

Adapting the European Immigration Policy in the Context of the Migration Pressure

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Abstract

This paper aims to present a general perspective in implementing the European immigration policy and some of the findings, regarding the challenges how this policy should be adapted reformed in order to respond to the threats of the EU is facing today.

The methodology used is preponderantly qualitative and it is based on the analysis of official documents, case study and EU Court of Justice case law and it will be divided into main parts. The first part concerns the area of free movement and it is analysing how the Union should adapt in order to not affect the right of free movement, taking also into consideration the rules relating to the absence of internal border controls. The second part of the research is analysing how the EU adapted its rules and policy regarding illegal immigration and unauthorised residence, and combating human trafficking.

The final objective of the paper is to observe if the EU – as a system, has the capacity to adapt its rules and policies in order to face the challenges and manage the crisis it is facing today. Immigration in Europe, if managed well, has the potential to address many key challenges facing certain Member States, including population ageing, the constantly changing demands of economies, and increased need for competitiveness in the global economy.

Key words:

1. Introduction: the context of migration pressure in the EU

1.1. Aspects regarding migration

Migration is as old as history, and by no means a new phenomenon. An interesting statement is saying that: “*For much of human history, movement – migration - has been the norm: an endless search for new hunting grounds, new pastures, new sources of goods to be traded, new means of work. The rise of the modern state changed all that.*”²

Trying to do a clarification of terms, we will start from saying that the most general category are *the foreign population or foreigners*, which refers to persons who are not citizens of the country in which they reside, including persons of unknown citizenship and stateless persons. From this perspective we can include here migrants and the refugees.

Regarding the concept of *migrant*, de jure it includes, and in the early stages of EC (European Community) integration primarily referred to EU nationals and their family members moving to another Member State or to third country nationals falling within the scope of agreements between the Community and third States or moving as posted workers within the framework of an EU company providing services in another Member State³.

Migration refers to the number of migrants, people changing their residence to or from a given area (usually a country) during a given time period (usually one year). Immigration is 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.⁴

Currently, migration is one of the major socio-economic and political challenges European Union are facing. (Im) migration mostly describes the movement of non-EU nationals, also called Third Country Nationals (TCNs), to the EU and is often approached by governments and the public as something that needs to be controlled, managed, monitored and/or prevented.

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² Harris, Nick. 2002. Thinking the Unthinkable: The Immigration Myth Exposed, I.B. Tauris Publisher, London. p.54

³ Papagianni, Georgia. 2006. Institutional and Policy Dynamics of EU Migration Law, Martinus Nijhoff Publishers, Leiden, p.20

⁴ See Article 2 of the Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers

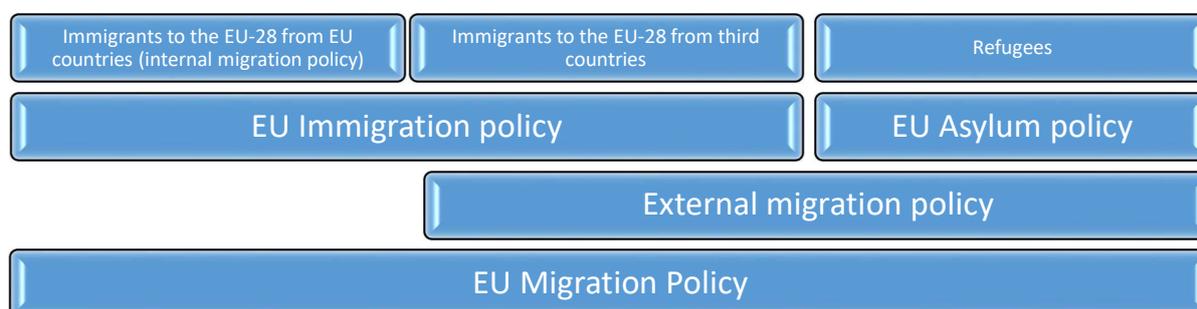
The European Commission also indicates also some categories of migrants by considering them being part of some integration programs, such as: economic migrants; immigrants admitted through family reunification process; refugees and persons enjoying international protection.⁵

In this category it can be included a special category of migrants, *the refugee*. It means a third-country national who

- owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group is outside the country of nationality and is unable or,
- owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear.⁶

Generally, at the EU level, these person benefits from Asylum is a form of protection given by a state on its territory based on the principle of non-refoulement (no repulsing/sending back) and internationally or nationally recognised refugee rights.

Figure 1: Aspects of the EU migration



Source: Author

As it could be observed in the Figure 1 migrant we choose to include in the migrant category those of immigrants and refugees, making the differentiation that at the EU level the immigrant is someone who chooses to move) from and EU country to another or from a third country to another) and a refugee is someone who has been forced to move from their home. Other differentiation if that refugees are protected from being deported or returned to situations that might threaten their lives. Being part of the EU asylum policy They are to be given access to social services and to be integrated into their new country's society. Im(migrants) are subjected to member states immigration laws and the EU immigration policy and procedures and can be turned away or deported back to their homeland.

1.2. Dimensions of migration in the EU

It can be observed that there is growing European interest in immigration as migrants become an increasingly significant presence in Member States. The heightened prominence of the issue of immigration in public debates and policy agendas comes from several directions. For example, there has been increasing interest in immigration and the global movement of people due to concerns around terrorism, which has been associated with pressure towards tighter controls on immigration. At the same time, economic and labour market perspectives emphasize the need for migrants to fill the skill and labour needs of European economies, even as there is concern from certain quarters that an influx of migrant workers can have detrimental effects on wages and employment amongst native workers.

⁵ Berceanu, Bogdan, Nicolescu, Cristina, Manda Cezar. 2016. *Case study on the situation of migrant women in the EU and Romania*. Revista Romana de Drept European, Special Issue, Wolters Kluwer Publishing House, pp. 129-141

⁶ Article 2, the Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, EU Official Journal, L 337, 20.12.2011, p. 9–26

In order to understand the dimension of the migration issue at the EU level, we will use the official statistics published by the Eurostat. According to this statistics, and as can be observed in the figure bellow (Table 1), A total of 4.4 million people immigrated to one of the EU-28 Member States during 2017, while at least 3.1 million emigrants were reported to have left an EU Member State. However, these total figures do not represent the migration flows to/from the EU as a whole, since they also include flows between different EU Member States.

Table 1: Immigration by citizenship

	Total immigrants		Nationals		Non-nationals							
	(thousand)	%	(thousand)	%	Total		Citizens of other EU Member States		Citizens of non-member countries		Stateless	
					(thousand)	(%)	(thousand)	(%)	(thousand)	(%)	(thousand)	(%)
Belgium	126.7	17.5	13.8	108.5	85.6	60.2	47.5	48.3	38.1	0.0	0.0	
Bulgaria	25.6	13.1	51.0	12.5	48.9	0.6	2.5	11.8	46.2	0.0	0.2	
Czechia	51.8	4.5	8.7	47.3	91.3	16.6	32.0	30.7	59.3	0.0	0.0	
Denmark	68.6	19.5	28.5	49.0	71.5	25.6	37.3	23.1	33.6	0.4	0.6	
Germany ⁽¹⁾⁽²⁾	917.1	124.4	13.6	788.9	86.0	395.0	43.1	391.5	42.7	2.4	0.3	
Estonia	17.6	8.5	48.5	9.1	51.4	4.6	25.9	4.5	25.5	0.0	0.0	
Ireland	78.5	26.4	33.7	51.2	65.2	28.5	36.3	22.7	28.9	0.0	0.0	
Greece	112.2	31.7	28.3	80.5	71.7	17.2	15.3	63.3	56.4	0.0	0.0	
Spain	532.1	78.2	14.7	454.0	85.3	139.4	26.2	314.2	59.1	0.3	0.1	
France	370.0	128.0	34.6	242.0	65.4	74.5	20.1	167.5	45.3	0.0	0.0	
Croatia	15.6	7.9	50.9	7.6	49.1	2.2	14.1	5.4	35.0	0.0	0.0	
Italy	343.4	42.4	12.3	301.1	87.7	61.1	17.8	240.0	69.9	0.0	0.0	
Cyprus	21.3	4.0	18.6	17.4	81.4	9.3	43.7	8.0	37.7	0.0	0.0	
Latvia	9.9	4.8	48.2	5.1	51.7	0.7	7.5	4.4	44.1	0.0	0.1	
Lithuania	20.4	10.2	49.9	10.2	50.1	0.7	3.4	9.5	46.5	0.0	0.2	
Luxembourg	24.4	1.2	4.9	23.2	95.0	16.7	68.3	6.5	26.6	0.0	0.0	
Hungary	68.1	31.6	46.4	36.4	53.5	11.2	16.4	25.3	37.1	0.0	0.0	
Malta	21.7	1.5	6.8	20.2	93.2	11.7	54.2	8.5	39.0	0.0	0.0	
Netherlands	189.6	44.6	23.5	143.7	75.8	72.6	38.3	68.6	36.2	2.5	1.3	
Austria	111.8	9.7	8.7	102.0	91.2	64.4	57.6	37.4	33.4	0.3	0.3	
Poland ⁽²⁾⁽³⁾	209.4	132.8	63.4	76.6	36.6	22.7	10.8	53.8	25.7	0.1	0.0	
Portugal ⁽²⁾	36.6	20.2	55.3	16.4	44.7	7.6	20.8	8.8	24.0	0.0	0.0	
Romania ⁽²⁾	177.4	146.3	82.5	26.8	15.1	9.2	5.2	17.5	9.9	0.1	0.1	
Slovenia	18.8	3.3	17.5	15.5	82.5	3.3	17.6	12.2	64.9	0.0	0.0	
Slovakia	7.2	4.3	59.5	2.9	40.5	2.3	32.4	0.6	8.1	0.0	0.0	
Finland	31.8	8.1	25.4	23.1	72.6	6.5	20.3	16.5	51.8	0.2	0.5	
Sweden	144.5	19.5	13.5	124.4	86.1	30.0	20.7	90.0	62.3	4.5	3.1	
United Kingdom	644.2	80.9	12.6	563.4	87.4	242.7	37.7	320.7	49.8	0.0	0.0	
Iceland	12.1	2.5	20.3	9.7	79.7	8.4	69.3	1.3	10.4	0.0	0.0	
Liechtenstein	0.6	0.2	25.9	0.5	74.1	0.2	38.1	0.2	36.0	0.0	0.0	
Norway	53.4	6.8	12.7	46.6	87.3	20.0	37.4	26.0	48.8	0.6	1.1	
Switzerland	143.4	23.8	16.6	119.5	83.4	82.5	57.6	37.0	25.8	0.0	0.0	

Note: The individual values do not add up to the total due to rounding and the exclusion of the 'unknown' citizenship group from the table.

(1) Break in series.

(2) Estimate.

(3) Provisional.

Source: Eurostat, http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_imm1ctz&lang=en, accessed: 02.04.2019

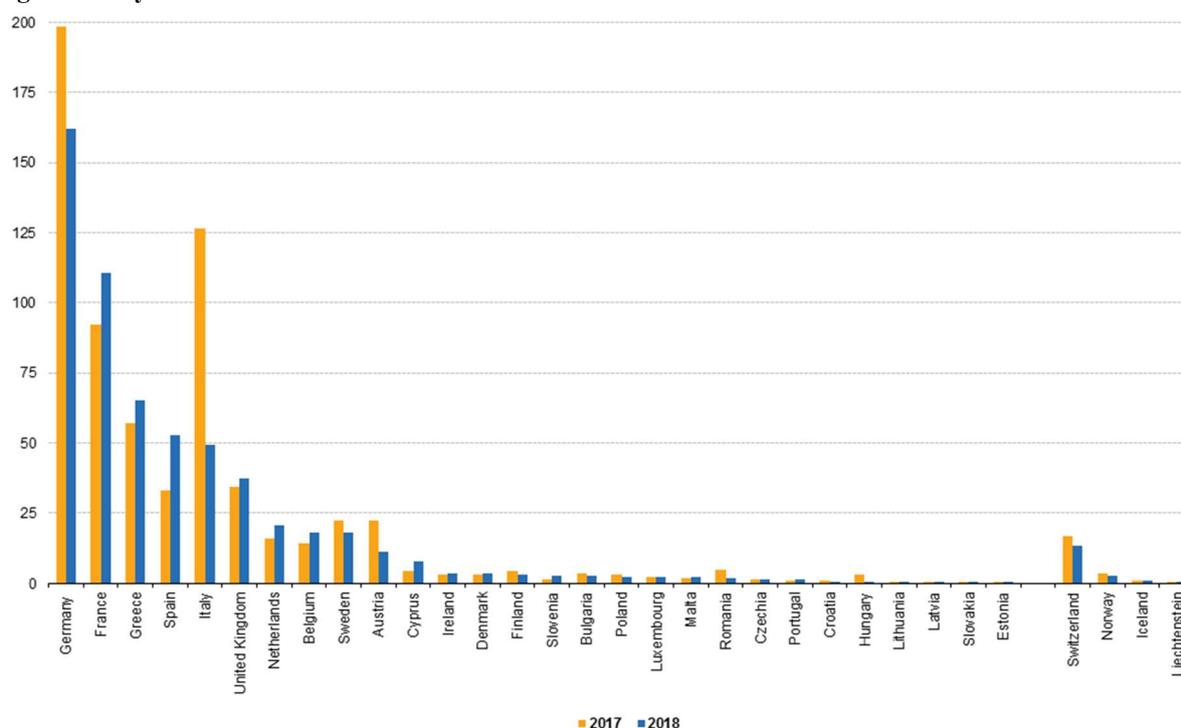
Immigration to the EU from non-member countries was 2.4 million in 2017. The number of people residing in an EU Member State with citizenship of a non-member country on 1 January 2018 was 22.3 million, representing 4.4 % of the EU-28 population. In absolute terms, the largest numbers of non-nationals living in the EU Member States on 1 January 2018 were found in Germany (9.7 million persons), the United Kingdom (6.3 million), Italy (5.1 million), France (4.7 million) and Spain (4.6 million). Non-nationals in these five Member States collectively represented 76 % of the total number of non-nationals living in all of the EU Member States, while the same five Member States had a 63 % share of the EU-28's population.⁷

In order to understand the real dimension in the EU we will look at the statistics provided also by the Eurostat regarding the other dimension of migration, the refugees and asylum seekers. 580 800 first-time asylum seekers applied for international protection in the Member States of the EU in 2018. Syrian, Afghan and Iraqi are main

⁷ Eurostat. Statistics explained. Migration and migrant population statistics, available online at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Migration_and_migrant_population_statistics, accessed: 02.04.2019

citizenships of asylum seekers in the EU in 2018. Syria was the main country of citizenship of asylum seekers in the EU Member States in 2018, a position it has held each year since 2013.⁸

Figure 2: Asylum seekers in the EU in 2017 and 2018



Source: Eurostat, http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_imm1ctz&lang=en, accessed: 02.04.2019

As can be observed in the figure 2, with 162 thousand applicants registered in 2018, Germany accounted for 28 % of all first-time applicants in the EU Member States. It was followed by France (110 thousand, or 19 %), Greece (65 thousand, or 11 %), Spain (53 thousand, or 9 %), Italy (49 thousand, or 8 %) and the United Kingdom (37 thousand, or 6 %).⁹

In this context it can be observed that the immigration policy at the EU level has proved, and still proves, to be a rather complex issue. The problems faced during the last decades have been numerous, while the number of obstacles to the formation of a common and comprehensive policy remain considerable.

Starting from these assumptions the content of the paper will try to explained which are the dimensions of the EU immigrations policy, by underling the competences of the EU and the Member States, which are the factors of pressure that generate the changes on this policy and what are the reforms that the EU should consider in modifying and adapting these policies in order to face the challenges of today.

In this paper we will refer mainly to the first dimension of the EU migration (as explained in the Figure 1) looking how it can have reformed the immigration policy taking into considerations all the aspects and trying to respect the EU treaties provisions and liberties.

⁸ Eurostat. Statistics explained. Asylum statistics, available online at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Asylum_statistics#Number_of_asylum_applicants:_drop_in_2018, accessed: 02.04.2019

⁹ Eurostat. Statistics explained. Asylum statistics, available online at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Asylum_statistics#Number_of_asylum_applicants:_drop_in_2018, accessed: 02.04.2019

2. Aspects regarding the EU Immigration policy

The EU immigration policy has been traditionally characterised by an intense competence debate. Member States have constantly questioned EU competence on the matter and showed a clear preference for cooperation at the intergovernmental level. In this regard it can be observed that the first step to an EU immigration policy was done by the Treaty of Maastricht. The Article K.1(3) EU Treaty as amended by the Treaty of Maastricht designated immigration policy a matter of common interest the Member States agreed upon a number of joint positions and draft conventions which did not become binding law. In the Treaty, there was introduced the distinctions of regimes for union citizenship and nationals of third countries was a parallel development that has defined EU rules¹⁰.

Today the legal base of the Immigration policy relay in Lisbon Treaty¹¹, more exactly in the Article 79 TFEU¹² which provides a comprehensive shared competence of the Union for most questions relating to the entry and stay of foreigners.

Also as a shared competence, legislation on immigration policy must comply with the principles of subsidiarity¹³ and proportionality¹⁴ that oblige the EU legislature to limit their action to initiatives that cannot be sufficiently achieved at national level and remain limited, in terms of regulatory intensity, to what is necessary to achieve legitimate policy objectives. The cited article shows that the Union has acquired an extensive competence for core aspects of immigration law, which must be exercised with due respect for the principles of subsidiarity and proportionality.¹⁵ For example, the Treaty of Lisbon established a competence for the EU to adopt legal rules on

¹⁰ The Union citizenship was first introduced by Article 8 EC Treaty as amended by the Treaty of Maastricht, published in the Official Journal of the EC, 1992/ C 22436

¹¹ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union - Consolidated version of the Treaty on the Functioning of the European Union - Protocols - Annexes - Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007, published in the EU Official Journal C 326 , 26/10/2012 P. 0001 - 0390

¹² "1. *The Union shall develop a common immigration policy aimed at ensuring, at all stages, 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.*

2. *For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures in the following areas:*

(a) *the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification;*

(b) *the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States;*

(c) *illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;*

(d) *combating trafficking in persons, in particular women and children.*

3. *The Union may conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States.*

4. *The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States.*

5. *This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed."*

¹³ See Article 5(3) of the Treaty on European Union (TEU) and Protocol (No 2) on the application of the principles of subsidiarity and proportionality. *In areas in which the European Union does not have exclusive competence, the principle of subsidiarity, laid down in the Treaty on European Union, defines the circumstances in which it is preferable for action to be taken by the Union, rather than the Member States.*

¹⁴ Like the principle of subsidiarity, the principle of proportionality regulates the exercise of powers by the European Union (EU). It seeks to set actions taken by EU institutions within specified bounds. Under this rule, the action of the EU must be limited to what is necessary to achieve the objectives of the Treaties

¹⁵ Hailbronner, Kay, Thym, Daniel. 2018. Legal Framework for EU Immigration Policy."EU Immigration and Asylum Law: A Commentary. Verlag C. H. Beck, pp. 271–299

economic migration such as the Blue Card Directive 2009/50/EC for as long as Member States retain a certain flexibility regarding economic migration in accordance Article 79(5).

But, as explained in the Table 2 there are also competences that belongs still to the EU member states, as well as there are EU Member States that bit apply the EU immigration Policy – as Denmark or that they apply only in part – as UK and Ireland.

Table 2: Shared competences between the EU and Member states on the Migration policy

<i>EU Competences</i>	<i>Member states competences</i>	<i>Exceptions for the EU policy on migration</i>
Wide rules regarding the immigration visa and asylum policy	The total number of migrants that can be admitted to the country to look for work;	Denmark does not apply EU-wide rules which relate to immigration, visa and asylum policies.
September 2003: Family Reunification Directive	All final decisions on migrant applications;	Ireland and the United Kingdom choose, on a case-by-case basis, whether or not to adopt EU rules on immigration, visa and asylum policies.
November 2003: Long-term Residents Directive	Conditions to obtain residence and work permits when no EU-wide rules have been adopted.	Ireland applied the Researcher Directive 2005/71/EC
October 2005: Researchers Directive		
May 2009: EU Blue Card Directive		

Source: Author, using the information of the European Commission on Migration and home Affairs, source: https://ec.europa.eu/home-affairs/what-we-do/policies_en, accessed: 08.04.2019

In the Table 3 we can observe the main steps in drawing an EU immigration. The EU has competences not only to regulate the entry and movement of third country nationals – as was the case within the Schengen framework, under the Single European Act or in the Maastricht era – but also to further establish a migration agenda in the classic sense of the term. Rules on the admission of third country nationals for long-stays, their rights and integration into host societies, the conditions concerning their residence in another Member State, external relations aspects and issues such as return policy and co-development are currently on the agenda.

Table 3: Timeline of the EU Migration Policy

<i>OVERVIEW</i>	<i>EU ACTS</i>	<i>MAIN PROVISIONS</i>
NOVEMBER 1993	Maastricht Treaty	Intergovernmental cooperation on migration and home affairs (under 3 rd Pillar)
MAY 1999	Amsterdam Treaty	EC receive competences on asylum and migration The Schengen is integrated in the treaties
OCTOBER 1999	Tampere Programme (1999 - 2004)	Asylum and migration policy has a more coherent provision
MARCH 2005	Hague Programme (2005 - 2009)	Guidelines for controlling and regulating migration flows and controlling the external border
NOVEMBER 2005	Global Approach to Migration and Mobility	Defines the EU asylum and migration policy
DECEMBER 2009	Lisbon Treaty	Pillar structure is abolished Decision making regarding the regulations on migration and

<p>MAY 2015</p>	<p>EU Agenda on Migration</p>	<p>asylum issues are taken under the ordinary legislative procedure CJUE has full jurisdiction starting with 1st December 2014 Addressed immediate challenges and equip the EU with the tools to better manage migration in the medium and long term in the areas of irregular migration, borders, asylum and legal migration.</p>
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Source: Author, using the information of the European Commission on Migration and home Affairs, source: https://ec.europa.eu/home-affairs/what-we-do/policies_en , accessed: 08.04.2019

3. Adapting the European Immigration Policy in the Context of the Migration Pressure

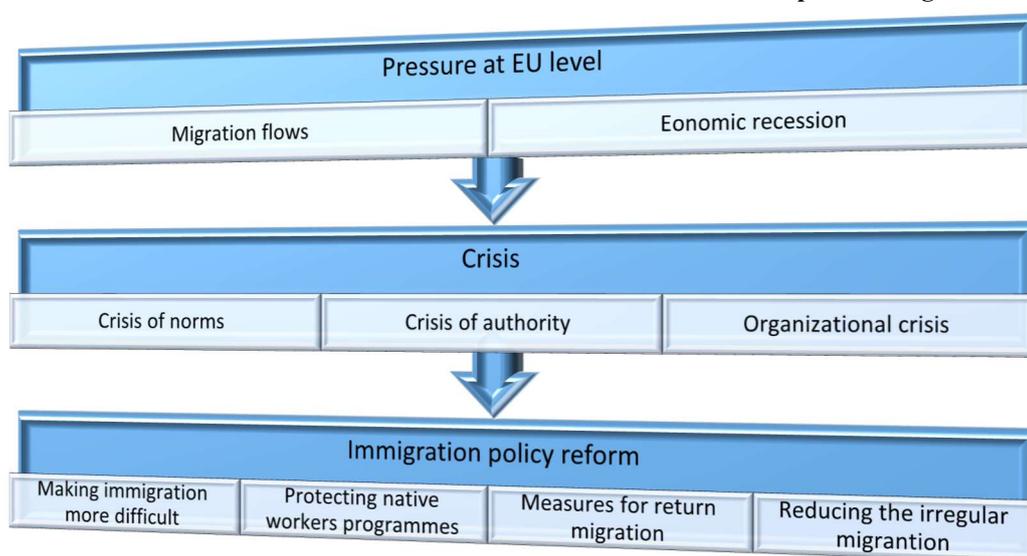
Crises are generally considered as “turning points” that trigger social phenomena—like migration—as well as public policy reforms.¹⁶

Generally, crisis are critical phases of a policy sector, which is defined as an institutional field of actors rules and practices associated with the state efforts to address to address a particular category of social issues and problems. At the core of a policy sector operate the senior political and bureaucratic officials who are in charge of the governmental machinery in this domain. Another part is composed by semi-public and private organization involved in the implementation of the policy. There are also pressure groups, lobbyists and other government agencies that try to influence the scope and content of policy outputs¹⁷.

The growing influx of migrants and asylum seekers in the summer of 2015 has clearly been framed as an “immigration crisis” by both policy-makers and observers. But this was not the only cause of generating the crisis at the EU level in order to need reformation of the Immigration Policy.

As stated by Allen and William, reform becomes an issue only when policies are perceived not to be working and a crisis is an example of a policy failure, which has to be followed by reforms¹⁸.

Figure 3: Main measures and reforms taken in the European Migration Policy



Source: Author

¹⁶ Lafleur, Jean-Michel, Stanek, Mikolaj (Ed.). 2017. South-North Migration of EU Citizens in Times of Crisis. Springer Publishing House, p. 7

¹⁷ Boin, Arjen, Hart, Paul. 2000. Institutional crisis and reform in policy sectors. Government institutions: effects, changes and normative foundations, Kluwer Academic Publisher, pp. 9-31

¹⁸ Drazen, Allen, Esterly, William. 2001. Do crisis induce reform? Simple empirical tests of conventional wisdom. Economics and politics, Vol. 13, Blackwell Publisher, pp. 129-157

As exposed in the Figure 3, the issue of reforming the Immigration policy of the EU appeared necessary in a period with a complex crisis, which started since 2008 and altered the patterns of EU policy-making. This was followed by the events at the external borders of the EU when hundreds of thousands of migrants strived to enter the EU's territory and/or to reach specific member states such as Germany and Sweden in 2015.

The crisis of authority of the EU could be observed in the reluctance of Eastern European countries to participate in a EU-wide relocation action. The crisis of EU clear norms in the migration police led to the re-erection of border fences within Europe.

The main causes in generating this crisis at the EU level could be explained as:

- the deterioration of living conditions of the EU citizens, as a consequences of the economic crisis. This caused especially the internal migration as job seekers, from the states affected by crisis to the states less affected.
- the war from Libya. This was the main cause for generating the humanitarian crisis of the EU
- studies
- achieving a better life.

The member states answer to this crisis which countries during the global economic crisis have consisted mostly of four types of measure: making new immigration more difficult, protecting native workers from the perceived competition of foreign workers, adopting programmes and measures to encourage return migration and clamping down on irregular migrants. But while the connection between crises and stricter migration policies is appealing, the causal link is not always obvious.¹⁹ This can be a consequence of an organisational crisis the EU and member states suffers, illustrated by a lack of cooperation and collaboration of this issue.

The main step in reforming the EU immigration policy was done in 2015, when the European Commission adopted the European Agenda on Migration²⁰. The main actions provided by the strategy in order to reform the EU policy on immigration can be described as:

- address the root causes of irregular migration with origin and transit countries
- better management of EU external border by the creation of the European Border and Coast Guard. Member States will continue to keep their competence and sovereignty over their borders. The European Border and Coast Guard will provide support to all Member States and be able to identify and intervene to address weaknesses in advance.
- Identify and registration of every arrival. At the end of 2010, the common rules on return (the so-called "Return Directive")²¹, agreed by EU States in 2008, entered into force. They provide for clear, transparent and fair common rules for the return and removal of the irregularly staying migrant, the use of coercive measures, detention and re-entry, while fully respecting the human rights and fundamental freedoms of the persons concerned.
- relocate refugees to other EU member states. This is a distribution among Member States of persons in clear need of international protection
- external cooperation assistance, and in particular development cooperation, plays an important role in tackling global issues like poverty, insecurity, inequality and unemployment which are among the main root causes of irregular and forced migration. This includes support in regions of Africa, Asia and Eastern Europe where most of the migrants reaching Europe originate from. A budget of Eur 96.8 billion for the 2014-2020 was allocated.

4. Conclusions

This paper analysed the complexed dimensions of the EU immigration policy. Generally, this EU policy is a shared competence of the EU and the member states, there is not a unique supranational competence for the directly application in the member states. This can be observed in the fact the major legislative instruments of the Immigration policy of the EU are directives, which are legislative acts that set out a goals that all EU countries must achieve and not the regulations. It is the choice of the individual countries to devise their own laws on how

¹⁹ Lafleur, Jean-Michel, Stanek, Mikolaj (Ed.). 2017. South-North Migration of EU Citizens in Times of Crisis. Springer Publishing House, p. 3

²⁰ European Commission. 2015. Communication from the Commission, a European Agenda on Migration, Brussels, 13.5.2015 COM(2015)

²¹ Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals

to reach these goals and many times there are not unitary implementations or the goals are not fully achieved or just the directive are applied with delay (see the case of the Return Directive).

Also regarding the vision of the reform needed on the Immigration's Policy it could be observed that in first instance the member states and the EU attached the concept of crisis to flows rather than to their causes. This had an important consequence on the policy-makers' agenda: instead of tackling the social, political or economic root causes that trigger migration, policy reforms tend to focus solely on reducing flows to pre-crisis levels.

The EU system demonstrated its legal and structural limitation in facing the crisis of migration and adapting this policy. A better clarification between various types of migration that could be observed in the EU, together with clear regulations and a better loyal cooperation between the EU administration and the member states should be a key point in solving this issue.

This could be an opportunity for the EU to face up to the need to strike the right balance in its migration policy and send a clear message to citizens that migration can be better managed collectively by all EU actors. In this regards a Treaty change will be needed, in which should be made a clear division on the migration in the EU. An exclusive competence of the EU should apply for a new European policy on internal and external legal migration, keeping as shared with the member states competence the policy fight against illegal migration and asylum.

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