure ‘*Member States + shall + verb + people*’:

(38) *The Member States shall provide persons enjoying temporary protection with a document*, in a language likely to be understood by them, in which the provisions relating to temporary protection and which are relevant to them are clearly set out. (Council Directive 2001/55/EC, Art.9).

As can be seen in (36) and (37), the recipients of rights are not expressed. Moreover, in (37), neither the agent nor the recipient of the legal actions are expressed. This device seems to create a kind of abstraction of the rights to be granted. In (38) both the agent and the recipients are clearly expressed, the latter only as recipients of rights and not as people having the title to specific rights. As Catenaccio (2007: 372-373) remarks,

[...] in constructing the migrant as a recipient of other agents’ choices [...], and one whose fundamental rights can be curtailed if the host country so decides, EU migrant rights’ legislation de-humanizes the ‘alien’.

From an investigation of the co-text of the modal *may*, similar results can be found:

1	139	States may
2	29	may be
3	21	may provide
4	16	may also
5	14	may require
6	10	may decide

7	6	may make
8	6	State may
9	5	Community may
10	5	may adopt
11	5	may determine
12	5	may not
13	5	may reasonably
14	5	may take
15	4	may allow
16	4	may apply
17	4	may authorise
18	4	may lay
19	4	may limit
20	4	may, in
21	4	they may
22	3	authorities may
23	3	may exclude
24	3	may introduce
25	3	may only
26	3	may reduce
27	3	may retain
28	3	may revoke
29	3	which may
30	2	and may
31	2	application may
32	2	Article may
33	2	case may
34	2	concerned may
35	2	Council may
36	2	harm may
37	2	interview may
38	2	it may
39	2	may ask
40	2	may confine
41	2	may consider
42	2	may cover
43	2	may examine
44	2	may give
45	2	may involve
46	2	may refuse
47	2	may reject
48	2	may request
49	2	may reunite
50	2	may stipulate

Table 13. Clusters of ‘may’ in the EU Directives corpus.

As can be seen from Table 13, also the modal *may* mainly co-occurs with *Member States* to the left side and with *be* to the right. Since the value commonly conveyed by this modal in the Directives is *permission*, it is fundamental to understand what is permitted or not permitted to Member States when granting specific rights. Two main syntactic structures with *may* related to the granting rights are found:

- (39) *The Member States may, by law or regulation, authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the unmarried partner, being a third relationship, or of a third country national who is bound to the sponsor by a registered partnership in accordance with Article 5(2) [...]. (Council Directive 2003/86/EC, Art. 4)*
- (40) *Material reception conditions may be provided in kind, or in the form of financial allowances or vouchers or in a combination of these provisions. (Council Directive 2003/9/EC, Art. 13)*

As can be observed in (39), permission is related to Member States which are allowed to grant some rights. As a matter of fact, the main syntactic structure is represented by '*Member States+may+verb+object*'. As already observed in (38), also in (39) the people involved in the granting of rights (*unmarried partner / third country national*) are conceived only as recipients of a specific right. In (40), the passive voice is preferred to the active one, with a syntactic structure such as '*Phrase denoting a right+may+verb in the passive voice*'. This structure is particularly frequent when some restrictions related to the rights are introduced.

Thus, in order to investigate ‘*may+passive voice*’, some concordances are provided:

1	tial in Europe in recent years. In these cases it may	be necessary to set up
2	terminated under the terms of Article 6(1)(b), it may	be extended automatically by
3	committed with an allegedly political objective, may	be classified as serious
4	ined by the Member States. Such a decision, which may	be of a general nature, shall
5	parents is not actually enforced. Such education may	be provided in accommodation
6	by the minor or the minor's parents. This period may	be extended to one year where
7	er for a refund. 5. Material reception conditions may	be provided in kind, or in the
8	st the said asylum seekers. Limits on such access may	be imposed only on grounds
9	family as soon as possible. In cases where there may	be a threat to the life or
10	rticle 7 which individually affect asylum seekers may	be the subject of an appeal
11	nty to those concerned. (14) Family reunification may	be refused on duly justified
12	time limit referred to in the first subparagraph may	be extended. Reasons shall be
13	r descending line, an autonomous residence permit may	be issued, upon application,
14	information on whether the applicant has been or may	be subject to persecution or
15	rsecuted or a real risk of suffering serious harm may	be based on events which have
16	rsecuted or a real risk of suffering serious harm may	be based on activities which
17	States shall take into account any guidance which may	be provided in relevant
18	committed with an allegedly political objective, may	be classified as serious
19	ly members of the beneficiaries of refugee status may	be valid for less than
20	tuation of the labour market in the Member States may	be taken into account,
21	family as soon as possible. In cases where there may	be a threat to the life or
22	3. Member States may provide that an application may	be made by an applicant on
23	f a personal interview. 2. The personal interview may	be omitted where: (a) the
24	quests for legal assistance and/or representation may	be provided by Member States.
25	to understand, of the possibility that their age may	be determined by medical
26	fy themselves that the safe third country concept may	be applied to a particular
27	by virtue of Directive 2004/83/EC, the applicant may	be considered as having an
28	on of whether an applicant should or, as the case may	be, should not be declared to
29	as to whether an applicant should or, as the case may	be, should not be declared to

Figure 22. Concordances of ‘*may be*’ in the EU Directive corpus.

As can be seen from the concordances, the subjects of *may be* seem to refer mainly to specific rights (e.g. *education, reception conditions, family reunification, legal assistance...*). More particularly, they seem to specify conditions under which some rights have to be granted. This point is marked by occurrences of deictic elements (e.g. *such education, such access, this period, the personal interview...*), which seem to introduce further conditions related to the rights described before. Therefore, more precision seems to be present when it is necessary to define the ‘boundaries’ of permission.

4.6.1- THE VALUES OF ‘SHOULD’

In order to further investigate the value of obligation, clusters and concordances of the modal *should* have also been taken into account.

1	53	should be
2	17	States should
3	7	should have
4	7	should not
5	7	status should
6	5	reunification should
7	4	protection should
8	3	applicant should
9	3	Directive should
10	3	should also
11	3	should help
12	3	should include
13	3	should take
14	3	should therefore
15	3	System should
16	2	be, should
17	2	Council should
18	2	members should
19	2	persons should
20	2	procedures should
21	2	Provision should
22	2	seekers should
23	2	she should
24	2	should ensure
25	2	should or
26	2	they should
27	1	Article should
28	1	asylum should
29	1	attention should
30	1	care, should

Table 14. Clusters of ‘should’ in the EU Directives corpus.

1 legal instrument. (10) This temporary protection should be compatible with the
2 other persons in need of international protection should be respected, and effec
3 tional protection should be respected, and effect should be given to Declaration No
4 o their country of origin, the protection offered should be of limited duration.
5 e existence of a mass influx of displaced persons should be established by a Council
6 hould be established by a Council Decision, which should be binding in all Member
7 n the event of a mass influx of displaced persons should be determined. These
8 d persons should be determined. These obligations should be fair and offer an
9 on the free movement of such data(8). (18) Rules should be laid down to gover
10 l obligations and with the Treaty. (19) Provision should be made for principles and
11 se temporary protection has ended. (20) Provision should be made for a solidarity
12 . (21) The implementation of temporary protection should be accompanied by
13 um because of the urgency of the situation. Visas should be free of charge or their
14 comparable living conditions in all Member States should be laid down. (8) The
15 ption. (9) Reception of groups with special needs should be specifically designed to
16 (10) Reception of applicants who are in detention should be specifically designed to
17 ersons that provide legal assistance, information should be provided on such
18 The possibility of abuse of the reception system should be restricted by laying
19 tates in the field of reception of asylum seekers should be secured. (14)
20 should be secured. (14) Appropriate coordination should be encouraged between the
21 ersons. (17) The implementation of this Directive should be evaluated at regula
22 als. (2) Measures concerning family reunification should be adopted in conformi
23 for exercising the right to family reunification should be determined on the basis
24 n the basis of common criteria. (7) Member States should be able to apply this
25 the family enters together. (8) Special attention should be paid to the situation of
26 gislation. (11) The right to family reunification should be exercised in proper
27 ion and for entry and residence of family members should be laid down. Thos
28 ily members should be laid down. Those procedures should be effective and
29 pirations. (15) The integration of family members should be promoted. For that
30 embers should be promoted. For that purpose, they should be granted a status
31 also provide that rules regarding refugee status should be complemented by measures

Figure 23. Concordances of ‘should be’ in the EU Directives corpus.

As can be observed from Table 14 and Figure 23, the passive voice is prominent and, more particularly, rights are found in many passive structures. As a matter of fact, the subjects of ‘*should be*’ structures are often represented by specific rights (e.g. *family reunification, temporary protection*). However, before providing further instances where occurrences of *should* are found, it is necessary to take into account previous studies on the deontic value of *should*. It is considered one of the vaguest modals:

The vaguest of the modal auxiliaries are those expressing probability (*may, might*), tentative possibility (*could*), tentative assumption (*should*) or hypothetical prediction (*would*). (Gotti 2005: 238)

It has also been considered a ‘medium strength’ modal auxiliary verb, as it does not have a clearly binding value (Huddleston/Pullum 2002). It sometimes seems to characterize the strategies of a specific discourse:

However, there are cases where *should* would seem to be the most appropriate modal form to be used in prescriptive texts, for example, when enunciating general guidelines and principles which often have strongly moral or ethical overtones. (Williams 2005, 2007: 128)

Thus, this section is aimed at analysing to what extent *should* can be assumed to be vague in the Directives under examination. In particular, the pragmatic context and the features of the text type investigated will be taken into account.

The modal *should* mainly co-occurs in the Recital, the section of Directives where the general motivations on which the legal act is grounded are provided (Caliendo 2004b: 161), as can be observed in the following examples:

- (41) The right to family members *should* be exercised in proper compliance with the values and principles recognised by the Member States, in particular with the respect to the rights of women and of children. (Council Directive 2003/86/EC, Recital, 11)
- (42) It is necessary to introduce criteria on the basis of which applicants for international protection are to be recognised as eligible for subsidiary protection. Those criteria *should* be drawn from international obligations under human rights instruments and practices existing in Member States. (Council Directive 2004/83/EC, Recital, 25)

In the examples above, *should* seems to establish the conditions with which Member States have to comply. As a matter of fact, as asserted in section 4.1, a Directive is a legal instrument aimed at harmonizing legislative measures of Member States through Articles preceded by premises and general guidelines on which the legislative measures are to be based on. Thus, *should* has a specific function, i.e. to establish a relationship between the EU and the Member States by which the addressees (the Member States) become involved in adhering to the criteria expressed in the Recital. For all these reasons *should* cannot be considered ‘vague’ from a linguistic perspective, neither tentative/assumptive nor a ‘medium strength’ modal auxiliary verb. It is possible to fully understand its value only in its socio-pragmatic context. Thus, *should* is deliberately chosen to convey values and principles expected in the Recital.

Further evidence of this value of *should* is provided in the Reference Corpus, where the modal verb only occurs in the Recital while only three occurrences of *should* can be found in the Articles.

In the Directives investigated, *should* is found in some Articles, a section where the most frequent modal auxiliary verb is *shall*:

- (43) Modalities for material reception conditions
1. Where housing is provided in kind, it *should* take one or a combination of the following forms:
- (a) premises used for the purpose of housing applicants during the examination of an application for asylum lodged at the border;
 - (b) accommodation centres which guarantee an adequate standard of living;
 - (c) private houses, flats, hotels or other premises adapted for housing applicants.
- (Directive 2003/9/EC, Art.14).
- (44) The Member States shall, if necessary, provide persons to be admitted to their territory for the purposes of temporary protection with every facility for obtaining the necessary visas, including transit visas. [...] Visas *should* be free of charge or their cost reduced to a minimum. (Council 2001/55/EC, Art. 8)

In (43) and (44), *should* seems to better specify obligations introduced by *shall* (*i.e. to grant housing and facilities*). Furthermore, Member States are conceded some relative freedom among options. More specifically, in (43), the States are obliged to offer some forms of housing to the housing applicants, but they are allowed to make choices within a limited set of options provided by the Directive.

Similarly, in (44) the Member States are compelled to grant persons admission to their territory and “every facility for obtaining the necessary visas”, but they can choose within a limited set: “free of charge” visas, or visas “with their cost reduced to a minimum”.

5 - DIRECTIVES ON ILLEGAL IMMIGRATION

The purpose of this section is to investigate vagueness in EU Directives on illegal immigration in order to give a general overview of the EU's attitude towards this phenomenon. For this purpose, the same points investigated in the Directives on legal immigration have been taken into account. The three Directives on illegal immigration that are under examination are:

- Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals.
- Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985.
- Council Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

5.1 - THE CONCEPT OF TIME

In the Directives on illegal immigration, no occurrence of the phrase *as soon as possible* has been found. Thus, 'time' and more particularly time referred to a short period within which some obligations are imposed, is commonly expressed by the adverb *immediately* or the adverbial phrase *as speedily as possible*:

- (45) Third-country nationals staying illegally on the territory of a Member State and holding a valid residence permit or other authorisation offering a right to stay issued by another Member State shall be required to go to the territory of that other Member State

Immediately. (Council Directive 2008/115/EC, Art. 6, 2)

- (46) When detention has been ordered by administrative authorities, Member States shall:

- (a) either provide for a speedy judicial review of the lawfulness of detention to be decided on *as speedily as possible* from the beginning of detention (Council Directive 2008/115/EC, art. 15)

5.2 - THE LEGAL CONCEPT OF APPROPRIATE / NECESSARY MEASURES

The legal concept of *appropriate / necessary measures* has been investigated in the Directives on illegal immigration, in order to analyse vagueness with reference to the Directives on legal immigration. Thus, clusters of the word ‘measures’ are reported:

1	5	coercive measures
2	5	measures to
3	4	necessary measures
4	3	measures, they
5	2	adopt measures
6	2	exceptional measures
7	2	measures should
8	2	these measures
9	2	those measures

10	1	additional measures
11	1	appropriate measures
12	1	execution measures
13	1	measures can
14	1	measures have
15	1	measures in
16	1	measures involving
17	1	measures on
18	1	measures or
19	1	measures shall
20	1	measures would
21	1	measures), Article
22	1	measures, detention
23	1	measures, in
24	1	measures, the
25	1	measures, whether

Table 15. Clusters of ‘measures’.

As can be seen from the Table, the most frequent adjectives co-occurring with *measures* are *coercive* and *necessary* vs. *appropriate* and *necessary*, most frequently found to co-occur with *measures* in the Directives on legal immigration. (see section 4.5.2)

The adjective *coercive* seems to be less vague than *appropriate* or *necessary*. As a matter of fact, if we take into account the categorization of adjectives provided by Fjeld (2005), we can classify this adjective as a Modal adjective. The adjectives belonging to the Modal category can be considered vague, depending upon the specification of a normative ordering source: “When the ordering source for a modal adjective is unspecified, the modal phrase is

vague, and the adjective will be responsible for its vagueness”. (Fjeld 2005: 167). Thus, in order to weigh the degree of vagueness of this adjective, it is necessary to contextualize it through concordances:

1	n adopted under this Directive. (13) The use of coercive measures should be
2	e removal process and if the application of less coercive measures would not be
3	common rules concerning return, removal, use of coercive measures, detention and
4	t in Article 8(4) and (5) (limitations on use of coercive measures), Article
5	Detention 1. Unless other sufficient but less coercive measures can be applied

Figure 24 A Concordance for ‘coercive’.

Figure 24 shows that the adjective *coercive* can be found in a context where a normative ordering source is not so clear, as it is not clearly expressed. However, if we take into account the co-text where this phrase occurs, we can realize that some specification is provided:

- (47) Where Member States use – as a last resort – *coercive measures* to carry out the removal of a third-country national who resists removal, such measures shall be proportionate and shall not exceed reasonable force. They shall be implemented as provided for in national legislation in accordance with fundamental rights and with due respect for the dignity and physical integrity of the third - country national concerned. (Directive 2008/115/EC, art. 8,4)

In the instance above, the phrase *coercive measure* seems to be specified by the main clause *such measures shall be proportionate* and the coordinate clause *and shall not exceed reasonable force*. In some other instances, the adjective *coercive* is preceded by *less*, mainly referring to measures to be adopted by the Member States instead of measures imposed by the Directive itself:

- (48) Unless other sufficient but *less coercive measures* can be applied effectively in a specific case, Member States may only keep in detention a third-country

national who is the subject of Return procedures in order to prepare the return and/or carry out the removal process.(Council Directive 2008/115/EC, art.15,1)

The presence of *less* before *measures* seems due to the fact that measures imposed on Member States may be considered so compelling that the States are only allowed to choose some less obligatory measures. Thus, Member States seem to have few opportunities to choose alternative options.

Moreover, if we look at the co-text where *necessary measures* is found, we can notice that the phrase is followed by a final clause conveying precise goals:

1	rticle 3	Member States shall take the necessary measures to oblige carriers which
2	cle 4	1. Member States shall take the necessary measures to ensure that the
3	cle 7	1. Member States shall take the necessary measures to comply with this
4	moval	1. Member States shall take all necessary measures to enforce the return

Figure 25 - A concordance for 'necessary measures'.

The verbs to *oblige*, to *ensure*, to *comply with*, to *enforce* can be considered verbs with a high modal force, thus conveying reduction in freedom of choice conceded to the Member States.

5.3 - MODALITY

In order to investigate vagueness of modality in this group of Directives, modal auxiliary verbs have been taken into account:

MODAL	FREQUENCY
SHALL	129
SHOULD	40
MAY	30
WILL	7
CAN	5
MUST	1
COULD	0

Table 16. Frequency of modal auxiliary verbs in Directives on illegal immigration.

Table 16 shows that also in this group of Directives the most frequent modal is *shall*, although it is followed by *should* and not by *may*, as in the Corpus of Directives on legal immigration. Thus, particular attention has been devoted to *shall* and *should*. In particular, clusters of *shall* and *should* are reported (Tables 17 and 18):

1	16	should be
2	7	States should
3	3	Directive should
4	3	should not
5	2	and should
6	2	departure should
7	2	detention should
8	2	measures should
9	2	return should
10	2	should also
11	2	should ensure
12	2	should provide
13	1	account should
14	1	aid should
15	1	ation should
16	1	ban should
17	1	child' should
18	1	It should
19	1	life should
20	1	migration should
21	1	not, should
22	1	obligations should
23	1	persons should
24	1	practices should
25	1	removal should
26	1	removed should
27	1	sharing should
28	1	should accompany
29	1	should aim
30	1	should enjoy

Table 17. Clusters of 'should'.

1	41	shall be
2	33	States shall
3	11	Directive shall
4	9	shall take
5	8	shall not
6	7	detention shall
7	6	concerned shall
8	6	State shall
9	5	shall apply
10	5	shall provide
11	4	Detention shall
12	4	shall have
13	4	They shall
14	3	Commission shall
15	3	paragraph 1 shall
16	3	shall also
17	3	shall bring
18	3	shall communicate
19	3	shall ensure
20	3	shall enter
21	3	shall forthwith
22	3	shall inform
23	3	shall mean
24	3	they shall
25	2	and shall
26	2	decision shall
27	2	Denmark shall
28	2	it shall
29	2	minors shall
30	2	or shall

Table 18. Clusters of 'shall'.

Since the most frequent structures resulting from Tables 17 and 18 are *shall be* and *should be*, concordances are provided to investigate the co-text:

1	y shall contain a reference to this Directive or shall be accompanied by s
2	ublication. The methods of making such reference shall be laid down by Mem
3	e". 2. Any decision taken pursuant to paragraph 1 shall be implemented acco
4	ghts and fundamental freedoms. 3. This Directive shall be applied without
5	e 5 Protection of personal data and data security shall be ensured in acco
6	of the Schengen Convention, personal data files shall be used in the conte
7	y shall contain a reference to this Directive or shall be accompanied by su
8	publication. The methods of making such reference shall be laid down by Mem
9	More favourable provisions 1. This Directive shall be without prejudice
10	d one or more third countries. 2. This Directive shall be without prejudice
11	ng to immigration and asylum. 3. This Directive shall be without prejudice
12	g a right to stay issued by another Member State shall be required to go to
13	heir territory. In that event no return decision shall be issued. Where a r
14	re a return decision has already been issued, it shall be withdrawn or sus
15	in their national legislation that such a period shall be granted only foll
16	ntry national who resists removal, such measures shall be proportionate and
17	nate and shall not exceed reasonable force. They shall be implemented as p
18	dies other than the authorities enforcing return shall be granted with due
19	mber State, the authorities of that Member State shall be satisfied that he
20	rn. Article 11 Entry ban 1. Return decisions shall be accompanied by an
21	y an entry ban. 2. The length of the entry ban shall be determined with d
22	ed, entry-ban decisions and decisions on removal shall be issued in writing
23	elated to return, as referred to in paragraph 1, shall be given by means of
24	emedies 1. The third-country national concerned shall be afforded an ef
25	of return or the removal process. Any detention shall be for as short a p
26	xecuted with due diligence. are in 2. Detention shall be ordered by admini
27	nistrative authorities. or judicial Detention shall be ordered in writing
28	gs by means of which the lawfulness of detention shall be subject to a speed
29	ceedings. The third-country national concerned shall be released immediat
30	tion is not lawful. 3. In every case, detention shall be reviewed at reaso
31	the case of prolonged detention periods, reviews shall be subject to
32	ceases to be justified and the person concerned shall be released immediat
33	rned shall be released immediately. 5. Detention shall be maintained for as
34	dation, the third-country nationals in detention shall be kept separated fro
35	isoners. 2. Third-country nationals in detention shall be allowed – on req

Figure 26. Concordances for 'shall be'.

1	carriers fail to meet their control obligations should be harmonised to t
2	of EU law, decisions taken under this Directive should be adopted on a
3	purpose of a return procedure, voluntary return should be preferred over f
4	rced return and a period for voluntary departure should be granted. An ext
5	legal safeguards on decisions related to return should be established to gu
6	e individuals concerned. The necessary legal aid should be made available
7	staying illegally but who cannot yet be removed should be addressed. Their
8	administrative controls or checks, such persons should be provided with wri
9	is Directive. (13) The use of coercive measures should be expressly subject
10	imum safeguards for the conduct of forced return should be established, ta
11	of individual removal orders (1). Member States should be able to rely on
12	rn. (14) The effects of national return measures should be given a European
13	l the Member States. The length of the entry ban should be determined with
14	five years. In this context, particular account should be taken of the fa
15	of a Member State during an entry ban. (15) It should be for the Member S
16	cient. (17) Third-country nationals in detention should be treated in a hu

Figure 27. Concordances for 'should be'.

What can be observed from an investigation of the concordances in Figures (26) and (27) is, as in the group of Directives on legal immigration, the high frequency

of passive structures, where the subject is represented by *the effects of national return measures, Third-country nationals, the Detention*.

A strong modal force seems to characterize the concept of *detention* mainly co-occurring with *shall*. As a matter of fact, as can be observed from Figure 27, some conditions related to detention are established through the employment of *shall* (i.e. *detention shall be ordered, detention shall be subject...*):

As far as the modal *should* is concerned, also in this group of Directives, it mainly occurs in the Recital:

- (49) Where there are no reasons to believe that this would undermine the purpose of a return procedure, voluntary return *should* be preferred over forced return and a period for voluntary departure should be granted [...] (Directive 2008/115/EC, Recital,10)

Thus, no substantial difference can be observed in relation to modality, as the values of *should* are understandable in its co-text (the Recital), where motivations on which the legal act is grounded are provided (see Section 4.6.1)

CONCLUSIONS

In the Presidency Conclusions, the preference of the word *migration* over *immigration* to discuss immigration issues seems to reveal a subtle ideology in the EU attitude towards immigration policy pointing at a growing concern for the migratory phenomenon conceived on a par with other criminal actions, like *trafficking of human beings*, *terrorism*, and *organised crime*, and as a kind of deep-rooted ‘evil’ to be fought and eradicated along with other criminal phenomena.

Through the investigation of the co-text of the EU Councils from 1999 to 2004, migration seems to be conceived as a phenomenon that has to be analysed more efficiently than in the past. Conversely, in the Councils from 2005 to 2008, verbs and adjectives conveying the need to improve migration policy have resulted to co-occur with nouns with a positive evaluation, such as *benefits*, *challenges*, *possibilities* and in a context which makes reference to Global Approach to Migration, a project which “brings together migration, external relations and development policy to address the broad migration agenda in an integrated, comprehensive and balanced way in partnership with third countries”. Thus, from 2004 onwards, the EU Councils seem to reveal ideology in a different direction according to which *migration* and *immigration* are discussed from two different perspectives. More particularly, *migration* is integrated in projects aimed at benefitting from external relations with third countries, while *immigration* is conceived as a criminal phenomenon which has to be defeated. As a matter of fact, the co-text in which *immigration* occurs also reveals a reference to initiatives against illegal immigration (e.g. the EU Pact).

Notwithstanding, the presence of no substantial difference of the lexis mainly employed with the word *immigration* to discuss the migratory phenomenon from 1999 to 2008 seems to reveal a kind of unchanged attitude by the EU towards this issue.

One of the most important points of the study is the attention paid by the EU to the migration phenomenon rather than the people involved in the phenomenon itself. The scarce attention in the direction of migrants and the construction of some ‘stereotyped’ discourse strategies employed by the EU in dealing with immigration have constituted the starting point for the investigation of migrants’ rights in EU Directives in this research.

In the analysis of the Directives, it has been possible to draw a distinction between ‘Weak’ and ‘Strong’ vagueness, where ‘weak’ vagueness appears to be mainly dependent upon text type and the pragmatic dimension taken into account (e.g. Member States’ freedom to choose forms and methods to implement Directives), while ‘strong’ vagueness can be conceived as indeterminacy revealing ideological implications both in legal definitions of migrants and the granting of migrants’ rights.

‘Strong’ vagueness is mainly conveyed through some *borderline indefinite adjectives with a strong evaluative meaning* modifying nouns and phrases.

Modality also plays a fundamental role as it seems to convey a kind of ‘depersonalised’ discourse on immigration, where people to whom the rights are being granted or negated are only treated as recipients of the granting of rights and not as people having the title to specific rights.

Furthermore, the values of *should* in the Directives seems to express a kind of “relational modality” (Fairclough 1989) operating at the interactional level, as this modal auxiliary verb is functional to establishing a relationship where the

addressees are compelled to comply with some obligations while they are allowed freedom to choose methods and forms to implement norms.

Finally, the investigation of Directives on illegal immigration has revealed a less strong form of vagueness related to time and to the legal concept of *necessary measures*.

In short, although the final authority stays with the Member States, these are bound to act in compliance with the normative force of the EU message in the Directives. In this process, the effect of vagueness is “to delegate to Member States the power to determine the reasons for accepting migrants or granting rights to them (Polese / D’Avanzo forthcoming).

The following press release illustrates a situation where lack of precision resulted into lack of legal efficacy, as the absence of a precise definition of ‘refugee’ caused a ‘free’ interpretation by each Member State and consequently, an iterated rejection of Medhi’s asylum application:

Medhi is the 19-year old Iranian, member of EveryOne Group who faces the death sentence in Iran for his homosexuality. The boy, who is being held in the detention centre at Rotterdam Airport was judged by the Dutch Supreme Court today. Mehdi had fled to Holland after the United Kingdom had turned down his request for asylum [...]

It seems unbelievable, and yet – while people all over the world discuss human rights and spend millions of euros organising conferences on the subject of asylum rights – once again an

innocent young man like Mehdi is running a serious risk of dying with a rope around his neck because some European governments prefer to get round the laws that protect refugees rather than carry out their duties towards them”

Press release 11 March 2008, EveryOne, group for international cooperation on human rights culture

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