Let the dust settle:
*Re-examining the influence of 9/11 on the securitization of EU migration policy*

**MA Thesis**
International Studies
(MAIS)

Name: Rosalie Maria Koevoets
Student number: S1739611
Supervisor: Dr. I.A. Glynn
E-mail: r.m.koevoets@umail.leidenuniv.nl
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1. Introduction

As the world looked on the tragic images of two planes crashing on 11 September 2001 into the towers of the World Trade Center, a Pandora’s box was opened of potential threats to the security of states.\(^1\) It was not merely observed as a human disaster of unprecedented scale, but also as an event that would change the world forever. In the immediate aftermath of the terror attacks, a discourse of danger and fear emerged that served as a legitimizing factor for policy-making and military action.\(^2\) Despite the prolific studies on the securitization of migration and asylum policies, and attempts to explore the consequences of 9/11 for the framing of debates on immigration, there remains surprisingly little agreement among scholars as to the question of the securitization of migration policies at the European Union (EU) level following the terrorist attacks.\(^3\)

Since the early 1980s, population movements have increasingly been framed in terms of security threat, leading to the introduction of restrictive migration policies at both the national and the EU level. The construction of ‘the migrant’ as alien to Western societies, yet able to access its territory and challenge the economic, cultural and societal stability of the system, gave rise to concerns about uncontrolled entry.\(^4\) It is now conventional wisdom that 9/11 provided an opportunity to intensify this connection between migration and security through explicitly linking migrants to the transnational threat of terrorism. According to adherents of this thinking, the events have had far-reaching consequences for debates on migration policies in Europe.\(^5\) The framing of terrorism as a new existential danger gave rise to the idea that this was an exceptional event that

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could only be dealt with by exceptional solutions. Contradictory but equally vigorous claims have been made on the absence of an intensification of the security rationale driving EU policy-making. Although these authors acknowledge that certain patterns of framing migration as a security problem were already present before 9/11, they insist that alternative discourses are equally important. In an attempt to shrink this gap in the literature, by providing a comprehensive analysis of EU migration policy, this thesis will ask: What was the impact of 9/11 on the securitization of migration policies at the European Union (EU) Level?

The general hypothesis underlying the analysis builds on the idea that the main question should not be analyzed with the intention of formulating a simple yes or no answer. The reason is that both the processes of securitization, as well as the field of EU migration policy are too complex and multifaceted to be explained in such simplistic wording. Previous efforts to analyze the impact of 9/11 have oversimplified securitization processes due to a general lack of understanding of robust methods for designing research projects, including ways to collect data and means for analysis. Additionally, very few scholars have taken account of the complex nature of EU migration policy, which consist of four subfields. It is time to finally dismantle the idea that securitization is a polar question whose expected answer is either affirmative or negative. Instead, securitization should be judged according to its intensity and instances of securitized practices should be placed in the wider spectrum of the discourse. Such a balanced approach guides the analysis of this thesis which formulates an argument by carefully examining every aspect of the policy. In doing so, every migration policy document produced in the period 1999-2004 is divided over four categories: asylum, legal migration, irregular migration, and external borders and visa.

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Furthermore, securitization is accepted as a process that gradually gained momentum during the 1980s when globalization and the opening of markets caused an increase in the number of migrants arriving in Europe. The question thus becomes whether 9/11 caused any significant changes to this trend and if we can discern an intensification of the security discourse.

This thesis argues against conventional knowledge by stating that empirical research on securitization has not produced consistent and conclusive evidence to provide an definitive answer as to the securitization question. The analysis indicates that, unlike previous studies had suggested, the various subfields are each driven by distinct discursive mechanisms. With regard to asylum, the research identifies the presence of a humanitarian discourse underlining the EU's long tradition of protection, human rights, democracy and freedom. The same can be said regarding the field of legal migration, in which attempts to keep security issues to the minimum are even more visible. This stands in stark contrast with the two other subfields. Irregular migration, in particular, witnessed quite an increase in securitized moves following 9/11. This already becomes evident by the immense increase in legislation during the period that was studied. Next to securitized moves, the analysis signals various instances where the EU tried to 'externalize' migration policy in order to prevent migrants from ever reaching the European border. Furthermore, whereas before 9/11 irregular migration was mostly linked to problems related to crime, a stronger correlation with terrorism emerged after the attacks. Finally, a similar conclusion will be drawn in relation to the subfield of external borders and visa policy. The evidence suggests that there was a substantial increase in the adaptation of new technologies to control borders and exchange information on migrants following 9/11. These technological measures were aimed at the deterrence and prevention of immigrants from entering the EU, and contributed to the strengthening of fortress Europe.

The argument will proceed through three sections, starting with a review of the literature on the consequences of 9/11 for the securitization of migration policies at the EU level. The discussion elaborates on the various arguments presented by the two

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opposing literary camps and provides an explanation for this contestation. The discussion illuminates two major weaknesses of securitization studies - one methodological and another theoretical. Consequently, the next section provides an explanation on how these pitfalls are avoided in this research and details the methodology used to select policy documents and clarifies how they have been analyzed. Section four consists out of four parts each dealing with a specific subfield. It indicates the various discourses driving integration and shows the complexity of providing a clear-cut answer to the question of the effect of 9/11 on the securitization of EU migration policy.
2. Literature Review

The literature on securitization theory presents an immense record of scholars solely interested in the impact of 9/11 on EU migration policy. Efforts to formulate a fundamental answer to the question of the consequences for securitization processes have generated contradictory claims.\(^\text{12}\) The works of Jef Huysmans and Didier Bigo, in particular, offer key insights and have been pivotal in developing subsequent arguments on both sides of the debate. According to Huysmans, the start of European integration in the field of migration during the early 1980s was heavily shaped by the changing realities of the international system and the ensuing concerns about the movements of populations.\(^\text{13}\) In policy debates, migration was often linked to criminal activities such as the smuggling and trafficking of persons and to abuse of the social, cultural, and economic provisions related to the welfare state.\(^\text{14}\) According to Huysmans, securitization is defined as the political and institutional framing of migration in a “domain of insecurity”. Defining certain events as threats or dangers contributes to the legitimacy of a political language that emphasizes crisis and exceptionality.\(^\text{15}\) Bigo agrees that securitization results from the construction of migration as a security issue. In addition, he focused on bureaucratic procedures and administrative practices to broaden the conceptualization of securitization. Securitization also emerges through security technologies that widened the scope of observation, including improved techniques of surveillance and opportunities to gather or cross-check information.\(^\text{16}\) These improvements in technologies of identification and profiling of population groups


allowed governments to control entry and exclusion of third country nationals who were referred to as ‘dangerous’ or ‘unwanted’.  

Both authors illuminate the complexity of securitization processes in political discourse and political practice. These insights have been endorsed several times in the literary debate on the effects of 9/11. On the one hand, there is the popular view that the terror attacks introduced a new security agenda which had a profound effect on the way the EU shaped its migration policy. Huysmans, in his earlier work, holds onto this view by stating that the politics of exception surrounding 9/11 justified the introduction of security measures and legislation that was usually reserved for emergencies. According to Baldaccini, the events of 9/11 forged the idea that improving border security was crucial to protect the EU’s internal security and reduce its vulnerability to terrorism. Echoing Bigo, to improve border security, the EU relied on “the ever-greater sophistication of security technology, in particular the use of biometric features in passports, visas, residence permits and identity documents, and the development and expansion of EU-wide information systems.” Brouwer also points to the acceleration of EU decision-making on these themes to construct her argument. Similar to Huysmans, she notes that developments at the EU level indicate that the event was used to consolidate legislation that previously lacked the necessary support but now found acceptance in the EU’s common goal of combating terrorism. Furthermore, she finds that in the first half year after 9/11, no new asylum law was adopted, which was a direct result of the attacks. As Member States put new emphasis on safeguarding internal security, the EU moved away from earlier Council conclusions that called for a harmonized approach. Instead, the national agendas of Member States focused on biometric data and the development of databases for migration purposes started to

determine EU decision-making.\textsuperscript{21} This connection between 9/11 and the progress of EU integration is also studied by Levy, who stated that the trend towards a more liberal democratic asylum regime seemed to be "\textit{stopped dead in its tracks}".\textsuperscript{22} Besides, both authors focus on the negative repercussions for the relationship between securing refugee protection on the one hand, and guaranteeing control over terrorists who might try to enter the EU on the other.\textsuperscript{23} Despite that all these authors acknowledge that even before 9/11 the process of EU integration in the field migration was more focused on security than on liberalization, they find that 9/11 gave rise to a new security agenda that generated an imbalance between protecting the internal security of the EU and the need to safeguard the free movement of people.\textsuperscript{24} The predominance of the security rationale was reinforced by the attacks and justified a range of policies to control migration that would otherwise not be considered legitimate.\textsuperscript{25}

These views are challenged by certain scholars who claim that 9/11 did not lead to the introduction of a new security agenda per se. Instead, pointing to the observation that a general pattern of linking immigration to crime and terrorism had already been prominent from the 1980s onwards, Bigo argues that more than ten years of the same "\textit{story telling}" and security framing had created a discourse that no longer needed to be explained. In other words, securitization in the field of migration had become self-evident. Therefore, 9/11 had by no means introduced a new agenda because policies after the events adhered to the exact same trends of the previous years.\textsuperscript{26} In line with this reasoning, Boswell also finds that the public debate remained relatively unaffected by the anti-terrorism agenda, with the exception of some attempts to securitize migration in the direct aftermath of the attacks. She insists that this linkage was difficult to sustain since alternative framings were equally influential and due to the fact that

securitizing EU migration policies had negative effects on other organizational interests.\textsuperscript{27} In addition, Boswell problematizes the causal link between discourses and policy practices. She argues that the simultaneous occurrence of securitization through public discourse, and the appropriation of policy instruments for the purposes of counterterrorism, does not necessarily indicate a causal link between the two. To put it differently, she questions the idea that the introduction of new security technologies was a direct result of the securitized discourse.\textsuperscript{28} Neal follows the same research agenda, he asserts that post-9/11 documents, political processes and rationales do not follow the classic logic of securitization. Instead, his findings indicate the predominance of an alternative logic driving EU decision-making. This modality seeks to undertake a risk analysis in order to adopt appropriate measures and tackle identified risks. EU policy-making and political practices in the field of migration are therefore best understood in terms of risk management.\textsuperscript{29} A similar argument is formulated by van Munster who demonstrates how risk management took center stage in the governing of immigration.\textsuperscript{30} Acknowledging this, Huysmans published a new paper on the effects of 9/11, wherein he argued that no consensus could be reached on the existence of a nexus between migration and terrorism.\textsuperscript{31}

The fundamental problem with these studies, regardless of their position in the debate, is that they all suffer from two shortcomings - one methodological, one theoretical - that account for this lack of consensus. First, the absence of a coherent and objective methodological approach guiding research on securitization theory stands out. Balzacq brings light to this issue by observing that it seems generally acceptable to formulate an answer to the question of securitization without providing an explanation on how and why the documents examined are selected. Besides, it seems that there is a lack of

\begin{thebibliography}{99}
\end{thebibliography}
Interest in securitization studies to include clear-cut ways to analyze the selected texts.\textsuperscript{32} Evidence is often shaky as it is presented on the basis of very few documents, leading to problems such as sampling bias and misrepresentation of certain patterns.\textsuperscript{33}

Next to methodological weaknesses, a two-sided theoretical issue results from a misunderstanding concerning the question of securitization. Existing works on securitization have oversimplified migration policies at the EU level. Baele and Sterck explain this issue by stating that:

"It may be perfectly true, for example, that securitization occurs in the subfield of asylum but not in the subfield of highly skilled workers' immigration. It follows that one can only claim that 'immigration is securitized' if one shows that all aspects of the phenomenon have been securitized – otherwise the claim is an excessive generalization."\textsuperscript{34}

It means that analyzing EU immigration policy requires the researcher to carefully consider the complete policy field by taking account of all the various subfields. The second element of the theoretical shortcoming stems from the multifaceted reality of the securitization process itself, as this occurs both at the level of political discourse and that of political practice. It is very difficult to detect such distinctive patterns and adequately make sense of their meaning and the relationship between them.\textsuperscript{35} Given these shortcomings, the next section details a methodology that allows for a balanced approach to the main question.

\textsuperscript{34} Stéphane J. Baele and Olivier C. Sterck, "Diagnosing the Securitisation of Immigration at the EU Level: A New Method for Stronger Empirical Claims," \textit{Political Studies} 63, no. 5 (2015): 1123, \url{http://journals.sagepub.com/doi/pdf/10.1111/1467-9248.12147}.
3. Methodology

The literature review concluded that diverging opinions on the impact of 9/11 result from two fundamental problems inherent in securitization studies. The methodology guiding the analysis in this research overcomes both. First, it acknowledges that securitization can only be established if the analysis demonstrates that all aspects of migration-related polices at the EU level have been securitized. Hence, every policy document made between 1999, the year of the signing of the Treaty of Amsterdam and the adoption of the Tampere program, and 2004, the year that the Tampere program expired, has been gathered and classified according to four samples that constitute the complete field of migration policies. The entry into force of the Treaty of Amsterdam is a logical starting point because only at that point it became possible for the EU to adopt legislation dealing with all aspects of migration. The four samples correspond to the Treaty Establishing the European Community, and therefore reflect the official classifications as implemented through legal acts. The rules governing EU immigration and asylum law are found in ‘Title IV’ of Part Three of the EC Treaty in Articles 61-69, which define the distinct subfields as:

- Visas and external borders (Art. 62);
- Asylum (Art. 63(1) and 63(2));
- Legal migration (Art. 63(3)(a) and Art. 63(4));
- Irregular migration (Art. 63(3)(b))

The reason that legislative documents were selected is that these are legally binding texts that reflect the EU’s action as it is actually carried out. Moreover, most documents contain an initial section expressing the context and objective of the legislative act which is a good indicator of the priorities, thinking and activities of those parts of the EU involved in the implementation of collectively binding decisions. Analyzing legal

documents therefore also solves the second aspect of the theoretical issue, which concerned the complexity of the processes of securitization, since this type of text allows researchers to fully understand the two levels at which securitization occurs. Given this specific research agenda, it is reasonable to place this thesis under umbrella of critical security studies, which are driven by an interest in critical discourse analysis. This approach moves beyond the emphasis on the discourse of the political elite, in this regard the EU institutions, and includes the practices of those parts of the bureaucracy responsible for implementing the policy in order to understand how the discourses are embedded in wider social practices and political processes. Central to critical discourse analysis is the idea that the securitization of migration emerges not solely from speech acts of politicians, but also from a range of administrative practices which are essential for the institutional framing of migration in a domain of insecurity.

The methodological weakness of securitization studies results from a lack of commitment to transparent document selection. This thesis tries to offset such problems by explaining how the documentation consulted was selected. During the initial part of the research legislative documents were gathered online. Reference works containing the text of and commentary upon every significant measure in the field of EU migration policy proposed since 1999 proved to be a helpful tool to guide the search. The next step involved the classification of the documents according to the four subfields by looking at the legal basis for action as conferred by the EC Treaty. In the end, the database, consisting of four sections, presented an overview of all the legislative acts in chronological order. It contained for each individual measure both the preparatory

43See for example the works of Peers (2006) and Niessen (2004).
documents, including the Commission legislative proposals, Council common position, initiatives of the European Council and Opinions of the European Parliament, as well as the final text of the adopted acts. Next to adopted measures, the database included lapsed proposals, withdrawn proposals, and relevant Communications, Discussion Papers and Strategy Papers not relating to a specific measure. Finally, I added the presidency conclusion of the European Council meetings in Tampere, Laeken, Seville and Thessaloniki. Once the database was complete, the analysis started by looking for references to the terms \textit{terror, terrorism, terrorist, 9/11, September 11, and attacks}. The documents containing those words were coded as securitized and from this coding system the following percentages indicating securitization were calculated.

Table 1: Quantitative indications of securitization, 1999-2004

<table>
<thead>
<tr>
<th>Migration sub-field:</th>
<th>Total number of documents</th>
<th>Number of documents before 9/11</th>
<th>Number of documents after 9/11</th>
<th>Number of 'securitized' documents before 9/11</th>
<th>Number of 'securitized' documents after 9/11</th>
<th>Increase in %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asylum</td>
<td>48</td>
<td>24</td>
<td>24</td>
<td>2 = 8%</td>
<td>6 = 25%</td>
<td>17%</td>
</tr>
<tr>
<td>Legal migration</td>
<td>36</td>
<td>9</td>
<td>27</td>
<td>1 = 11%</td>
<td>6 = 22%</td>
<td>11%</td>
</tr>
<tr>
<td>Illegal immigration</td>
<td>63</td>
<td>21</td>
<td>42</td>
<td>0 = 0%</td>
<td>9 = 21%</td>
<td>21%</td>
</tr>
<tr>
<td>External borders</td>
<td>102</td>
<td>25</td>
<td>77</td>
<td>0 = 0%</td>
<td>16 = 21%</td>
<td>21%</td>
</tr>
</tbody>
</table>

Although in the first instance, the research looked for quantitative changes over time, the findings as presented in the table did not indicate a reliable trend. The coding system only allowed for the detection of securitization according to a very simple mechanism that classified a document as securitized based on a single reference. The mere presence of a potentially securitized word provided too little evidence to reach clear-cut conclusions. Besides, such a method would also draw into the principles of critical
discourse analysis that advocates looking beyond the language of the official policy. Consequently, the analysis moved on to finding qualitative data on securitization through reading the documents containing references to the terms that were coded as securitized. The purpose of the second stage of the analysis was to understand how the documents constructed the link between terrorism and migration and what this reveals about the way internal security is framed in the political discourse. The documents were read for meaning, structure and connection with other themes. The preparatory documents, in particular, proved to be relevant for constructing the argument as these were often longer, comprehensive texts that elaborated on important details such as reasons, challenges, objectives and consequences for introducing new legislation. In addition, I came to realize that the mere focus on legislative documents and high-profile European Council Conclusions would not provide an adequate indication of the priorities and thinking of officials involved in the execution of migration policy. In order to remain aligned with the research design of critical security studies, it was necessary to examine the discussions of the JHA Council, which are summarized in the minutes of each meeting of the justice and home affairs ministers in Brussels. The JHA Council minutes are far less high-profile than European Council Conclusions, providing a better indicator of the interests of the national authorities entrusted with the responsibility to implement migration policy. These documents offered important information about securitization processes at the level of policy practices as they signaled political agreement on issues and set out the direction of policies to be pursued when the European Commission issued a proposal. At this stage, it became clear that other dynamics were also driving EU policy-making, which related back to the literature stating that securitization of migration conflicts and interferes with the EU’s fundamental values of equality and respect of human rights, with international legal obligations in the context of asylum rights, and with the economic and demographic

needs for labor migrants. Additionally, the analysis revealed that although the various discourses can be discerned fairly easily in the legislative texts, any causal relationship between the different framings and policy outcomes is much harder to establish. Consequently, this thesis bolsters the idea that the relationship between discourses and practices is mutually constitutive rather than causally related, which is another key concept associated with critical discourse analysis. It means that policy practices can in principle be legitimized by a wide variety of discourses, whose securitizing intensity may be more or less strong, yet securitization is simultaneously constituted, produced and reproduced through political practices.

During the last part of the research, the focus of the critical discourse analysis shifted from the specific securitization processes to more generic patterns in order to get a comprehensive understanding of the logics driving EU policy-making. The same research agenda was followed by Boswell, who encouraged securitization authors to consider alternative moves. She insisted that limiting the focus of the research to processes of securitization may lead to overgeneralizations as other dynamics in the framing of migration could potentially be obscured. In other words, rather than presupposing securitization, studies should first examine how migration issues are constructed in general before analyzing how these framings are affected by 9/11. The last part of the analysis was important in developing the final conclusions as the most relevant legislative acts were now read in conjunction with the JHA Council minutes, and were analyzed through more neutral analysis to get a better understanding of the different framings and the influence of 9/11 hereon.

4. Main findings

The complexity of establishing a conclusive answer to the question of the securitization of migration governance is compounded by the organizational settings of the EU. Similar to the Member States, the EU has legislative, executive and judicial branches.51 Before the main results are presented, it is important to paint a picture of the institutional dynamics during the period 1999-2004.

With the signing of the Amsterdam Treaty, the Member States agreed to extend the competence of the EU to enact measures within all areas of migration and asylum law.52 The Treaty also transformed the arrangements for decision-making. During the Tampere period, decisions were taken by unanimity in the Council, after consultation of the Parliament, and had to be initiated either by the Commission or Member States, which shared legislative powers.53 The European Court of Justice was provided with limited jurisdiction to give preliminary rulings on the validity and interpretation of EU law.54 As for executive power, Member States were in principle responsible for implementing the legislation. In practice, it still proved to be rather difficult to reach agreement on legislative proposals. One of the biggest hurdles to the adoption of measures in the area of migration was the fact that the Council was still acting by unanimity.55 This meant that no Member State had to change its national policy without its consent.56 Interestingly, the Commission proposed nearly every asylum and legal migration measure during the period under study, and Member State only exercised their right of initiative in the fields of external borders and irregular migration.57 The active use of Member States’ legislative powers in these areas gave them the power to

56 Jan Niessen, Five years of EU migration and asylum policymaking under the Amsterdam and Tampere mandates (Brussels: Migration Policy Group, 2004), 42.
control the agenda and placed the Commission in a rather peripheral position. The influence of the national agendas of the Member States on EU decision-making was certainly true in the case of measures related to biometrical data and the development of databases for migration purposes, which accelerated due to national policies in Germany and the Netherlands on these themes. In the other areas, however, the Commission, worked in close cooperation with the Member States. Rather than drafting their own proposals, the Member States expressed their preferences to the Commission, which was sometimes accused of moderating their national policies since proposals often reflected the interests of the Council. Finally, despite its consultation powers, the role of the European Parliament in policy-making proved to be much weaker in reality. In fact, it is hard to find any example where its views were adopted due to the Commission’s unwillingness and lack of political or legal obligation to redraft proposals following the EP’s opinion.

These dynamics had a cost; in June 2004, when the Commission published its final assessment concerning the Tampere period, it stated that despite “substantial progress has been made in most areas of justice and home affairs,” the EU’s institutional context was constrained by, among other things, the limited position of the Parliament and unanimity in the Council. The Commission acknowledged that the shared right of initiative sometimes precluded “the effective, rapid and transparent attainment of certain political commitments” as “national concerns were given priority over Tampere priorities.” All in all, Member States remained reluctant to share more sovereignty during the Tampere period, causing negotiations on sensitive measures to last for many months, sometimes even years. Since some of the adopted measures allowed

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60 Jan Niessen, Five years of EU migration and asylum policymaking under the Amsterdam and Tampere mandates (Brussels: Migration Policy Group, 2004), 42.
64 Jan Niessen, Five years of EU migration and asylum policymaking under the Amsterdam and Tampere mandates (Brussels: Migration Policy Group, 2004), 41.
considerable national discretion and had adopted the lowest common denominator as an EU standard, the Commission insisted that future action must go further in certain areas.\(^65\)

### 4.1 Asylum

A number of prominent contributions in securitization studies have pointed to the securitized dynamics in the field of asylum policy following 9/11. Although some of these instances cannot be denied, the securitization thesis should be refined by acknowledging the presence of a humanitarian logic emphasizing protection, human rights and norms, and solidarity.\(^66\)

The Tampere conclusions, that specified how the Area of Freedom, Security and Justice needed to be implemented, underlined the EU’s commitment to freedom based on human rights, democratic institutions and the rule of law. The Member States agreed to work towards establishing a Common European Asylum System, “based on the full and inclusive application of the Geneva Convention.” To achieve this goal, the EU had drawn up a scoreboard to spell out a set of priorities for the years to come.\(^67\) The underlying reason for this commitment to a shared framework of humanitarian values was Europe’s inadequate response to the Kosovo refugee crisis in 1998-1999. Faced with the critique of a ‘fortress Europe’, the Member States wanted to embrace a new, more liberal policy on asylum.\(^68\) These priorities were repeated in two Communications of November 2000, which both reaffirmed the spirit of Tampere.\(^69\)\(^70\) Again, the EU declared that the principles of the common asylum procedure must remain firmly attached to “respect for the Geneva Convention and other relevant human rights instruments” and supply the basis

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for a capacity to meet “humanitarian needs on the basis of solidarity.”\textsuperscript{71} All relevant proposals initiated by the Commission over the next years confirmed this human rights approach. For example, the Council directive on minimum standards for the qualification of persons in need of international protection, once again, recalled that the “cornerstone of the system should be the full and inclusive application of the Geneva Convention.”\textsuperscript{72}

Interestingly, even in the direct aftermath of 9/11, the EU continued to follow the rationale set out in the Tampere Council conclusions. In reaction to the attacks an Extraordinary JHA Council meeting was held that issued instructions for the Commission “to examine urgently the relationship between safeguarding internal security and complying with international protection obligations and instruments”.\textsuperscript{73} The Council thus implied that there was potentially a link between asylum and terrorism, which echoes securitization studies that claim that the Member States attempted to put the Union’s internal security above international protection norms following 9/11.\textsuperscript{74} The JHA Council was followed by a Commission Communication, analyzing the legal mechanisms for excluding persons suspected of terrorist acts from international protection as refugees. Surprisingly, the Commission reinsured the EU’s commitment to its humanitarian tradition by stating that “refugees and asylum seekers should not become victims of the recent events”, from which it can be concluded that it wanted to resist the terrorism-asylum linkage from being made.\textsuperscript{75} The Commission continued by stating that it fully understood that:

“Member States are now looking at reinforced security safeguards to prevent terrorists from gaining admission to their territory through different channels. These could include asylum channels, though in practice terrorists are not likely to

use the asylum channel much, as other, illegal, channels are more discreet and more suitable for their criminal practices.”

The Commission placed irregular immigration higher on the list of possible means of entry for terrorists as opposed to asylum channels, which demonstrates that it tried to differentiate asylum policy from other fields. With regard to irregular migration, the Commission reaffirmed the terrorism-migration nexus by acknowledging that illegal channels were suitable for criminal practices. In addition, this excerpt also illustrates how securitization worked in the subfield of external borders, since the Commission asserted that it is completely understandable and legitimate for Member States to increase border security in order to prevent terrorists from entering their territory. These observations confirm securitization scholars that noticed a merging of the separated yet linked policies on border control and internal security following 9/11. In this fragment, different types of migrants are seen to be treated according to different logics, which corroborates the literature arguing that securitization might vary across subfield. At the same time, the analysis also illuminates how the lack of methodological rigor can easily lead to inaccurate verdicts of securitization. To illustrate, Brouwer stated that the views of the Commission expressed in the Working Documents were “somewhat confusing, as they seem to contradict each other.” Her confusion could have been easily solved if she had differentiated the subfields, allowing her to disentangle the various, indeed ‘contradicting’, discourses. Further down the document it is stated that security measures need to strike a proper balance with refugee protection. More specifically, the Commission endorsed the line taken by UNHCR that, rather than make major changes to the refugee protection regime, Member States were called on to “scrupulously and rigorously” apply the exclusion clauses contained in the Geneva Convention in order to prevent persons suspected of terrorist acts from seeking

77 See for example: Baldaccini (2008).
asylum.\textsuperscript{81} The Commission thus urged the Member States to continue in the same tradition as they agreed to at Tampere. By stating that asylum policy should remain anchored within international norms, it effectively placed international law at the heart of EU asylum law. Another example of the European Commission’s resistance to shifting humanitarian norms towards securitization was the complete absence of any references to refugees, asylum, or the exclusion of any person seeking refugee status in the “Commission’s proposal for a Framework Decision on combating terrorism”.\textsuperscript{82}

At that time, public unease about migration was on the rise. Broad populist movements expressing their discontent about the immigration and integration of minorities had emerged throughout Europe and started to demand more stringent migration measures. These developments made it all the more surprising that the reaction of the Commission, in the immediate aftermath of 9/11, indicates that it made a clear effort to distinguish terrorism from asylum, in order to ensure a different treatment in relation to refugees. Furthermore, even a few years later, in 2003 for instance, when the Member States were faced with even more malaise in public opinion and when abuse of asylum procedures was perceived to be on the rise, the Commission still stressed that these developments constituted “a real threat to the institution of asylum and more generally for Europe’s humanitarian tradition”, and it underlined that such events “demand durable solutions and mechanisms that boost solidarity.”\textsuperscript{83}

It would be naïve to assume that these developments and the anti-terrorism agenda did not affect asylum policy at all. Indeed, it must be acknowledged that some of the adopted legislations hardly bear resemblance to their original proposals. The fact that the Commission proposed legislation on all aspects of asylum law before the attacks took place, strongly indicates that the content of the measures have been influenced by enhanced security concerns at the time of negotiations. Two documents are important in this respect. First, the “Council Directive 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”, also called the definitions Directive. The second important document is titled the “Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status”, or the Directive on asylum procedures. In the aftermath of 9/11, all Member States agreed that security concerns needed to be reflected in the Definitions Directive, but they became divided among two ways of doing so. After intense negotiations, including with the UNHCR, the JHA Council were presented with a proposal for their approval that added national security concerns as ground not to grant refugee status, which was an exclusion clause not provided for in the Geneva Convention. Furthermore, the proposal allowed for benefits received by refugees and persons enjoying subsidiary protection, such as protection from refoulement and maintaining family unity, to be refused, reduced or withdrawn for reasons of national security or public order, including in cases of terrorism. This relates back to securitization literature arguing that 9/11 led to a watering down of existing standards and commitments to international protection.\textsuperscript{84} It is worth noting that, it was not only the Member States that played an active role in ensuring that refugee protection would not become an avenue for the impunity of suspected terrorists.\textsuperscript{85} The Commission, for example, recalled that in cases in which it had been “prima facie” established that someone falls under the scope of the exclusion clauses, states should be entitled to channel such claims through an accelerated procedure without having the need to examine the “inclusion clauses” of the Refugee Convention.\textsuperscript{86} The Commission thus argued for the practice of ‘exclusion before inclusion’ which is contrary to the principles of international law.\textsuperscript{87} The Directive on asylum procedures also witnessed important amendments during the negotiation process. The most radical change was the introduction of the safe country of origin


principle, which allowed asylum seekers to be denied access to an asylum procedure (and the territory) altogether based on the applicant’s origin country.\textsuperscript{88}

The dynamics discussed above are what authors such as Crisp indicate as the connection between 9/11 and \textit{“the mounting challenge to asylum”}, described as violations of (international) laws and norms of refugee protection in name of national security.\textsuperscript{89} It is interesting to note that, in this case, securitization predominantly seems to occur at the level of political practice instead of political discourse. This would in turn fortify Boswell’s argument that organizational practices may be motivated by alternative logics that do not correspond to the political discourse.\textsuperscript{90} Furthermore, despite acknowledging that these securitization instances cannot be ignored, research should be cautious about jumping to conclusions too soon. In the end, many authors defending the thesis that terrorism provided new impetus to securitize asylum, and consequently justified the introduction of exceptional measures, point to the example of Eurodac (a system for taking and comparing fingerprints of asylum seekers) to support their argument.\textsuperscript{91} This is quite problematic given the fact that this legislation was on the table long before 9/11. It illustrates that securitization was a phenomenon that clearly predated the attacks, which calls into question the idea that developments after September 2001 are deemed ‘extraordinary’.\textsuperscript{92}

It might as well be the case that, instead of initiating a re-orientation in policy practices, the terror attacks only strengthened prior existing tendencies. Lastly, while the literature provides extensive information on how securitization was driven by internal security concerns, the external dimensions of the policy agenda, aimed at limiting refugee flows into the EU territory, is widely neglected. The safe country of origin principle falls under this form of securitization, which allowed states to deny the examination of asylum claims and facilitated the return of asylum seekers to countries


\textsuperscript{91} See for example the works of: Baldaccini (2008), Van Dijck (2006), Schlentz (2010), Brouwer (2003).

through which they had passed which were considered ‘safe’. A second example of externalization is the adoption of an EU program for financial and technical assistance to third counties in the area of migration and asylum in 2004. This rule was the outcome of the Seville European Council in 2002, where the Member States expressed a general commitment to attain "closer economic cooperation, trade expansion, development assistance and conflict prevention ... [to] reduce the underlying causes of migration flows". These practices reveal that the EU was actively looking for ways to reduce migration through its foreign policy.

### 4.2 Legal migration

During the period 1999-2004, legal migration was the least securitized subfield. Attempts to keep security issues in the background are even more visible compared to asylum. The underlying reason for this dynamic was that there was no strong incentive to securitize legal migration as this conflicted with the EU’s economic interests regarding the internal market.

At Tampere, the European Council underlined “the need for approximation of national legislations on the conditions for admission and residence of third country nationals”, and it stated that “the legal status of third country nationals should be approximated to that of Member States’ nationals.” This indicates that the EU endorsed the objective of fair treatment of third-country nationals, guaranteeing them rights that were comparable with the rights and obligations of citizens in the Member States. The Council agreed to a more vigorous integration policy aimed at enhancing “nondiscrimination in economic, social and cultural life and develop measures against racism and xenophobia.” At that time, the EU was facing a growing problem caused by structural shortages of specific knowledge and skills and an ageing active workforce. Member States were therefore eager to consider opportunities for opening the borders for the sake of economic

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migration. This also accords with the paragraph in the Tampere conclusions presenting the underlying reason for spelling out these goals:

“The European Council acknowledges the need for approximation of national legislatio
ns on the conditions for admission and residence of third country nationals, based on a shared assessment of the economic and demographic developments within the Union.”

The Tampere meeting was followed by a publication by the European Commission on a “Community Immigration Policy”. This was the first time since the signing of the Amsterdam Treaty that the question of a common immigration policy was discussed. At that time, little progress had been made on the Tampere scoreboard. In an attempt to revise the EU's agenda, the Commission recognized that the “zero immigration policies of the past 30 years are no longer appropriate”, and it called for “new channels for legal immigration to the Union should now be made available for labour migrants.” The Commission highlighted that, although the first two channels of legal migration were asylum and family reunification, emphasis was to be placed on “the need to develop an immigration policy designed to admit migrants mainly for economic reasons”, as well as to counteract “demographic decline”. By stating this, the Commission recalled that it understood legal migration predominantly in economic terms. This becomes even more visible in the part where it expressed its reasons for drafting the proposal for a Council Directive on the right to family reunification:

“This reflects the Commission’s view that successful integration of third country nationals to maintain economic and social cohesion is one of the major challenges which the EU faces with respect to immigration policy. The establishment of stable family communities ensures that migrants are able to contribute fully to their new societies.”

97 Tampere Conclusions, para. 20.
Again, the Commission depicted legal migrants as economic valuable and fruitful contributors to European societies. However, securitization is also visible when the Commission indicated that migration could potentially harm the “social and economic cohesion of the Union”, thereby creating the image that migration posed a destabilizing challenge to the system.\footnote{Jef Huysmans, “The European Union and the Securitization of Migration,” Journal of Common Market Studies 38, no. 5 (December 2000): 770-771, http://onlinelibrary.wiley.com/doi/10.1111/1468-5965.00263/epdf.} This kind of logic is in accordance with the literature that evokes the image of the EU as a gated community whose borders were selectively opened for migrant workers in order to bypass a growing scarcity of labor.\footnote{Henk van Houtum and Roos Pijpers, “The European Union as a Gated Community: The Two-faced Border and Immigration Regime of the EU,” Antipode, 39 (2007): 302-306, DOI: 10.1111/j.1467-8330.2007.00522.x} In addition, the integration element reflects Huysmans’ idea that migrants were seen as a danger to the cultural identity of the EU which raised concerns over the successful integration of immigrants into the social fabric of the Member States. Again, these findings corroborate the literature refuting the connection between 9/11 and intensified securitization as it shows that certain securitized practices were already in place.\footnote{See for example the works of: Christina Boswell (2007) and Didier Bigo (2005).}

This trend continued following 9/11, albeit to a somewhat lesser degree. Similar to asylum, the EU tried its best to separate legal migration and terrorism. This became evident in the Council Conclusions adopted during the extraordinary JHA meeting which included lengthy paragraphs on strengthening the EU’s external border, but did not contain any reference to legal migration policies.\footnote{Extraordinary JHA Council Meeting, Council Doc. 12019/01 (Presse 327).} Another pattern that both asylum and legal migration share is a visible change in the Member States’ willingness to adopt far-reaching legislative measures in the period after 9/11. To illustrate, following the impetus given by the Commission Communication in 2000, several draft proposals were tabled: on a uniform residence permit, on the status of long-term residents, on migration for employment or self-employment, and a proposal for an open method of coordination. The latter presented an ambitious plan for deeper community integration based on the goal set during the Lisbon summit in March 2000 for the EU to become “the most competitive and dynamic knowledge based economy in the world capable of sustained economic growth with more and better jobs and greater social cohesion”.\footnote{European Council, Conclusions of the Presidency, Lisbon European Council, 23-24 March 2000, para. 5.} Neither the proposal on migration for employment or self-employment, nor the open...
The method of coordination became a reality during the duration of the Tampere program. The effect of enhanced security concerns was also reflected in the Seville European Council Summit in 2002, that was largely devoted to the issue of illegal migration and that articulated a strong mandate for enhanced border control, but remained quiet on the agenda of legal migration.

Overall, these observations connect well to the argument made by Boswell, who stated that the securitization of legal immigration was in conflict with the policy goal of European governments to introduce more liberal policies on labor migration. During the Tampere period, governments in the UK and Germany were implementing measures to provide high-skilled migrants and foreign students easier access to their labor markets. Similar events took place in Spain concerning the regulation of illegal workers in response to growing labor shortages. The terrorism-migration nexus proved therefore impossible to sustain since there was no strong incentive to do so. Again, Boswell is right in her observation and in 2003, the Commission revised its ideas via a new Communication that emphasized that immigration of workers offered a solution to skill shortages as long as appropriate migrants were attracted.

4.3 Irregular migration

Almost all authors, who defend the correlation between 9/11 and the revival of securitization, point to what occurred in the fields of irregular migration and external border policy to justify their main thesis. As the evidence simply cannot be ignored, it is obvious that this accredits some of the securitization literature. The analysis also uncovered two alternative patterns which have remained surprisingly underexposed in previous studies.


The Amsterdam Treaty introduced a new objective:

“to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.”

Through this wording, the EU established a direct link between the free movement of persons and measures intending to prevent and combat crime. This was repeated during the Tampere meeting where the Member States expressed the need for “a consistent control of external borders to stop illegal immigration and to combat those who organise it and commit related international crimes.” In doing so, the EU reaffirmed the connection between criminality and illegal immigration. During that same summit, the EU made a connection between illegal immigration and human trafficking, which was termed a “serious crime.” It was observed therefore that close co-operation with countries of origin and transit was necessary and the Council called for “a greater coherence of internal and external policies”, and “an integrated and consistent” approach to external relations. Since this policy involved a form of cooperation with third countries, it is part of the external dimension of migration policy, which was aimed at combating illegal migration through foreign policy.

The most distinctive feature in the period between Tampere and 9/11 was the French proposal containing four controversial measures in 2000, including the mutual recognition of expulsion decisions. It spelled out two possible cases of expulsion based on a “serious and present threat to public order or to national security and safety”, or the “failure to comply with national regulations on the entry or residence of aliens”. The proposal was received with fierce criticism because it lacked specific and detailed

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111 Tampere Conclusions, para. 23.
112 Tampere Conclusions, para. 11 and 59.
human rights safeguards.\footnote{Steve Peers and Nicola Rogers, \textit{EU Immigration and Asylum Law: Text and Commentary} (Leiden: Martinus Nijhoff Publishers, 2006), 791.} Moreover, the Directive did not specify minimal standards to which the national rules of the Member States should comply when it came to how national expulsion decisions were taken, the grounds taken for such decisions, and the manner of execution.\footnote{Ryszard Cholewinski, “Control of Irregular Migration and EU Law and Policy: A Human Rights Deficit,” In \textit{EU Immigration and Asylum Law: Text and Commentary}, ed. Steve Peers and Nicola Rogers (Leiden: Martinus Nijhoff Publishers, 2006), 914.} As the rules allowed for too much national discretion and did not provide adequate provisions to challenge decisions, they could possibly lead to unequal treatment of migrants.\footnote{Ryszard Cholewinski, “The EU Acquis on Irregular Migration Ten Years On: Still Reinforcing Security at the Expense of Rights?” In \textit{The First Decade of EU Migration and Asylum Law}, ed. Elspeth Guild and Paul Minderhoud (Leiden: Martinus Nijhoff Publishers, 2012), 144.} The discussions of the JHA Council revealed that before 9/11, the ‘externalization’ of migration control was met with considerable resistance since the French proposal was intensively discussed, redrafted and even suggested to be repealed in their entirety.\footnote{Steve Peers and Nicola Rogers, \textit{EU Immigration and Asylum Law: Text and Commentary} (Leiden: Martinus Nijhoff Publishers, 2006), 793.} This trend, however, was turned upside down following 9/11, which seemed to be a stepping stone towards the development of the external dimension of irregular migration policy.

In 2000, when the EU faced the prospect of the largest expansion in the history of European integration taking place in 2004, the need for harmonized rules started to become more urgent because it was recognized that enlargement constituted a significant challenge for preventing illegal migration.\footnote{Ryszard Cholewinski, “The EU Acquis on Irregular Migration Ten Years On: Still Reinforcing Security at the Expense of Rights?” In \textit{The First Decade of EU Migration and Asylum Law}, ed. Elspeth Guild and Paul Minderhoud (Leiden: Martinus Nijhoff Publishers, 2012), 137.} For this reason, the next European Council placed irregular migration and human trafficking on top of the political agenda. The Member States called on the Commission to urgently bring forward the Tampere conclusions in this area \textit{“by adopting severe sanctions against those involved in this serious and despicable crime.”}\footnote{European Council, \textit{Conclusions of the Presidency, Santa Maria da Feira European Council, 19-20 June 2000}, para. 52.} Subsequently, the Commission released a detailed Communication which, again, reinforced the criminal-migration nexus by
expressing that “criminal activities, which are regularly connected with irregular migration flows, are a major common concern in all Member States.”

The main findings illuminate a repeating pattern of a linkage between criminal activities and irregular migration. This accords well with research by Bigo, who highlighted that periods of endorsing the same narrative had naturalized a security discourse. The same counts for Boswell, who showed that the development after 9/11 did not deviate from prior established patterns. Both concluded therefore that the events did not generate a new security agenda. This research, however, also points to two distinct trends that were to complement the existing discourse. In fact, the aforementioned Communication of November 2001 exhibits these supplementary patterns of externalization and the terrorism-migration nexus. Externalization, firstly, is reflected in the way that the European Commission advocated for a more extensive role for its external agenda by encouraging the creation of “a coherent common policy on readmission and return”, as one of the main lines of action to prevent and combat irregular migration. Moreover, steps were taken to develop the concept of liaison officers in countries of transit and origin and to co-ordinate efforts among Member States as the Commission believed that “permanent information exchange between immigration and airline liaison officers as well as with police liaison officers and other intelligence officers of Member States should be guaranteed.”

This was also the first document in the field of irregular migration policy in which the terrorism-migration nexus entered the stage as new measures were welcomed in the context of “prevention of terrorist threats” and the Commission expressed the need for “trustworthy action against terrorist risks.” Such instances of linking the issue of irregular migration to the danger of terrorism became much more frequent in the

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124 COM(2001) 672 final, para. 4.3.1.
125 COM(2001) 672 final, para. 4.1.4.
126 COM(2001) 672 final, para. 5.
following years. Contrary to the opinions of Bigo and Boswell, this pattern did not completely adhere to existing patterns. The argument that securitization originates from the period preceding the terror attacks should therefore, only in this respect, be nuanced by accepting some new extensions to this framing. The discussion will now turn to the period after 9/11 to demonstrate how policy on external relations became more operational.127

The European Council Meeting in Laeken in December 2001 reconfirmed the mandate to develop the external dimensions as it emphasized the need for a more structured EU policy on relations with third countries, including the identification of more countries for “conclusion of readmission agreements”, as well as the promotion of further cooperation “in order to combat illegal migration”.128 The Action Plan on illegal migration was adopted shortly after and criteria were agreed for negotiation in readmission agreements.129 This plan included a paragraph titled “Pre-Frontier Measures”, which was devoted entirely towards steps to be taken to set up a network of immigration and airline liaison officers from the home ministries in order to check that documentation was thoroughly examined.130 The stationing of such customs agents was aimed at preventing would-be illegal migrants and asylum seekers from reaching the European borders and was therefore also coined ‘remote control’.131 In that same document, the Council advocated for the creation of a system for exchanging information on issued visas. Whereas pre-9/11 documents usually referred to the purpose of combatting international crime, it was now accepted that such a system could “contribute to the prevention of illegal immigration and to the fight against terrorism.”132

In April 2002, the Commission advanced a Green Paper on the return of illegal residents

as "an integral and vital component in the fight against illegal immigration." This was followed by a Communication on the same topic highlighting the need to "enhance operational co-operation among Member States in order to make return policies more efficient in practice." The process finally resulted in the adoption of a Return Action Program in November 2002.

Meanwhile, as discussed under asylum policy, the EU faced an increase in the political sensitivity of immigration and asylum matters. The result was that irregular migration became the centerpiece of the Seville European Council in 2002 and the 2003 Thessaloniki European Council, where Member States agreed to a strong mandate for control measures and return policies to curb illegal migration. These developments crystalized in numerous acts such as readmission agreements, including cooperation in respect of transit for the purposes of removal by air, the organization of joint flights, and the compensation of the financial imbalances resulting from the expulsion of third country nationals. Together with measures strengthening pre-frontier controls, and measures supporting countries neighboring the EU in controlling emigration or transit migration across their territory, these policies all presented ways through which the EU tried to outsource forms of migration control to non-EU countries. All in all, the evidence seems to indicate that the attacks allowed the externalization of policy action to be put at the heart of policy-making in the field of irregular migration. However, one issue which calls this causal relationship into question remains open, for it is not automatically proven that growing attention to the external dimension was a direct

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137 Jan Niessen, Five years of EU migration and asylum policymaking under the Amsterdam and Tampere mandates (Brussels: Migration Policy Group, 2004), 9.
effect of the attacks. Indeed, it is impossible to establish a clear-cut answer as to the puzzle if the policies that were introduced after 9/11 in the field of irregular migration resemble ‘extraordinary instruments’ that would otherwise have lacked support and which signaled a radical departure from the agenda of previous years.

4.4 External borders and Visa

One can rightfully argue that policy on external borders relied heavily on a security rationale ever since the signing of the Amsterdam Treaty. It is suggested that the politics of emergency surrounding 9/11 influenced this trend by shaping a political agenda focused on the introduction of new technological advancements and enhanced border security. Nevertheless, it remains important to judge these instances according to their intensity and place them in the wider spectrum of the discourse.

At Tampere, where Member States placed an emphasis on their humanitarian tradition and shared commitment to more liberal legal migration policies, external border policies were explained in a completely different language since the Council expressed “the need for a consistent control of external borders to stop illegal immigration and to combat those who organize it and commit related international crimes.” The presence of such different discourses can be utterly confusing and easily lead to misunderstandings. Van Dijck, for instance, falls victim to such a misconception when she concludes that “the Tampere Conclusions were quite ambiguous with regard to the migration phenomenon.” She observed that on the one hand, Member States underlined that third country nationals were welcome “and that they will not be denied the freedom to access the territory”, while on the other hand the EU stressed the need for consistent control of external borders.140 Again, her analysis highlights the importance of distinguishing between the various subfields since, rather than indicating an inconsistency on the side of the EU, these conclusions point to the presence of two distinct discourses driving integration in two separated realms of migration policy.

In spite of this securitized rhetoric, the Tampere conclusions did not focus much on the development of legislation in this area. The reason was that with the signing of the Amsterdam Treaty, the EU agreed to incorporate the Schengen rules that already contained measures on visas and borders.\footnote{Steve Peers and Nicola Rogers, \textit{EU Immigration and Asylum Law: Text and Commentary} (Leiden: Martinus Nijhoff Publishers, 2006), 7.} Transferring the acquis into the EU institutional context proved to be an arduous process since not every Schengen provision fell neatly under the categorical division of its legal framework.\footnote{Joanna Parkin, \textit{The Difficult Road to the Schengen Information System II: The legacy of ‘laboratories’ and the cost for fundamental rights and the rule of law} (Brussels: CEPS Liberty and Security in Europe, 2011), 8.}\footnote{Rens van Munster, \textit{Securitizing Immigration: The Politics of Risk in the EU} (New York: Palgrave Macmillan, 2009), 101-102.} The most important legislative proposals before 9/11 included the Regulation determining the list of third countries whose nationals must be in possession of visas when crossing the external borders. Next to carrier sanctions and liaisons officers, the visa regime was singled out as one of the three core strategies of pre-frontier measures to control immigration at distance.\footnote{European Commission, "Proposal for a Council Regulation listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement," \textit{COM(2000) 27 final}, Brussels, 26 January 2000, 11 [hereinafter COM(2000) 27 final], 9.}\footnote{Natalie Schmidthäussler and Arne Niemann, "The Logic of EU Policy-Making on (Irregular) Migration: Securitisation or Risk?," \textit{Mainz Papers on International and European Politics}, no. 6 (2014): 2, \texttt{https://international.politics.uni-mainz.de/files/2014/07/mpiep06.pdf}.} The Commission mentioned “a \textit{number of relevant sources of statistical information and indicators to assess the risk of illegal migratory flows},” since “\textit{risks relating to security and illegal immigration should be given priority consideration}” for establishing the list.\footnote{European Commission, "Proposal for a Council Regulation listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement," \textit{COM(2000) 27 final}, Brussels, 26 January 2000, 11 [hereinafter COM(2000) 27 final], 9.} In other words, the EU considered ‘risks’ to be a priority factor against which the approval of visa applications should be reviewed. This signals the logic that van Munster and Neal dubbed as ‘risk management’, which supports the notion that EU policy-making may be more adequately described by alternative logics.\footnote{Natalie Schmidthäussler and Arne Niemann, "The Logic of EU Policy-Making on (Irregular) Migration: Securitisation or Risk?," \textit{Mainz Papers on International and European Politics}, no. 6 (2014): 2, \texttt{https://international.politics.uni-mainz.de/files/2014/07/mpiep06.pdf}.} The significance of this regulation also lies in the fact that is arguably neglected international protection norms by introducing a visa requirement on refugees if the third country where they resided was on the list of countries whose nationals must be in possession of a visa when crossing the external borders of the EU. In doing so, it limited legal ways to access the EU territory and forced refugees to make recourse to illegal
means of entry.\textsuperscript{146} These findings reveal that certain patterns of securitization in the area of visa policy were undoubtedly present before 9/11.

As for visas and border controls, events took another turn after 2001 as the development of legislation assumed growing importance.\textsuperscript{147} This became evident by, firstly, the enhanced possibilities of using modern technologies for the purpose of gathering information on foreign nationals. Secondly, the numerous attempts to strengthen the EU border pointed to another trend that signals the revival of securitization. Discussions on the development and usage of databases gained impetus shortly after 9/11.\textsuperscript{148} Already on 20 September 2001, it was agreed that the Council would start to “\textit{examine whether to extend, in the context of counter-terrorism, SIS access to other public services.}”\textsuperscript{149} SIS was one of the cornerstones of Schengen and constituted an automated international database on cross border crime used by police and border authorities for entry refusal purposes.\textsuperscript{150} Negotiations on updating SIS had already been underway since 1996 but due to its dual application as a tool for both immigration and criminal purposes, determining the legal basis for SIS proved to be a difficult issue.\textsuperscript{151} With the Member States unable to reach agreement on who should take overall responsibility for managing the creation of a new system progress remained slow.\textsuperscript{152}

The process of creating SIS II accelerated after the events on 9/11, starting with the mandate provided by the extraordinary JHA meeting. The Austrian delegation subsequently presented a paper on the possible use of SIS to combat terrorism.\textsuperscript{153}

\begin{thebibliography}{150}
\bibitem{149} Extraordinary JHA Council Meeting, Council Doc. 12019/01 (Presse 327), para. 13.
\bibitem{150} Jan Niessen, \textit{Five years of EU migration and asylum policymaking under the Amsterdam and Tampere mandates} (Brussels: Migration Policy Group, 2004), 2.
\bibitem{151} Joanna Parkin, \textit{The Difficult Road to the Schengen Information System II: The legacy of 'laboratories' and the cost for fundamental rights and the rule of law} (Brussels: CEPS Liberty and Security in Europe, 2011), 8.
\bibitem{152} Joanna Parkin, \textit{The Difficult Road to the Schengen Information System II: The legacy of 'laboratories' and the cost for fundamental rights and the rule of law} (Brussels: CEPS Liberty and Security in Europe, 2011), 9.
\end{thebibliography}
Following discussions on this paper during the November 2001 JHA meeting, the Council agreed to develop the possibility of extending access to SIS beyond visa and immigration authorities to agencies such as Europol and Eurojust. In June 2002, the Council agreed on the new functionalities for SIS including the collection and storage of biometric features, the possibility of interlinking alerts, and the addition of new categories of data, which was legitimized by a reference to the goal of safeguarding greater effectiveness in combating terrorism.

The policy-making process of updating SIS I is often accredited in the securitization literature with the creation of ‘exceptional measures’ and ‘measures beyond law’, justified on the grounds of special security concerns. Whereas before 9/11, negotiations on SIS were dominated by legal issues, in the aftermath of the attacks the politics of emergency shaped a policy process where there was no clear legal competence. To illustrate, in the post-9/11 climate, the democratic process was seriously undermined as new features and functionalities were adopted in the form of binding Council Conclusions that provided no possibility for consultation of the European or national parliaments. Moreover, controversial new functions such as the addition of biometrics and extended access to police authorities were agreed without considering the ethical challenge they posed to EU principles of non-discrimination, data protection and privacy. Biometric data, for instance, were more effective in linking information to people, which therefore allegedly transformed the original nature of SIS from a database used for control purposes to one used as an investigative tool.

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The intensified use of data on third-country nationals also proceeded through the development of the Visa Information System (VIS), a technological device to exchange information concerning visas, which emerged as a direct consequence of 9/11. At the extraordinary JHA meeting, the commission was invited to submit proposals “for establishing a network for information exchange concerning visas.” This recommendation to “attach top priority” to “set up a common visa identification system” was repeated at both the Laeken and Seville European Council meetings. The overarching aim of VIS was subsequently laid down as a migration control instrument since it would store information on “visas issued but also data concerning visas applied for and refused.” However, as public opinion on migration deteriorated in the years that followed, security measures were deemed to be more necessary. In its final

166 Extraordinary JHA Council Meeting, Doc. 12019/01 (Presse 327), para. 26.
167 See respectively: Seville European Council para. 30 and Laeken European Council para. 42.
168 Proposal for a comprehensive plan to combat illegal immigration and trafficking on human beings in the European Union, para 37.
proposal, the purpose of VIS was extended far beyond the original aim in order to cover more aspects including the fight against terrorism and organized crime.\(^{169}\)

These findings tend to confirm the securitization literature that claims that in the period after 9/11, there was a convergence of migration and security instruments.\(^{170}\) In addition, Member States exhibited a strong political will to invest in surveillance and information technologies which were seen as solutions against all forms of security problems.\(^{171}\) Contrary to most securitizing moves reported by this study, the use of data such as biometrics had never been debated before 2001. In 2003, however, this suddenly became one of the cornerstones of the Thessaloniki Council which urged that a “coherent approach is needed in the EU on biometric identifiers or biometric data, which would result in harmonised solutions for documents for third country nationals, EU citizens’ passports and information systems (VIS and SIS II).”\(^{172}\) Again, this seems to support the thesis that 9/11 had a far-reaching impact on the political practices in external borders and visa policy. And yet, it is important to remain cautious in accepting that the introduction of ‘exceptional’ policies necessarily depended on sustaining a strong link between terrorism and migration.\(^{173}\) To put it differently, it is questionable whether the political discourse was central to the political justification of the intensification of migration controls. It is beyond the scope of this research project to provide a conclusive answer to this last point. At the same time, it should be noted that during the initial phase of the research, no reliable trends in the occurrence of ‘securitization’ was discerned, which would support the observation that the political elite refrained from reviving the terrorism-migration nexus.\(^{174}\) This recalls the literature that problematized the causal link between political discourse and securitized outcomes. Meaning that even if it is really the case that the discourse remained unaffected by 9/11, it might still be


\(^{172}\) Thessaloniki European Council para. 11.


\(^{174}\) See section 3. Methodology.
perfectly true that securitization occurred in policy practices. Finally, to make things even more complicated, even if the last scenario in fact explains developments in this area, it is still open to debate if these measures are to be considered an ‘exceptional course of action’ since it might as well have been the case that they remained along the exact same lines of years before.

The argument in relation to external borders and visas is also formulated through a second track, namely, the numerous attempts to strengthen the EU border. The idea of creating a European Border Police was discussed right after 9/11. At the following Council meeting in Laeken in December 2001, the issue of border management was elevated to receive top priority as it was stated that “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.” At the Laeken Summit, the Council called for “conditions in which a mechanism or common services to control external borders could be created.” Following this recommendation, in June 2002, the Commission presented a Communication that repeated the need to “increase co-operation, co-ordination, convergence and consistency between border practitioners in EU Member States,” and which set out a program that would eventually lead "towards a European corps of border guards.” It is interesting to note that following 9/11, the EU immediately shifted its attention towards the perceived weakness of the external borders and the need to guarantee control over terrorists who might try to enter. This corresponds to Huysmans’ idea that politics of emergency surrounding 9/11 facilitated the integration of migration policy into an internal security framework, which reinforced justification for more stringent border controls. At the same time, based on the speed of concrete and operational progress, it also illuminates that this sense of urgency did not translate into


179 See for example the selected paragraph of the Extraordinary European Council meeting of 20 September 2001, Doc. 12019/01 that is discussed in Section 4.1 on Asylum.
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immediate action since it took the EU until 2004 to establish the “Agency for the Management of Operational Cooperation at the External Borders”, also commonly known as FRONTEX. Such strikingly slow progress does not correspond to what is normally expected under the ‘politics of emergency’ and therefore, again, these dynamics casts doubt on the influence of 9/11.

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The main findings confirm the hypothesis that the question of the impact of 9/11 on the securitization of migration policies at the EU level is too complex to be answered with a simple yes or no. Through a research that captures both the nuances of securitization and the general framings in each of the subfields, this dissertation demonstrates that the areas of asylum and legal migration policies can be differentiated from external borders and irregular migration due to the dominance of alternative discourses emphasizing humanitarian and economic aspects of migration. This leads me to the conclusion that the influence of 9/11 was rather limited. At the same time, part of the academic analysis on the effects of the terrorist attacks also focused on the growing attention to certain subfields at the expense of others. The slowdown of European integration with regards to legal migration and asylum may therefore provide an indicator that the attacks allowed the Member States to elevate the priority of external borders and irregular migration. This is further indicated by the Council’s willingness to use their shared right to initiate legislation in these areas. The French proposal related to the area of irregular migration, issued before hardly any Commission legislative proposals on asylum or legal migration, illustrates that the Member States used their legislative power to put certain issues on the agenda. This seemingly placed the Council’s emphasis on irregular migration and external border control from an early date. In these areas, instances of securitization are much more frequent and there is evidence that, following 9/11, Member States were willing to adopt legislation beyond the mechanisms developed in previous years.\footnote{Jörg Monar, "Justice and Home Affairs," \textit{JCMS: Journal of Common Market Studies} 40, no. 1 (2002): 126, DOI: 10.1111/1468-5965.37.s1.11-i2.} Next to securitized moves, the attacks potentially served as a catalyst for the EU to develop measures concerning the external dimensions of migration policy and to explore ways to introduce sophisticated techniques to improve border security. Overall, it becomes clear that there are different ingredients in EU migration policy which guarantees that each type of migrant is treated according to the kind of logic that favors the organizational interest and political mandate in that particular field.\footnote{Natalie Schmidthäusler and Arne Niemann, "The Logic of EU Policy-Making on (Irregular) Migration: Securitisation or Risk?,” \textit{Mainz Papers on International and European Politics}, no. 6 (2014): 28, \url{https://international.politics.uni-mainz.de/files/2014/07/mpiep06.pdf}.}
That being said, even though the analysis of legislative documents allows for the differentiation of the various subfields, it would be naïve to assume that asylum seekers or labor migrants, in reality, did not suffer from certain legislations that were now only discussed in the context of other areas. In addition, when the EU sought political justification for introducing policy practices, it could draw on a wide variety of framings. Meaning that even if the evidence precludes that the political discourse experienced more securitization, this might not hold for political practices. This is the case with regards to asylum policy, where the discourse was not securitized, and yet it was observed as being restrictive in some aspects. The main findings show that the assumed link between securitized discourses and securitized outcomes is indeed open to debate. This is further supported by the observation that in the field of external border policy, several technologies for surveillance and control were introduced despite the fact that the analysis identified no reliable change in the occurrence of securitization and hence, in the political discourse. The research therefore leaves us with two questions, namely, if 9/11 was in fact central and necessary to reinforce political justification for securitized practices. Closely related to this is the puzzle of what exactly denotes a ‘securitized practice,’ for it may be perfectly true that the introduction of more stringent measures after 9/11 are best understood as a continuation of a trend that was well underway before the attacks. Further related studies should therefore remain cautious in judging instances of securitization since, as far as the legislation adopted after 9/11 was under scrutiny before the attacks, it is quite problematic to argue that such measures to restrict, prevent or externalize migration policy resemble ‘extraordinary instruments’ in order to deal with an ‘extraordinary threat’ which would have appeared controversial under other circumstances. After all, it seems likely that most of the EU migration legislation in the period following 11 September 2001 adhered to developments that were set in motion before and that a Pandora’s box, in reality, had been opened years ago.
6. Bibliography

6.1 Primary Sources


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6.2 Secondary Sources


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