

The Impact of Public Opinion on European Union Public Policy-Making: The case of Immigration Policies

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Abstract:

In recent years there has been an extensive debate on the quality of democracy in the European Union (EU) . The rise of transnational organizations such as the European Union has led to the creation of spaces where many decisions are made in multiple policy areas where there is no systematic information on the congruence between the policy advocated by formal political actors and the preferences citizens represent. We posit in this paper the following research questions: Is the European Council responsive to EU citizens' preferences in immigration policies? Does greater opposition to immigration among member states result in an increase in an issue's salience to members of European Council? To answer these questions we use two data sets: the DEU data set (which contains data with the policy positions defended by each member state on immigration policies in the decision-making process within the European Council) and the European Social Survey (which displays the preferences of public opinion on immigration issues across EU member states). The main conclusion of our analysis is that domestic public opinion do not play a central part in the policy positions adopted by member states in the EU Council and neither do they play a relevant role in the salience member states attach to the immigration issues during the negotiation process. This is better explained by agency and structural variables.

Key words: political responsiveness; democratic deficit; European Union; policy positions; European Council; immigration policies

Introduction

In the last years there has been an extensive debate on the quality of democracy in the European Union (EU). The term 'democratic deficit' has been often used to put into question the process of European integration as well as the legitimacy and functionality of its institutions (e.g. Weiler 1995). Normative democratic theory argues that there should be some connection between the interests of citizens and public policies enacted by their representatives (Strom 2003; Fishkin 2003). In this line, Dahl (1971:1) argues that 'a key characteristic of democracy is the continued responsiveness of the government to the preferences of the people'. The main factor that legitimizes a political system is the link between government and the governed (Mather, 2006). Political legitimacy is a prerequisite for the success of a government, at least in the medium- and long- term and that legitimacy is what justifies both the behaviour of the elites and their political decisions as the degree of acceptance of the governed. Keeping this in mind, the goal of this paper is to test empirically the connection between public opinion and preferences that EU member states display during the decision-making that takes place in the European Council. The concept of the EU democratic deficit has often been invoked without being empirically quantified. We aim to evaluate empirically the link between public opinion and democratic political representation in the European Union decision-making process.

Since the 1980's an increasing number of scholars have pointed the democratic deficit of the EU although little work has verified the relationships between the preferences of the European citizens and the public policies decided in Brussels. To date, research on political representation in the European Union has focused on the comparison between public opinion and policy-making within the European Parliament (EP). This research has produced mixed findings: some studies show congruence between voters and European parties (van der Eijk and Franklin 1991; Rohreschneider and Whitefield 2007) while others show a clear divergence, particularly when it comes to specific policy areas (Thomassen and Schmitt 1997; Hooghe 2003).

More recently, Costello *et. al* (2012) argue that congruence between parties and voters in the EP is higher on the left-right dimension, which they define according to policies on redistribution and the role of the state in the political and economic system. However, no study focuses on the political responsiveness of the European Council

(EC), which, together with the EP, is the main decision-making body in the EU. The Council is the arena where Member States (MS) vote upon legislation. In fact, decisions in the EU cannot be adopted without the consent of the Council. Therefore, in order to understand the question of policy representation in the EU it is necessary to examine the congruence between the policy positions defended by member states¹ within the European Council and the interests or preferences of European citizens.

We focus on an intentionally narrow policy dimension – immigration policies. Our rationale is as follows. The EU legislative scope is rather broad. Some areas are highly technical (e.g., the convenience of the consuming transgenic tomatoes). As a result, public debate is unlikely to lead to a level of awareness sufficient to form a meaningful political opinion. However, on more controversial and topical issues, such as immigration policies, public awareness is likely to be higher and more completely formed, which implies that EU citizens are able to ascertain whether their interests are being attended. According to democratic theory, the EC should act responsively to the needs and views of their constituents.

To analyse the political responsiveness in the European Council we integrate data from the European Social Survey with the DEU II data set (Thomson *et al.* 2012), which covers data and information of the decision-making process within the European Council. Our approach consists of two steps. In the first step we posit the following research questions. Is the EC responsive to EU citizens' preferences in immigration policies? Specifically, we test the extent to which the EC reflects the preferences of citizens when adopting decisions. Does greater opposition to immigration among MS' result in an increase in an issue's salience to members of EC? In the second step we refine the quantitative analysis by considering specific cases. Our intention is to reinforce the general pattern in the data using concrete examples.

Assessing the Democratic Deficit

The idea of representative democracy is based on processes of political delegation where elected representatives should be receptive to the will of their constituents and the goal of decisions should attend to the preferences and welfare of

¹ Throughout the text the terms “actors” and “member states” are used interchangeably.

citizens. This applies to any democratic system independent of the prevailing institutional framework and the actors involved in the policy-making process. The main requirement for representative democracy, thus, involves a certain degree of congruence or linkage between elites' and citizens' preferences and policy outputs. High levels of responsiveness will lead to broad satisfaction and public support towards political actors and greater confidence in the political system in general. Low levels of responsiveness, in contrast, reflect a democratic deficit and a greater perception among citizens that their interests and policy preferences are not considered by political elites. The level of responsiveness of political elites is one of the major concerns in the study of democratic representation and a pillar in the evaluation of the quality of democracy (Dahl 1971; Diamon & Morlino 2004: 22).

In order to test political responsiveness in the EU Council, our analysis focuses on two aspects of the decision-making process. The first is derived from the policy positions that EU member states defend during the decision-making process in the European Council. The policy position displayed by a member state in the Council is likely to be defined by diverse pressures from different groups on the core executive that give orders to the member state's representative on what position to take in the Council meetings. According to normative democratic theory, in the absence of democratic deficit, the policy positions of member states should match their citizen's preferences.

The policy positions member states defend can, and often do, differ from the policy alternative states are eventually willing to accept. This divergence is best explained by the importance or salience that a given actor places on a particular policy outcome. Greater levels of salience imply that a given actor is less likely to show flexibility in the negotiation process. Issue salience has been seen as a key variable of democratic responsiveness. Salience is directly related to the process of democratic accountability as citizens who care about a particular issue are more likely to evaluate elected officials' actions on that issue on elections (Lindaman and Haider-Markel 2002). Assuming that elected representatives of member states are responsive, they have incentives to be particularly responsive on citizens' salient issues and to consider them to be salient as well.

Salience in the decision-making can be understood according to two meanings. First, salience is interpreted as the proportion of potential power a member state is willing to

mobilize in order to influence the final decision of a given policy issue. A second explanation of salience refers to the extent to which a member state experience utility loss when a policy outcome is different from its more favoured policy position. As a result, member states that attach higher levels of salience to a particular policy issue are highly sensitive to small deviation from their policy positions while member states with lower levels of salience are less sensitive and experience less utility loss.

Within the EU political architecture, the Council is key to the decision-making process. The European Council supports the 'national interest' (which in a federal system is equivalent to the territorial interest). However, when applied to the Council we do not know what that '*national interests*' means. A member state can defend the interests of the party in office, the interests of one region over another, the interest of one social group over another, etc. The logic for a given position and expressed level of salience can be ambiguous and does not necessarily stem directly from citizen of member states. The literature is of little help as little to no systematic work offers a guideline to explain the interests defended by the members of the Council, beyond case studies. The Council has traditionally been an opaque institution (the least transparent in the EU) more akin to a secret society than to a democratic institution (Arregui 2012). Schmitter (2003: 83) notes that the Council often acts in ways little understood by the average citizen and with a limited level of transparency and accountability.

This lack of transparency stems from the top-down process that underpinned the development of the European Union, termed the *Monet Method* of integration (Featherstone 1994). In the words of Jacques Delors (1993) 'Europe began as an elitist project (which was believed) that all that was needed was to convince to citizens the decisions to be made'. European political elites have taken the initiative and responsibility in the EU decision-making process while European citizens have been characterized by their permissive consensus. This concept of permissive consensus refers to the idea that European political elites could pursue their own plans for European integration without little attention to the public and its desires and orientations (Marks & Steenbergen 2004; Hellstrom 2008). Therefore, our general hypothesis is that EU public opinion has no a substantial impact on the policy preferences that member states display in the decision-making process of the immigration policies under study: *the more deficient the quality and quantity of mechanisms for responsiveness of Council*

officials and politicians the more divergence between the policy preferences between European citizens and the representatives of the European Council.

At the same time, although the level of political information held by European citizens about the EU policy process is very low (Díez Medrano 2007), it does exist for those issues in which citizens have more interest and the media provide information (e.g. working time or immigration policies). For these more controversial topics, political actors will have a greater incentive to take into consideration the preferences of the European citizenship. In fact, there is empirical evidence that when an issue suddenly emerges into the media agenda in the member states could change entirely the decision-making scenario (Arregui 2004). Thus, *the more salient the issue of immigration is within EU member states, the more congruence there will be between the citizens preferences and those policy preferences defended by member states within the European Council.*

Economic concerns also matter. Previous research has found a clear relationship between state of the economy and the perceptions and attitudes towards immigration (Olzak 1992; Borjas 1999). Olzak argues that any economic threat, real or imagined, engenders opposition to immigration. The structural factors promoting a discriminating sense of economic vulnerability may vary: from the labour or housing market to the prolongation on the supply of government benefits. For example, some studies play emphasis on the idea about the importance of fears in labour market competition between nationals and immigrants (Scheve and Slaughter 2001; Mayda 2006). Other studies highlight the importance of perceptions about the fiscal burdens that migrants impose on public services (Hansen 2007, Facchini and Mayda 2008). Although findings have been mixed, these studies show that the state of the national economy is a relevant factor in the formation of attitudes towards immigrants in a particular country. We assess the two country-level economic indicators – per capita GDP and the proportion of the population unemployed. These allow two distinct, but related hypotheses. Firstly, *the higher the rate of unemployment the more opposition of member states (in the Council) to adopt policy decisions that favour the rights and interests of immigrants.* Secondly, *the higher the GDP of a member state the less economic pressure for its citizens and, thus, the less opposition there will in those states to adopt decisions that favour of the rights and interests of the immigrants.*

Political factors are also theoretically relevant. We focus on two dimensions that may explain the formation of policy preferences: political ideology (i.e., agency) and the distribution of power within the national executives. The latter is defined by party fragmentation and/or the effective number of parties (i.e., structure).

Political elites may decide policies based on individual or ideology preferences rather than public opinion. According to the literature (see Mattila and Lane 2001; Mattila 2004) there is empirical evidence that left-right conflicts structure behaviour within the EU Council. Hageman and Hoyland (2008) show empirically that there is a tendency within the Council to vote together with the governments of similar ideology. The ideological differences of the members who are part of the European Council range from the greens to the liberals, from the Christian-democrats to social-democrats or from communists to conservatives. Taking into account that there is a clear division line in European politics about the salience and preferences between left-wing and right-wing parties regarding to the rights and benefits that immigrants should get in the EU, we expect variation on the preferences of left and right-wing ministers of immigration. We expect that *the more the left-wing the minister of immigration the more beneficial the preferences of member states regarding to the rights and interests of immigrants.*

Research which shows that institutional conditions may influence the preferences of members states and the development of the policy within the European Council (Arregui 2008.). Taking into account that policy preferences are formed within the national executives, one relevant institutional characteristic might be related to the way in which decision-making power is distributed within an executive, mainly when there is a coalition cabinet. In coalition cabinets (more than one party cabinet), the executive might be more inclusive in terms of policy preferences. Therefore, parties tend to choose portfolios in which they obtain more political and electoral utility. Thus, *the more fragmented the cabinet of member states the more support for the rights and interests of immigrants.*

The Data and Measures

The data used in both stages of the analysis, the quantitative and the case studies, is derived from a variety of sources. Given the hypotheses of interest, we combine

interview data from in the European Council, public opinion data from the European Social Survey (ESS) and a variety of country-level measures of political ideology of the party in office, political fragmentation, GDP, unemployment and non-citizen percentage of the population of a given EU member state.

[insert Table 1 here]

The Dependent Variables: Position and Saliency

The data from the EU policy process has been taken from the DEU II dataset (Thomson *et al.* 2012). These data provide measures of the position taken by member states in the European Council and the saliency they attach to a given issue. This is the most complete data that currently exists about the EU policy process. These data contain information on 325 issues that correspond to 124 legislative proposals. From those 124 proposals, 70 correspond to the pre-enlargement period, EU-15 and 54 legislative proposals are from the post-2004 period. The full data set contains legislative proposals from all policy areas. We have selected from these data only the proposals that were decided on immigration policies within the Justice and Home Affairs European Council. The data was collected through 349 semi-structured interviews with experts to gather information on the controversies raised by the legislative proposals analysed. During these interviews, experts provided information, among other things, on the actors' policy positions on the controversial issues and the levels of importance the actors attach to the issues. The resulting analytic includes 260 unique observations. Each observation represents a specific actor (1 per country) and issue.

In order to match public opinion and member states preferences we need data on the positions that member states defended in the policy process. Matching public opinion preferences and policy decisions can be done in at least two different ways: we can distinguish between 'rhetoric' and 'effective' policy representation (Hobolt & Klemmensen 2008). What is called *rhetoric representation* assesses policy positions of political actors and this is captured, for example, by analysing, party manifestos or speeches made publicly by leaders and/or politicians. This type of policy representation

is understood mainly in terms of political orientations. In contrast, *effective representation* involves unequivocal measures and concrete outcomes of policy decisions. This is the type of information we find in the DEU II data set, where it is specified and justified the policy positions taken by EU member states².

We operationalize the position of actors with a dichotomous measure. Values of 1 are assigned to member states that take a position that is relatively less favourable toward immigration. Values of 0 are assigned to member states that express a relatively neutral or positive position toward a given immigration policy issue.³ Nearly two thirds of positions recorded by Council members are in opposition to a given immigration policy (table 1), reflecting a generally restrictive posture toward immigrants and immigration.

Issue salience reflects the strength of actors' policy positions. A member state with a high level of salience will use its potential to influence other actors and the final decision outcome. Member states attach most of the times a different level of salience to a specific issue. Policy experts that were interviewed estimated the level of salience that each actor attached to each issue on a scale between 0 and 100. According to the question made to the policy experts, a score of 100 indicates that an issue is difficult to be more important for a member state while a score of zero indicates that the issue is irrelevant for a state. A score of 50 indicates that the issue has an average level of priority for the member state and that it is willing to use arguments but not power politics during the decision process. Reflecting heightened interest in European immigration in recent decades, the majority of actors (67%) report that a given issue is salient (table 1). The implication is that members of the Council do not treat immigration passively.

² Thomson (2006) has made validity and reliability tests of the DEU data set. These tests show that there is an important level of congruence (in the selected conflict dimensions and policy positions of member states) between the data collected through interviews with policy experts and the data collected from the official Council documents

³ In 9 cases, members of the Council do not report a policy position. There can be two reasons for this. Firstly, member states are indifferent in relation to some issues insofar an issue does not reflect any underlying interest of a particular member state. Arregui and Thomson (2009) showed that there is a strong positive correlation between member states' size and the percentages of issues on which they take policy positions. This is due to the fact, that larger member states have a broader range of interests than smaller states. Secondly, it is also possible that a member state with no positions is hiding her position for strategic reasons. This happens sometimes. These cases are 'missing data' (König et al.2005). We recode these positions as neutral.

[insert table 2 here]

Table 2 shows the distribution of salience and opposition by country. Differences between countries in the number of responses reflect different years of entry into the EU. Newer member states (e.g., Cyprus) are only observed in terms of salience and opposition in periods subsequent to entrance (e.g., 2007). Table 1 shows that there is a tendency to oppose issues in the European Commission that pertain to immigration. For example, Germany, which has a relatively long history of immigration, is opposed to 14 out of 18 issues. Austria shows a similar pattern. This does not suggest that countries are uniformly opposed. Only two countries, Cyprus and Estonia, show no variation and they are both new entrants into the EU and have only participated one of the observed issues. For original members of the EU and entrants in the 2004 enlargement, every country shows considerable variation with a number of member states (e.g., Belgium) as likely to oppose as not a given issue.

The level of interest in immigration is clearly seen in the general tendency for these issues to be considered highly salient (i.e., 50+). For example, the Netherlands considers 17 out of 18 interests to be highly salient. This does not imply that every issue that a member state considers salient translates into opposition. Despite the Netherlands' level of interest, the number of cases to which it is opposed is decidedly split (7 for and 11 against). As with opposition, the only states to show no variation are Cyprus and Estonia, which reflects their participation in a single issue due to their recent entrance.

Independent Variables:

Public opinion is measured by the European Social Survey (ESS), which is a repeated, nationally representative cross-sectional survey of public opinion. The ESS is intended to assess attitudes of citizens of EU countries since 2001. We selected three rounds (2002, 2004 and 2006) that offer the best coverage of the policy periods recorded in the DEU II dataset. When possible, we match issues with public opinion that most closely preceded the policy process. For some periods the matching is

straightforward. Issues considered in 2004 and 2005 are matched with ESS measures from 2004. Issues from 2006 are merged with ESS measures of public opinion in 2006. However for the earlier issues, the temporal order could not be perfectly maintained. Issues from 1999 and 2000 are matched with the 2002 ESS as this is the first round in which measures of attitudes toward immigrants/immigration are available.

We employ a variety of sources to measure the political and social context of given member states. In order to measure the fragmentation of a cabinet we use the concept of the effective number of parties. The effective number of parties counts parties and weighs the count by their relative strength. The variable ideology has been operationalised as the ideology of the incumbent minister in charge of immigration policies the years under analysis. The measure is categorical with three possible labels – left, center and right. As seen in table 1, member states are roughly even in terms of left and right ideology with about 10% in a centrist position. The social context is measured by the percentage of immigrants, derived from official statistics compiled by Eurostat, is the percentage of that member states had in 2002, 2004 and 2006 categorized by terciles. Tremendous variation is found in the EU in terms of immigration with those in the top tercile recording percentages 14.3 on average compared to the bottom tercile with a percentage of about 1.7 on average.

The economic context is captured by the percentage of the population unemployed and the per capita GDP. The rate of unemployment, acomplied from official statistics by Eurostat, reflects the large amount of variation in employment opportunities in the EU. We have split the measure into terciles with the lowest tercile consisting of countris with about 4.3% of the population unemployed in contrast with the highest tercile where nearly 11% of the population is unemployed on average (table 1). The GDP per capita has been collected for the same years from the OECD.

The Model

To measure the democratic deficit (or lack thereof) we estimate two sets of models to assess the association between country-level public sentiment, derived from

the ESS, and reported salience and opposition by a given actor for a given issue. The estimation strategy is a binomial logistic regression described by equation 1:

$$(1) \quad \text{logit} \left\{ \Pr \left(\frac{y_i = 1}{y_i = 0} \mid x_i, z_i \right) \right\} = \beta_0 + \beta_1 x_i + \beta_2 z_i + \mu_i$$

where the outcome is either the salience of or opposition to a given issue ($y_i = 1$). Public sentiment for a given country and year is included as an independent predictor (x_i) and we include a number of controls (z_i). Observations are assumed to be independent across issues and countries. The models is fit using the command `-logit-` in Stata 12 (StataCorp, 2011).

[insert Table 3 here - Salience]

Results

Table 3 shows the estimated coefficients and relevant test statistics of the binomial logistic regression of salience on public opposition to immigration and other characteristics of the actor/country. We estimate 7 models, introducing additional controls to assess any change in the democratic deficit, reflected in the significance or lack of significance, in the association between public opposition and the reported salience of an issue by European Council actors.

Model 1 only includes public opinion, which has been standardized to have a mean of 0 and a standard deviation of 1. Positive and significant coefficients suggest that greater opposition to immigration among the public of a member state translates into a greater perception of salience for an immigration issue by an actor in the European Council. The model provides little evidence that this is the case. The coefficient is far from significant and very close to 0.

To test the sensitivity of the bivariate association seen in model 1, we include a number of controls to account for the period/year (model 2), the percentage of the population “non-citizen” (model 3), the economic context (model 4 and 5) and the political context (model 6 and 7). Before describing the relationship between these controls and the dependent variable, it is worth noting that public opinion is not significantly predictive of salience in any model. The coefficient changes in magnitude and sign, but is far from significant in all models and in the full specification (model 7), it remains very close to 0 at 0.07.

These results provide some evidence for a democratic deficit in that public opinion from EU member states does not predict salience for European Council members from these states. However, other attributes are indeed significant predictors. The period matters. Issues that emerge in 2004 are significantly more likely to elicit higher salience relative to the baseline year – 2000. In addition, we do find evidence that the percentage of non-citizens in a given member state significantly predict a higher level of salience. In the full model (model 7) the highest tercile, relative to the lowest tercile, is positively and significantly associated with greater salience. Medium levels (2nd tercile) of unemployment relative to low levels (1st tercile) significantly predicts less salience for a European Council actors as does a centrist political orientation for the government in power.

[insert Table 4 here]

Table 4 shows the estimated coefficients and relevant test statistics of the binomial logistic regression of opposition by a European Council actor on public opposition to immigration and other characteristics of the actor/country. As before, we estimate a number of models, introducing all additional controls found in the models of salience (table 3). However, we also account for the reported salience of a given actor for a given issue, considering it to be a relevant control for models 3 through 8.

As with salience, we find little evidence that public opinion significantly influences the behavior of European Council members on the issue of immigration. Model 1, which

establishes the bivariate association between public sentiment and opposition, establishes that the relationship is not significant and the estimated coefficient is close to 0. In other words, model 1 provides no evidence of a link between public sentiment of a EU member state and the behavior of a state's European Council representation.

Model 2, which accounts for period, does not change the association between public opinion and opposition nor does the inclusion of the measure of salience in model 3. In fact, no additional control changes the relationship between public sentiment and reported opposition of their European Council representative. We find that the only significant predictor in the full model (model 8) is salience, which is significant when only controlling for public sentiment and period (model 3) and in each subsequent specification (models 4-8). Given that we do find significant associations between a number of these covariates and salience (table 3), we suggest that the association between these measures and opposition is mediated by the salience of the issue for a given actor.

[insert figure 1 here]

[insert table 5 here]

Case study: Return Directive

In November 2001 (Com (2001) 672), the European Commission pointed out that return policy is a crucial part of the fight against illegal immigration. The Green Paper of April 2002 (Com (2002) 175) developed in more detail the issue of return. It maintained the need for an approximation and improved cooperation among member states. The 'Hague Program' adopted in November 2004 in a Brussels European Council asked for the establishment of common standards for persons to be returned with full respect for their human rights. It called for a submission of a Commission proposal at the beginning of 2005. The Commission released the proposal on 1st September 2005 (COD (2005) 167). The main goal of the proposal was to provide for a legal instrument which is applicable to any broadly defined undocumented person (e.g., illegal entry, expiration of visa, expiration of a residency permit, withdrawal of refugee

status and/or a negative decision on asylum claim). The proposal was object co-decision in which both the EP and the Council are co-legislators.

The proposal evoked a relatively high level of political controversy both within and between EU institutions. The policy experts that were interviewed for this dossier mentioned that there were four main policy controversies under stake. The first controversial issue was *whether any illegal stay should result in a deportation order* (issue d05157i1 in table 5). On this issue there were basically two policy positions, those member states (Austria, Germany, France, Spain and others) who argued in favour of the automatic deportation of illegally staying third-country nationals, linking the issue to the fight against illegal immigration, and those actors (the Commission, the EP, Belgium, Finland or Sweden) who defended the idea that an illegal stay should not automatically lead to a deportation order, linking the issue to human rights. Here, the decision outcome adopted was closer to position 100: illegal stay should result in a deportation order with exceptions determined by member states (See figure 1).

The second issue was about the *minimum rights of illegally staying third-country nationals awaiting deportation* (issue d05157i2 in table 5). In this scale there were some member states claiming no rights for those immigrants (position 0 in our scale). This position was defended by Austria, Germany, Cyprus, Greece and Malta with the main argument being the disproportionately high economic cost that having guaranteed rights for illegal immigrants could incur for some member states (position 0). On the other extreme, other member states such as Finland, Sweden, Portugal or Luxembourg (position 100) argued that immigrants although they can be illegal they also have rights. Some member states such as Netherlands, Spain, Italy, France or Poland argued according to both previous argument and wanted to provide some basic social rights (position 70).

The third issue pertained to the *provisions for the voluntary return of illegal immigrants* (issue d05157i3 in table 5). On this issue there were three policy positions, the first position argued for no provisions for voluntary return for illegal immigrants (position 0). Italy, Cyprus, Malta, France, Germany or Greece defended this position. The main argument used to support this policy was that the more efficient way to contain illegal immigration was via direct deportation. The second position defended by Netherlands, Poland or Portugal was to include provisions for voluntary return, but

member states would have discretion as the period by which an undocumented immigrant could comply (position 30 and decision outcome). The last policy position on this issue was defended by Belgium, Finland or Luxembourg. Those states wanted to allow voluntary return with few exceptions (position 100). Actors that defended that position considered that voluntary return is less traumatic for immigrants as well as it is cheaper for member states.

The fourth issue refers to the *maximum duration of detention of immigrants* (issue d05157i4 in table 5). The first position claimed for a maximum duration of detention of one month (position 0). This position was defended just by the EP and was the more liberal position. Some member states (Poland, Slovakia, Netherlands, Spain, France or Italy) argued for a maximum of three months of detention, extendable to 6 months (position 30), which is consistent with provisions in their respective domestic legislation. Other member states (Austria, Germany, Cyprus, Greece) argued for 18 months of detention (position 80). The argument here was that 18 months was required to competently administer a deportation order. The most extreme position argued for no time limit of detention (Latvia, Malta, Finland, Sweden) (position 100). Those member states argued in favour of no time limit for detention because this position mirrors what their national legislation had already approved. The final decision on this issue was position 70, which represented 6 months of detention extendable to 18 months.

Regarding to salience scores on this issue, the member states that show a higher salience (AT, EE, DE, LV, MT) are those that already have in their own legislation the time of detention. Therefore, it was very hard for them to accept a reduction in the arresting time. Furthermore, those members states considered that a period of six months it is not enough time when illegal immigrants or the recipient countries do not want cooperate. If this were the case, they would have to free immigrants, so they preferred to have a larger period within which to comply. For actors with a lower salience, this was not a major problem because they already had a shorter period of detention stipulated in their national legislation.

Table 5 displays the information that meet policy positions of member states and public opinion within each member state (mean opposition). This is a measure that shows that the higher the value the more opposition to illegal immigrants and their rights, the lower the value the more support for immigrant's rights and a central position means an

average of the member states included in our analysis. According to the data shown it is not difficult to perceive that there are several cases in which public opinion and policy preferences do not match at all. Austria, for example, shows a quite neutral public opinion about immigrants while Austria as member state was quite consistent in her opposition to immigrants. The opposite happens to Finland, where there is a public opinion more opposed to illegal immigrants while Finnish representatives in the Council took relatively moderate positions on three over the four issues under study.

Conclusions

The main conclusion at this stage is that citizen's preferences play a central role in democratic theory but not in crafting EU policy within the European Council. Overall, the EU meets the formal requirements for the EU political system to be considered democratic. That is to say, the citizenry is directly (European Parliament) and indirectly (European Council) represented in European institutions. However, our findings suggest that the European Council, which is one of the central decision-making bodies in the EU, reflects a democratic deficit insofar actors in the Council make decisions that are not clearly linked to public sentiment in their countries of origin.

We have also found public opinion does not set the boundaries within which decision-makers find opportunities or constraints: domestic public opinion do not affect the salience that member states attach to immigration issues during the decision-making process. The analysis shows that salience is better explained by characteristics of the actors (e.g., the ideology of the government in office in a given member state) or structural conditions (e.g., the percentage of immigrants at the domestic level, the percentage of the population unemployed). In the European Council, member states do not structure their discourse according to the preferences of citizens but accordingly to their ideology as well as some key structural factors that might condition salience but no policy positions. Therefore, public opinion neither determines policy positions of Council members or the salience they show during the negotiation process. In other words, the level of responsiveness of the European Council on immigration is low, suggesting that democratic deficit is indeed present.

One potential explanation of the observed disconnect between members of the Council and public opinion is that it reflects poor mechanisms of political competition, transparency and accountability that exist in the European Council. Political competition might be a key variable in this puzzle insofar it may influence public policy in a clear way: because political actors in the Council do not have to win elections at the European level they clearly do not have incentives to take into consideration citizens's preferences. Further, to increase political competition between EU actors might be relevant to help to create a European public sphere. In order to work in the construction of a European demos (which is necessary to control the EU Council) a European-level discourse is required, a sense of belonging to a political community helping to create a European demos, as well as the making of a shared public sphere (Sifft et al. 2007 : 128). The emergence of all these three elements are interrelated. Until there is no shared public sphere does not seem possible to create a European demos. Similarly, it is difficult that may arise if a European public sphere there is no clear political competition between different actors. The emergence of a public sphere is directly related to the fact that the EU is able to overcome the democratic deficit of more procedural nature and is able to establish an incentive structure in which European citizens would be the principal and all European political actors (including the European Council) the agents.

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Table 1. Descriptive Statistics

	% or Mean (Std. Dev.)
Saliency by Member of European Council	
[0-50]	32.69
[50-100]	67.31
Opposition by Member of European Council	
No	27.69
Yes	72.31
Public Opposition (standardized)	-0.01 (1.02)
Year	
2002	50.38
2004	43.85
2006	5.77
Terciles of % "not citizen"	
1st	1.65 (0.74)
2nd	4.64 (0.92)
3rd	14.30 (11.59)
Terciles of unemployment	
1st	4.30 (0.84)
2nd	7.16 (1.02)
3rd	10.99 (3.39)
Terciles of GDP per Capita (pps)	
1st	77.35 (17.03)
2nd	115.51 (4.59)
3rd	150.28 (45.29)
Political ideology	
left	42.69
center	10.77
right	46.54
Fragmentation	7.58 (2.58)
n	260

Source: DEU II, ESS (2002, 2004 and 2005), Eurostat and OECD

Table 2. Salience and Opposition by Country

Country	Salience		Decision	
	Low [0-49]	High [50-100]	Neutral / For	Against
AT	2	15	4	14
BE	5	13	7	11
CY	0	1	0	1
CZ	3	4	2	5
DE	3	15	4	14
DK	4	8	7	11
EE	1	0	1	0
ES	5	12	6	12
FI	8	10	7	11
FR	6	12	4	14
HU	3	5	4	4
IE	6	5	7	11
IT	6	10	4	13
LU	9	6	6	11
NL	1	16	7	11
PL	1	6	4	4
PT	8	9	7	11
SE	7	11	7	11
SI	2	3	4	4
SK	3	4	2	6
UK	2	10	9	9
Total	85	175	103	188

Table 3. Binomial Logistic Regression of Salience of Immigration Legislation on Attitudes toward Immigration and other Country-Level Characteristics

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	beta (std. err.)						
Opposition (standardized)	-0.0108 (-0.08)	-0.0456 (-0.34)	0.133 (0.89)	0.167 (1.06)	0.164 (1.00)	0.0586 (0.33)	0.0694 (0.38)
Year (ref.=2002)							
2004		0.560* (1.99)	0.735* (2.46)	0.768* (2.54)	0.778* (2.55)	0.868** (2.75)	0.870** (2.76)
2006		0.227 (0.39)	0.423 (0.71)	0.438 (0.73)	0.448 (0.74)	0.626 (0.94)	0.625 (0.94)
Terciles of % "not citizen" (ref.=1st)							
2nd			0.974* (2.48)	1.019* (2.33)	0.979* (2.07)	0.786 (1.59)	0.801 (1.61)
3rd			0.665 (1.76)	0.665 (1.54)	0.639 (1.28)	1.120* (2.04)	1.161* (2.07)
Terciles of unemployment (ref.=1st)							
2nd				-0.296 (-0.80)	-0.331 (-0.75)	-1.100* (-2.08)	-1.174* (-2.04)
3rd				0.209 (0.52)	0.153 (0.29)	-0.508 (-0.79)	-0.566 (-0.85)
Terciles of GDP per Capita (pps) (ref.=1st)							
2nd					0.0810 (0.19)	-0.0954 (-0.22)	-0.140 (-0.31)
3rd					-0.00283 (-0.01)	0.0777 (0.13)	0.0147 (0.02)
Political ideology (ref.=left)							
center						-2.618*** (-4.11)	-2.668*** (-4.08)
right						-0.478 (-1.36)	-0.542 (-1.35)
Fragmentation							0.0247 (0.33)
Constant	0.722*** (5.46)	0.476** (2.63)	-0.211 (-0.63)	-0.197 (-0.40)	-0.177 (-0.29)	0.802 (1.16)	0.713 (0.96)
n	260	260	260	260	260	260	260

*p<0.05 , **p<0.01 ,***p<0.001

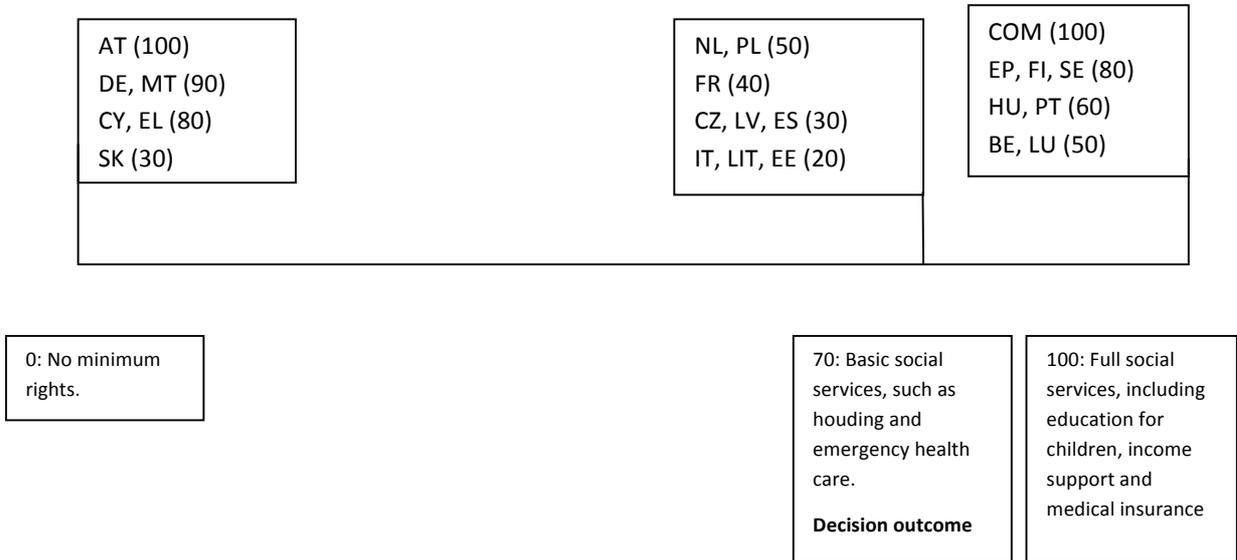
Table 4. Binomial Logistic Regression of Support For Immigration Legislation on Attitudes toward Immigration and other Country-Level Characteristics

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	beta (std. err.)							
Opposition (standardized)	-0.0893 (-0.65)	-0.108 (-0.77)	-0.100 (-0.71)	-0.0687 (-0.41)	-0.129 (-0.72)	-0.165 (-0.88)	-0.164 (-0.87)	-0.164 (-0.87)
Year (ref.=2002)								
2004		0.479 (1.60)	0.369 (1.20)	0.549 (1.68)	0.541 (1.65)	0.496 (1.48)	0.500 (1.49)	0.500 (1.49)
2006		-0.652 (-1.18)	-0.746 (-1.30)	-0.626 (-1.06)	-0.690 (-1.13)	-0.798 (-1.30)	-0.804 (-1.30)	-0.804 (-1.30)
Salience (ref.=low [0-49])			1.014*** (3.46)	0.950** (3.17)	0.955** (3.17)	1.094*** (3.43)	1.093*** (3.42)	1.093*** (3.42)
Terciles of % "not citizen" (ref.=1st)								
2nd				0.157 (0.34)	0.216 (0.44)	0.0856 (0.16)	0.0879 (0.17)	0.0879 (0.17)
3rd				0.318 (0.68)	0.550 (1.03)	0.304 (0.55)	0.329 (0.58)	0.329 (0.58)
Terciles of unemployment (ref.=1st)								
2nd				-0.661 (-1.64)	-0.915 (-1.92)	-0.821 (-1.59)	-0.858 (-1.52)	-0.858 (-1.52)
3rd				-0.293 (-0.68)	-0.637 (-1.13)	-0.762 (-1.19)	-0.793 (-1.19)	-0.793 (-1.19)
Terciles of GDP per Capita (pps) (ref.=1st)								
2nd					-0.220 (-0.49)	-0.140 (-0.31)	-0.162 (-0.34)	-0.162 (-0.34)
3rd					-0.650 (-1.08)	-0.861 (-1.36)	-0.900 (-1.33)	-0.900 (-1.33)
Political ideology (ref.=left)								
center						0.935 (1.35)	0.907 (1.28)	0.907 (1.28)
right						0.570 (1.61)	0.543 (1.38)	0.543 (1.38)
Fragmentation							0.0126 (0.16)	0.0126 (0.16)
Constant	0.961*** (6.92)	0.808*** (4.24)	0.225 (0.90)	0.373 (0.69)	0.798 (1.20)	0.557 (0.76)	0.514 (0.66)	0.514 (0.66)
n	260	260	260	260	260	260	260	260

*p<0.05 , **p<0.01 , ***p<0.001

Figure 1: Spatial Representation of the policy positions of member states on two of the contentious issues (COD/2005/167)

Minimum rights of illegally staying third-country nationals awaiting deportation (Issue 2)



The maximum duration of detention (Issue 4)

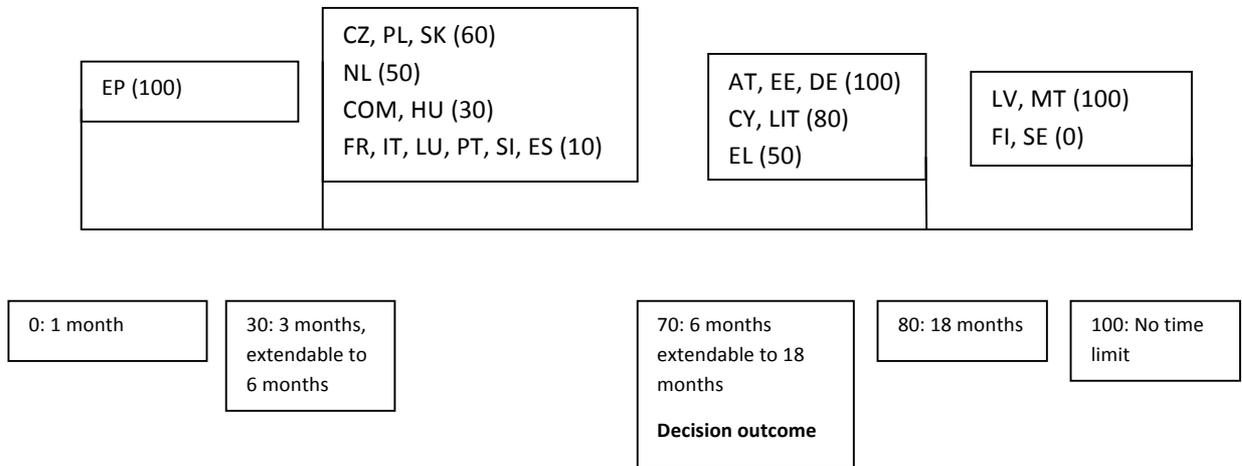


Table 5: Table of Salience and Opposition by Country and Issue

Country	Salience		Decision		Salience		Decision		Mean Opposition
	Low [0-49]	High [50-100]	Neutral / For	Against	Low [0-49]	High [50-100]	Neutral / For	Against	
	issue d05157i1				issue d05157i2				
AT	0	1	0	1	0	1	0	1	-0.029
BE	0	1	1	0	0	1	1	0	0.131
CZ	1	0	0	1	1	0	1	0	1.122
DE	0	1	0	1	0	1	0	1	0.095
ES	1	0	0	1	1	0	1	0	-0.454
FI	1	0	1	0	0	1	1	0	0.592
FR	0	1	0	1	1	0	1	0	0.303
HU	1	0	1	0	0	1	1	0	2.283
IT	1	0	0	1	1	0	1	0	-0.127
LU					0	1	1	0	0.298
NL	0	1	0	1	0	1	1	0	0.170
PL					0	1	1	0	-0.858
PT	1	0	0	1	0	1	1	0	1.914
SE	1	0	1	0	0	1	1	0	-2.425
SI									-0.015
SK	1	0	0	1	1	0	0	1	-0.863
Total	8	5	4	9	5	10	12	3	
	issue d05157i3				issue d05157i4				
AT	1	0	0	1	0	1	0	1	-0.029
BE	0	1	1	0	1	0	0	1	0.131
CZ	1	0	1	0	0	1	0	1	1.122
DE	1	0	0	1	0	1	0	1	0.095
FI	0	1	1	0	1	0	0	1	-0.454
FR	1	0	0	1	1	0	0	1	0.592
HU	0	1	1	0	1	0	0	1	0.303
IT	0	1	0	1	1	0	0	1	2.283
LU	1	0	1	0	1	0	0	1	-0.127
NL	0	1	1	0	0	1	0	1	0.298
PL	1	0	1	0	0	1	0	1	0.170
PT	1	0	1	0	1	0	0	1	-0.858
SE	0	1	1	0	1	0	0	1	1.914
SI					1	0	0	1	-2.425
SK					0	1	0	1	-0.015
Total	7	6	9	4	10	6	0	16	-0.863

Source: DEU II, ESS 2004