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Migration to the European Union

- an analysis of national and common policies -

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Introduction

“The Union shall develop a common immigration policy aimed at ensuring, at all states, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.”

(Lisbon Treaty, Article 79.1)

Migration has been one of the priorities of the EU in the last decade and will most probably become ever more so throughout the 21st century. Who will be allowed to live and work in the EU? Who won't? Who will have to leave again? What used to be a domain of national decision-making has changed profoundly. With the Treaty of Amsterdam and the first programme for the Area of Freedom, Security and Justice AFSJ, the EU in 1999 embarked on the development of common policies. The common market, Schengen and globalization have made it impossible to deal with transnational phenomena like migration only nationally.

Nevertheless, what cooperation should look like and how far it should go is a matter of persistent discussion. Immigration as such remains controversial, since debates are shaped by very different perceptions of challenges and opportunities. Immigration prompts questions of a political, economical, social, cultural and ethical nature. So how can consensus be achieved, what immigration policies have been pursued in Europe in the last years and what does this mean for the future?

2010 is a great moment for such analysis, since we can look back at a turbulent decade while most recently new foundations have been laid with the Lisbon Treaty and the Stockholm Programme.

Against this backdrop, the analysis will follow a bottom-up logic in presuming that EU immigration policies cannot be understood without knowledge of national situations. Instead of just describing policy outcomes as such, it should be explored why, how and by whom decisions were reached. This regards the interaction of the European Council, the Council of Ministers, the Commission and the European Parliament on the EU level as well as individual member states.

Instead of taking differing positions of European states as a given, three case studies on France, Germany and Italy shall illustrate how such differences emerge. In each country, factors like the historical background, the current social and economic situation and the changing colours of governments are taken into account when looking at national policies of the last decade.

France, Germany and Italy are founding members of the EU, who until this day have crucial importance. Furthermore, they may in some ways be considered as exemplary in their differences. While France and Germany have known immigration for generations, Italy only most recently has transformed from a sending to a receiving country. Geographically, Italy can represent the member states which today struggle with their external borders, while France and Germany are in more comfortable, remote positions. The former colonial power France, the *Gastarbeiterland* Germany and the 'new' destination Italy finally know very different social dynamics – and thus other debates and consequences are to be expected, as well as different strategies on the EU level.

Since the EU has given its citizens the right of free movement, this study will analyse the immigration of third country nationals only and due to volume constraints neglect the topic of pre-enlargement movements. The focus will be on legal migration, but irregular migration and asylum along with integration matters will be considered where necessary.

The analysis starts with some theoretical reflections, before taking on the case studies and finally the EU level. In an interdisciplinary approach it builds

on diverse material, including primary sources such as national laws, EU directives and general political guidelines set by the Tampere, Hague and Stockholm Programmes and the Commission, as well on as academic literature, surveys and media coverage. While the comparative case studies - given the pragmatic constraints - can by no means be exhaustive, they are supposed to offer a kaleidoscope of issues and possible policies. It goes without saying that neither on the EU level every single legal measure of the last 10 years can be lined up, let alone be detailed. This is not a study of jurisprudence. Rather, the aim of this analysis is to catch a glimpse of the bigger picture and to explore some general questions expected to be relevant in future discussions on immigration.

I. Migration to Europe – theoretical considerations

I.1 Migrants in Europe – history, identity and “the other”

Migration is no new phenomenon, people have moved throughout history. What changed are routes, quantities – and rules. With the establishment of the nation-state system in the 19th century, migration to and in Europe became “bureaucratized, directed, limited and defined – through passports, visas, border control, institutions and sharp distinctions between the rights of citizens and those of non-members”¹.

Throughout the following wars, the drawing and tearing down again of frontiers and the Iron Curtain era, migratory movements never came to a halt - on the contrary sometimes reached peaks due to refugees, expulsions and the search for labour and a better future elsewhere. Since the end of the Cold War, more and more Europeans have come to enjoy unparalleled freedom of movement. But the construction and enlargement of the EU “is intimately and inevitably tied up with a process of exclusion *and* inclusion (...) while the

¹ Favell, Adrian/ Hansen, Randall: “Markets against politics: migration, EU enlargement and the idea of Europe”, *Journal of Ethnic and Migration Studies*, Volume 28, No. 4, October 2002, p.584.

price of this exclusion for those caught outside the European geographical space will, in the short run, be severe”².

Exclusion and inclusion imply the notion of in-group and out-group, as introduced by the sociologist Sumner in 1906. Much research has since been done on the concept of ‘otherness’ and identity construction. The immigrant, can be argued, is Simmel’s stranger, someone “whose position in this group is determined, essentially, by the fact that he has not belonged to it from the beginning”³. The in-group can use the out-group as a “constitutive outside”⁴ in the search for its own identity.

Historically, such ‘figures of otherness’ often used to be ‘internal’ strangers, such as ethnic and religious minorities - in particular Jews -, or homosexuals, to mention a few. Furthermore, one may argue that while in the era of nation-state-building identities were formed in opposition to neighbours – ‘Frenchness’ for example in contrast to the British and later the Germans – these opposites have lost much of their power in the process of post-war reconciliation and European integration.

Therefore immigrants are to fill the role of the ‘other’ more and more. A textbook example for this may be the case of Belgium: While the federal state in spring 2010 was at the brink of disintegration and the government had to step down due to the crisis between its francophone and Dutch populations, what the otherwise paralyzed parliament did succeed in was the passing of a law for Europe’s first ban of the burka – almost unanimously.⁵

² Favell&Hansen: “Markets against politics”, p.596.

³ Georg Simmel ,The Stranger’ quoted in Buonfino, Alessandra: “Between Unity and Plurality: The Politicization and Securitization of the Discourse on Immigration in Europe”, *New Political Science*, Volume 26, No. 1, March 2004, p.27.

⁴ Buonfino: “Between Unity and Plurality”, p.28.

⁵ Leigh Phillips: “Belgium moves to ban burqa, niqab”, EU observer, 30.4.2010.
<http://euobserver.com/?aid=29980>

In the EU, two new groups have emerged: citizens and 'third country nationals'. Some argue that Europe under construction uses this at first glance rather technical distinction to reaffirm a – so far rather weak – “we-identity by sustaining a politics of belonging aimed at the exclusion of the Other”⁶.

In this perspective, the creation of an “area of freedom, security and justice *within* the EU and for all citizens of the EU entails a more marked definition of the borders between the Inside and the chaotic Outside”⁷. This again may entail even the extreme case of ‘reactive identities’ mentioned above – “that is, identities that are such only in opposition to someone else”⁸.

Such a view suggests a transferring and re-articulating of national discourses onto the European level – and thereby contradicts hopes that the EU will bring about a new political regime that favours freedom and equality while overcoming discriminating measures in general – and in particular in migration policies.⁹ “Isn’t this, after all, a post-national project, guided by ideals of individual equality and non-discrimination?”¹⁰

As regards the in-group/out-group dynamic, the presence of immigrants inevitably brings about many questions about the self-image of the receiving societies. On practical and theoretical levels, issues discussed include the question of religion and religious symbols in public, integration policies or requirements for naturalisation.¹¹ As illustrated by the debates on Islam, such discussions touch on the “foundation of our societies, on the limits of

⁶ Buonfino: “Between Unity and Plurality”, p.41, also see p.25.

⁷ Buonfino: “Between Unity and Plurality”, p.44.

⁸ Allievi, Stefano: “How the Immigrant has Become Muslim. Public Debates on Islam in Europe”, *Revue européenne des migrations internationales*, Numéro vol. 21 – n°2, 2005, p.12.

⁹ Tholen, Berry: “Privileging the near and dear? Evaluating special ties considerations in EU migration policy”, *Ethnicities*, 9, 2009, p.33.

¹⁰ Tholen: “Privileging the near and dear?”, p.48.

¹¹ Tholen: “Privileging the near and dear?”, p.33.

their possibilities of ‘openness’, on their boundaries, on the many interpretations of possible ‘tolerance thresholds’”¹². All this brings up further questions: how far do European societies correspond to eventual self-proclaimed ideal types?¹³

Very different resulting debates and scenarios both on the national and the European level will appear in this study.

1.2 Attitudes towards migrants and frames of debate

How can attitudes and objectives in migration policy making best be systemized? As an analytical background, three approaches will be presented briefly.

Zincone suggests five general attitudes to immigrants: solidarist, multiculturalist, functionalist, identitarian and repressive/legalitarian.¹⁴ The *solidarist* approach has the objective of giving migrants – especially those who are vulnerable and in need of help – access to the territory and to rights. *Multiculturalism* may – but not always – be compatible and is in favour of protecting the immigrants’ customs and culture, as long as no major conflicts arise. One may distinguish between a hospitable, tolerant multiculturalism and a segregating one, which prevents real communication and equality.

In the *functionalist* approach, what counts are the economic and demographic needs of the host society - immigrants are therefore allowed to come and work according to an acknowledged necessity, not for their own sake. Zincone describes ideological and pragmatic functionalism – the former treating immigrants like any other means of production and being opposed to settlement and integration, since one plans to get rid of them as soon as they are no longer needed. The latter accepts immigration as something

¹² Allievi: “How the Immigrant has Become Muslim”, p.13.

¹³ Allievi: “How the Immigrant became Muslim”, p.18.

¹⁴ Zincone, Giovanna: “The Making of Policies: Immigration and Immigrants in Italy”, *Journal of Ethnic and Migration Studies*, Volume 32, No.3, April 2006, pp.351-352.

useful that simply needs to be streamlined and organized – in this case settlement and integration are not generally excluded.

Identitarian politics see immigration as a threat and are therefore programmed to strictly limit any influx of migrants. In case of doubt, there will be a strong preference for persons with a cultural background considered as comparable or compatible to that of the host society, the ideal migrant having family ties with the receiving country.

Lastly, a *repressive* or *legalitarian* attitude is concerned primarily with security issues such as crime and terror associated with immigrants. Unauthorized crossing of borders as well as irregular residence are therefore to be prevented, law and order are to be upheld – possibly at the expense of civil and human rights.

Tholen – following Walzer - presents a threefold categorisation of reasons for being favourable of (certain kinds of) migration: the consideration of need, mutual advantage and special ties.¹⁵

The idea of *need* already appears in the writings of Kant and is reflected in the principle of non-refoulement in international law. People who fear for their life or well-being must not be rejected, but welcomed and offered help. This seems to paraphrase quite well Zincone's *solidarist* category.

The logic of *mutual advantage* then sounds quite similar to the *functionalist* approach presented above: Migration is not supposed to be allowed out of altruism, but because both immigrant and host society are expected to benefit. As Tholen points out, there are quite some question marks to this: what exactly is a benefit? Should the national economy be the decisive factor or specific sectors of the labour market? Is all this about short-term gains or are consequences for future generations and/ or the countries of origins to be taken into account?

¹⁵ Tholen: "Privileging the near and dear?", pp.38-39.

In these two approaches, a society opens up to members of random other origins for rather well-defined reasons. Tholen's third approach doesn't oppose in-group and out-groups like that, but distinguishes between those who are thought to have things in common with the in-group and those who are thought to be strangers "in all relevant senses"¹⁶. This third way of thinking is therefore based on the notion of *special ties*, even regardless of which need or advantage may exist on top of that. *Special ties* seem to be closely linked to the concept of *identitarian* attitudes.

The distinctions made so far should be quite helpful when trying to make sense of different migration policies and possible underlying attitudes.

To get a more complete picture though, one key feature of migration discourse still needs to be presented: economization and securitization as dominant frames of debate as well as of analysis. Framing "must provide a plausible narrative that fits available knowledge about the phenomena in question. But there will inevitably be different ways of defining the issue"¹⁷.

According to numerous authors, the "security/insecurity dilemma is at the heart of the immigration debate in Europe today"¹⁸. Whereas some – be they politicians, journalists or researchers – prefer to contemplate migration in terms of economic gains and losses (unemployment, need for skilled or unskilled workforce, contribution to and dependence on national welfare systems...), others choose to put the phenomenon in a context of post 9/11 terror, fear of culture clashes, crime and similar issues. "Securitization constitutes political unity by means of placing it [Europe] in an existentially hostile environment and asserting an obligation to free it from threat"¹⁹, as

¹⁶ Tholen: "Privileging the near and dear?", p.39.

¹⁷ Boswell, Christina: "Migration Control in Europe After 9/11: Explaining the Absence of Securitization", *Journal of Common Market Studies* JCMS, Volume 45, No. 3, 2007, p.591.

¹⁸ Buonfino: "Between Unity and Plurality", p.48.

¹⁹ Jef Huysmans cited in Neal, Andrew W.: "Securitization and Risk at the EU Border: The Origins of FRONTEX", *Journal of Common Market Studies* JCMS, Volume 37, No. 2, 2009, p.339.

Huysmans sums up. If Buonfino is right with her assertion that “the security discourse on immigration has been felt by European authorities to reflect the resurgence of ‘national’ or ‘European’ identity in Europe better than the discourse on the economization of immigration”, that will have far-reaching consequences on actual immigration policies. For now, being aware of these different frames of debate should be enough. The question of securitization will be picked up and deepened in Chapter 3.

1.3 Between national sovereignty and a common approach

One of the crucial questions of European integration is how much sovereignty member states are willing to transfer to the next level. The analysis of migration policy can illustrate these dynamics impressively, since “membership in the EU (...) implies a radical shock to the nation-state’s pretence to control and govern migration through its exclusive border controls and its inclusive citizenship and welfare rights”²⁰. The introduction of the common market and its four freedoms has introduced an unknown interdependence. When *internal* border controls are being abolished, it obviously becomes crucial for each state how its immediate and indirect neighbours in the EU handle their *external* borders, who they allow to settle in their territory, whom they grant citizenship.

That European states have started working together on migration issues seems the only logical consequence – but how and to which extent should and could they find common solutions? As a cabinet member of former EU-commissioner Franco Frattini has pointed out, “any change in immigration policy at the European level, which is an ‘invasion’ of one of the most sacred areas of national jurisdiction, has to be carefully balanced”²¹.

Hence the dilemma. As the following will demonstrate, each step of migration policy making on the EU level marks a new compromise, defining both the

²⁰ Favell&Hansen: “Markets against politics”, p.585.

²¹ Bertozzi, Stefano: “Legal Migration. Time for Europe to Play Its Hand”, CEPS Working Document No. 257, February 2007, p.6.

acceptable and unacceptable in the view of member states and European institutions. And this has to happen by no means in one direction only – rather zig-zag-developments are to be expected, given evolving priorities and changing political colours of governments and EU officials.

Generally it seems likely that there will be different degrees of readiness to transfer competences according to how much a state considers harmonization of policies as being in its own interest.

To give just one example of the importance of national veto at this point: The steadfast refusal of some national governments to give up powers in the area of labour migration (such as manifest in *Directive 2004/927*) has blocked harmonization in this area and set clear limits to ambitions of EU institutions.²²

Generally, we are now witnessing a situation of complex multi-level governance in migration policies, that is, the cooperation between different levels of political authorities. No one can afford to ignore the other, but power is distributed unevenly. Since the coming into force of the Amsterdam Treaty in 1999 the policy area has seen profound changes. This analysis aims at showing major developments in the last decade. The chosen approach to look at the examples of France, Germany and Italy as well as the European level should be especially rewarding in this respect and allow a better understanding of differing strategies and points of views.

1.4 (Im)Possible comparisons – statistics on migrants

One last theoretical aspect needs to be addressed: the problem of numbers. Data is omnipresent in debate, a rhetorical weapon that politicians and publicists use to make a point, an indicator that governments base decisions on, that analysis uses as a point of reference. Data is especially relevant for the topic of migration. How many immigrants are actually living in a given

²² Carrera, Sergio/ Hernández i Sagrera, Raül: “The Externalisation of the EU’s Labour Immigration Policy – towards Mobility of Insecurity Partnerships?”, Working Document No. 321, Centre for European Policy Studies CEPS, October 2009, p.29.

country? How many in the EU? How has the influx of immigrants been evolving over the years? Where do they come from? What is the ratio of irregular immigrants? Which percentage of asylum applications is turned down in one member state compared to another? What developments are to be expected for the future?

The answer is quite sobering: “The lack of data available and the enormous variation from country to country means there is no simple European pattern or trend (...) diversity relates not only to existing flows and trends but also to the methods of registering and measuring them”²³.

Basically there are three different tools: residential registers, files on resident permits and finally data obtained through surveys or census.²⁴ In 2008, for example, only 20 out of 27 EU member states were keeping information about their populations in the form of residential registers.

It is trivial to remark that of all, the highly politicized irregular migrants are the most unlikely to appear in official statistics. But not only this: it would be a mistake to use the term itself carelessly, because “speaking of ‘illegal’ or ‘irregular’ migrants is not describing a single and actual social or legal reality”²⁵. Rather one is confronted with a continuum mashed into one term. The OECD for instance lists 18 different versions of irregularity – and it seems as if a majority of today’s undocumented migrants did in fact enter their current country of residence legally and only later turned into overstayers for some reason or other.²⁶

²³ Salt, John/ Almeida, José Carlos: “International Migration in Europe. Patterns and Trends since the mid-1990s”, *Revue européenne des migrations internationales*, Numéro vol. 22-n°2, 20e anniversaire, 2006, p.2.

²⁴ Thierry, Xavier: “Les migrations internationales en Europe: vers l’harmonisation des statistiques”, *Population&Sociétés*, Numéro 442, February 2008, p.1.

²⁵ Bertossi, Christophe (ed.): “How Can Europeans Agree on a Common Migration Policy”, Note de l’Ifri, Report of the Ifri/Barrow Cadbury Trust ,Anglo-French Policy Dialogue on Regularisation and Co-Development’, February 2009, p.26.

²⁶ Bertossi: “How Can Europeans Agree?”, pp.26-27.

With this example we touch on the general dilemma of definitions. Who is to be considered a migrant after all? Even to this, there are various answers depending on the country of destination. Some count students and asylum seekers, others don't. Some start counting only from a minimum stay of one year, others require new arrivals to register with the authorities already after some days. To make things even more complicated, in many countries there is more than one institution in charge of statistics on migrants.

For political as well as practical reasons, it is all but easy to introduce a common way of defining and counting immigrants and emigrants – the latter being a necessary factor for the calculation of net gains or losses of population. Nevertheless, in the last years important efforts have been made to harmonize statistics, both nationally and on the European level.²⁷

In 2007 the EU adopted the *Regulation 862/2007*²⁸ and took up some wordings of the UN. In the EU from now on

“‘immigration’ means the action by which a person establishes his or her usual residence in the territory of a Member State for a period that is, or is expected to be, of **at least 12 months**, having previously been usually resident in another Member State or a third country.” (§2, 1.b)

As set out in § 3 to 6, the member states are asked to henceforth supply Eurostat with detailed data.

Foundations are thus laid out for a sound empirical basis for future discussions – but harmonization of such a scope evidently takes time and does not help retrospective analysis. Not only, but especially for the topic of irregular migration one therefore needs to acknowledge “a fundamental lack of hard evidence”, while “the rhetoric has run ahead of the research”²⁹. Against this backdrop, any case study at this point needs to be cautious when comparing data. Instead of insisting on meticulous counting, this analysis will

²⁷ Thierry: “Vers l’harmonization des statistiques”, pp.3-4.

²⁸ Regulation (EC) No. 862/2007 “on Community statistics on migration and international protection”. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:199:0023:0029:EN:PDF>

²⁹ Salt&Almeida: “International Migration in Europe”, p.15.

thus try to acknowledge the current empirical limits of the subject and focus on broader patterns and trends as far as these seem tenable.

II. National perspectives – France, Germany and Italy

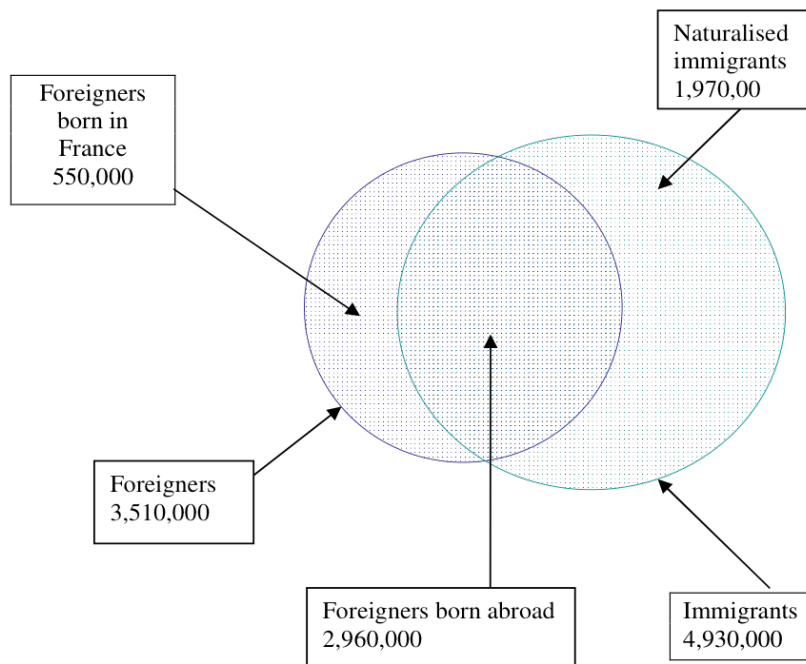
II.1 France

France has known immigration on a big scale longer than any other European country. Foreigners came to fill labour shortages already in the 19th century. In 1930 France for a moment was receiving more immigrants than the USA. But while it used to be people from the countryside and Europeans such as Italians or Poles, the colonial empire and later globalization brought arrivals from other parts of the world. In 2005 for the first time there were more immigrants from Africa than from Europe living in France, while influx from Asia has been rising considerably as well.³⁰

Statistics have been counting *immigrés* – who may or may not have acquired citizenship - and *étrangers* – born abroad or in France -, as illustrated in the figure below.

³⁰ Engler, Marcus: “Country Profile France”, *focus MIGRATION*, March 2007, pp.1-3.

Figure 1: Foreigners and Immigrants in French statistics³¹



Source: Institut national de la statistique et des études économiques, INSEE (2006)

II.1.a Republicanism, *laïcité* and the question of integration

The sociologist Dominique Schnapper has called France “*un pays d’immigration qui s’ignore*”. Since the founding of the republic, “national identity (...) has been built on the myth of ethnic homogeneity of its population, on the philosophy of the social contract and the political community of its citizens”³². Ernest Renan’s idea of the nation as a “*plébiscite de tous les jours*” has symbolized the self-image of France as much as the secularism enshrined in law since 1905. At the time, this separation of faith and state was aimed at the Catholic Church, but with the growth of the Muslim population it has taken on a new dimension.

³¹ Figure taken from Engler: “Country Profile France”, p.3.

³² Wihtol de Wenden, Catherine: “Immigration Policies in the European Union: The Case of France”. In: Overhaus, M./Maull, H.W./Harnisch, S. (ed.): *National Perspectives on EU Immigration Policy*, Foreign Policy in Dialogue, Volume 8, No. 22, May 2007, pp.33-34.

Already in 1962, ca. 350.000 “French Muslims” were counted – today the country is home to around five million Muslims, a number unparalleled in the EU.³³ With the diversification of society due to post-colonial migration, questions have arisen regarding the consequences. Would it be possible to keep on ignoring ethnicity, beliefs and diversity in general, and to call this equal treatment for all? Incidents like the so-called headscarf-affair of 1989, after two Muslim girls had been denied entry into their school, lead to nation-wide debates regularly.

According to the classic French social model, the making of immigrants into ‘excellent French people’ was meant to happen in a process of economic integration, political participation and cultural assimilation – the breakdown of this system in the eyes of many has been symbolized by the *banlieue* riots of 2005.³⁴

As Costa-Lascoux points out, “*l’intégration reste très liée à la conception que chaque État-nation se fait du ‘vivre ensemble’, de la citoyenneté, des modes de participation et de représentation démocratique*”³⁵. France has had to start reconsider its conceptions, as will be illustrated below. The mere question of who is to be allowed to come to live and work in France is a likewise emotional issue.

II.1.b Key developments in national policies 2000-2010

II.1.b-i The presidential election 2002 – Immigration and the *Front National*

In 2002, it became obvious how deep tensions had become in France with regard to immigration: Jean-Marie Le Pen, the candidate of *Front National*,

³³ Hamilton, Kimberly: “The Challenge of French Diversity”, *Migration Information Source MPI*, November 2004, p.1-2, and Engler, Marcus: “Country Profile France”, p.6.

³⁴ Dubet, François: “The French Social Model and Immigration: Principles and Reality”. In: *Rethinking Immigration and Integration: a New Centre-Left Agenda*, Policy Network, 2007, pp.72-73.

³⁵ Costa-Lascoux, Jacqueline: “L’intégration, à la française’: une philosophie à l’épreuve des réalités”, *Revue européenne des migrations internationales*, Numéro vol. 22-n°2, 20e anniversaire, 2006, p.2.

made it to the final round of the presidential elections. Even if the conservative Jacques Chirac then defended his second term in the Élysée with 82%, the incident highlighted the readiness of 5.525.906 French citizens (17,79%) to support a man notorious since the early 1980s for his xenophobic vision of “*la France pour les Français*”.

FN can be seen as an example for a new extremism in Europe that chooses immigration as its principal ideological battlefield. In the words of Bruno Mégret, ex-general secretary of FN, a country needs “a real people, (...) a community of men and women who recognize each other as close by means of a language, culture, faith, blood and history”³⁶. Or as Le Pen himself put it when campaigning against the EU constitution: “The most serious danger for France is losing its independence for the sake of Europe and losing its identity for the sake of immigration”³⁷. The rise of the extreme right has brought immigration “back to high politics”³⁸, even if FN so far has not made it out of opposition. How then did the French governments handle the hot topic during the last years?

II.1.b-ii The laws of 2003, 2004 and 2006

If the vision of *Front National* is clearly identitarian and repressive according to Chapter 1, government policies of the last decade might generally be described as functionalist, based on the assessment of advantage – with some repressive or legalitarian elements. Chirac’s government has profoundly changed the legal framework for migration, asylum and integration in France during the last years.

The *law n°2003-1119*³⁹ tightened the rules for family reunification and for acquiring of citizenship through marriage, made entry and residence

³⁶ Bruno Mégret quoted in Guibernau, Montserrat: “Migration and the rise of the radical right. Social malaise and the failure of mainstream politics”, *Policy Network Paper*, March 2010, p.14.

³⁷ Jean-Marie Le Pen quoted in Guibernau: “Migration and the rise of the radical right”, p.14.

³⁸ Withol de Wenden: “The Case of France”, p.40.

³⁹ LOI n° 2003-1119 du 26 novembre 2003 relative à la maîtrise de l’immigration, au séjour des étrangers en France et à la nationalité.

conditions for third-country nationals more difficult and put a focus on the fight against irregular migration. For instance, the expulsion of *sans papiers* was meant to happen faster and people helping irregular migrants were to be sanctioned.

As regards asylum, restrictionist measures shaped *law n°2003-1176*⁴⁰, which introduced new obstacles such as the notion of “safe countries” and “safe third countries” into national law.⁴¹ Generally it should be noted that by that point the acceptance rate of asylum applications in France had already dropped from 85% in 1980 to 9,8% in 2003.

Parallel to the passing of these two laws, an interdisciplinary commission appointed by President Chirac to reflect on the “*application du principe de laïcité dans la République*” published a report that drew a lot of attention. Its bottom-line was an interpretation of “laicism as an important means of favouring the cohabitation of people of various origins, cultures and religions”⁴². One recommendation was adopted within a few months: The commission argued that France’s educational system should be a neutral environment for all - and no place for conspicuous religious symbols, be it large crosses, headscarves, *kippahs* or similar. The French Assembly passed the corresponding *law n° 2004-228*⁴³ with an overwhelming cross-party

http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=B16BDCC8F0429934B6D444C2BoE36DFD.tpdjo10v_1?cidTexte=JORFTEXT000000795635&categorieLien=id

⁴⁰ Loi n°2003-1176 du 10 décembre 2003 modifiant la loi n° 52-893 du 25 juillet 1952 relative au droit d'asile.

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000611789&dateTexte=>

⁴¹ Tanaka, Hiroyuki: “Immigration and the 2007 French Presidential Elections”, Immigration Backgrounder, Migration Policy Institute MPI, No.3, May 2007, p.5, and Withol de Wenden: “The Case of France”, p.36.

⁴² Melotti, Umberto: “Migration Policies and Political Cultures in Europe: A Changing Trend”, *International Review of Sociology*, Volume 16, No.2, July 2006, p.205.

⁴³ LOI n° 2004-228 du 15 mars 2004 encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics.

http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=B16BDCC8F0429934B6D444C2BoE36DFD.tpdjo10v_1?cidTexte=JORFTEXT000000417977&categorieLien=id

majority of 494 to 36 votes and large public support. It came into force with the *rentrée scolaire* 2004.⁴⁴

The last law relevant to migration under Chirac's presidency – *law n°2006-911*⁴⁵ – most clearly bore the mark of his interior minister Nicolas Sarkozy. Far gone the 1990s, when Sarkozy's predecessor Charles Pasqua had championed "*immigration zéro*". Sarkozy now introduced the slogan "*oui à l'immigration choisie, non à l'immigration subie*". He praised this approach as "the expression of France's sovereignty. It is the right of our country, like all the great democracies of the world, to choose which foreigners it allows to reside on our territory"⁴⁶. In other words: His self-proclaimed goal was for France to enter into the international competition for "the best", "not those who are not wanted anywhere else"⁴⁷.

Over the years, family reunification and formation had come to account for almost two thirds of all recorded migration to France – much to the dismay of many politicians and citizens. But there was no easy consensus on what to promote instead. Debate was controversial.⁴⁸ *Law n° 2006-911* underwent more than 300 amendments in parliament before approval. The final version combined the wooing of highly skilled workers for particular professions and geographic areas ("*la carte 'compétences et talents'*") as well as of students from third countries, the restriction of family reunification and formation, yet

⁴⁴ Melotti: "Migration Policies and Political Cultures in Europe", p.205, and Hamilton: "The Challenge of French Diversity", p.7.

⁴⁵ LOI n° 2006-911 du 24 juillet 2006 relative à l'immigration et à l'intégration.
http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=B16BDCC8F0429934B6D444C2B0E36DFD.tpdjo10v_1?cidTexte=JORFTEXT000000266495&categorieLien=id

⁴⁶ Nicolas Sarkozy quoted in Murphy, Kara: "France's New Law: Control Immigration Flows, Court the Highly Skilled", Migration Information Source MPI, November 2006, p.1.

⁴⁷ Nicolas Sarkozy quoted in Engler: "Country Profile France", p.5.

⁴⁸ As an example for coverage see Anne Vidalie and Boris Thiolay: "La France doit-elle choisir ses immigrés?", L'Express, 17.1.2005. http://www.lexpress.fr/actualite/societe/la-france-doit-elle-choisir-ses-immigres_487327.html

another tightening of rules for access to residence and citizenship in general – and a pronounced fight against irregular migration.

As regards integration, the new approach was symbolized by the introduction of the obligatory CAI, “*Contrat d’accueil et d’intégration*”. Third country nationals wanting to settle in France had to sign it from now on according to § 5, thus agreeing to take lessons in French language and values.

The notion of functionalism and (mutual?) advantage discussed in Chapter 1 is most clearly visible in the requirement that the “*carte ‘compétences et talents’*” is to be granted

“à l’étranger susceptible de participer (...) de façon significative et durable au développement économique ou au rayonnement, notamment intellectuel, scientifique, culturel, humanitaire ou sportif de la France et du pays dont il a la nationalité.”
(§ 15 - Art. L. 315-1).

Beyond the question of how to define whether such a poetic criteria is met in the individual case, this passage fuelled debate about brain drain.

Even if § 15 explicitly speaks of mutual advantages, critics called this a bad masquerade of French interests indifferent of development issues. To counter these suspicions, the ‘*carte compétences et talents*’ is only to be issued to those who agree to return home within six years or whose country of origin has signed a ‘co-development’ deal with France. But even this attempt “to reframe the issue about the loss of some of sending countries’ most skilled nationals by emphasizing the ‘circulation of skills’”⁴⁹ has not put an end to the controversy.

Many other aspects of the law drew harsh criticism from opposition and NGOs, which denounced the ‘*immigration choisie*’ as ‘*immigration jetable*’, but failed with an appeal to the *Conseil Constitutionnel*.⁵⁰

⁴⁹ Murphy: “France’s New Law”, p.3.

⁵⁰ Engler: “Country Profile France”, p.5.

II.1.b-iii The presidential election 2007 and the creation of MIIINDS

Sarkozy's style paid off – in May 2007 he won the presidential elections against his socialist adversary Segolène Royal, who in her campaign amongst other things had emphasized the link between migration and development. Sarkozy for his part had proposed six key pillars with regard to immigration: to create a new Ministry of Immigration and National Identity, to promote and defend French republican and secular values, redirect funds to disadvantaged urban neighbourhoods, attract (an annually limited number of) highly skilled from third countries, avoid any family reunification that would imply state financial support and finally to prevent the re-entry of expelled irregular immigrants for at least five years.⁵¹

After taking over the Élysée, one of Sarkozy's first coups was to introduce by *decree n° 2007-999* his new super-ministry MIIINDS, "*Le ministère de l'immigration, de l'intégration, de l'identité nationale et du codéveloppement*", the latter rebaptised "*développement solidaire*" in 2008. The ministry was first headed by Brice Hortefeux, now Minister of the Interior and followed by Eric Besson in 2009.

The so far last significant legal measure was *law n°2007/1631*⁵², which additional to the CAI introduced obligatory tests (and if deemed necessary, courses) on language and republican values even before the issuing of visas for family migrants in their home countries – yet another restrictive step in Sarkozy's strategy of tightening the rules for family migration.

As laid out in the *Rapport Politique* 2008 and 2009 compiled by MIIINDS, there have been no more major legal changes since, the general focus of policies remaining "*la lutte accrue contre l'immigration irrégulière*", "*le*

⁵¹ Tanaka, Hiroyuki: "Immigration and the 2007 French Presidential Elections", pp.7-8.

⁵² LOI n° 2007-1631 du 20 novembre 2007 relative à la maîtrise de l'immigration, à l'intégration et à l'asile.
http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=B16BDCC8F0429934B6D444C2BoE36DFD.tpdjo10v_1?cidTexte=JORFTEXT000000524004&categorieLien=id

développement de l'immigration économique" and *"le développement solidaire avec les pays source d'immigration"*⁵³.

II.1.c France and migration today

In 2009 and early 2010, migration issues have been high on the public agenda – some aspects of human rights and of integration shall be highlighted briefly.

France has been repeatedly criticised for conditions in detention centres etc. For instance *Human Rights Watch* in October 2009 published a report on how unaccompanied minors arriving at Charles de Gaulle airport were denied basic rights, strip-searched, handcuffed and intimidated.⁵⁴ Another critical point remains the northern city Calais, where uncounted numbers of irregular immigrants try to cross over to the UK. Media have shown the miserable conditions under which people from Afghanistan, Africa and elsewhere are stranded, risking starvation and freezing to death in the cold months, while authorities are failing to cope with the situation.⁵⁵

MIINDS has tried to set a different agenda. Immigration Minister Eric Besson launched the *'débat sur l'identité nationale'* in late October 2009 for a redefinition of what it means to be French today. For that end, hundreds of public meetings all over the country were to be organised for several months. Such a debate had been planned already during the election campaign of 2007, but for many it was too obviously put into practice in a moment in which the Sarkozy administration needed to distract attention from other issues. Besson by contrast pointed out an objective necessity and added: *"Nous n'aurions jamais dû abandonner au Front National un certain nombre de*

⁵³ MIINDS: Rapport Politique 2008, p.11.

<http://www.immigration.gouv.fr/IMG/pdf/RappPol2008.pdf>

⁵⁴ Emma Jane Kirby: "France Migrant Policy Criticized", BBC News, 29.10.2009.

<http://news.bbc.co.uk/2/hi/europe/8331828.stm>

⁵⁵ "Frankreich: Kinderflüchtlinge in Calais", Weltspiegel.de, 24.1.2010.

<http://www.ardmediathek.de/ard/servlet/content/3517136?documentId=3701088>

valeurs qui font partie du patrimoine républicain".⁵⁶ This remark is especially interesting when taking into consideration that in early 2010, the regional elections in France made it obvious that the far right is all but disappearing from the political scene.⁵⁷

The '*débat sur l'identité nationale*' cannot be reproduced here in its full complexity, but was covered extensively by media and found a considerable public echo without leading to a real consensus.⁵⁸

Meanwhile, France keeps up its policy of the integration contract CAI – in March 2010 Besson signed in a festive ceremony the 500.000 CAI in Paris and praised the system of mutual engagement of the Republic and the migrants.⁵⁹ But parallel to this optimistic symbolism, France still seems far from an agreement over what is acceptable and unacceptable and what eventual sanctions should be. In April 2010 the case of a Muslim woman, driving a car wearing a niqab, and her polygam husband made headlines. This occurred almost at the same time as the Belgium parliamentary ban on the burka. Interior Minister Brice Hortefeux (ex-Minister of Immigration) went as far as to ask MIINDS to explore possibilities of expatriating the man (a French citizen for nine years) on grounds of the polygamy – a move that fuelled debate even further.⁶⁰

⁵⁶ "Besson relance le débat sur l'identité nationale", Le Monde.fr, 25.10.2009.
http://www.lemonde.fr/politique/article/2009/10/25/besson-relance-le-debat-sur-l-identite-nationale_1258628_823448.html

⁵⁷ Stefan Simons: "Minarette wie Mittelstreckenraketen – Regionalwahlen in Frankreich", Spiegel Online, 13.3.2010. <http://www.spiegel.de/politik/ausland/0,1518,683338,00.html>

⁵⁸ "Identité nationale. Un débat qui fache". Dossier par Libération.fr.
<http://www.liberation.fr/identite-nationale-debat,99854>

⁵⁹ Remise du 500 000ème C.A.I par le ministre Eric Besson, vidéo de 12.3.2010.
http://www.ofii.fr/breves_87/eric_besson_signe_le_500.000e_contrat_d_accueil_et_d_integration_989.html

⁶⁰ Pierre Jaxel-Truer et Elise Vincent: "Voile intégral, polygamie: comment un fait divers devient une controverse politique", Le Monde.fr, 26.4.2010.
http://www.lemonde.fr/politique/article/2010/04/26/voile-integral-polygamie-comment-un-fait-divers-devient-une-controverse-politique_1342588_823448.html#ens_id=1245449

Sarkozy's attempts to project his immigration policies on the European level – notably during his EU presidency in the first semester of 2008 – will be discussed in Chapter 3. The contrast to the neighbour country Germany now will make clear what different shapes domestic immigration policies can take.

II.2 Germany

II.2.a “Deutschland ist (k)ein Einwanderungsland”

Germany has witnessed years of intense political and public discussion on immigration and the beginning of a change in attitudes. For decades, mainstream discourse had been dominated by a refusal to acknowledge the phenomenon as such. The immigrants recruited by the *Bundesrepublik* labelled as ‘*Ausländer*’ were not supposed to become integral parts of society, but to fulfil their job as ‘*Gastarbeiter*’ and leave afterwards. The fact that the majority decided to stay, especially after the ‘*Anwerbestopp*’ of 1973 had made moving back and forth legally impossible, and instead have family members join them, was an effect never intended by policy makers. One consequence was that *Gastarbeiter* children born in Germany were seldom in a position to be naturalized and therefore destined to grow up as foreigners in their own country.⁶¹ Most scholars explain this German exclusionism by a “particular political culture”, a philosophy in which “‘belonging’ to the nation – far from being conceived in subjective civic and political terms, as in France (...) has always been conceived in objective, ethnocultural terms, as a fact linked to blood and land”⁶². This view is confirmed by the observation that the millions of *Vertriebenen* after World War II and the hundreds of

⁶¹ Melotti: “Migration Policies and Political Cultures in Europe”, pp.192-193.

⁶² Melotti: “Migration Policies and Political Cultures in Europe”, p.193.

thousands of *Spätaussiedler* after the fall of the Iron Curtain were considered home comers and treated in a privileging way.⁶³

In the early 1990s, a wave of asylum-seekers from the imploding Yugoslavia and other regions of crisis created a sense of emergency in large parts of the public. 1993 the so-called *Asylkompromiss* tightened the rules for political asylum considerably; application rates have dropped extremely since.

II.2.b Key developments in national policies 2000-2010

Generally, in Germany there has been a need to define and redefine crucial assumptions regarding immigration – ranging from the notion of citizenship to the regulation of labour migration and the question of integration. This difficult and ongoing process can be illustrated by three major legal changes of the last ten years.

II.2.b-i Reform of the *Staatsangehörigkeitsgesetz* 2000

German citizenship has been shaped for almost one century by the *Reichs- und Staatsangehörigkeitsgesetz*, in force since 1914. In that time the relatively young *Reich* still saw many emigrate to America, *ius sanguinis* was therefore codified as “not simply an ethnicizing concept of citizenship but also a powerful way of constructing the nation even across space”⁶⁴. During the 20th century this motivation obviously lost its meaning and the law became more and more an exclusionary instrument against newcomers.

First amendments were introduced through the reform of the *Ausländergesetz* in 1990, making it easier for long-term residents and the so-called second and third generations to become naturalised. But this was only a beginning. In 1998 the Kohl years ended and a red-green coalition under chancellor Gerhard Schröder took over. This new government expressed concern that there were too many people without a German passport living

⁶³ Özcan, Veysel: “Germany: Immigration in Transition”, *Migration Information Source MPI*, July 2004, pp. 2-3.

⁶⁴ Green, Nancy L.: “The Politics of Exit: Reversing the Immigration Paradigm”, *The Journal of Modern History*, Volume 77, June 2005, p. 276.

in the country. A debate evolved that led to a reform with effect from January 1st 2000.⁶⁵

A central matter was a new understanding of citizenship as one step in the process of integration, not as the last step. Discussions between the political parties were not easy, especially after SPD and Greens lost the majority in the *Bundesrat* in spring 1999. In the end a compromise reform⁶⁶ was passed with five major elements. Eligible immigrants now only had to wait eight years to apply for citizenship. *Jus soli* was cautiously introduced in the sense that a child born to foreign parents could get citizenship at birth if at least one of its parents had been residing legally for eight years. Double citizenship in these cases was an option until the 23rd birthday – by then a choice had to be made. In general, double nationality was only to be allowed in cases of special hardship – for example if the applicant's country of origin prohibits the giving up of the nationality. As a criteria *sine qua non*, sufficient knowledge of German was established. To ease the process, the procedural fee was reduced from what used to be about a month's salary of the applicant to 255 € per adult and 51€ per child.⁶⁷ The evaluation of the reform is ambivalent, even if the long-time "*bête noire* of immigration scholars"⁶⁸ had finally been given a makeover. Hoffmann concludes: "Is it easier now to become German than it was before 2000? (...) It depends"⁶⁹.

II.2.b-ii Zuwanderungsgesetz 2005

Immigration, as described above, had been very restricted since the 1970s. In the 1990s, legal immigration was possible for nine groups: EU citizens, family members, *Spätaussiedler*, Jews from the former Soviet Union, asylum seekers

⁶⁵ Hoffmann, Holger: "The Reform of the Law on Citizenship in Germany: Political Aims, Legal Concepts and Provisional Results", *European Journal of Migration and Law*, Volume 6, 2004, pp.195-197.

⁶⁶ Staatsangehörigkeitsgesetz. <http://bundesrecht.juris.de/rustag/BJNR005830913.html>

⁶⁷ Hoffmann: "The Reform of the Law on Citizenship in Germany", pp.198-202.

⁶⁸ Favell&Hansen: "Markets against politics", p.592.

⁶⁹ Hoffmann: "The Reform of the Law on Citizenship in Germany", p.203.

and refugees under the Geneva Convention, temporary protection refugees, foreign students and finally – since the *Anwerbestoppausnahmeverordnung* of 1990 - new guest workers for selected sectors with labour shortages.⁷⁰ The latter were for example needed in the booming construction industry. As some point out, “Germany’s new capital – supposed symbol of a newly confident ‘Berlin Republic’ – would not have been rebuilt without unskilled migrant labour, both legal and illegal”⁷¹.

In 2000, the red-green government and its interior minister Otto Schily started to rally for a new immigration regime. A *Zuwanderungskommission* headed by the CDU politician Rita Süssmuth in July 2001 published a report⁷² that pointed out the necessity for immigration – both for economic and demographic reasons.

But for many, attracting labour migrants in a time of high domestic unemployment seemed a dubious, even scandalous strategy. Right wing populists denounced a supposed ‘stealing of German jobs’, but doubts were present not only in the fringes of the political spectrum. Analysts tried to argue differently. Demand for labour in a situation of mass unemployment can thus occur due to mismatches – more specifically due to qualifications mismatch (not enough workers with the needed skills), preferences mismatch (not enough workers willing to take the job), regional mismatch (suitable workers are not available in the area) or mismatch due to information deficits (employers and potential workers do not know about each other). In addition, aggregate shortages can occur due to fast growth of

⁷⁰ Borkert, Maren/ Boswick, Wolfgang: “Migration Policy-Making in Germany – between national reluctance and local pragmatism?”, Working Paper No.20, IMISCOE, December 2007, pp.4-5.

⁷¹ Favell&Hansen: “Markets against politics”, p.590.

⁷² “Zuwanderung gestalten, Integration fördern”, Bericht der Unabhängigen Kommission ,Zuwanderung’, 2001.
http://www.bmi.bund.de/cae/servlet/contentblob/150408/publicationFile/9074/Zuwanderung_gestalten_-_Integration_Id_7670_de.pdf;jsessionid=6BoBA1E3B7D547CCF85E1C6A121B4D9D

the economy or individual sectors or reversely due to decreases in labour supply, for example because of an ageing population.⁷³

In this line, the UN estimated Germany would need 3,6 million immigrants *each year* until 2050 to retain its support ratio between working-age and old-age population.⁷⁴ If such numbers seemed unrealistic even to supporters of immigration, it seemed certain that labour shortages weaken the economy – and that is was therefore in the common interest to counter such situations.

A first experiment of Schröder's government was the Green Card for IT specialists in early 2000 that sparked polemics such as the famous remark "*Kinder statt Inder*"⁷⁵. But the real debate began with the draft for a new immigration law, based on the suggestions of the Süßmuth commission, in August 2001 – the resulting political tug-of-war was to last for three years.⁷⁶

After the governing coalition had put the bill through *Bundestag*, the *Bundesrat* voted in March 2002 – but was it a Yes or a No? The representatives of Brandenburg had contradicted each other in the open voting, but finally were counted in favour of the bill. After this, several conservatively governed *Länder* filed procedural complaint at the Constitutional Court, there was talk of *Verfassungskrise*. Karlsruhe decided in favour of the complaint.

The coalition gave it a second try in 2003, but this time the unchanged bill met even clearer opposition in the *Bundesrat* –no less than 128 changes were

⁷³ Boswell, Christina/ Straubhaar, Thomas: "Does Germany Need Labour Migration?", Policy Brief No.2, *focus MIGRATION*, April 2005, p.1.

⁷⁴ "Replacement Migration: Is it a Solution to Declining and Ageing Population? Executive Summary", United Nations Population Division, 2001.
<http://www.un.org/esa/population/publications/migration/execsum.pdf>

⁷⁵ "Rüttgers verteidigt verbalen Ausrutscher – Kinder statt Inder", Spiegel Online, 9.3.2000.
<http://www.spiegel.de/politik/deutschland/0,1518,68369,00.html>

⁷⁶ Schmid-Drüner, Marion: "Germany's New Immigration Law: A Paradigm Shift?", *European Journal of Migration and Law*, Volume 8, 2006, pp. 193-197, see also "Zuwanderungsgesetz. Chronologie einer langen Debatte", tagesschau.de.
<http://www.tagesschau.de/inland/meldung231028.html>

demanded. The following negotiations took over one year, taking on an even more aggressive tone after the terror attacks in Madrid in April 2004 had brought the security issue back on the European agenda and the Conservatives asked for additional measures. In May 2004 the Greens announced a failure of the negotiations and chancellor Schröder intervened at the highest level to save the project. In a “procedure (...) unprecedented in German politics”⁷⁷, Schily reached agreement with the leaders of the opposition parties. Finally, the new immigration compromise was passed with the votes of SPD, Greens, CDU/CSU and FDP – only two Conservatives and the two PDS parliamentarians voted against. The *Bundesrat* finally agreed and the *Zuwanderungsgesetz* came into effect on January 1st 2005.

So what was the result of this political and ideological battle? The Act⁷⁸ was “groundbreaking in its focus on promoting the integration of the immigrant population and on increasing the number of highly-skilled and self-employed immigrants”⁷⁹.

But the core revolution of the original draft had been lost during the negotiations – there is no point system to assess suitable labour migrants. What the new *Aufenthaltsgesetz* did introduce was two instead of the five kinds of permits for migrants – a residence permit (§7) and a settlement permit after five years (§9 II). A ‘one-stop-government’ was established that simplified procedures – migrants from now on apply for residence and employment permit at once.

According to §18 V *Aufenthaltsgesetz* the precondition for all labour migration is to be a valid job offer. Highly skilled immigrants are to be given preferential treatment so that they can apply immediately for a settlement

⁷⁷ Schmid-Drüner: “Germany’s New Immigration Law”, p.196.

⁷⁸ Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern (Zuwanderungsgesetz), 30.7.2004. <http://www.bmi.bund.de/cae/servlet/contentblob/150220/publicationFile/13484/Zuwanderungsgesetz.pdf;jsessionid=973D1EE59AD725201543DD63CA176913>

⁷⁹ Özcan, Veysel: “Country Profile Germany”, focus MIGRATION, May 2007, p.6.

permit. First experience in 2005 and 2006 however showed that only a few hundred persons received such a permit on the basis of this regulation, the majority having already resided in Germany before.⁸⁰ The success of the measure therefore is questionable. Reasons may have been the high income threshold of 84.000 € per year or psychological factors, in the sense that highly-qualified immigrants may still not feel truly welcome in Germany.⁸¹ It needs to be remembered that the general recruitment ban remains in force for unqualified and as well as for qualified labour – with the exception of individual cases.⁸²

University students from now on were granted the right to extend their residence permit for one year after their graduation to look for a job in Germany. This innovation is in line with the new approach to compete internationally for the best, observed already in France. Family reunification basically remained untouched. As a reaction to growing security concerns after the Madrid attacks, a measure additional to expulsion itself was introduced: the *Abschiebungsanordnung* of § 58 *Aufenthaltsgesetz*, aimed at so called *Hassprediger* or suspected terrorists, but contrary to the initial goal of the Conservatives executable only based on evidence, not suspicion.

Regarding integration, the *Zuwanderungsgesetz* provided for the introduction of special courses for immigrants and resident foreigners ‘in need’ of such measures.⁸³

II.2.b-iii The reform of 2007

Two years after the entry into force of the *Zuwanderungsgesetz*, Angela Merkel’s now ruling Grand Coalition of CDU/CSU and SPD agreed on a

⁸⁰ Özcan: “Country Profile Germany”, p.6.

⁸¹ Schmid-Drüner: “Germany’s New Immigration Law”, p.208.

⁸² Borkert & Bosswick: “Migration Policy-Making in Germany”, p.9.

⁸³ Schmid-Drüner: “Germany’s New Immigration Law”, pp.197-203.

controversial reform, the EUAufhAsylRUG⁸⁴, that also put into practice 11 EU directives – a rather reluctant step, since most of these had been there for years already.

As for legal migration and the attraction of the highly skilled, some looser rules for entry were introduced. For instance self-employed third-country nationals now only had to invest € ½ million instead of € 1 million and create five instead of ten jobs. By contrast, the income threshold for highly skilled migrants that the *Zuwanderungsgesetz* had fixed at 84.000€ a year remained unchanged despite the disappointing feedback so far.

Amongst the most important changes was a clause according to which ‘tolerated’ refugees (persons who could not be deported) were – under circumstances – entitled to finally obtain real residence status, namely after having stayed for at least eight years in Germany (if the family had minor children, only six years). Persons who didn’t fulfil the criteria were allowed to look for a job anyway if they had been in the country for at least four years. But critics were sceptical and suspected that among the 180.000 *Geduldeten* only a few thousand may actually succeed in fulfilling all criteria.

The reform of 2007 was controversial mostly due to its tightening of integration rules, which the government justified not least as a reaction to the shock of the failed *Kofferbomber* terror attack of July 2006. Persons who did not attend obligatory integration classes could now be sanctioned financially, for instance with cuts in welfare payments. In order to be naturalized, knowledge of the German legal order became mandatory. Also, a catalogue of behaviour considered as ‘*integrationsfeindlich*’ was introduced, possibly justifying expulsion.

One of the most delicate new provisions restricted family reunification or formation in the sense that spouses from third countries were to be allowed

⁸⁴ Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union (EUAufhAsylRUG), 16.8.2007. <http://www.buzer.de/gesetz/7868/index.htm>

entry only if they were of age and had some knowledge of German. This was presented mainly as a measure against forced marriages. But since the rule is to apply only to citizens of countries on the Schengen visa white list, this aspect privileged citizens of countries such as the USA, Australia or Japan against citizens of Arab, African and other countries (only of the latter group, language knowledge is asked). NGOs as well as the opposition and even some coalition members denounced this as a violation of the equality principle.

For these and many other aspects, the negotiation and passing of the reform was marked by heavy controversy. PRO ASYL spoke of a "zum Teil rechtsstaatswidriges Abschottungswerk" and saw EU directives distorted in meaning. A spokesperson of the oppositional Greens called the reform unconstitutional, a violation of human rights and hostile to women, families and integration in general.⁸⁵

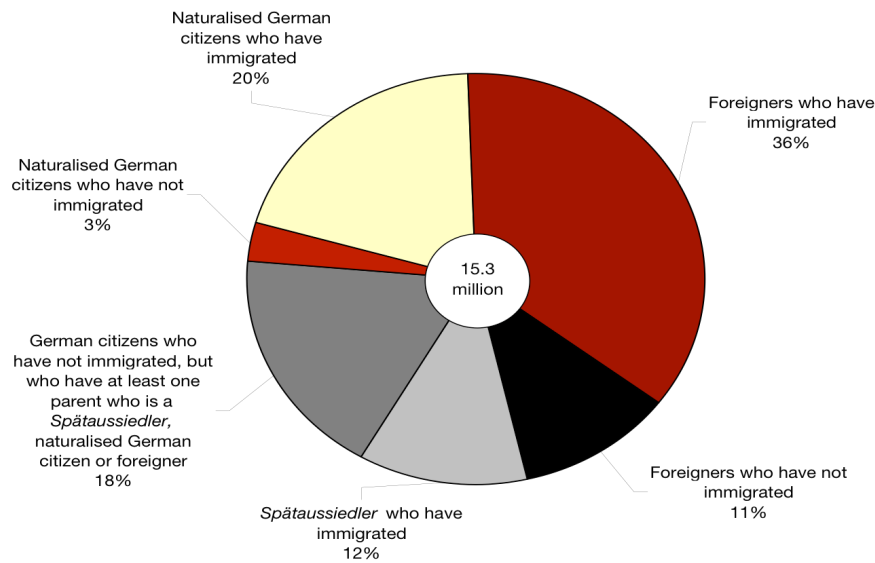
II.2.c Germany and migration today

After a turbulent decade, Germany now seems to accept more and more being an immigration country. The subsequent federal governments led by Schröder and Merkel have introduced various reforms, new instruments and more transparency, such as the publication of an annual *Migrationsbericht*.

The poor data situation is to be improved since 2005 through a new form of annual microcensus that registers for instance a person's former citizenship and the year of his or her naturalisation. Instead of the simple old distinction between Germans and foreigners, the reorientation towards the concept of 'migration background' has made possible a much more sophisticated picture of today's population. According to the definitions illustrated in Figure 2, the *Statistisches Bundesamt* in its first estimates with these new details in 2005 found 19% of Germany's population to have a migration background, equalling 15,3 million persons.

⁸⁵ For this section, compare Schneider, Jan: "Die Novellierung des Zuwanderungsgesetzes 2007", Bundeszentrale für politische Bildung bpb.de, 15. 5.2007.
http://www.bpb.de/themen/OGZA5T,o,o,Die_Novellierung_des_Zuwanderungsgesetzes_2007.html

Figure 2: Germans with a ‘migration background’ in 2005⁸⁶



Source: German Federal Statistical Office

The country seems to have let itself in for a - at times painful - self-reflection, since it stopped to ignore the phenomenon of immigration as such. For the last years, various conflict lines have been identified in the German multi-level governance of immigration, ranging from the federal to the local level. Ideas expressed vary likewise from pluralism and multiculturalism to strict assimilationism. Generally though, recent German policy making “could be considered as a progressive problem shifting from a ideological sphere to a more pragmatic dimension, promoting bottom-up perspectives on the one hand while simultaneously facing a top-down European ‘harmonization’ in this policy field on the other”⁸⁷.

Obvious is the rather recent focus on integration. While the PISA studies revealed the disadvantages of children with migration background in the education system, media coverage of so-called *Ehrenmorde*, forced marriages, and the question of headscarves have brought Muslims into the limelight

⁸⁶ Figure taken from Özcan: “Country Profile Germany”, p.4.

⁸⁷ Borkert & Bosswick: “Migration Policy-Making in Germany”, p.23.

especially. Berlin has tried to react with several new measures, such as the creation of the *Deutsche Islamkonferenz*⁸⁸ in 2006.⁸⁹

What different shapes the integration debate still takes even in neighbouring countries is illustrated perfectly by a recent case. Turkish-born Muslim Aygül Özkan first made headlines just for becoming the first minister of a German *Landesregierung* with a migration background. Days later uproar followed because she had confessed not only to be against the wearing of headscarves in state schools, but also against the display of crucifixes. “*Die Schule sollte ein neutraler Ort sein*”, she declared in an interview in late April 2010 – and was immediately forced to take back her remarks by her own party, the Christian Democrats, after candid comments by leading CDU politicians who insisted on the importance of Christian symbolism in classrooms – among them even Maria Böhmer, *Integrationsbeauftragte der Bundesregierung* of all people.⁹⁰ Obviously what is common sense and tradition in France, is still enough to cause a scandal in German mainstream discourse.

Regarding labour migration and demography, recent developments are considered to be alarming. While measures to attract the highly skilled from elsewhere fail (even after conditions have been loosened still further in 2009)⁹¹, Germany itself seems to fall into the brain drain trap and for the second year has lost more people than it has welcomed.⁹²

⁸⁸ http://www.deutsche-islam-konferenz.de/cln_110/SubSites/DIK/DE/Startseite/home-node.html?__nnn=true

⁸⁹ Özcan: “Country Profile Germany”, pp.5-6.

⁹⁰ “Özkan und die CDU: Das Kreuz mit dem Kreuz”, [sueddeutsche.de/dpa/AP](http://www.sueddeutsche.de/dpa/AP), 26.4.2010. <http://www.sueddeutsche.de/politik/332/509463/text/>

⁹¹ Roland Preuß: “IT-Branche – Die Green Card fehlt”, *Süddeutsche Zeitung*, 1.3.2010. <http://www.sueddeutsche.de/wirtschaft/it-branche-die-green-card-fehlt-1.9542>

⁹² Wolfgang Jaschensky: “Migration – Auswanderungsland Deutschland”, [sueddeutsche.de](http://www.sueddeutsche.de), 26.5.2010. <http://www.sueddeutsche.de/politik/migration-auswanderungsland-deutschland-1.950011>

II.3 Italy

II.3.a From emigration to immigration

The case of Italy is in many ways different from France and Germany. Unlike them, Italy has had no experience with immigration until very recently – rather it used to be a sending country itself up until the 1970s. In the course of 100 years, an estimated 26 million Italians emigrated. This experience left traces and in no way prepared for flows in the opposite direction.⁹³

Moreover, mass immigration to Italy did not begin in a boom period, but in a difficult time with unemployment for a while exceeding 10, even 12%. Italy did not actively invite foreign labourers, like France and Germany had done in their times, but saw itself become a destination for emigrants and refugees leaving Africa, the Balkans and other regions of bloodshed and economic despair.⁹⁴ “Briefly, in Italy immigration has been passively accepted rather than deliberately encouraged and has caused recurrent emergencies and a state of continuous precariousness”⁹⁵. The influx – surprising and strange as it was for most Italians – was for years treated like a temporary phenomenon. As a result, no coherent legal framework was established. The confusing and sometimes contradictory rules that existed left the early immigrants of the 1980s and 1990s in an often “uncertain legal status”⁹⁶.

In terms of attitudes, Italy can be neither linked to the French nor to the German idea of citizenship. Nation building on the peninsula had happened in the second half of the 19th century and included both Romantic elements of blood and earth and political elements such as the idea of a subjective wish to belong. At the same time as the German *Reich*, the Kingdom of Italy combined

⁹³ Melotti: “Migration Policies and Political Cultures in Europe”, pp.194,199.

⁹⁴ Venturini, Alessandra/ Villosio, Claudia: “Labour market effects of immigration into Italy: An empirical analysis”, *International Labour Review*, Volume 145, No.1-2, 2006, p.91.

⁹⁵ Melotti: “Migration Policies and Political Cultures in Europe”, p.195.

⁹⁶ Di Pascale, Alessia: “The New Regulations on Immigration and the Status of Foreigners in Italy”, *European Journal of Migration and Law*, 2002, p.71.

ius sanguinis and *ius soli* in a law on citizenship in 1912, attempting to strengthen the bonds of emigrants to the home country.⁹⁷

Generally, the country up until this day is characterized by extreme regional identities and antipathies. In any case, given this complex background, the way in which immigration policies in Italy would evolve was in no way predestined – accordingly, the analysis will show paradoxes and contradictory developments.

II.3.b Key developments in national policies 1998-2010

II.3.b-i The Turco-Napolitano Act 1998

In the late 1990s, Italy found itself in need of legislation for immigration and integration. Previous measures were chaotic and had failed; furthermore Italy had to adapt its border controls after having entered the Schengen area in October 1997. In a process that included actors such as Catholic associations and academic experts, the centre-left government led by Romano Prodi drafted what was to be known as the Turco-Napolitano Act, referring to the Interior Minister Giorgio Napolitano (today's president of Italy) and the Minister of Social Affairs, Livia Turco. Negotiations lasted almost one year, but even "opposition MPs praised the 'in-depth', 'fair' debate and the atmosphere of 'total equanimity and intellectual honesty'"⁹⁸.

The resulting *law no. 40/1998*⁹⁹ expressed a shift in official attitudes – "assuming that immigration from third countries is a phenomenon which will continue and cannot be ignored and therefore needs regulation of all its aspects"¹⁰⁰. Three main objectives were the easing of labour migration, the

⁹⁷ Green: "The Politics of Exit", pp. 277-278.

⁹⁸ Zincone: "The Making of Policies", p.355.

⁹⁹ Legge 6 marzo 1998, n. 40. "Disciplina dell'immigrazione e norme sulla condizione dello straniero." <http://www.camera.it/parlam/leggi/98040l.htm>

¹⁰⁰ Di Pascale: "The New Regulations on Immigration and the Status of Foreigners in Italy", p.77.

fight against irregular migration and affiliated criminal activity and finally better integration measures.

The government from now on annually was to set quotas for foreigners allowed to come in for work, seasonal work or self-employment. Two kinds of status were defined: stay with a residence permit and stay with a residence card, the latter giving eligible long-term residents the right to unlimited settlement and a legal status close to that of an Italian citizen. Family reunification was provided for quite generously – as long as certain financial and formal criteria were fulfilled, relatives ranging from spouses to parents and dependent third degree family members could be sent for. After the granting of their resident permit, they were in turn entitled to access to public and educational services¹⁰¹. Even irregular migrants' children were granted the right to receive an education.

On the other hand, the fight against irregular migration was intensified with a widening of measures of refusal of entry as well as expulsion. Centres for Retention and Temporary Assistance (*Centri di permanenza temporanea*) were created as places to detain foreigners before expulsion.¹⁰²

Like the Chirac and Schröder administrations, also the Italian centre-left government turned to a commission of experts for advice. In this case a *Commissione per le politiche di integrazione degli immigrati* led by Giovanna Zincone, professor in Turin, was appointed. The reports of 2000 and 2001 developed an integration model critical of both assimilationism and multiculturalism – suggesting instead the recognition of individual rights, of some rights even to irregular migrants and a mobilization of the civil society, including local authorities, NGOs as well as migrants' associations.¹⁰³

¹⁰¹ Di Pascale: "The New Regulations on Immigration and the Status of Foreigners in Italy", pp.72-75.

¹⁰² Di Pascale: "The New Regulations on Immigration and the Status of Foreigners in Italy", pp.73-74.

¹⁰³ Campani, Giovanna: "Migration and Integration in Italy: A Complex and Moving

But already, polls showed a shift in attitudes. “Italian public opinion saw a link between immigration and crime, believed that there were too many immigrants, and considered immigration the second most important issue after unemployment”¹⁰⁴. Silvio Berlusconi picked up this mood in the manifesto of his *Casa della Libertà* for the 2001 elections: “Only those who want to work and have a realistic chance of finding a job can come to Italy. Not quotas of non-EU citizens as in the past, but quotas of manual workers, carpenters, nurses, etc., who already have a contract of employment”¹⁰⁵.

The *Lega Nord*, part of Berlusconi’s new project *Casa della Libertà*, had long built its success on its hostility towards Southern Italy. If it wanted to form a government in Rome though, it “had to at least partly attenuate its anti-southerner attitudes, and sought to make up for this forced moderation by concentrating on the campaign against immigrants, especially Muslims”¹⁰⁶. In this, one may see a variation of the reflex to build a new we-feeling against an out-group discussed above. According to *Lega Nord*’s leader Umberto Bossi, “excessive cultural differences, especially if expressed by skin colour, are fatal for social peace. When streets and places are full of coloured people, citizens no longer feel at home and lose their identity”¹⁰⁷. That a coalition including such politicians was to change migration policies after the elections in 2001 came as no surprise.

II.3.b-ii The Bossi-Fini Act 2002

But Italians were far from a we-feeling when drafting new immigration policies after all. After Berlusconi’s government had taken over, negotiations on a reform of current legislation took place in a “highly polarised and

Landscape”, 2007, pp.3-4.

¹⁰⁴ Zincone: “The Making of Policies”, p.359, making reference to Ispo – Commissione Integrazione: “L’atteggiamento degli italiani nei confronti degli immigrati”, Dipartimento degli Affari Sociali, 2000.

¹⁰⁵ Zincone: “The Making of Policies”, p.361.

¹⁰⁶ Zincone: “The Making of Policies”, p.357.

¹⁰⁷ Umberto Bossi quoted in Guibernau: “Migration and the rise of the radical right”, p.13.

ideological political atmosphere”¹⁰⁸. More than a thousand amendments were tabled in committee, a third of which was voted upon, but Berlusconi’s government held a solid majority. Popularly named after the leader of *Lega Nord* and Gianfranco Fini, leader of the *Alleanza Nazionale* and Deputy Prime Minister, the final *law no. 198/2002*¹⁰⁹ expressed the expected move towards more functionalist, repressive and identitarian policies, even if more moderate than its earlier versions¹¹⁰.

One of the most significant changes was the link made between employment and residence permit. While in the past migrants had been allowed entry as long as they had a ‘sponsor’, now a labour contract was obligatory, including the guarantee of the employer that the migrant had accommodation and that the expenses of eventual repatriation had already been paid. This put the migrants into a very fragile position via their employer.¹¹¹ It is easy to imagine that migrants so dependent on their working contract are easy prey to exploiters, unlikely as they are to quit their job and to risk irregularity in case of not finding a new contract within six months.

A Fund for migration policies and integration measures established in 1998 was suppressed by the Berlusconi administration, money being redirected to the financing of repressive measures such as forced expulsion of irregular migrants and new temporary detention centres.¹¹² Family reunification was tightened to children and spouses.

On the other hand, the social rights enjoyed by all categories of immigrants including even irregular ones were left intact. Moreover, the Constitutional

¹⁰⁸ Zincone: “The Making of Policies”, p.364.

¹⁰⁹ Legge 30 luglio 2002, n. 189 "Modifica alla normativa in materia di immigrazione e di asilo".
<http://www.camera.it/parlam/leggi/02189l.htm>

¹¹⁰ Zincone: “The Making of Policies”, pp.364-365.

¹¹¹ Campani: “Migration and Integration in Italy”, pp. 7-8.

¹¹² Campani: “Migration and Integration in Italy”, pp. 5, 9.

Court ruled against two especially restrictive provisions of the Act. Following its judgements it was neither lawful to imprison irregular immigrants who failed to comply with their expulsion order, since this did not constitute a crime, but an administrative offense only. Nor was it constitutional to arrest and deport persons without giving them a hearing and possibility to objection.¹¹³

Zincone, one of the most prominent Italian scholars in the field of migration, concludes that despite the rhetorical trenches between the left and right, there is quite a lot of continuity in the Acts. She sees the reason in intervening factors, ranging from a strong pro-migrant advocacy coalition and the lobby of employers to the persistent dilemma of reconciliation of ideological positions and objective problems that needed solution.¹¹⁴

In the first years after the Bossi-Fini Act, most migrants were employed in unskilled or low-skilled sectors such as seasonal agriculture, tourism, construction and services. Their distribution in the country reflects the uneven economic structure of Italy: While the south is as always struggling with high unemployment and low development, immigration there is counted as being between 1 and 2% of the population. Meanwhile, in the industrial north, where economy and employment numbers are far better, immigrants make up more than 6%. But numbers in any case are to be interpreted with extreme care: Italy is infamous for its underground economy, which according to the national Institute for Statistics Istat makes up for about 17% of the GDP. In this parallel economy, there are many guesses as to how many immigrants are involved. According to analysts, the restrictive quotas set up by the Berlusconi administration after 2001 in fact

¹¹³ Zincone: "The Making of Policies", p.367.

¹¹⁴ Zincone: "The Making of Policies", pp.368-370.

increased irregular immigration and irregular work as well as frustration of legally operating firms rather than reduced immigration as such.¹¹⁵

With regard to the Italian labour market in general, two things at least seem for sure. Italy, similar to other European countries, is ageing rapidly and already one “of the oldest nations in the world”¹¹⁶. The need for labour immigration is very real and most likely to intensify. Prognosis sees especially big need in the care sector and related areas. Interestingly, this seems to have “a positive impact on the public perception of migrants, as their presence in domestic or care-related employment contributes greatly to the reduction of hostility”¹¹⁷.

Concerning eventual competition between Italian and foreign workers for jobs – a topic picked up enthusiastically by right-wing parties – studies analysing the limited data available for earlier years suggest that “the role played by migrant workers (...) has a predominantly complementary effect”¹¹⁸, that is, they are “concentrated in areas where there is excess demand for labour and where the unemployment rate is low”¹¹⁹. This fits with the additional observation that “the internal mobility of nationals is nil”¹²⁰. This said, the mechanisms of labour market shortages and the phenomena of mismatches laid out in the German case seem to be of relevance in Italy, too.

But what got into the focus of immigration policies under the fourth Berlusconi administration from 2008 onwards, was something else entirely – security.

¹¹⁵ Enaudi, Luca: “Immigration and Integration Policies in Italy”. In: *Rethinking Immigration and Integration: a New Centre-Left Agenda*, Policy Network, 2007, pp. 90-91.

¹¹⁶ Enaudi: “Immigration and Integration Policies in Italy”, p.89.

¹¹⁷ Enaudi: “Immigration and Integration Policies in Italy”, p.90.

¹¹⁸ Venturini&Villosio: “Labour market effects of immigration into Italy”, p.112.

¹¹⁹ Venturini&Villosio: “Labour market effects of immigration into Italy”, p.96.

¹²⁰ Venturini&Villosio: “Labour market effects of immigration into Italy”, p.111.

II.3.b-iii Berlusconi's "emergency package" 2008

After the intermezzo of the second centre-left Prodi administration between 2006 and 2008, Berlusconi came back. Only a few days in office, his government agreed on a combination of legislative changes that was labelled 'the security package', including the *law decree no. 92* on "urgent measures in the field of public security"¹²¹ and a decree declaring a "state of emergency" in Campania, Latium and Lombardy¹²².

With this 'security package', the fight against irregular migration and the Sinti and Roma communities was taken to a new level, as had been promised. This time, Berlusconi could build on such a solid majority that the reforms of the previous immigration acts were not even moderated by Catholic or left-wing parties as had been the case before.¹²³

The package introduced the 'crime of illegal immigration': What used to be an administrative offence, now could lead to a prison sentence of up to four years. Moreover, the fact of being an irregular immigrant was transformed into an aggravating circumstance to other crimes – expressing a general "assumption of dangerousness"¹²⁴ of persons in irregular situations, regardless of the individual. Also, the maximum duration of detention was extended to 18 months instead of 60 days, anticipating the EU *Directive 2008/115*.¹²⁵

But the best example of the securitization of the immigration issue is the declaration of the state of emergency in three regions in May 2008. The

¹²¹ Decreto-Legge 23 maggio 2008, n. 92 "Misure urgenti in materia di sicurezza pubblica".
http://www.governo.it/GovernoInforma/Dossier/pacchetto_sicurezza/decreto_sicurezza.pdf

¹²² Decreto del Presidente del Consiglio dei ministri 21 maggio 2008.
http://www.interno.it/mininterno/export/sites/default/it/sezioni/servizi/legislazione/immigrazione/0979_2008_05_27_decreto_21_maggio_2008.html

¹²³ Merlino, Massimo: "The Italian (In)Security Package: Security vs. Rule of Law and Fundamental Rights in the EU", Research Paper N.14, *Challenge - the changing landscape of European security*, March 2009, p.4.

¹²⁴ Merlino: "The Italian (In)Security Package", p.20, also pp.6+9.

¹²⁵ Merlino: "The Italian (In)Security Package", p.10.

prefects of Naples, Rome and Milan were equipped with extraordinary competences justified *“a causa della presenza di numerosi cittadini extracomunitari irregolari e nomadi che si sono stabilmente insediati nelle aree urbane”*, leading to *“una situazione di grave allarme sociale, con possibili gravi ripercussioni in termini di ordine pubblico e sicurezza per le popolazioni locali”*¹²⁶.

In July 2008, the government extended the state of emergency to the entire territory, based on a “persistent and extraordinary influx of non-EU citizens”¹²⁷. Four days later, the Minister of the Interior and the Minister of Defence decided to send 3.000 soldiers for anti-crime activities to urban areas for a minimum of half a year, 1.000 of them to the surveillance of the Centres of Identification and Expulsion.¹²⁸

Most emergency measures were rather openly directed against the Sinti and Roma communities, which had grown considerably within a few years, especially after EU enlargement to Romania and Bulgaria. “Although official statistics show that reported crimes have fallen since the 1990s, the security package has been supported by the widespread perception – fuelled by politicians and the media – that crime rates are out of control and that they are directly linked to ‘illegal’ immigration”¹²⁹, the Sinti and Roma being particularly discredited. The universal suspicion against them was demonstrated clearly by the plans for a census of the nomadic community with the fingerprinting even of children, which led to national and international uproar, the European Parliament denouncing “an act of direct discrimination based on race and ethnic origin prohibited by Art. 14 of the ECHR and furthermore an act of discrimination between EU citizens of Roma

¹²⁶ Decreto del Presidente del Consiglio dei ministri 21 maggio 2008.

¹²⁷ Merlino: “The Italian (In)Security Package”, p.11.

¹²⁸ Merlino: “The Italian (In)Security Package”, p.7.

¹²⁹ Merlino: “The Italian (In)Security Package”, p.22.

origin and other citizens”¹³⁰. Later on, though, Rome managed to convince the EU Commission of the alleged non-discriminating nature of the fingerprinting, arguing that it was not aimed at any group, but at individuals impossible to identify otherwise.¹³¹

II.3.c Italy and migration today

The measures of 2008 have left human rights advocates and scholars consternated. “The Italian (in)security package shows that the respect of human rights cannot be taken for granted in Europe. The (in)security package constitutes an illustrative example of illiberal practices by liberal regimes”¹³².

But for some, it did not go far enough. In 2009 for instance the *Lega Nord* proposed an amendment that would have required doctors to report patients in an irregular situation. This suggestion was dropped, but symbolizes how attempts of criminalisation of irregularity are escalating, as the Commissioner for Human Rights of the Council of Europe has stated very recently.¹³³ “The degree of exceptionalism emerging from the current Italian status quo is therefore expanding as time passes”¹³⁴.

Human rights concerns are regularly on the international agenda with regard for instance to the situation on the island of Lampedusa. Here, two more recent examples of 2010 shall illustrate the worries about the present situation in Italy – the report of the Council of Europe’s Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

¹³⁰ European Parliament resolution of 10 July 2008 on the census of the Roma on the basis of ethnicity in Italy. <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2008-0361&language=EN>

¹³¹ Lucia Kubosova: “EU gives blessing for Italy's Roma fingerprint scheme”, EUobserver.com, 5.9.2008. <http://euobserver.com/9/26691/?rk=1>

¹³² Merlino: “The Italian (In)Security Package”, p.28.

¹³³ Guild, Elspeth: “Criminalisation of Migration in Europe: Human Rights Implications”, Issue Paper, Commissioner of Human Rights of the Council of Europe, February 2010, pp.16+26.

¹³⁴ Merlino: “The Italian (In)Security Package”, p.2.

(CPT) and the riots of Rosarno.

After having monitored Italian authorities intercepting migrants at the maritime borders, the CPT in late April 2010 published a report stating that “persons who were pushed back to Libya (...) were denied the right to obtain an individual assessment of their case and effective access to the refugee protection system”¹³⁵. The accusations include “that the Italian authorities have knowingly pushed back particularly vulnerable persons and perhaps also persons who could attest to their status as refugees”. Generally, the CPT accuses Italian authorities of violation of the international principle of non-refoulement – and thus adds to the numerous accusations brought up against Italy in this matter in the last years.¹³⁶ The case of Libya cooperation will be detailed in Chapter 3.

Regarding the situation of immigrants who did make it to Italian territory, the riots of Rosarno in January 2010 highlight a complex pattern of tensions between immigrants and locals, authorities and probably the mafia.¹³⁷ The town in Reggio Calabria had hosted several thousands of Africans – with or without papers – mostly as seasonal workers on the fields of the region. After unidentified men had shot at several of them, groups of upset immigrants took to the streets, set cars on fire and fought with police. The next day, locals for revenge attacked immigrants with stones and iron bars, even chasing and hitting them with cars. Many of the Africans fled Rosarno on their own, and when authorities finally brought some hundred more out of town to put them into emergency accommodations, locals stood by clapping. The incidents brought attention to the miserable living conditions and the exploitation

¹³⁵ Report to the Italian Government on the visit to Italy carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 to 31 July 2009, Strasbourg, 28 April 2010. <http://www.cpt.coe.int/documents/ita/2010-inf-14-eng.htm>

¹³⁶ For the official reaction, see Response of the Italian Government to the report of the CPT, Strasbourg, 28 April 2010. <http://www.cpt.coe.int/documents/ita/2010-inf-15-eng.htm>

¹³⁷ “Rosarno treibt Immigranten in die Flucht. Leben unter menschenunwürdigen Bedingungen”, tagesschau.de, 10.1.2010. <http://www.tagesschau.de/ausland/italien268.html>

immigrants are subject to in Italy's agriculture business - especially since investigation started over a possible involvement of the *'Ndrangheta*, who supposedly systematically blackmails Africans for protection money. Workers interviewed said the shots that started the riots were fired to scare them away instead of paying them for their work.

While the riots of Rosarno so far have been a singular event, they may also be seen as a symbol of what's wrong with Italian immigration policies at present: The inability of authorities to control irregular immigration, the power of employers and criminals to exploit irregular workers without hindrance, a fragile social atmosphere and xenophobe hostility that can turn into violence and the inability of authorities to cope with resulting situations.

II.4 Implications for European policies

The case studies illustrate the different ways in which migration has developed and is being dealt with in EU member states. It is acknowledged that "this diversity in the nature of the problems associated with immigration represents a substantial obstacle"¹³⁸ for common policies. France, Germany and Italy are examples for the contrasts between countries with a history as a colonial power, with a past of recruiting *Gastarbeiter* or with a very recent transition from emigration to destination country. But differences only start with history. Situations in Europe also vary according to the proportion of influx and resident population with a migration background (ranging from 1% in Slovakia to 39% in Luxemburg), the dominant nature of immigration (family reunification or labour migration) or the level of immigrants' qualification (usually mostly low-skilled, with the exception of an unusually high proportion of highly qualified immigrants in the UK), to name a few.¹³⁹

¹³⁸ Lavenex, Sandra: "Country Profile European Union", *focus MIGRATION*, March 2009, p.1.

¹³⁹ Lavenex: "Country Profile European Union", pp.1-3.

As should be clear by now, migration policies are not to be understood without taking into consideration political cultures, defined “as how in each country State, people and nation are conceived, how the relationships between ethnicity, nationality and citizenship are regarded, and the way citizenship rights and duties are recognized or attributed to native and non-native people”¹⁴⁰. On this abstract level, one may conclude that two dilemmas are bound to determine any changes in European immigration policies: “firstly, the tension between standardisation based on supranational regulations and the desire to safeguard sovereignty; and secondly, the tension between the priority nations attribute to internal security and universal human rights, humanitarian values and economic priorities”¹⁴¹.

This in mind, more specific conflict lines can be identified between groups of states with similar situations and interests (at least perceived as such), for instance between rich and poor or big and small states – the smaller and poorer by nature being more dependent on cooperation and solidarity. Clashes then are also probable between countries with and without difficult external borders, here one may think of Italy struggling with its coastlines and Germany, after the Eastern enlargement in a quite comfortable and remote location.¹⁴²

Moreover, as explained above, European states find themselves in very different and changing economic and labour market situations. For the area of labour migration, this means that while countries such as France and Germany are focusing more and more on highly skilled immigrants, countries such as Italy now see a need rather in low-skilled sectors such as domestic services. With regard to an eventual common policy on labour migration, this

¹⁴⁰ Melotti: “Migration Policies and Political Cultures in Europe”, p.191.

¹⁴¹ Lavenex: “Country Profile European Union”, p.8.

¹⁴² Parkes, Roderick/ Angenendt, Steffen: “The re-nationalization of migration policy-making? EU cooperation after the Immigration Pact”, Working Paper SWP, January 2009, p.3.

is a big obstacle, since “a person treated as highly skilled in one member state in fact may be considered a non-profitable Other in another”¹⁴³.

The question now obviously is, how in such a complex situation any agreement whatsoever can be reached. Here, institutional settings and decision-making procedures in the EU are crucial. The issue of who decides what will be one of the topics to explore in Chapter 3. As will be detailed below, intergovernmentalism has shaped many developments in the area.

The example of Germany can illustrate the changes and the importance of the stance a member state takes. Germany during the last 20 years “has developed from a pro-active supporter to a reluctant follower”¹⁴⁴. Having promoted the Schengen agreement and the Dublin Convention, Germany in the 1990s called for solidarity given the refugee influx from the former Yugoslavia, but more or less in vain. This experience is interpreted as one reason for Germany’s subsequently more cautious attitude towards EU burden sharing in migration and asylum matters. In the 2000s, Berlin has refused numerous attempts of transferring competences – especially in labour migration – to the supranational level and has been quite slow in implementing EU directives. Additional explanations for this change are seen in the power of the *Länder* and in the difficult internal debate on immigration detailed in Chapter 2.¹⁴⁵

Given all these obstacles, it was not so much pro-active initiatives but rather an acknowledging of necessities that made European states to embark on the creation of a more common migration policy after all. Thus, the starting point is to be seen in the creation of the common market.

¹⁴³ Carrera, Sergio: “Building a Common Policy on Labour Immigration. Towards a Comprehensive and Global Approach in the EU?”, CEPS Working Document No. 256, February 2007, p.15.

¹⁴⁴ Musekamp, Simon: “Defending National Competences: The German Position on a Common European Immigration Policy”. In: Overhaus, M./Maull, H.W./Harnisch, S. (ed.): *National Perspectives on EU Immigration Policy*, Foreign Policy in Dialogue, Volume 8, No. 22, May 2007, p.16.

¹⁴⁵ Musekamp: “Defending National Competences”, pp.21-22.

III. EU and Migration – towards a common approach?

III.1 Schengen, Dublin and the Area of Freedom, Security and Justice

European integration and the common market have led to extreme interdependence. After the first Schengen Agreement in 1985 had been signed as an international treaty between France, Germany and the Benelux countries, the end of checks at internal borders was later transferred into the *acquis communautaire* and – with the enlargements - expanded to almost all member states. The result is evident: When people move freely between states, each of these states feels the consequences of how the others handle their *external* borders.

The Dublin Agreement of 1997 was another pioneer step. With this treaty, the signing states agreed on a more organized approach to asylum: asylum seekers were now required to file their application in the first member state they set foot in and in no other state at the same time. This was supposed to relieve countries with an especially attractive labour market or social system and counter the phenomena of ‘asylum-shopping’ (parallel applications in several states) and of ‘refugees in orbit’ (no state feeling responsible).

After these first steps, the Treaty of Amsterdam came as an institutional milestone in that it inserted the Schengen treaties into the system and transferred visa, asylum and immigration policies into the 1st pillar of the EC structure. This implied the application of the community method, the possibility of majority instead of unanimous decisions and some degree of control through the European Court of Justice. Also, for the first time an ‘Area of Freedom, Security and Justice’ was mentioned in Title IV of the Treaty.¹⁴⁶

III.2 From Tampere to the Hague Programme

Thus, with the entry into force of the Amsterdam Treaty in 1999 another set of actors came to play a role in migration policies. Instead of purely

¹⁴⁶ Jahn, Daniela/ Maurer, Andreas/ Oetzmann, Verena/ Riesch, Andrea: “Asyl- und Migrationspolitik der EU. Ein Kräftespiel zwischen Freiheit, Recht und Sicherheit”, Diskussionspapier, SWP, July 2006, pp.6-7.

intergovernmental procedures, in some areas the Commission with the community method got the right of initiative and the European Parliament was involved through consultation, to be extended to co-decision – the Lisbon Treaty’s ordinary legislative procedure - later on.

This institutional set-up marked the beginning of the decade along with the general political guidelines of Tampere Programme of October 1999, which – even if legally non-binding – give insights. In its Presidency Conclusions,¹⁴⁷ the European Council stated that the “separate but closely related issues of asylum and migration call for the development of a common EU policy to include the following elements”: I. partnership with the countries of origin, II. a common European asylum system, III. fair treatment of third country nationals and IV. management of migration flows.

In section III.20., the Heads of States and Governments (HOSG) acknowledged

... the **need for approximation of national legislations** 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, as well as the situation in the countries of origin.** (...) These decisions should **take into account** not only **the reception capacity of each Member State**, but also their **historical and cultural links** with the countries of origin.

In section III. 21. they stated that “the legal status of third country nationals should be approximated to that of Member States' nationals”.

In section IV on the management of migration flows, concerted action in fields such as visa policies, border control and readmission was mentioned. That the fight against unauthorised migration would be central for the years to come, was already made clear in the introductory paragraphs:

... to develop common policies on asylum and immigration, while taking into account 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.

The choice to use the internationally disputed term ‘illegal immigration’ has been kept up by the EU until this day.

¹⁴⁷ Tampere European Council Presidency Conclusions, 15 and 16 October 1999.
http://www.europarl.europa.eu/summits/tam_en.htm

The Commission stated its point of view in its Communication on a Community Immigration Policy of November 2000¹⁴⁸. With reference to both growing “migratory pressures” and “growing shortages of labour at both skilled and unskilled levels”, it suggested “the ,zero’ immigration policies of the past 30 years are no longer appropriate” (p.3).

Given the **differences between Member States** with respect to links to countries of origin, the capacity of reception, the development of integration policies and labour market needs the Commission proposes that the best way to achieve a regulated immigration policy is to **establish an overall framework at EU level**, with common standards and procedures and a mechanism for setting objectives and indicative targets, **within which Member States would develop and implement national policies**. (p.14)

On the whole, the Commission’s Communication underlined the economic and demographic problems of the EU and the “positive contribution” that migrants could make “to the labour market, to economic growth and to the sustainability of social protection systems”(p.21):

... while **increased legal immigration** in itself cannot be considered in the long term as an effective way to offset demographic changes, since migrants once settled tend to adopt the fertility patterns of the host country, it **could, in the short term, be an important element in population growth which could accompany other responses** to demographic change, such as more friendly family policies. Equally, **increased immigration will not, of itself, be an effective long-term way to deal with labour market imbalances**, including skill shortages (...). **However**, controlled immigration **may help to alleviate shortages provided it takes place within the context of an overall structural strategy** (p.25)

But while the Commission thus pursued a very functionalist approach and signalled the need for more coordinated, proactive policies for legal labour migration, member states were not at all ready for that. The Commission’s proposal for a Directive on the conditions of entry and residence of immigrants for economic purposes¹⁴⁹ in 2001 accordingly ran aground on

¹⁴⁸ COM (2000) 757, Communication from the Commission to the Council and the European Parliament on a Community Immigration Policy, Brussels, 22.11.2000. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2000:0757:FIN:EN:PDF>

¹⁴⁹ 2001/C 332 E/08: Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities, 5 September 2001. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2001:332E:0248:0256:EN:PDF>

the resistance of all member states – Germany in particular.¹⁵⁰

Generally, the measures agreed upon under the guidelines of the Tampere Programme have been described as following a “reactive-restrictive, security-centric logic and apparent political/electoral priorities”¹⁵¹.

As a follow-up to the Tampere Programme, the Hague Programme was endorsed by the European Council of November 2004¹⁵² and subsequently put into an Action Plan for the years 2004 to 2009. In this context, the Commission called for a focus on 10 priorities¹⁵³:

- strengthening fundamental rights and citizenship
- anti-terrorist measures
- defining a balanced approach to migration
- developing integrated management of the Union’s external borders
- setting up a common asylum procedure
- maximising the positive impact of immigration
- striking the right balance between privacy and security while sharing information
- developing a strategic concept on tackling organised crime
- a genuine European area of justice
- sharing responsibility and solidarity

¹⁵⁰ Bertozzi: “Legal Migration – Time for Europe to play its hand”, p.6.

¹⁵¹ Parkes, Roderick: “The EU under Siege? The Development of EU Migration Policy from the Treaty of Amsterdam to the European Constitution”. In: Overhaus, M./Maull, H.W./Harnisch, S. (ed.): *National Perspectives on EU Immigration Policy*, Foreign Policy in Dialogue, Volume 8, No. 22, May 2007, p.12.

¹⁵² The Hague Programme: “Strengthening Freedom, Security and Justice in the European Union”, Presidency Conclusions Annex I, Brussels, 4/5 November 2004.
http://ec.europa.eu/justice_home/news/information_dossiers/the_hague_priorities/doc/hague_programme_en.pdf

¹⁵³ The Hague Programme - Ten priorities for the next five years, 10th May 2005.
http://ec.europa.eu/justice_home/news/information_dossiers/the_hague_priorities/index_en.htm and
http://europa.eu/legislation_summaries/justice_freedom_security/citizenship_of_the_union/l16002_en.htm

The Hague meeting itself showed the frictions between member states with regard to the question if all decisions relevant to Justice and Home Affairs (JHA) were in the future to be made with majority voting. Germany along with Austria, Greece and others insisted on the principle of unanimity in the area of legal migration, although others such as France or Spain signalled readiness to move on to majority decisions. This led to an only limited institutional change on January 1st 2005: With that day, almost all matters of asylum, migration and border control involved a majority voting in the Council of Ministers and a co-decision with the EP, but legal immigration remained a domain of consensus decision-making.¹⁵⁴

This situation made innovations under the Hague Program difficult: “the timidity of a number of its proposals suggest that the Commission yielded to the parameters set by the Council fairly early on. Areas remaining outside the Community method have been held particular hostage to this dynamic”¹⁵⁵.

The Tampere and Hague years did lead to several important directives. As for legal immigration, *Directive 2003/86*¹⁵⁶ set minimum standards for family reunification and based on the core family concept entitled third-country nationals with a residence permit for at least one year and the possibility for permanent residence to be joined by the spouse and unmarried or minor children. The directive drew criticism for instance because it allows member states to refuse entry to children over 12 under certain circumstances.¹⁵⁷

¹⁵⁴ Jahn et al.: “Asyl- und Migrationspolitik der EU”, p.25.

¹⁵⁵ Collett, Elisabeth: “Beyond Stockholm: overcoming the inconsistencies of immigration policy”, EPC Working Paper No.32, European Policy Centre, December 2009, p.13.

¹⁵⁶ Council Directive (EC) No 2003/86 on the right to family reunification, 22. September 2003. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:251:0012:0018:EN:PDF>

¹⁵⁷ Lavenex, Sandra: “Country Profile European Union”, focus MIGRATION, March 2009, p.5.

*Directive 2003/109*¹⁵⁸ was aimed at the harmonization of the legal status of long-term residents with that of EU citizens. But some important limits remain: for example, long-term residents still cannot choose to move on to any other EU country – member states are still entitled to set quotas etc.¹⁵⁹

For asylum matters, the *Directives 2003/9, 2004/83 and 2005/85* set minimum standards for the admission of asylum-seekers, common criteria for the recognition of the refugee status (including for the first time gender and non-state persecution) and for procedures granting and withdrawing refugee status.¹⁶⁰

III.3 The Global Approach to Migration 2005

While migration matters had been put into the JHA portfolio, by 2005 a new approach was being developed: aspects such as employment, development, external relations and the neighbourhood policy were to be taken into consideration. Migration was to be dealt with in a more complete context.

In this spirit, the Presidency of the European Council of December 2005¹⁶¹ stated that the EU should

... ensure that migration works to the **benefit of all countries concerned**. Action must be taken to reduce illegal migration flows and the loss of lives, ensure safe return of illegal migrants, strengthen durable solutions for refugees, and build capacity to better manage migration, including through maximising the **benefits to all partners of legal migration**, while fully respecting human rights and the individual's right to seek asylum. The immediate actions set out below form part of **a broader agenda for developing the EU's relationship with Africa and the Mediterranean countries through genuine partnership**. (p.3)

The need for cooperation with third countries had already been

¹⁵⁸ Council Directive (EC) 2003/109 concerning the status of third-country nationals who are long-term residents, 25. November 2003. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0109:EN:HTML>

¹⁵⁹ Lavenex: "Country Profile European Union", p.5.

¹⁶⁰ Lavenex: "Country Profile European Union", p.7.

¹⁶¹ 15744/05: Note from the Presidency on a Global Approach to Migration: Priority Actions focusing on Africa and the Mediterranean, Brussels, 13.12.2005. <http://register.consilium.eu.int/pdf/en/05/st15/st15744.en05.pdf>

acknowledged in the Tampere Programme and by the Council of Seville in 2002. But in Seville, the logic had been a negative one in the statement that countries uncooperative in combating irregular migration would jeopardize their good relations with the EU. The Global Approach, by contrast, took on a more positive twist in that it “put a strong emphasis on the potential of international mobility for development and on the magic of win-win-win relations between sending countries, receiving countries and migrants themselves”¹⁶².

This notion poses its own problems, though, since the Global Approach “presupposes a strategic convergence of interests between the EU, member states and Neighbours in the field of migration management. Now, this is precisely the question”¹⁶³. Because contrary to this, controversy persists over whether the EU is transforming into a fortress, or even has already become one.

III.4 ‘Fortress Europe?’ FRONTEX, securitization and externalisation

Several questions arise: In how far has Europe been excluding migrants and asylum seekers? What impact did the attacks of 9/11, Madrid and London have? How much has migration been framed as a security problem and what is the role of FRONTEX? Is Europe respecting human rights at its borders – especially in the Mediterranean? And how far is Europe willing to go in order to keep away unwanted migrants?

The term ‘fortress Europe’ has been used for years. Already at the beginning of the last decade, Favell and Hansen described three basic versions: one based on the assumption of racism of ex-colonial powers, one based on the already mentioned cultural studies notion of identity construction versus an Other, a third one suggesting that national politicians happily use EU forums

¹⁶² Pastore, Ferruccio: “The Global Approach under stress. Cooperative migration management in a time of crisis”, *Forum Internazionale ed Europeo di Ricerche sull’Immigrazione* FIERI, May 2009.

¹⁶³ Pastore: “The Global Approach under stress”.

to push through repressive policies – pleasing voters and escaping the scrutiny of domestic courts and constitutions at the same time.¹⁶⁴ But Favell and Hansen contest the fortress metaphor: between 1985 and 2002, considerable amounts of arrivals for family reunification, asylum and labour migration had come in, secondly, temporary labour migration and cross-border movements of all sorts had increased and thirdly, “member state politicians and EU policy-makers alike have explicitly shifted towards a pro-immigration stance, after years of zero-immigration rhetoric”¹⁶⁵. The reason for this, they argue, was a new international labour market that opened up the EU in spite of political rhetoric and the attempts of states to stay in control. “The emerging governance of economic and geographical factors over state-territorial ones suggests that the borders of the new Europe will continue to be fuzzy and porous rather than fortress-like”¹⁶⁶.

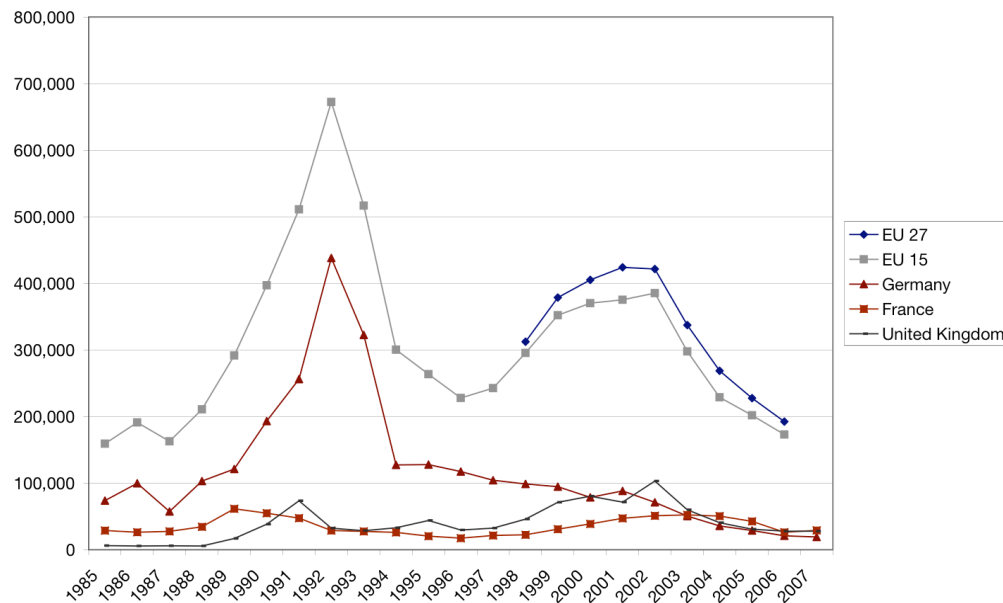
While this was written in 2002, the ‘fortress’ discussion was by no means to be abandoned. Those advocating the metaphor saw their position confirmed by data like this:

¹⁶⁴ Favell&Hansen: “Markets against politics”, pp.586-587.

¹⁶⁵ Favell&Hansen: “Markets against politics”, p.587.

¹⁶⁶ Favell&Hansen: “Markets against politics”, p.596.

Figure 3: Numbers of asylum-seekers in Europe 1985-2007¹⁶⁷



Source: Eurostat

With regard to the immense drop of applications, analysts have pointed to “the increasingly draconian response to asylum-seekers since the 1990s”¹⁶⁸ in the member states, ranging from detention and dispersal to deportation, and complemented by measures on the EU level such as the introduction of joint deportation flights by the Council of Ministers in January 2004.¹⁶⁹ A recent field study in the *zone d’attente* at the Parisian Charles de Gaulle airport for instance has pointed to at times unacceptable conditions.¹⁷⁰ Such areas – located at airports, ports, stations or along actual borders, “are physically located within a given national territory, but legally, they are considered to lie outside”¹⁷¹. While the study analyses several incidents of

¹⁶⁷ Figure taken from Lavenex: “Profile European Union”, p.7.

¹⁶⁸ Schuster, Liza: “A Sledgehammer to Crack a Nut: Deportation, Detention and Dispersal in Europe”, *Social Policy and Administration*, Volume 39, No.6, December 2005, p.606.

¹⁶⁹ Schuster: “A Sledgehammer to Crack a Nut”, p.612.

¹⁷⁰ Makaremi, Chowra: “On technologies of control of foreigners. Border Detention in Europe”, *Challenge - the changing landscape of European security*, 2009, p.3.

¹⁷¹ Makaremi: “On technologies of control of foreigners”, p.3.

violence committed by French authorities reported by ex-detainees, it concludes that in these situations of “law of exception”, the body of each abused detainee “appears as an application point of border control, in an ambivalent space of government that – both figuratively and literally – questions and calls for a definition of the ‘frontiers’ of democratic States”¹⁷².

How is the European focus on border control to be explained though? For many scholars, the answer lies in the securitization approach: “the border between security, terrorism, immigration and social fear has become very thin. Immigration has turned into one of the greatest security concerns of the 21st century”¹⁷³, they say. In this context, it is often argued that securitization as a tendency of member states has hijacked – especially through intergovernmental bias – the making of common policies.¹⁷⁴ But securitization in relation to what threat – economic, social, existential? And what effect did international terrorism have?

Boswell has contested the “received wisdom (...) that 9/11 provided an opportunity (...) to correlate terrorism with immigration”¹⁷⁵. According to her, while concerns about immigration and irregular immigration have been and always are present, after the initial shock “from late 2001 onwards references to terrorism are almost wholly absent from debates on irregular migration and migration control in Europe”¹⁷⁶. As an especially intriguing example, Boswell cites that the new socialist Spanish government only days after the attacks in Madrid in April 2004 shifted the focus of migration policies from security concerns to economic considerations.¹⁷⁷ In this interpretation, “while securitization may seem like a tempting option for

¹⁷² Makaremi: “On technologies of control of foreigners”, p.16.

¹⁷³ Buonfino: “Between Unity and Plurality”, p.23.

¹⁷⁴ Buonfino: “Between Unity and Plurality”, p.43.

¹⁷⁵ Boswell, Christina: “Migration Control in Europe After 9/11”, p.589.

¹⁷⁶ Boswell: “Migration Control in Europe After 9/11”, p.596.

¹⁷⁷ Boswell: “Migration Control in Europe After 9/11”, p.597.

governments, it also creates a number of serious risks”¹⁷⁸, undermining for instance parallel attempts to balance labour market shortages. Thus, the interesting link may be found in a reversed logic: instruments developed for immigration control, such as databases like the Schengen Information System SIS, Eurodac of the Visa Information System VIS along with external border checks, have become used for anti-terror-activities.¹⁷⁹

If Europe is argued to be (becoming) a fortress, FRONTEX is described as its guardian. The activities of the European Agency for the Management of Operational Cooperation at the External Borders have been under scrutiny since its creation in 2004.¹⁸⁰ Was FRONTEX the result of securitization in the aftermath of 9/11? Neal, citing inquiries made in Brussels, denies this: “FRONTEX, or something like it, would have come about with or without 9/11”¹⁸¹, given that restrictionism had been commonplace long before – as illustrated in detail in the Chapter 2. While first feasibility studies on a European Border Police indeed were carried out in autumn 2001, two years later “any sense of urgency had translated into bureaucracy and a lack of concrete operational progress”¹⁸². Since its actual coming into being, not only the reasons for the creation of FRONTEX, but also its activities have been subject to controversy. While criticism is to prevail and will be considered below, there are also other observations, such as Neal’s statement that “in terms of many of its day-to-day activities, FRONTEX is arguably the *opposite* of securitization or exceptionalism, in that it aims to regulate and harmonize the border practices of individual states, preventing the arbitrariness and

¹⁷⁸ Boswell, Christina: “The Securitization of Migration: A Risky Strategy for European States”, DIIS Brief, *Danish Institute for International Studies*, April 2007, p.6.

¹⁷⁹ Boswell: “Migration Control in Europe After 9/11”, p.601.

¹⁸⁰ Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, 26 October 2004. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:349:0001:0011:EN:PDF>

¹⁸¹ Neal: “Securitization and Risk at the EU Border”, p.344.

¹⁸² Neal: “Securitization and Risk at EU Borders”, p.342, see also pp.340-343.

erosion of rights that are associated with national sovereignty over borders and migration”¹⁸³.

Human rights concerns have arisen especially with regard to the interception of vessels and ships in the Mediterranean. A study on the law of sea comes to the conclusion “that the EU *acquis* regulates (...) human rights requirements only incompletely, and in some points explicitly or implicitly even permits actions of the EU Member States in violation of fundamental rights”¹⁸⁴. On top of this, the principle of non-refoulement – enshrined in international law and most recently the Lisbon Treaty § 78.1 – is not being applied thoroughly. Non-refoulement implies an obligation to allow entry to a person to at least examine the grounds of his or her application, given that adequate procedures cannot happen on a ship and that rejection could only be based on the existence of a safe third country willing to accept the person in question. “UNHCR and international literature in the field remain very critical of the conformity of such third-country arrangements with international law”¹⁸⁵. From this it follows that border control authorities are violating human rights for instance when they intercept vessels and ships and force them to sail back to third countries¹⁸⁶. This renders the progressive shifting of controls beyond state borders and the legitimacy of the pre-border control measures in the Mediterranean conducted by southern member states and coordinated by FRONTEX highly doubtful.¹⁸⁷ As explained in Chapter 2, conduct of Italian authorities has been criticized for this repeatedly and recently. For now, shipwrecks and drowning migrants-to-be have become a sad routine that not necessarily make it into the news any more.

¹⁸³ Neal: “Securitization and Risk at EU Borders”, p.347.

¹⁸⁴ Weinzierl, Ruth/ Lisson, Urszula: “Border Management and Human Rights. A study of EU Law and the Law of the Sea”, Study for the *German Institute for Human Rights*, 2007, p.16.

¹⁸⁵ Weinzierl/Lisson: “Border Management and Human Rights”, p.14.

¹⁸⁶ Weinzierl/Lisson: “Border Management and Human Rights”, p.16.

¹⁸⁷ Weinzierl/Lisson: “Border Management and Human Rights”, p.5, 10 and 14-16.

How far is Europe willing to go when it comes to keeping unwanted migrants away? The suggestion of German Interior Minister Otto Schily (SPD) in 2004 to open outposts for the processing of asylum and visa applications in third countries such as Maghreb states has been amongst the most radical suggestions¹⁸⁸ – meeting fierce criticism, but also support by Berlusconi in Italy and Tony Blair in the UK.¹⁸⁹

While such outposts so far have not been established, the case of Libya illustrates to what lengths member states – in this case Italy – and the EU have already gone in the attempt to stop unwanted influx. The “development of cooperation with Libya is exceptional after the country’s years of isolation (...) and its relegation to the status of a pariah state”¹⁹⁰. The origins of cooperation lie in Italy’s attempts to stop increasing migration flows from Libya since 2000 by establishing a permanent liaison, training Libyan personnel, reportedly financing Libyan border control equipment with millions of Euros annually, financing even deportation flights from Libya to countries of origin in 2004 as well as at least one detention camp in the north of the desert state¹⁹¹. While doubts were expressed, the Commission stating still in 2005 that “in practice, international protection of refugees is not assured”, the EU started to develop cooperation since 2002. The case shows how one country has been pushing EU policies in a certain direction, since the European Council decided in October 2004 to lift a long-lasting EU arms embargo and to start a new ‘policy of engagement’ “after considerable pressure from Italy, which was keen to enable Libya to acquire military equipment for border surveillance”¹⁹².

¹⁸⁸ Otto Schily: “Afrikas Probleme in Afrika lösen. Ein Gastbeitrag”, FAZ, 23.7.2004.
<http://www.faz.net/s/RubA24ECD630CAE40E483841DB7D16F4211/Doc~E417342584B954EB8B925AA13C2B43446~ATpl~Ecommon~Scontent.html>

¹⁸⁹ Jahn et al.: “Asyl- und Migrationspolitik der EU”, pp.30-31.

¹⁹⁰ Hamood: “EU-Libya Cooperation on Migration”, p.20.

¹⁹¹ Hamood: “EU-Libya Cooperation on Migration”, pp.32-33.

¹⁹² Hamood: “EU-Libya Cooperation on Migration”, p.23.

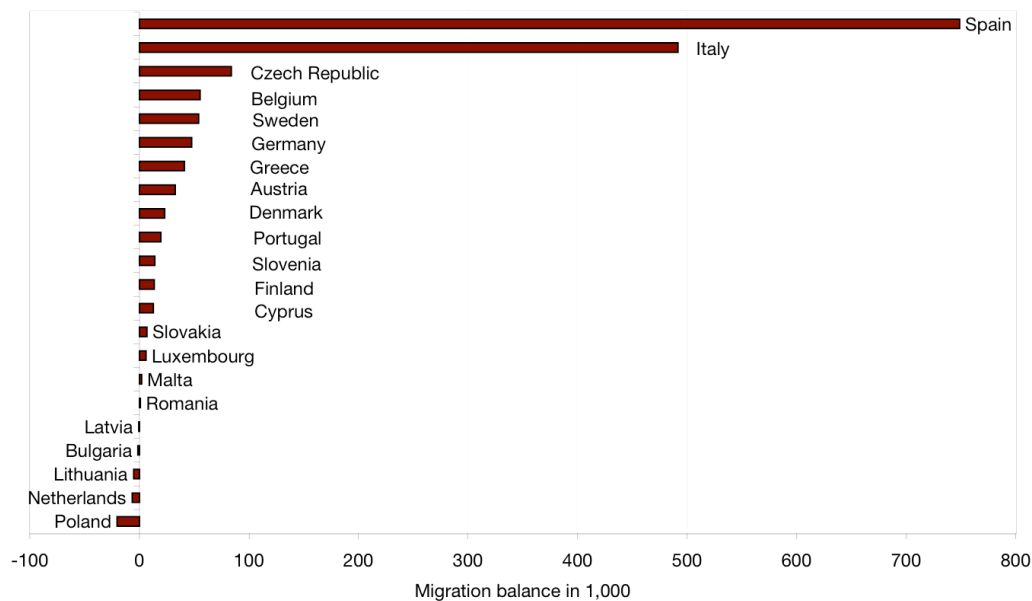
While a Commission website states dryly that “today, Libya and the European Union are not linked by contractual relations”¹⁹³, most recently the Stockholm Programme has confirmed the EU’s efforts to conclude a readmission agreement with the Gaddafi regime. This has enraged human rights organisations such as PRO ASYL, which in a press release denounced, “*dass auf Hoher See abgedrängte Bootsflüchtlinge aus Eritrea, dem Sudan und Somalia auf so beschämende Art erneut Opfer schwerster Menschenrechtsverletzungen in Libyen werden*”¹⁹⁴.

III.5 The European Pact on Migration and Asylum 2008

III.5.a The status quo in 2008

In 2008, EU member states as ever experienced quite different situations with regards to immigration.

Figure 4: Migration balances in selected EU member states in 2007¹⁹⁵



¹⁹³ http://ec.europa.eu/external_relations/libya/index_en.htm

¹⁹⁴ PRO ASYL press release, 30.11.2009.
http://www.proasyl.de/de/presse/detail/news/das_stockholmer_programm_und_die_traurige_realitaet_an_europas_gre/back/657

¹⁹⁵ Figure taken from Lavenex: “Profile European Union”, p.2.

In this context, the European Pact on Immigration and Asylum was agreed upon. What did the Pact reveal about EU decision making in the area at the given moment? And what did it imply for the policies of the years to follow?

III.5.b National interest on the European level – the Pact and France

The Pact – agreed upon by the EU Summit of October 2008 - has been labelled the French Pact, since it was drafted during the French Presidency. As expected, Paris made immigration one of its top priorities and took the opportunity to influence in an early stage the follow-up to the Hague Program due to be drafted in 2009. Thus the Pact has been described as an example of how a member state could “successfully transplant some of its own normative and political priorities to the EU level”¹⁹⁶. The fact that the Sarkozy administration placed terms like *‘immigration choisie’* or the concept of the *Contrat d’accueil et d’integration* (CAI) in the early drafts of the Pact brought many to the conclusion that “the Pact reflects a French rather than a European perspective”¹⁹⁷. At the same time though, it is assumed to show “how intergovernmentalism can reduce the more extreme excesses of any one country’s vision of European immigration”¹⁹⁸. How is that?

At a second glance, the final version of the Pact seems ambivalent. Even if MIIINDS played a decisive role in drafting and negotiating, several of its priorities were mellowed down by other states such as Spain (neither *‘immigration choisie’* nor the CAI made it to the final version), the remaining French elements being “bound into a complex set of compromises”¹⁹⁹. After all, the Pact had to overcome various frictions, which have been pointed to in earlier sections of this analysis. To name just two: The diverging interests of

¹⁹⁶ Carrera, Sergio/ Guild, Elspeth: “The French Presidency’s European Pact on Immigration and Asylum: Intergovernmentalism vs. Europeanisation? Security vs. Rights?”, Policy Brief No. 170, Centre for European Policy Studies CEPS, September 2008, p.5, see also p.1.

¹⁹⁷ Collett, Elizabeth: “The EU Immigration Pact – from Hague to Stockholm, via Paris”, EPC Policy Brief, European Policy Centre, October 2008, p.2.

¹⁹⁸ Collett: “The EU Immigration Pact”, p.4.

¹⁹⁹ Parkes& Angenendt: “The re-nationalization of migration policy-making?”, p.3.

richer and poorer states were brought together by an emphasis on practical cooperation supposed to create a win-win-situation by reducing pull-factors to the richer states instead of just transferring money to poorer states under the label of solidarity. Also, while eastern and southern member states had been fighting for a while over which region should be a priority of the Global Approach, the Pact foresaw a focus on both Eastern neighbours and the Mediterranean.²⁰⁰

III.5.c The Pact's implications for future policy development

Although the 'Frenchness' of the Pact doesn't seem as dominant as expected, its national bias remains undisputed. Analysts agree that it is "driven by a predominantly intergovernmental logic prioritising the competences of the member states"²⁰¹.

What does the Pact itself²⁰² state?

A look at the text shows repeated references to the Global Approach and a definition of migration as "an integral part of the EU's external relations" (p.2) as well as a restrictive philosophy, visible for instance in the following wording:

The European Union, however, does not have the resources to decently receive all the migrants hoping to find a better life here. Poorly managed immigration may disrupt the social cohesion of the countries of destination. The **organization of immigration must consequently take account of Europe's reception capacity in terms of its labour market, housing, and health, education and social services,** and protect migrants against possible exploitation by criminal networks. (p.3)

Contrary to Collett's assessment that the "idea that Member States have a 'capacity' to receive migrants is new"²⁰³, this is mentioned already in the

²⁰⁰ Parkes& Angenendt: "The re-nationalization of migration policy-making?", p.3.

²⁰¹ Carrera / Guild: "The French Presidency's European Pact on Immigration and Asylum", p.5.

²⁰² 13189/08: Note of the Council of the European Union: European Pact on Immigration and Asylum, Brussels, 24. September 2008.
<http://register.consilium.europa.eu/pdf/en/08/st13/st13440.en08.pdf>

²⁰³ Collett: "The EU Immigration Pact", p.3.

Tampere Programme III.20 (see p.50 of this study). Nevertheless the reappearance of the idea is symbolic of the restrictive notion of the Pact.

The intergovernmental approach becomes obvious as well:

The creation of a common area of free movement also brings **Member States** new challenges. **One Member State's actions may affect the interests of the others.** Access to the territory of one Member State may be followed by access to the others. It is **consequently imperative that each Member State take account of its partners' interests when designing and implementing its immigration, integration and asylum policies.** (p.3)

What is interesting in this wording is the “conceptualization of solidarity as self-interest”²⁰⁴. The Pact itself is then presented in a quite ambitious manner:

... the European Council considers that **the time has come**, in a spirit of mutual responsibility and solidarity between Member States and of partnership with third countries, **to give a new impetus to the definition of a common immigration and asylum policy** that will take account of both the collective interest of the European Union and the specific needs of each Member State. (p.4)

With a hint to the follow-up to the Hague Program, the European Council adopts five “basic commitments” supposed to guide policies in the following years:

- to organize legal immigration to take account of the priorities, needs and reception capacities determined by each Member State, and to encourage integration;
- to control illegal immigration by ensuring that illegal immigrants return to their countries of origin or to a country of transit;
- to make border controls more effective;
- to construct a Europe of asylum;
- to create a comprehensive partnership with the countries of origin and of transit in order to encourage the synergy between migration and development. (p.4, details pp. 5-15)

While the document lines up various examples and proposals (such as the strengthening of FRONTEX or setting a new deadline in 2012 for the common asylum system), “not only does the Pact contain very few specific initiatives,

²⁰⁴ Collett: “The EU Immigration Pact”, p.3.

and nothing on a grand scale; it also contains more ‘don’t’s than ‘do’s’ “²⁰⁵. Analysts have thus found it “difficult to argue the added value of the Pact (...) taking into account the existing normative and institutional setting”²⁰⁶, while others have discovered its main benefit in having been “a catalyst for debate”²⁰⁷. As the multi-annual programmes, it is not legally binding.

In a twist of events, the Pact was in any case not to be at the centre of public attention in any case and for many passed unnoticed: The October 2008 Summit was overshadowed by the unfolding global financial crisis.

III.6 The Stockholm Programme

In 2009 the time had come for the third multiannual programme for the AFSJ – now for a Union in which about 500 million people are free to move and stay wherever they choose, “with Ireland and the UK remaining in splendid and voluntary isolation”²⁰⁸ and Bulgaria, Romania and Cyprus not yet allowed into Schengen. In June 2009, the Commission gave some key data to put the next programme into perspective. Hence, there were 1.636 designated points of entry to the Union, and in 2006 about 900 million people had crossed them. In the same year, 18.5 million third country nationals had been registered, equalling about 3.8% of the population. The Commission estimated an additional eight million irregular immigrants living in the EU. Between 2008 and 2060 the number of persons of working age was expected to fall by 15%, or about 50 million. With regard to asylum, the acceptance of applications continued to be very variable. In 2007, some Member States granted protection in only very few cases, while others had a recognition rate close to 50%.²⁰⁹ Applications had dropped from dramatic

²⁰⁵ Collett: “The EU Immigration Pact”, p.3.

²⁰⁶ Carrera / Guild: “The French Presidency’s European Pact on Immigration and Asylum”, p.7.

²⁰⁷ Collett: “The EU Immigration Pact”, p.2.

²⁰⁸ Guild, Elspeth/ Carrera, Sergio: “Towards the Next Phase of the EU’s Area of Freedom, Security and Justice: The European Commission’s Proposals for the Stockholm Programme”, CEPS Policy Brief No. 196, Centre for European Policy Studies, August 2009, p.2.

²⁰⁹ COM (2009) 262: Communication from the Commission. An area of freedom, security and

heights (440.000 in 1992 in Germany alone) to only 240.000 in the EU 27 in the year 2008.²¹⁰

In this situation, the guidelines of the Stockholm Programme came almost parallel to the entering into force of the Lisbon Treaty on December 1st 2009. As the Commission would sum up in April 2010 with regard to the implementation of Stockholm²¹¹:

The **entry into force of the Lisbon Treaty** enables the Union to demonstrate greater ambition in responding to the day-to-day concerns and aspirations of people in Europe. Firstly, the increased role of the **European Parliament as co-legislator** in most areas and the greater involvement of national parliaments will make the EU more accountable for its actions in the interests of the citizen and enhance the democratic legitimacy of the Union. Secondly, the introduction of **qualified majority voting** in the Council for most policy areas will streamline decision-making. And finally, judicial review will be improved as the **European Court of Justice** will assume judicial oversight of all aspects of freedom security and justice, while the **EU Charter of Fundamental Rights** becomes legally binding. (AP p.3)

To get an impression of the envisioned policies, three relevant documents will be analysed: The Commission's Communication of June 2009, the Stockholm Programme of 2009 and the Action Plan for Implementation of April 2010.

III.6.a Main features of the EU's new policy outline and its Action Plan

III.6.a-i Border control, FRONTEX and technology

While the Commission's communication emphasizes the role of FRONTEX, it mentions a need "to consider a clarification of the international rules in the light of the imperatives of maritime control and surveillance, while preserving the fundamental obligation of rescue at sea" (p.18). This might be a classic example of constructive ambiguity – the technique of putting a controversial idea into so vague a wording that all kinds of interpretation are

justice serving the citizen, Wider freedom in a safer environment, Brussels, 10. June 2009, p.4.
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0262:FIN:EN:PDF>

²¹⁰ Numbers taken from Özcan: "Country Profile Germany", p.4, and COM (2009) 262, p.29.

²¹¹ COM (2010) 171: Communication from the Commission: Delivering an area of freedom, security and justice for Europe's citizens, Action Plan Implementing the Stockholm Programme, Brussels, 20. April 2010, p.3.
http://ec.europa.eu/justice_home/news/intro/doc/com_2010_171_en.pdf

possible to what this “clarification” is actually supposed to mean. Interesting also the paragraph on the black and white visa lists:

... the decision to issue a visa should **gradually move from the presumption of risk associated with the applicant's nationality to an assessment of individual risk**. This development will be made possible by the introduction in the long term of systems that allow collection of advance information on individuals wishing to enter a Member State of the European Union. (p.19)

In the Stockholm Programme, the member states pick up this idea and suggest a study “to what degree an assessment of individual risk could supplement the presumption of risk associated with the applicant’s nationality” (p.58). While this can be read as an opening up to criticism, it anyhow confirms how the presumed European core-value of equality up to this day does *not* apply to third-country nationals, being discriminated on the basis of nationality.

Generally, much faith is expressed to “increased use of new technologies (biometrics, etc.)” (COM 2009 p.18). Analysts observe a temptation inside the Commission to counter problems with technology no matter what, despite experiences in the USA that some of these praised innovations like chips in passports become “forgers’ dream come true”, so that “the only winners in this move are the companies that develop the technologies (...) at the expense of EU tax payers”²¹².

The Stockholm Programme itself argues enthusiastically and

considers that **technology can play a key role** in improving and reinforcing the system of external border controls. The entry into operation of the **SIS II** and the **roll-out of the VIS system** therefore remains a key objective (p.57)

More specifically,

... the European Council looks forward to the continued phased development of the **European Border Surveillance System (Eurosur)** in the Southern and Eastern borders, with a view to putting in place a system **using modern technologies and supporting Member States, promoting interoperability and uniform border surveillance standards** and to ensuring that the necessary cooperation is established between the Member States and with FRONTEX to **share necessary**

²¹² Guild&Carrera: “Towards the Next Phase of the EU’s Area of Freedom, Security and Justice”, p.7.

surveillance data without delay (p.56)

As concrete measures, proposals for and feasibility studies on an entry/exit system, a European system of travel authorisation and automated border controls are encouraged (p.57). Generally, it is stated that “the strengthening of border controls should not prevent access to protection systems by those persons entitled to benefit from them” (SP p.55), but how this should be practically achieved remains as mysterious as before.

III.6.a-ii Legal Migration and Integration

Regarding legal migration, some passages provoke a déjà-vu:

Effective **management of migratory flows is one of the greatest challenges** facing the European Union in coming years, especially in the context of an ageing population. **Immigration plays an important role in the growth of the EU population and will make a crucial contribution to the EU's economic performance** in the longer term. (COM 2009 p.23)

The European Council for its part as always remains a little more cautious and ...

... recognises that labour immigration **can contribute** to increased competitiveness and economic vitality. In this sense, the European Council is of the opinion that the Union should encourage the creation of **flexible admission systems that are responsive to the priorities, needs, numbers and volumes determined by each Member State** and enable migrants to take full advantage of their skills and competence. (SP p.63)

Integration is defined as “a dynamic, two-way process of mutual interaction, requiring not only efforts by national, regional and local authorities but also a greater commitment by the host community and immigrants” (SP p.64). But according to §79 (4) of the Lisbon Treaty integration will remain excluded of any harmonization on the European level.

III.6.a-iii Asylum

While in late 2009 the decision has been made to place the new European Asylum Support Office EASO in Malta, “the European Council recalls that the establishment of a Common European Asylum System (CEAS) by 2012 remains a key policy objective for the EU” (SP p.59). Specific reference is made that “an important objective is to avoid the recurrence of tragedies at sea” (p59).

The Stockholm Programme contains repeated references to human rights in a “common area of protection”:

The development of a Common Asylum Policy should be based on a full and inclusive application of the **Geneva Convention** on the status of refugees and **other relevant international treaties**. Such a policy is necessary in order to maintain the long-term sustainability of the asylum system and to promote solidarity within the EU. **Subject to a report from the Commission on the legal and practical consequences, the European Union should seek accession to the Geneva Convention and its 1967 Protocol.** (p.69)

In spite of such declarations to respect human rights, analysts of the Stockholm Programme have pointed to enduring contradictions within the EU policies: For instance, while the “leading countries of origin of refugees worldwide are (...): Afghanistan, Iraq (together these two account for almost half of the world’s refugees), Colombia, Sudan and Somalia. All of these countries are on the EU visa black list”²¹³.

III.6.a-iv The external dimension and development

The Stockholm Programme strongly emphasizes the Global Approach on Migration and the “original principles of solidarity, balance and true partnership with countries of origin and transit outside the Union” (p.60).

Efforts to promote concerted mobility and migration with countries of origin should be closely linked with efforts to **promote the development of opportunities** for decent and productive work **and improved livelihood options in third countries** in order to **minimize the brain drain**. (p.62)

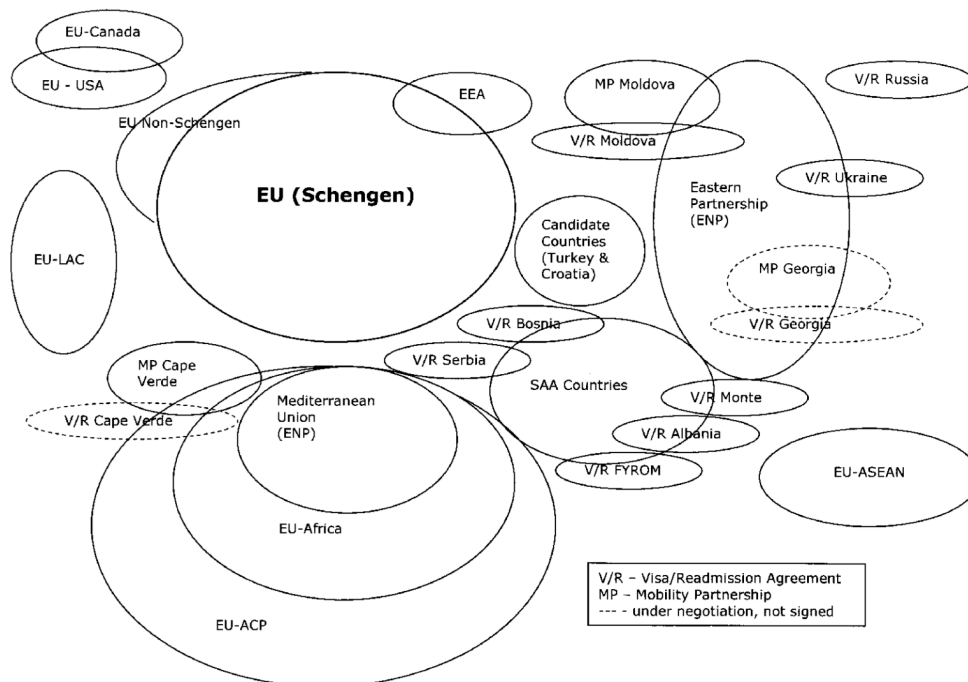
To this end, the European Council asks the Commission – as already in 2005 - for proposals on the support for remittance transfers, the role of diasporas in development, and the concept of circular migration that will be the topic of the next section of this analysis.

III.6.b Stockholm and Lisbon - Where to go from here?

The end of 2009 thus has brought about several new parameters for migration policy making - due to institutional changes in the Lisbon Treaty and the guidelines set by the Stockholm Programme. After 10 years of common efforts, the EU finds itself in a complex network of agreements:

²¹³ Guild&Carrera: “Towards the Next Phase of the EU’s Area of Freedom, Security and Justice”, p.5.

Figure 5: The EU and migration agreements in 2009²¹⁴



Three questions should at this point round up this analysis: What are the perspectives for labour migration? What about the impact of migrants on Europe’s “ticking time-bomb”²¹⁵ of demography? And finally: What are Europeans’ attitudes towards all this now?

III.7 Temporary and circular migration

So what is the near future of labour migration to the EU? The Stockholm Programme states that implementation of the Commission’s Policy Plan on Legal Migration will continue (p.63). That Plan published in December 2005²¹⁶ had argued that

With regard to economic immigration, the current situation and prospects of EU labour markets can be broadly described as a **“need” scenario**. Some Member States

²¹⁴ Figure taken from Collett: “Beyond Stockholm”, p.84.

²¹⁵ Favell&Hansen: “Markets against politics”, p.12.

²¹⁶ COM(2005) 669: Communication from the Commission: Policy Plan for Legal Migration, Brussels, 21. December 2005. http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0669en01.pdf

already experience substantial labour and skills shortages in certain sectors of the economy, which cannot be filled within the national labour markets. This **phenomenon concerns the full range of qualifications - from unskilled workers to top academic professionals.** (Policy Plan, p.4)

But while the Policy Plan had announced a framework directive along with four specific directives concerning highly skilled workers, seasonal workers, transfers of multi-national companies and remunerated trainees, by 2009 only the Blue Card had finally been agreed upon. Starting June 2011, highly qualified applicants with a job offer meeting a minimum salary threshold can apply for a Blue Card, that will entitle them to privileges such as family reunification after six months and a fast-track to long-term residence status. Also, intra-EU mobility is facilitated – but the free choice of moving between member states didn't survive negotiations.²¹⁷

What still is missing, though, are plans to open channels for legal low-skilled migration. Although the Commission has admitted shortages in all categories, policies throughout the 2000s have neglected the low-skilled segment, due to a constant resistance of member states, as outlined in earlier Chapters.²¹⁸ “Europe's failure to face up to the realities of the situation leads to the great hypocrisy of modern migration policy (...): the systematic use of undocumented migrants workers, who are denied many of the rights laid down in the human rights instruments and labor conventions endorsed by these same countries”²¹⁹.

What in this context seems most striking is a reorientation towards temporary migration schemes against a backdrop of “the influence and expansion of a utilitarian, selective and economically-oriented approach”²²⁰. But the *Gastarbeiter* concept of the 1950s and 1960s had failed spectacularly

²¹⁷ Collett: “Beyond Stockholm”, p.36.

²¹⁸ Castles, Stephen: “Guestworkers in Europe: A Resurrection?”, *International Migration Review* IMR, Volume 40, No. 4, Winter 2006, p.750.

²¹⁹ Castles: “Guestworkers in Europe: A Resurrection?”, p.760.

²²⁰ Carrera: “Building a Common Policy on Legal Immigration”, p.2.

– so what is happening now?

The report of the *Global Commission on International Migration* for instance in 2005 suggested a careful reintroduction of temporary migration programmes while avoiding issues of the past by appropriate policy settings, and this idea is being picked up by more and more states.²²¹ Problems though seem numerous: How to ensure that temporary migrants really don't stay, given that "it is very hard for democratic countries to force former guestworkers to leave"²²². Moreover, integration can be a huge issue. In the case of long-term employment, "the workplace and the trade union were sites of interethnic communication and integration", a coming and going of temporary workers hence may have "negative effects on social integration and intergroup relations"²²³, as has been observed in the case of contract workers.

But while the classic *Gastarbeiter* was supposed to come and go only once, in the age of ever-increasing human mobility the EU is now considering seemingly more innovative models, as stated in the Stockholm Programme:

... to further explore the concept of circular migration and study ways to facilitate orderly circulation of migrants, either taking place within, or outside, the framework of specific projects or programmes including a wide-ranging **study on how relevant policy areas may contribute to and affect the preconditions for increased temporary and circular mobility** (p.62)

To this end, the Commission has developed a number of suggestions, such as for the introduction of multi-entry visas, the possibility of moving back and forth without consequences to the legal status, or the facilitation of portability of contributions to social security.²²⁴

The Stockholm Programme further announces

²²¹ Castles: "Guestworkers in Europe: A Resurrection?", p.748.

²²² Castles: "Guestworkers in Europe: A Resurrection?", p.747.

²²³ Castles: "Guestworkers in Europe: A Resurrection?", p.751.

²²⁴ Collett: "Beyond Stockholm", p.33.

continued and expanded use of **the Mobility partnership instrument as the main strategic, comprehensive and long-term cooperation framework for migration management** with third countries, adding value to existing bilateral frameworks. (p.61)

A mobility partnership is a joint declaration negotiated by the Commission on behalf of interested member states with a third country that has cooperated substantially in the EU's fight against irregular migration. It allows mainly for facilitated temporary and circular migration and promises a win-win-win-situation for EU member states, the third country and its citizens.²²⁵

The policy tool originates in an initiative of France and Germany for a "New European Migration Policy" presented in October 2006 by their Interior Ministers Sarkozy and Schäuble:

We do **not want uncontrolled immigration into our labour markets and our social security systems**. In order **to promote circular migration, quotas should be set** for the migration of labour into certain occupations...in order for the concept of circular migration to succeed, it **is important that migrants return to their countries** of origin after their stay in an EU member state. ...Finally, we also have to **make sure that the countries of origin unconditionally comply with their obligation to readmit those migrants who do not want to return voluntarily**.²²⁶

In a Communication on Circular Migration and Mobility Partnerships of May 2007, the Commission accordingly announced that the EU would create possibilities

to come to the EU **temporarily for work, study, training or a combination of these** on the condition that, at the end of the period for which they were granted entry, **they must re-establish their main residence and their main activity in their country of origin**. Circularity can be enhanced by giving migrants the **possibility**, once they have returned, **to retain some form of privileged mobility** [to] and from the Member States where they were formerly residing (...).²²⁷

In May 2008, the two first mobility partnerships were adopted: Between Moldova and 15 EU member states as well as between Cape Verde and four

²²⁵ Carrera / Sagrera: "The Externalisation of the EU's Labour Immigration Policy", p.1.

²²⁶ Passage of "New European Migration Policy", quoted in Carrera&Sagrera: "The Externalisation of the EU's Labour Immigration Policy", p.11.

²²⁷ Passage of COM (2007) 248, quoted in Carrera&Sagrera: "The Externalisation of the EU's Labour Immigration Policy", p.14.

member states. While the respective provisions in the two declarations vary, substantial criticism towards the concept as such has been expressed. Thus, the partnerships “advocate a normative framing of the phenomenon of migration driven by the public policy ambition of controlling the human movements of foreigners in a way that prevents their social settlement, permanent residence and social integration (...), not (being) treated as workers and human rights holders, but as economic units”²²⁸.

Since the joint declarations are in the category of ‘soft law’, to be shaped by the participating EU states, third country nationals may be left in vulnerable situations. Carrera and Hernández I Sagrera observe a similar tendency as Castles: “Circular migration is a return to the public authorities’ illusion that migration can be controlled as a temporary phenomenon, and now even as a circular one”²²⁹.

The EU proclaims a vision of “solidarity, balance and true partnership with countries of origin and transit outside the Union” in the Stockholm Programme (p.60). With regard to what has been discussed above, this seems at least for now highly doubtful. Rather, both third countries and third country nationals seem to be of secondary importance in the rationale of the EU’s current policies, being pushed into compliance with European security and economic interests. What is more, the rewarding of certain countries cooperating in security and migration issues “opens up a whole series of questions in relation to the differential treatment being established for individuals depending on their nationality”²³⁰.

As Castles sums up, “the EU and its Member States seem still to be trying to *import labour, not people* – just as the Western European countries did 40 years ago.”²³¹ But additionally to the moral dimension of expected negative

²²⁸ Carrera&Sagrera: “The Externalisation of the EU’s Labour Immigration Policy”, p.2.

²²⁹ Carrera&Sagrera: “The Externalisation of the EU’s Labour Immigration Policy”, p.33.

²³⁰ Carrera&Sagrera: “The Externalisation of the EU’s Labour Immigration Policy”, p.3.

²³¹ Castles: “Guestworkers in Europe: A Resurrection?”, p.760.

consequences for migrants, is the EU sabotaging itself by bringing in immigrants for the short term, while its own need proves to be long-term?

III.8 Migrants, demography and the welfare state

As mentioned earlier, the EU has repeatedly acknowledged its demographic problem. In a Communication of October 2006²³², the Commission identified five key areas for action, among those immigration and integration. In its latest Demography Report²³³, a rather dramatic scenario of ageing is presented. Whereas women in the area of EU 25 in 1935 on average had 2.37 children, indicators for today's generation expect an average of 1.5 children only. Life expectancy has grown to 81.5 years (women) and 75.2 years (men) in the EU 27 in 2004 – ten years more than four decades earlier.

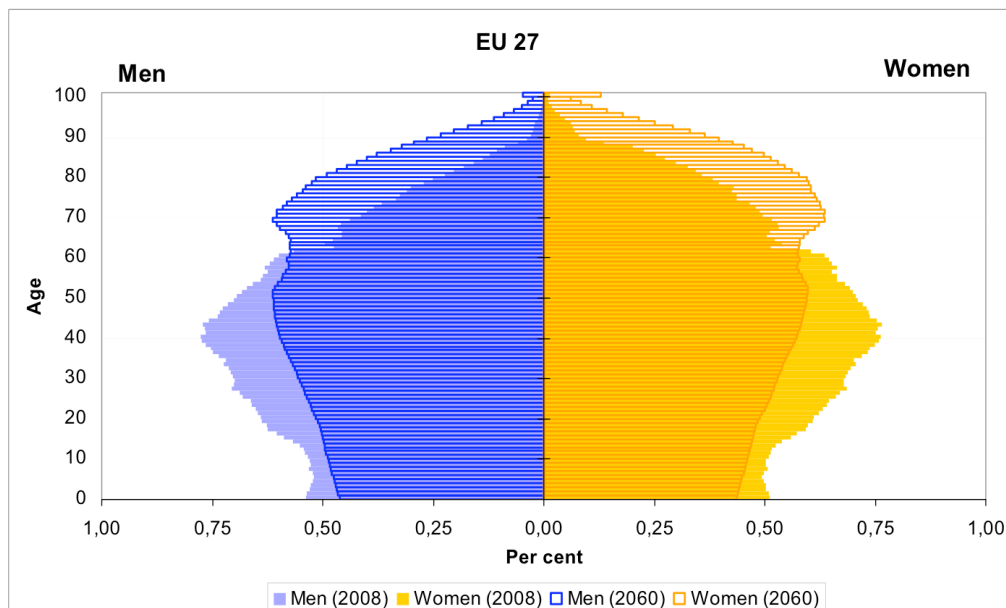
While demographic projections based on fertility, mortality and migration expectations are constantly readjusted, the trend seems certain “as far as the long-term evolution of the demographic old-age dependency ratio (people aged 65+ in relation to people aged 15-64) is concerned”²³⁴.

²³² COM (2006) 571: Commission Communication: The demographic future of Europe – from challenge to opportunity, Brussels, 12.10.2006. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0571:FIN:EN:PDF>

²³³ SEC (2008) 2911: Commission Staff Working Document: Demography Report 2008: Meeting Social Needs in an Ageing Society, Executive Summary, Brussels, 2008. <http://ec.europa.eu/social/main.jsp?langId=en&catId=502&newsId=419&furtherNews=yes>

²³⁴ SEC (2008) 2911: Demography Report 2008, p.6.

Figure 6: Prognosis on Europe's population structure in 2008 and 2060



Source: Eurostat, EUROPOP2008 convergence scenario

Today's dependency ration is "at 0.25, meaning that, for every person aged 65 or over, there are four people of working age (15-64). In 2050, there will be only two people of working age for every person aged 65+"²³⁵. While such developments need to be countered by new family and social policies, the Commission also counts on immigration as a helpful factor in this situation. According to its data, the EU 27 population has increased by about 15.5 million due to net migration between 1995 and 2007, while "immigration plays a very different role in national population dynamics across the Member States"²³⁶.

Western and Northern European states such as France combine high life expectancy with a high living quality and relatively high birth rates and seem on the safer side. Here, population is not expected to shrink significantly.²³⁷

²³⁵ SEC (2008) 2911: Demography Report 2008, p.6.

²³⁶ SEC (2008) 2911: Demography Report 2008, p.13.

²³⁷ Leunig, Ragnar: "EU – Erweiterung, Arbeitsmigration und demographische Entwicklungen in Europa", 2007, p.9.

In contrast, central and southern European countries are about to experience massive demographic changes. There, the average of children per woman has fallen to between 1.3 and 1.4. In Germany the negative trend has been recently confirmed by a new low – 30.000 babies less being born in 2009 than in 2008, hence a drop of 3,6%.²³⁸ In Italy the situation is quite similar, as described already in Chapter 2. This demographic decline may lead to dramatic consequences. *“Für Deutschland hieße das: Bei der derzeitigen Geburtenrate und ohne Zuwanderung würde die Bevölkerungszahl von jetzt 82 auf 56 Millionen im Jahre 2050 zurückgehen, was allein schon katastrophale Folgen für Rentenzahlungen, Steuereinkünfte, Konsum, Bildungswesen und viele andere Bereiche hätte. Nur wenn die Geburtenrate auf 1,7 steigen würde und gleichzeitig mindestens 300.000 mehr Menschen einwandern als auswandern, könnte die Bevölkerungszahl von etwa 80 Millionen gehalten werden”*²³⁹. Central-Eastern and Eastern European countries in the mid and long term are expected to experience demographic decline, too.²⁴⁰

In the discussion on a possible breaking down of European welfare systems, the impact of immigration is discussed controversially. As Boeri sums up, a large influx of immigrants in the short run improves balances, but such effects even out with time, since migrants themselves will draw pensions later. But the temporary relief may be complemented by two scenarios: “a long vesting period to qualify for social insurance, may prevent short-term migrants to reap the benefits of their past contributions”, hence “the host country is free-riding on social security contributions of migrants”²⁴¹. While

²³⁸ “Neue Daten: Geburtenzahl in Deutschland sinkt dramatisch”, Spiegel Online, 17.5.2010. <http://www.spiegel.de/wissenschaft/mensch/0,1518,695184,00.html>

²³⁹ Leunig: “Erweiterung, Arbeitsmigration und demographische Entwicklungen “, p.10.

²⁴⁰ Leunig: “Erweiterung, Arbeitsmigration und demographische Entwicklungen “, p.13.

²⁴¹ Boeri, Tito: “Immigration to the Land of Redistribution”, Discussion Paper No. 4273, Forschungsinstitut zur Zukunft der Arbeit IZA, June 2009, p.12.

such taking advantage seems ethically extremely questionable, “a second factor improving the sustainability of the pension system in the destination country is the increase in fertility generally associated with migration. However, the effect of migration on fertility is typically transitory”²⁴².

In public discourse, however, usually a quite different aspect prevails: many perceive immigrants to benefit over proportionally from welfare systems. Public fears of immigrants as a fiscal burden have led to governments “tightening up migration policies and cutting on welfare access by migrants”²⁴³, increasingly so in the economic crisis.

Thus, migration to Europe does and will lead to discussion about the relation between migration and the welfare state. After the “nation state became one of the most important organizational entities for social solidarity”, the realities of the 21st century will confirm that it is “neither possible nor desirable to deny new arrivals access”²⁴⁴. As the case studies have illustrated, so far European states have found different answers to this. It seems one of the biggest challenges for future EU migration policies to identify ways in which inclusion of immigrants in the welfare systems can improve the social integration of the newcomers as well as the stability of the existing systems.

Many immigrants on their part seem to be taking a more self-confident attitude to what benefits they already bring. One example is the first *‘journée sans immigrés’* on March 1st 2010, where in several countries - including France and Italy - non-European residents put down work for one day to raise Europeans’ awareness on how dependent their societies have already become.²⁴⁵

²⁴² Boeri: “Immigration to the Land of Redistribution”, p.12.

²⁴³ Boeri: “Immigration to the Land of Redistribution”, p.2.

²⁴⁴ Mau, Steffen/ Burkhardt, Christoph: “Migration and welfare state solidarity in Western Europe”, *Journal of European Social Policy*, Volume 19, 2009, p.214.

²⁴⁵ See <http://www.lajourneesansimmigres.org/fr/>, for Italy see <http://www.la-journee-sans-immigres.org/ext/http://primomarzo2010.blogspot.com/2009/10/chi-siamo.html>

III.9 Europeans' attitudes towards migrants – survey insights

So what do European citizens think about all this? Beyond doubt public attitudes towards migrants will be a crucial factor in the evolution and the success or failure of policies both on the national and common level. Selected results of three studies shall give some insight.

Martínez-Herrera and Moualhi in their analysis of the European Social Survey (ESS) of 2002-2003 have found quite different attitudes in western European countries. For instance, while 86% of Swedes were in favour of granting similar rights to immigrants, Germans expressed the most reluctance with only 56% in favour. Generally, immigrants from wealthy countries were more welcomed than those coming from poor countries.²⁴⁶ “Yet, one surprising finding is that western European citizens do not demonstrate a significantly different attitude with respect to whether immigrants are from Europe or from outside Europe”²⁴⁷.

Masso, looking at the ESS 2004-2005, sees general in-group/out-group dynamics confirmed, since openness gradually sinks - with most caution expressed towards non-Europeans from poor countries.²⁴⁸ As to how Europeans perceive the impact of migrants, “although most individuals have pointed out that immigrants could enrich the country’s cultural life, the judgements are more sceptical regarding the positive influences on the country’s economy and on the general quality of life”²⁴⁹.

²⁴⁶ Martínez-Herrera, Enric/ Moualhi, Djaouida: “Predispositions to discriminatory immigration policies in western Europe: An exploration of political causes”, *Portuguese Journal of Social Science* Volume, Volume 5, No. 3, 2006, p.218, also 227.

²⁴⁷ Martínez-Herrera / Moualhi: “Predispositions to discriminatory immigration policies in western Europe”, pp.227-228.

²⁴⁸ Masso, Anu: “A Readiness to Accept Immigrants in Europe? Individual and Country-Level Characteristics”, *Journal of Ethnic and Migration Studies*, Volume 35, No.2, February 2009, p.261.

²⁴⁹ Masso: “A Readiness to Accept Immigrants in Europe?”, p.262.

While Masso concludes that personal characteristics shape an individual's attitude towards immigration most, the ESS does show differences on the macro-level. Thus, more negative general attitudes prevailed in Hungary, Slovakia, Greece and Portugal, while Germany, France and the UK were in the medium group, the most positive attitudes having been found in the Nordic countries as well as in Ireland and Spain.²⁵⁰

Most recent data – taking into consideration the global economic crisis - is supplied by the project *Transatlantic Trends*, which carried out an international survey on the topic in September 2009. Here, in all countries polled scepticism had grown, more respondents than in 2008 seeing immigration as 'more of a problem than an opportunity' (ranging from 43% in France to 66% in the UK). What catches the eye is how immigrants' numbers are overestimated in all countries: In France respondents thought 26% of the country's population to be immigrants, although OECD data indicates only 9% as actually foreign-born. In Germany, the ratio was 23% to an actual 13%, in Italy 23% to 6.5%.²⁵¹ While these data need to be interpreted with extreme care due to differing national definitions and data collection methods, as pointed out in Chapter 1, the general misperceptions remain striking and may explain a lot of negative attitudes.

In the European average, 31% of respondents thought that 'immigrants take jobs away from native-born workers' and 42% that 'immigrants bring down wages'. *Transatlantic Trends* suggests that personal economic situations of respondents had a limited affect on attitudes compared to their political affiliation on the left-right spectrum.²⁵²

An average of 62% of Europeans expressed the opinion that immigrants benefit more from welfare systems than they contribute to them.

²⁵⁰ Masso: "A Readiness to Accept Immigrants in Europe?", p.262.

²⁵¹ Transatlantic Trends: Immigration, Key Findings, 2009, pp.6-7. www.transatlantictrends.org

²⁵² Transatlantic Trends: Immigration, p.8.

A general tendency across Europe seems a marked distinction in attitudes towards irregular and towards legal migrants, with up to 71% of Spaniards and 81% of Italians worried about irregular migrants. An average of 37% of Europeans thinks that legal immigrants increase crime rates, compared to 61% agreeing to this statement about irregular immigrants. Here again there are huge differences of attitudes in countries: While in France 24% expressed such suspicions against legal and 31% against irregular migrants, in Italy 34% and a whole 77% respectively.²⁵³

Opinions on desirable features of immigrants vary as well: For instance, only 44% of French, but 74% of German respondents said that advanced education was important. More consensus was found when 69% in the European average did not consider a Christian background as important, but huge majorities in all countries stressed knowledge of the national language and a job offer as preconditions for admission to entry. Unanimously positive also the attitudes towards future climate refugees: 68% of Europeans are in favour of letting them relocate here.²⁵⁴

One of the most interesting findings, though, is the assessment of effective means to counter irregular immigration. While, as has been explained throughout Chapter 3, many EU measures have focused on the reinforcement of border controls, only 24% of European respondents saw this as the most effective means – agreement especially low in the countries with southern sea borders such as France (16%), Spain (21%) and Italy (22%). By contrast, increased development aid is favoured by 44% of French, 45% of Italians and 51% of Spanish respondents, the European average being 35%. Employer sanctions with a European approval average of 25% seem to be a quite German notion: There, 37% consider this the most effective measure against

²⁵³ Transatlantic Trends: Immigration, pp.10-12.

²⁵⁴ Transatlantic Trends: Immigration, p.13, p.26.

irregular influx, which may reflect a relatively high confidence of Germans in the efficiency of their political system, for instance compared to Italians.²⁵⁵

Finally, with regard to integration, Europeans consider 'unwillingness of immigrants' to be the greatest obstacle (48%) rather than 'discrimination by society' (36%). Here once more, country averages differ significantly: While in Italy (47%) and France (48%) more people see the problem in discrimination, in Germany this assessment is reversed: There, only 27% share this view, while an overwhelming 60% blame immigrants.²⁵⁶

Concerning governments' immigration management, approval rates range from 71% in Germany to 50% in France and only 43% in Italy. EU policy makers can feel encouraged: An European average of 58% expressed support for decision making on immigration on the common level – a negative outlier being the non-Schengen-member UK with approval of only 30%.²⁵⁷

Conclusion

Migration to Europe has proven to be as complex as its consequences. The case studies have shown how reactions of national publics and politicians as well as European decision makers have included repressive, identitarian, functionalist, multicultural and solidarist elements in varying constellations.

While some member states have known immigration for generations, others are only now getting acquainted with it. In the last decade, Europe has developed complicated multi-level governance of migration matters, member states transferring some aspects like visa policy and asylum matters in large parts to the EU level, while vehemently keeping others such as legal migration and integration to themselves.

²⁵⁵ Transatlantic Trends: Immigration, p.16.

²⁵⁶ Transatlantic Trends: Immigration, p.22.

²⁵⁷ Transatlantic Trends: Immigration, p.24.

The persistent intergovernmental nature of much of EU migration policy making has in the eyes of most observers prevented proactive, farsighted policies on a grand scale. The common market and the abolishment of internal borders have made European states interdependent as never before, but these have been reluctant to embrace all the consequences. Given national differences, many decisions seem half-hearted or simply have not been taken at all. It will be interesting to see how the new institutional setting of the Lisbon Treaty will change things.

Immigration in some parts of Europe has already caused profound social changes. While a country with its own emigration history like Spain has campaigned for openness with black-and-white posters of Spaniards leaving the country and slogans like “Your grandfather sat on a suitcase, too”, elsewhere empathy so far is lacking. Tendencies are contradictory: Long-term immigrants become part of society and as potential voters of mainstream parties will increasingly influence the political agenda, while xenophobia and hostility remain an issue, as the success of the extreme-right in national as well as the European elections of June 2009 have underlined.²⁵⁸

The EU and its member states regularly point to their commitment to human rights, but politics don’t always fit the rhetoric. The Commissioner for Human Rights of the Council of Europe and others regularly criticize violations, for instance through criminalisation and repressive measures against irregular migrants that could never be applied to citizens, such as detention without charge or conviction.²⁵⁹ As discussed, authorities continue to violate the principle of non-refoulement and basic rights of detainees.

As discussed, migration has and will have major impacts on the economic development future of the EU as well as of countries of origin. The consequences of a persistently unbalanced global governance of trade and

²⁵⁸ Guibernaut: “Migration and the rise of the radical right”, p.11.

²⁵⁹ Guild: “Criminalisation of Migration in Europe”, Issue Paper Council of Europe, p.38-39.

economy will most probably force more and more persons to leave their home countries. This leads many to denounce the notion of *'immigration choisie'* as a euphemism for luring elites out of poor countries - thereby destroying any chance whatsoever to overcome the miserable conditions there-, while at the same time rejecting those who are victims of these developments at the borders or degrading them to leading precarious lives in Europe's underground economies.

Extreme functionalism – policymaking considering nothing but perceived advantages – carries its own risks and may lead to “situations where the Other is dehumanised and regarded as an economic unit that can be used”²⁶⁰. Furthermore, neither is there an overall definition of who is highly skilled and who is not nor is consensus in sight on who is needed to come to and who should stay away.²⁶¹

Generally, there seems to be no easy one-fits-all solution to migration issues, but rather fundamental conflicts of interests along various lines: between the rapidly ageing EU in need of labour force and poor third countries, between EU countries themselves, between employers and employees, citizens and newcomers and so on.

Decision makers often are lost confronted with such problems, as for instance a spokesman on migration policy of the German DGB had to admit: *“Wir als Gewerkschaft sind nicht der Auffassung, dass man Europa so abschotten muss, haben aber kein ordentliches Konzept dafür”*²⁶². Policies manoeuvring between ideology-driven restriction and demand-driven

²⁶⁰ Carrera: “Building a Common Policy on Labour Immigration”, p.12.

²⁶¹ Carrera: “Building a Common Policy on Labour Immigration”, p.13-14.

²⁶² Antje Bauer: “Massenzuwanderung von Geringqualifizierten muss man vermeiden. Interview mit Volker Roßocha, Leiter des Referats Migrationspolitik beim DGB-Bundesvorstand, zu Migration”, *Edition Le Monde diplomatique* N°4 *Immer der Arbeit nach*, 2008, p.63.

liberalization at times have bizarre side effects such as the 'Pro Illegal Labour Committee' of employers in Northern Italy in 2001.²⁶³

With concepts of temporary and circular migration, the question arises if it is even theoretically conceivable to escape the dilemma of either fuelling brain drain - by giving incentives to stay -, or of falling into the *Gastarbeiter* trap - by trying to avoid permanent settlement, which is likely to fail and have negative affects on integration.

Too often, debates and political choices in Europe are detached from the individual life plans of migrants and realities in the countries of origin. Policy making without migrants will not render best results. It seems only reasonable to consider practical experiences, background knowledge of circumstances in countries of origin and transit, intercultural competence and so on.²⁶⁴

Especially for the uncounted irregular migrants who try to enter the EU, the prospect of 'the modest miracle of a normal life' seems to justify the risk of life. This renders absurd an externalising and restrictive EU border policy, even more so when considering that for many, frontiers are not recognisable or are culturally regarded as artificial constructs – for instance in the vast desert strips of North Africa.²⁶⁵ Where persons are ready to do virtually anything to get away, where conditions of life have worsened "from an individual's desire for a better standard of living to the desire that 'any standard of living is better than none'"²⁶⁶, repressive policies will not solve the problem. "Europe will still be their 'Amerika'"²⁶⁷.

²⁶³ Zincone: "The Making of Policies", p.362.

²⁶⁴ Hamood: "EU-Libya Cooperation on Migration", p.37.

²⁶⁵ Hamood: "EU-Libya Cooperation on Migration", p.35-36.

²⁶⁶ Masso: "A Readiness to Accept Immigrants in Europe?", p.253.

²⁶⁷ Favell&Hansen: "Markets against politics", p.598.

Increasingly so, the problem of future climate change refugees enters the immigration discourse. Since this trend is foreseeable, the question is what to do about it now. In line with European citizens' opinion that policies should focus on aid instead of repressive measures, the EU may do well in deepening its Global Approach through sustainable global climate policies if it wants to avoid unknown dimensions of refugee movements in upcoming decades.

As three of the most prominent migration scholars, Bigo, Carrera and Guild, have pointed out, the demographic changes in Europe require "a dramatic re-thinking of EU policies towards third-country nationals. The EU must become a more welcoming place"²⁶⁸. It seems a symptomatic detail that for instance the website of the *Office Français de l'Immigration et de l'Intégration* OFII features versions in English, German, Italian and Spanish, but not in Arab, Chinese or other languages of non-European regions of origin.²⁶⁹

Obsession with security will lead nowhere, since it is "against the very idea of freedom of movement and of citizenship at the EU level to consider neighbours and foreigners as potentially hostile"²⁷⁰. Nevertheless, after the considerations throughout this analysis, the picture of 'fortress Europe' seems to be simplifying. Carling instead suggests the metaphor of "a dense jungle with various paths, each associated with specific obstacles, costs and risks"²⁷¹. The future on both sides will look very different according to how Europeans choose to further shape this jungle.

²⁶⁸ Bigo, Didier/Carrera, Sergio&Guild, Elspeth: "What Future for the Area of Freedom, Security and Justice? Recommendations on EU Migration and Borders Policies in a Globalising World", CEPS Policy Brief, No.156, March 2008, p.3.

²⁶⁹ <http://www.ofii.fr/>

²⁷⁰ Bigo/Carrera&Guild: "What Future for the Area of Freedom, Security and Justice?", p.4.

²⁷¹ Carling, Jørgen: "European Strategies for Reducing 'Unwanted' Immigration", DIIS Brief, Danish Institute for International Studies, April 2007, p.8.

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