

A common EU migration policy?

EU immigration and asylum policy from the
perspective of regime complexity

Abstract

Since the creation of the Schengen cooperation the internal borders within the EU have disappeared and been replaced by a common external border. This has led to an increased coordination of migration policy.

Scholars have discussed the EU approach to migration from different perspectives. In this thesis the ambition is to introduce a new theoretical framework in the study of EU immigration and asylum policy. By using the theory of regimes and regime complexity the thesis contributes to put the EU migration policy into a new perspective. According to my results it is not only security and human rights that are important to discuss in relation to the migration policy but also the EU internal market and its economic goals of competitiveness. The thesis provides examples of how migration and asylum policy within different EU Member States not only increasingly have the same rules and decision-making procedures but also how implicit norms and practices are common, despite the grand differences in numbers of asylum applications and recognitions of refugee status and other forms of protection.

Key words: EU migration policy, asylum, regime complex, immigration, regimes

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1. Introduction

Since the creation of the Schengen cooperation the internal borders within the EU have disappeared and been replaced with a common external border. This has led to an increased coordination of migration policy on the EU level.

The migration literature within political science is particularly thin. I am tempted to agree with Hollifield that these can be seen as an effect of that migration policy seldom has been counted as part of high politics which usually attracts the attention of scholars in international relations. Hollifield means that according to the realist tradition “Unless it can be demonstrated that a social or economic phenomenon, like migration, clearly affects relations among states, to the point of upsetting the balance of power, it should be left to economists, sociologists, anthropologists, and other scholars of low politics.” (Hollifield 2008: 199) Not until the mid 90s, and even more after the 9/11 terrorist attacks did scholars begin to realize that migration movements can have effects on security and sovereignty of states. (Hollifield 2008: 200)

Scholars have discussed the EU approach to migration from different perspectives. One theory is that an increased securitization of the migration policy is going on in the EU. Other scholars argue that the states have only limited control when it comes to migration policy. Depending on who you listen to you might believe that the EU is under siege. The talk is of migration flows flooding the borders of the EU, and who is going to take care of them? Member States seem to have one thing in common; they all want others to take more responsibility for the asylum seekers coming to the EU to seek protection.

Migration as a policy field is affected by liberal economic goals, internal security considerations and different public demands as for example human rights. These are all issues central to the EU project that has made cooperation in the area of migration both necessary and difficult. Security considerations have been seen as necessary to accompany the taking away of internal borders, the pressures on the external borders of Member States have become bigger. The Member States with borders towards third states become responsible to “protect” not only their country but the whole EU from immigrants that are often seen as a burden. At

the same time economic concerns have been raised on the subject of EU demographic development, prognostications show that the EU need immigration in order to secure future economic growth, Europe's own population is getting older and would without immigration decrease. Last, no discussion on asylum is complete without mentioning the concern of human rights that has made all EU Member State sign the UN Convention relating to the Status of Refugees from 1951.

In an attempt to try to see the broader picture of the common EU migration policy as well as contributing to a new perspective I will apply regime theory in order to structure EU migration policy. A regime has been defined as “a set of principles, norms, rules and procedures around which actors' expectation converge. Regimes constrain and regularize the behaviour of participants, affect which issues among protagonists move on and off agendas, determine which activities are legitimized or condemned, and influence whether, when and how conflicts are resolved.” (Puchala & Hopkins 1982:62) Looking upon the common migration policy as a regime allows you to seek new insights using the different analytical dimensions of principles and norms, decision-making procedure and governing elite, rule and practices. With help from theory on regime complexes I can further track how the relating regimes of liberal economic goals, internal security considerations and international human rights are reflected in the EU migration regime.

1.1. Aim and research questions

The study aims at finding new explanations to policy outcomes and practices in EU migration policy by investigating whether a coherent regime can be found in terms of common norms, principles, decision-making procedures, rules and practices, and how this regime is a product of a larger regime complex.

1. Is there an EU specific immigration and asylum regime?

2. If so, how can the insertion of this regime into a complex explain EU asylum policy outcomes and practices?

1.2. Limitations

My primary intention is to study and try to explain the EU asylum policy. This is due to several factors; first to limit the research to a comprehensible area to undertake for a master's

thesis, but also because the area of asylum is the most developed on an EU level. Furthermore the asylum policy plays an important role in international relations and affects the image that the outside world has of the EU in terms of promoter of Human Rights. However, I don't believe that you can separate the asylum policy entirely from other kinds of immigration. I believe that also labour immigration and irregular immigration are part of the same regime. Moreover, I will focus my study on policy directed towards third-country nationals. There are extensive migration movements going on within the EU, covered by the free movement of persons, which I will not include in my thesis.

It is common in migration studies to distinguish between asylum seekers, labour migration, family migration and irregular migration. I believe that the distinction can be useful to some extent but these different types of immigration are all interconnected and often put in relation to each other by policy-makers. The public opinion generally doesn't see the difference between the different categories, and if there is any opposition against immigration because of large amounts of family migration the admission of asylum seekers can suffer from this or vice versa.

With the risk of contradicting myself I will, despite the argument stated above, draw the line when it comes to family migration. This type of migration will largely be left out of the discussion in my thesis. I believe that the logics of family migration are in many ways different. When it comes to family migration the state has a responsibility towards citizens or someone already granted residence. These persons have been endowed much more extensive right as well as the power to vote.

Integration is commonly connected to migration, but in my case it falls outside the scope of my research even though it is interesting and relevant for the larger picture.

1.3. Definitions

Migration is the general term for the movement of people across international borders or within States. To distinguish the migrant from the tourist or other kinds of short term travellers a migrant is defined as someone living outside their country for a period of 12 months or more. (Boswell & Geddes 2011:2) The word immigration defines the direction of the movement, non-nationals moving into a new country for settlement.

An asylum seeker is “a person who seeks safety from persecution or serious harm in a country other than his or her own and awaits a decision on the application for refugee status under relevant international and national instruments” (IOM Key Migration Terms)

A refugee, as defined by the Convention relating to the Status of Refugees from 1951, Art 1A(2), as modified by the 1967 Protocol, is any person who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country”.

Irregular immigrants are the ones who illegally are present on a territory, as defined by the EU Return Directive Article 3; “a third country national who does not fulfil, or no longer fulfils the conditions of entry as set out in the Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State”. According to Schengen Borders Code Article 5 you need a (a) valid travel document, (b) valid visa, if required according to Council Regulation (EC) No 539/2001 of 15 March 2001, (c) justification of purpose of stay and sufficient economical resources for the stay (d and e) no alert on SIS nor considered public threat.

2. Background

2.1. A brief history of EU migration policy

Ever since the Schengen agreement (1985), which was agreed upon outside the treaty framework of the European Union (EU), the Member States have increasingly discussed migration policy together. The Schengen agreement was a framework between five EC Member States (Belgium, Netherlands, Luxemburg, Germany and France) to liberalize free movement between them, the Amsterdam treaty (1997) later incorporated the agreement into the treaty of the EU.(Boswell & Geddes 2011: 58)

In the same Amsterdam treaty that incorporated the Schengen agreement, provisions for an EU migration and asylum policy was also included. Since the Amsterdam treaty came into effect 1999, the EU Member States have worked with the common migration and asylum policy through five year work plans. Between 1999-2004 it was called the Tampere agreement, from 2005 to 2009 it was the Hague Programme, and the current work plan from 2010 until 2015 is the Stockholm Programme agreed upon during the Swedish presidency of the Council.(Boswell & Geddes 2011:51-52)

The Member States Denmark, Ireland and Great Britain all have opted out of EU common migration and asylum policy. Denmark is only part of the common agreements necessary to the Schengen cooperation while Ireland and Great Britain have the possibility to opt-in on the agreement that suits which means that most EU-rules also are valid there. (EU-upplysningen)

In 2000 the European Commission officially lifted the so called zero labour migration policy towards non OECD countries. (Hansen & Jonsson 2011: 264) The European Commission states that there is a mismatch on the labour market; even though unemployment within the EU is high the demand for workers continues to increase. (Communication from the Commission to the European Parliament and the Council: Annual report on immigration and asylum 2010)

2.2. Relation to previous research

The subject of European common migration policy is a well discussed topic in news media and different political environments and the picture of the fortress of Europe is a commonly used metaphor. When it comes to academic research on the matter the issue has primarily been studied from two points of departure, which are commonly referred to as gap hypothesis and securitization. The gap hypothesis focuses on the “inability of states to achieve their stated migration policy objectives” (Boswell & Geddes 2011:39), and can be summed up as an approach studying policy failure. Securitization, on the other hand, mainly focuses on a discursive analysis on how states try to justify migration control measures by emphasizing possible security threats that migration could lead to. I will present these concepts more thoroughly below.

Another interesting contribution relevant for my research is the special volume of the Journal of refugee studies from 2000. Schuster compares the investigations of the asylum policy of different EU countries also presented in the same journal. The question is whether the asylum policy has been changed by a major political shift, where the countries have gone from having a right- wing or centre right government to a centre left government. (Schuster 2000: 118) Even though the asylum policy of the different Member States are shown to be very different there are several ways where they converge. First of all, the common problem of asylum seems to be one of numbers. (Schuster 2000:121) In all countries measures are taken to increase the control in order to avoid what is being called 'bogus' asylum seekers. (Schuster 2000:123, 128) However the conclusion is that little change can be seen in the area of asylum policy and that in many countries the parties agree on the asylum policies whether they are left or right. A common stance identified is also that harmonization within the EU is seen as important but that the ideas of how to harmonize differ, a big focus is on making other countries sharing the burden, meaning that there is a burden to be shared. (Schuster 2000:129)

Boswell and Geddes have written a generalized book called “Migration and Mobility in the European Union”.(2011) They use the theoretical approach of “decoupling”, arguing that there is often a high discrepancy between the discourse and the practice in the field of migration policy.

Securitization

As already mentioned the perspective of securitization is widely used within the field of migration research. Huysmans is one among many researchers arguing for that the Europeanization of the immigration also has led to securitization. He means that migration has become a meta-issue in contemporary Europe connected to many different social problems such as integration of immigrants, visa policy, distribution of social entitlements, and the management of cultural diversity. (Huysmans 2000: 770) “One of the best examples is the 1990 Convention Applying the Schengen agreement of 14 June 1985 which connects immigration and asylum with terrorism, transnational crime and border control.” (Huysmans 2000: 756) According to Huysmans, the link between decreasing internal border controls and increasing external border controls is not obvious but rests upon the double assumption that “control of illegal movement of goods, services and persons happens primarily at the border, and that the free movement of persons is constituted by abolishing border controls.” (Huysmans 2000: 759) He also points at a type of recurrent welfare-chauvinism that sees immigrants either as profiteers who try to gain benefits from the welfare system from a state where they do not belong, a kind of welfare fraud, or as something that needs to be controlled during economic recession because the state ought to care first and foremost for the welfare of its ‘own’. (Huysmans 2000:768f) To me this securitization perspective has some valuable points when it comes to the welfare-chauvinism and how the search for a common European identity can sometimes be created out of differentiation towards third country nationals-taking away suspicion towards our EU Member State nationals by putting it on third country nationals instead. However, I think that the connection to security is hard to avoid when abolishing internal borders, and this has to do with the origins of migration policy that I will present shortly. Furthermore, I believe that security considerations are not the only ones setting the agenda when it comes to EU migration policy.

Gap Hypothesis

Few migration receiving countries have immigration control policies that are perfectly implemented or without unintended consequences. Cornelius and Tsuda are amongst several researchers who have detected significant immigration control problems in the last ten years and believe that the gap between policy objectives and policy outcomes is growing

wider.(2004:5) These policy gaps can be considered empirical facts and therefore the important questions according to Cornelius and Tsuda become; “how do we measure them, and how do we explain them?” (2004:5) However, gaps can be difficult to measure when governments don’t have clearly defined goals in immigration policy, and even though the goal could be clearly stated it is not always an indication of the true objectives of the immigration policy. (Cornelius & Tsuda 2004:6) Several reasons for this are presented. First immigration policy is in many ways flawed, strengthening borders does generally not lead to less immigration, only increased use of people-smugglers and higher probability of illegal residents to stay as the possibility of re-entry is smaller. (Cornelius & Tsuda 2004:8) Macro-structural explanations are another answer to why receiving countries don’t really want to implement too harsh immigration policy, illegal immigrants can serve as cheap labour to low-skilled jobs in the industry and the service sector. Here also demographic imbalances play their part in attracting migration movements to developed countries. (Cornelius & Tsuda 2004:9-10) Domestic and international political constraints are a third type of explanation to the limits of immigration control policies. Interest groups can use their power to water down restrictive legislation on immigration. But also the state itself can contribute to this, different government agencies promoting different stances, or conflicting opinions on migration between, for example, ministry of justice and ministry of economics. (Cornelius & Tsuda 2004:14) Cornelius et al. argue that there is extensive evidence that today’s countries of immigration are so dependent on this in order to compete on the global market that few can afford to drastically reduce immigration without domestic consequences. Despite this most developed migration receiving countries would confess themselves to only reluctantly receive immigrants. (Cornelius & Tsuda 2004:40)

2.2.1. Why do we even need migration policy in the first place?

The basic assumption in all research on how states go about in controlling or managing migration usually is that some kind of control is necessary and that the state does need a migration policy, or usually and more specifically, an immigration policy. Therefore I will here present some different theories on borders and why it could be considered a vital function of a nation state to be able to control its border and not let just anyone pass and become citizen.

Borders

Borders and theory about borders has naturally a central place in any discussion on migration. When focusing on the common migration policy of the EU it is the physical borders that are particularly relevant. Borders between different countries within the EU create the limits of nationalities, democracies and citizenships. As already mentioned the Schengen area creates the external borders of entry and exit to the EU.

Borders work both ways they both include and exclude. Parker and Adler-Nissen talk about borders as a subcategory to boundaries.(2012:775) They refer to boundaries as sites of difference and pre-existent to entities, because different entities could not exist without boundaries between them. The same thing goes for members of that entity; they are made up by the boundaries telling them apart. Another important part of a boundary is that it needs to be sustained from both sides of the boundary and therefore generally has an implication for both sides. Not only the inside that seems to generally be the centre of attention.

Parker and Adler-Nissen define boundaries as more fluid while border is a more specific term referring to a formalised and well defined boundary. It is important to remember that even if the physical borders referred to in relation to states and immigration are “inscribed territorially” they become manifested only by human behaviour. (Parker & Adler-Nissen 2012:782)

Borders are crucial for the definition of a sovereign state. One definition of the sovereign state is the one of international law:

“A state is an entity that has a defined territory and a permanent population, under the control of its own government, and that engages in, or has the capacity to engage in, formal relations with other such entities.” (Parker & Adler-Nissen 2012:787)

This definition conceives borders both in terms of territory and population as well as for its government. Zapata-Barrero tries to pinpoint some theoretical approaches to borders meaning that the border as a political category has at least three characteristics: “it is a primary political institution, it is a process, and it is a functional notion. (Zapata-Barrero 2013:10) It is an institution because it is created by human organization, no border is inherent, it is always dependent on political decisions made in our history. It is primary because other institutions depend on this institution in order to exist and remain stable. Moreover, a border is not static, therefore the description as an ongoing process of inclusion and exclusion, everyday creating

what is included and what constitutes “the other” and in this way giving meaning to separations and identities. By describing the border as a functional notion Zapata-Barrero means that it cannot be described without mentioning the functions it performs. (2013:10-12)

Perhaps the most important function of borders is the one of delimiting political power over territory establishing the sovereignty of the state. “Monopoly of control over borders is perhaps the last bastion of state sovereignty, and the driving force behind our historical era, which began at Westphalia. There is a direct relationship between the border and the State, to the extent that they need each other to define themselves.” (Zapata-Barrero 2013:13)

Nations and sovereignty

Hollifield explains how the institutions of citizenship and sovereignty can be seen to be built upon migration control. He means that according to the Weberian definition of sovereignty, a state can exist only if it has monopoly of the legitimate use of force in a given territorial area, this in order to protect itself from interference in internal affairs. Therefore the ability of a state to control its borders and in that way its population must be seen as a necessary precondition for sovereignty. The right for a state to control who enters or leaves its territory is a general principle of international law with only a few exceptions, notably the refugee regime created by the Convention relating to the Status of Refugees from 1951. Furthermore, Hollifield reasons that because all crossings of borders entail a risk for states it would seem to be in their interest not to allow migration. (Hollifield 2008: 188)

Castles and Miller raise the issue of immigration as a challenge to national identity. “In many countries, ethnic homogeneity, defined in terms of common language, culture, traditions and history, has been seen as the basis of the nation state. This unity has often been fictitious- a construction of the ruling elite- but it has provided powerful national myths. Immigration and ethnic diversity threaten such ideas of the nation, because they create a people without common ethnic origins” (Castles & Miller 2009: 15). These national myths of the importance of a homogeneous people who share the same language and culture are probable to be one reason for controlling the borders and the in-flow of immigrants. Here, naturally, the classical countries of immigration¹ have been able to cope with the multicultural societies, which often are the results of immigration, better than the countries that put the common culture at the heart of the nation-building. (Castles & Miller 2009:15f)

¹ Australia, Canada and the USA.

Joppke argues that there are two very important parts to nation states that immigration challenges; sovereignty and membership/citizenship. He means that the territorial organization of nation states is a key to understanding this. (Joppke 1998: 2-3) Joppke also points out that the concept of nation-states actually is dual, states are “territorial organizations characterized by the monopolization of legitimate violence” and nations are “membership associations with a collective identity and a democratic pretension to rule”. (Joppke 1998:5) These two parts of the dual concept nation-state, have different origins, stateness originating in the geopolitical results of the Peace of Westphalia and thus created under absolutism, and nationness coming from the cultural transformation of Protestantism, and Enlightenment. These concepts were later merged in during the French revolution. (Joppke 1998:5) Immigration constitutes challenges both to sovereignty and citizenship of the nation-state, different kinds of scholars have analysed immigration policy as a challenge to either sovereignty or citizenship, rarely mixing these two perspectives even though these are reasons to control migration that are highly intertwined in the real world. (Joppke 1998:6)

For my research, which will focus on the EU migration and asylum regime, it is above all the sovereignty issue that is the most important. Joppke identifies two different challenges that he calls “Globally Limited Sovereignty” and Self-Limited Sovereignty, he seriously questions the global aspect when it comes to limit immigration and ends up arguing that it is above all domestic factors that can act self-limiting when controlling migration. (Joppke 1998:11) Here he gives two different explanations on how a state can act self-limiting; it can be either through what he calls client politics, where concentrated benefits from immigration, for example cheap labour for big companies- outweighs diffuse or even invisible costs, for example taking jobs from the lower class.(Joppke 1998:12) Constitutional politics is another way through which states limit themselves when it comes to controlling migration, states usually have the power to allow or reject an immigrant, but once the person enjoys equal protection of the law, the state has no longer the capacity to dispose of the person at will.(Joppke 1998:12)

3. Theory

In the following chapter I will look closer on regime theory and theory on regime complexity, which is the theory that I believe can contribute to new explanations in the research on EU migration and asylum policy.

3.1. Regime Theory

“Regimes can be defined as sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge in a given area of international relations. Principles are beliefs of fact, causation, and rectitude. Norms are standards of behavior defined in terms of rights and obligations. Rules are specific prescriptions or proscriptions for action. Decision-making procedures are prevailing practices for making and implementing collective choice.” (Krasner 1983: 2) In this very short and concise way Krasner defines the core elements of what a regime is in his introductory chapter in a specialized issue of the journal of International Organization from 1982 which has come to be the centre of the literature on international regimes.

Regimes are something more than temporal arrangement in international affairs, they are long term. Some researchers refer to regimes as sorts of institutions that shape adherence to rules by “formulating, communicating, administering, enforcing, interpreting, legitimating and adapting them” (Krasner 1983:2) Actors often create and maintain this kind of governance institutions in order to overcome problems of cooperation. (Gehring & Faude 2013:121) Important to remember is that regimes do not fill a purpose in itself, regimes are an intermediary structure that affects the outcome of cooperation or a relationship in international relations. (Krasner 1983:5) However, this does not mean that the regime has to serve the interest of every participant. In fact, according to Puchala and Hopkins the extreme example of slave states is one example of a regime where not all members of the regime accept the norms and rules voluntarily but that can be strong never the less. (1983:63)

Important features of a regime according to Puchala and Hopkins (1983:62f):

1. Regimes focus on reasons for different attitudes and behaviours. Regimes are subjective, “they exist primarily as participant’s understandings, expectations or convictions about legitimate, appropriate moral behavior”.
2. An international regime has a special view on relevant procedures of decision making.
3. Principles and the estimated hierarchies among principles are important elements of study in a regime. This as well as norms that define correct and deviant behaviour.
4. Each regime is governed by actors in the form of a special set of elites. The important officials can be states representatives or bureaucrats, and this has an effect on the formation of the regime.
5. There are regimes in every issue-area of international relations that has a detectable patterned behaviour.

Critique of the regime approach obviously comes from the realist tradition since a basic assumption of regime theory is that there is some kind of interdependence, and that to manage this kind of interdependence institutions matter. However, according to Keohane this could also make regimes all the more important to study, since they explain principles of order that are considered an exception in the realist worldview of conflict. (Keohane 1983:141) In his article he explores why self-interested actors would engage in international regimes and comes to the conclusion that regimes can be of help, even to actors completely governed by self-interest, when there is a problem of collective interest where everyone would be worse off if trying to solve the problem on their own. (Keohane 1983: 1970)

3.2. Regime Complexity

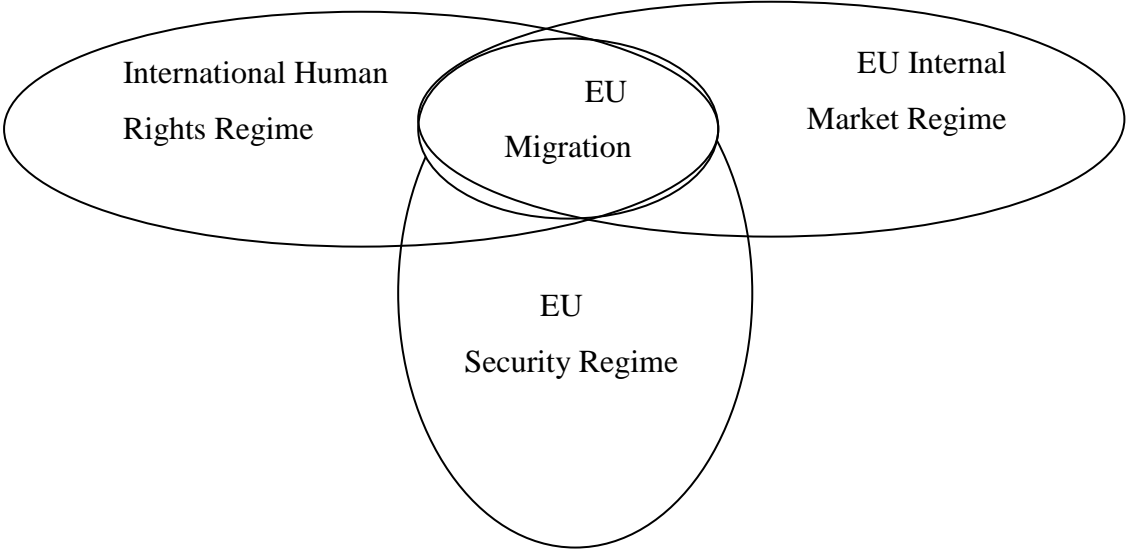
“Scientists have known for a long time how important it is to distinguish systems from their components. Yet scholars of international relations often fail to seriously consider systems populated with international institutions.” (Orsini et al. 2013:27)

Regime complexity tries to describe the increasingly interrelated global affairs of our age and how it is no longer possible to negotiate new deals without taking into consideration other institutions, treaties and organizations in the field. Different policy fields get more and more interconnected with each other. As I have already mentioned, the common migration policy of the EU is affected by both logics of the internal market, security and human rights. EU migration policy is probable to not only being discussed on one arena, but on several,

since the implications of the decisions affect society as a whole. Orsini et al. try tentatively to define regime complexity in the following manner; “a network of three or more international regimes that relate to a common subject matter; exhibit overlapping membership; and generate substantive, normative, or operative interactions recognized as potentially problematic whether or not they are managed effectively”. (2013:29) They argue that a regime complex usually focuses on a more specific subject matter than a regime, it could be seen like a crossroad between different regimes. (Orsini et al. 2013:30)

“The elemental regimes of a complex can be brought together through different forms of interaction. They can interact at the political and material levels when their subjects are perceived as intrinsically interconnected. This can be at a normative level when their norms, rules and procedures are related or at an operative level when compliance with the provisions of one regime effects (positively or negatively) the performance of another regime. However, a regime need not interact with all the other components of a complex to be part of it. It must interact with at least one of the other regimes of a complex.” (Orsini et al. 2013:31)

In my case I think the perspective of regime complex is most suitable just because, as I mentioned before, it is apparent that the EU migration regime is interconnected with other regimes such as the EU internal market regime, the EU security regime and the International Human Rights Regime. Through this paper I will argue that the EU migration regime is found in the crossroad of these other regimes, with its own procedure and decision-making process but subordinated and dependent in status of the other regimes.



Through the theory of regime complexes I find a manner to integrate the different vital parts of EU migration policy that do not completely belong within the limits of the EU

migration regime as such, because they are governed by other norms or principles. It would be wrong to believe that regime complexes evolve by themselves, as any other political development there are actors behind the evolution of regime complexes. State governments are seen as resourceful powers behind the development of different regime complexes, but also interest groups, NGOs and international organizations can affect the formation of regime complexes by choosing in what forum or how they want to address a specific problem. Because of the multitude forums in today's global governance, choosing where to address a specific problem can be strategic in order to promote a certain set of norms and principles active in that context, this is called forum shopping. Or if it is a more permanent change of norms and principles, it is known as regime shifting. (Betts 2013:76)

4. Methodology

4.1. Analytical framework

According to the regime theory presented above there are certain points of analysis that are more important than others. Krasner defines regimes as “implicit or explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge”. Important to analyse on a first level is what principles and norms are active on an EU level when it comes to asylum policy.

My second level of analysis is to investigate if there is a formalised procedure to make decisions and how these decision-making procedures are standardised. In here I will also include a study of the governing elite. It is not only important to see how decisions are made in terms of official and non-official procedures, but also what kind of actors are involved in this decision-making. As Puchala and Hopkins put it “individuals and bureaucratic roles are linked in international networks of activities and communication. These individuals and rules govern issue-areas by creating and maintaining regimes.” (1982:62)

The third level of analysis will be to see what kind of common legislative output has been formed on the EU level concerning asylum policy. In what way is this legislative output following the principles and norms established and how are they reflecting the governing elite in EU migration policy. As a last point of analysis, I think it is relevant and important to compare how the EU asylum policy interacts with national migration policy and what kind of migration policy this produces in the end.

All levels of analysis in my analytical framework constitute parts of what makes the content of the EU migration regime.

1. Principles and Norms
2. Decision-making procedures and governing elite
3. Rules
4. Practices

4.1.1. Criteria for research

My mission is twofold and therefore I need two different sets of criteria. First I want to identify if there even is a regime that shapes and converges the principles and practices of EU migration policy. Then I want to take a closer look of that regime to identify what other regimes are influencing the regime in order to identify how this influences the outcomes.

EU Migration regime

To establish the possible existence of an EU migration regime I need to identify what aspects confirm the hypothesis of a regime on each level of analysis presented above.

1. Are there any explicit and/or implicit norms and principles in the EU regarding migration policy? Explicit norms and principles can be expected to be pronounced outright in different EU texts. Implicit norms and principles are the ones found beneath the wordings in the texts, but also behind actual rules and practices.
2. Is there any common decision procedure and common elite in the area of EU migration policy?
3. Are there any common rules in the area of EU migration policy?
4. Are practices coherent in the area of EU migration policy? Here it is not only important to see if Member States that are supposed to be part of this regime follow the common principles and rules that they have agreed upon but also to see if they cohere in actions that are not agreed upon commonly.

Regime complex for migration policy

To see if the influence from other policy areas can explain migration policy according to the logics of regime complexes, I will tentatively look for traces of; a Human Rights Regime, an EU internal market regime and an EU Security Regime.

1. When it comes to principles and norms, what principles and norms indicates influence of the recently mentioned regimes? Is there one regime in particular that seems to be especially influential? Is there any regime that does not seem to be important at all?

2. Who is involved in the decision-making? Are the actors involved in the decision-making for migration policy also active in the policy areas of the other regimes mentioned?
3. What kind of arguments are promoted by the rules? Could these arguments be related to any other regime in particular?
4. How do the practices sustained by the Member States reflect the different regimes that could be part of a Migration regime complex? Are there cases when logics from other regimes are applied to the migration regime?

By asking these different questions to the texts and information that I encounter, I expect to distinguish not only an EU migration regime but also different links to other regimes that could act both as subordinated to the migration regime but also as superior.

4.2. Material

To be able to investigate the above presented different levels of analysis I will need to use different kinds of material and adjust my approach accordingly.

Principles and Norms

To investigate the principles and norms valid at the European level in the asylum policy I have chosen to study two guiding EU documents in the field. The Stockholm Programme which is the latest five year (2010-2014) agreement in the field of freedom, security and justice and the Global Approach to Migration and Mobility (GAMM), a communication written by the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. In order to distinguish the main principles and also their internal hierarchy I will use text analysis as my tool. It will from time to time be necessary to interpret the texts not only literally but also in their context and read between the lines in order to understand how these principles and norms are really used in relation to each other.

Decision-making procedures and governing elite

To establish the decision-making procedures valid in the case of EU asylum policy I will first and foremost turn to EU treaties (and other valid agreements in the area). This can also be of help when finding out who the relevant governing elite in the area is and what implication this have. However, I believe it necessary also to consult different secondary sources in the form of previous research to get the entire view on this matter.

Rules

When analysing the common rules I will basically present an overview of the EU legislation produced on the matter of asylum policy, both in terms of EU regulations and directives as well as a brief summary of EU legislation in the field of labour migration and irregular migration. Secondary sources as well as previous research can be a helpful tool to fully understand the implications of the relevant EU legislation.

Practices

To be able to evaluate the strength of the EU migration regime it is important to see if practice coincidences with the principles and norms in the EU as well as the rules later decided upon with common decision-making procedures. Therefore, it is important to study the national asylum legislation as well as statistics on how many persons are seeking asylum in that specific Member State, how many are granted asylum and how many are rejected, and also how many are sent back to other Member States as an effect of the Dublin II regulation. Other relevant sources could be former research as well as reports from news media and interviews with officials working in the agencies managing migration in the Member State.

When doing this kind of research on the practice of EU asylum policy, it will be impossible to investigate all Member States within the scope of my master's thesis. Instead I have chosen to focus on three Member States with different migration history; France, Spain and Sweden. These three Member States are representing different types of immigration countries. All these countries have a history of emigration, as well as most EU countries.(2000:119) What makes them relevant different cases of comparison is the time when they turned into countries of immigration. For France and Sweden this shift started after

the Second World War, while for Spain it was not until the 80's. What further distinguishes France from Sweden is that France has a history of colonialism with the special ties and controversies that comes with that while Sweden has positioned itself as a liberal asylum country. I have borrowed this classification from Schuster (2000:119) since I believe that a comparison between these three countries can give a fruitful insight into policy convergence and differences between EU Member States. The typology used by Cornelius et al. also places France and Spain in different groups calling France one of the "Reluctant Countries of Immigration", while Spain is classified as part of the "Latecomers to Immigration". (2004) In this typology Sweden is not mentioned, instead they include a third group that they call "Countries of immigration" that consists of countries like the USA, Canada and Australia. An additional reason for picking France, Spain and Sweden as my cases of comparison is also that I speak all three languages which will help me considerably in my research consulting information issued by national agencies as well as news media.

The three Member States of my choice could also be called "old Member States", I find it reasonable to only pick old EU Member States since they are the ones receiving the lion part of the asylum seekers (around 90%). I also consider that the older Member States have had enough time by now to be shaped by as well as having shaped EU policy in this area. Many of the newer Member States are just about to turn into immigration states having large parts of their populations profiting from the free movement provided by an EU membership.

4.2.1. Source evaluation

Unfortunately the limited scope of my thesis has not made it possible for me to make interviews and do more in depth research on first hand sources in relation to the national practices. This has made my work dependant on secondary sources and as I have already mentioned there is not that much academic research on the topic. It has been hard to find several secondary sources in the form of peer reviewed research articles to compensate for biased information. The same goes for reports that I have used from different NGOs in my research. Despite the fact that they contribute to national, on the ground, insight I have tried to use these sources with moderation since I haven't had that many different sources to control for biased information. This I admit is a weakness which makes it even more necessary to test any results further in future research.

4.3. The method of text analysis

When you read a text there are several ways or strategies available to deal with what you are reading. In all cases it is important and relevant to highlight who is the author of the text and who is the intended receiver of the text. Moreover different methods of text analysis focuses on different aspects of the text; it could be the kind of language used in the text , in what historical and cultural situation the text is written or style, genre, grammatical, semantical or logical construction. (Svensson & Starrin 1996: 170)

My belief is that no one is objective, which means that no text can be other than subjective. In my interpretation of regime theory it is important to establish who constitutes the governing elite. When analysing the text searching for principles and norms it is important to keep in mind who has actually written these texts in order to understand them fully. Texts are not only dependent on previous knowledge in the field, but also on the experiences of the authors in terms of generation, gender and social class.

In my text analytical method I will focus on the argument in the text, a so called idea analytical method. To explain the content of the text it is important to identify and define words that are contextually ambiguous. (Svensson & Starrin 1996: 196) Floating signifiers is an expression used by Laclau and Mouffe to describe words that are particularly open to different articulations of meaning. (Jørgensen & Winther - Phillips 2002:33) When doing my research I need to be particularly observant on how this kind of words are filled with meaning in order to appear objective and natural, the aim is not to uncover an objective reality but to explore how this reality is created.

To be able to interpret you need some preunderstanding. (Svensson & Starrin 1996: 181) However, these preconceptions also make you a subject in your own text. Objectivity is impossible for others as well as for oneself, therefore it is important to always be aware of your preunderstanding and act extra suspiciously whenever something confirms your initial belief in order to fully prove the relation.

5. Principles and norms in policy documents for EU migration

"Principles are beliefs of fact, causation, and rectitude. Norms are standards of behavior defined in terms of rights and obligations." (Krasner 1983:2) I analyse the principles and the norms together because I believe it to be hard to separate beliefs of fact and rectitude from standards of behaviour, what is a principle for one person can be merely a norm for another.

In order to find traces of the norms and principles active in the EU when it comes to the common migration policy I have chosen to study two important documents in this field. Neither of them will explicitly spell out what principles or norms lie behind the wording and therefore this kind of quests demands a certain amount of interpretation. The first document is the Stockholm Programme (2010/C 115/01) which is the latest five year (2010-2014) agreement in the field of freedom, security and justice. This document is broad and include much more than only migration issues, it is in the last chapters of the document, number 5 and 6, that the migration policy is lined out. However, migration is also touched upon in the section about security and in that respect in relation to trafficking, terrorism and cross-border crimes.

The second document that I have chosen to study in my search for norms and principles is the Global Approach to Migration and Mobility (GAMM), a communication written by the The European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. According to the webpage of DG Home Affairs, responsible for migration policies, the GAMM "is to be regarded as the overarching framework for the EU external migration policy, complementary to the EU foreign policy and development cooperation." (EC, DG Home Affairs) It is clear that this document is based on the Stockholm Programme because you can recognise many parts of it, but it is also describing the migration policy and priorities in more detail.

What is a legitimate interest? In the Stockholm Programme it is states that access to the EU should be made more efficient for "businessmen, tourists, students, scientists, workers, persons in need of international protections and others having a legitimate interest to access the Union's territory"(2010:5)

In the Stockholm Programme there is a dichotomy created by EU citizens and "the others". It is here very clearly stated that Human Rights and human dignity are of utmost importance for the EU, both in the GAMM and the Stockholm Programme. However, one could still be doubtful about who the texts refer to when wanting to ensure human rights and human dignity, citizens or everyone?

This differentiation is also used in the GAMM, but to an even greater extent. In the document they make a distinction between mobility and migration. Mobility includes what they call "e.g. short-term visitors, tourists, students, researchers, business people or visiting family members". (2011:3) The area of mobility is primarily linked to the VISA-policy and is inherently seen as something positive, perhaps because what they have in common is a short stay in the EU which is only profitable for the tourist sector without taking any jobs from the EU citizens. Migration on the other hand is actually not defined more specifically, other than that it is a more specific subject, interlinked to mobility through the VISA-policy. In the text migration seem to be the more problematic area. What we see here is not a dichotomy as in the Stockholm programme between EU citizens and "the others", the GAMM rather divides into three different groups: EU citizens, short-term visitors and migrants.

5.1. Principles and norms related to human rights

Human rights: core values of the EU

It is firmly established in the Stockholm Programme but also in the GAMM that the Human Rights Charter is at the centre for the migration policy. Perhaps it is even the founding principle behind EU migration policy.

"Respect for the human person and human dignity and for other rights set out in the Charter of Fundamental Rights of the European Union and the European Convention for protection of Human Rights and fundamental freedoms are core values."(Stockholm Programme 2010:4).

Convention relating to the Status of Refugees from 1951 is mentioned at several occasions. Related to this the texts establish as a principle that the UN to be the most important international organisation to cooperate with for the EU. (Stockholm Programme 2010:37) The ambition is said to be to "enhance solidarity with refugees and displaced persons"(GAMM: 2011:17) "European Council remains committed to the objective of

establishing a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection". (Stockholm Programme 2010:32)

To harmonise asylum reception is to show solidarity with refugees

Connected to basic principle of human rights and the Convention related to the Status of Refugees is the importance of asylum seekers being offered a decent treatment regardless of in what Member State they turn in their application of asylum. (Stockholm Programme 2010:32)

The norm behind this principle is that there should be solidarity between the Member States in receiving asylum seekers. A coherent use of the Common European Asylum System (CEAS) is supposed to impede secondary movements within the EU if an asylum seeker already has been rejected in one EU Member State. (Stockholm Programme 2010:32), however there is an awareness that this system needs to be improved. This reasoning is not only argued from a migrant centred perspective, that might be the impression you get from reading the texts, but it is also beneficial from an economic perspective.

Related to the solidarity with refugees it is also stated as a principle that there should be decent reception centre for migrants. "measures should be taken to ensure decent living conditions for migrants in reception centres and to avoid arbitrary or indefinite detention." (GAMM 2011:16)

A migration policy in respect for the fundamental freedoms of the EU

Under the title of "promoting citizenship and fundamental rights" in the Stockholm Programme the following statement is made: "The area of freedom, security and justice must, above all, be a single area in which fundamental rights and freedoms are protected" (Stockholm Programme 2010:4) The fundamental freedoms of the EU includes the free movement of citizens and their family members, the free movement of goods, capital and services. This principle could be argued to be an economical one, since it is focusing primarily on the well-functioning of the internal market. However, it is also a right for people to move freely within the European Union motivating a harmonised migration policy in a security perspective.

Foreign policy is closely linked to migration policy

In the two texts on EU migration policy it comes almost as given that migration policy is closely linked to Foreign policy. As we will see later on this is, however, not the only connection to other policy areas that is made.

In the last chapter (7) of the Stockholm Programme the external dimension of area of freedom, security and justice is discussed. Mentioned here is that part of maintaining security in the EU is to address threats even far away from the continent. Human Rights are once again repeated as an important part of the EU values that should be promoted abroad. “internal and external aspects of Human Rights are interlinked, for instance as regards the principle of non-refoulement or the use of death penalty by partners that the Union cooperates with” (2010:34)

The Stockholm Programme mentions several different strategies for different geographical areas. When it comes to migration policy the geographical area that is especially discussed is the Mediterranean area, according to the programme this area is in need of a stronger partnership with third countries and cooperation in terms of border control and fight against organised crimes as well as in terms of return and readmission. (2010:36) When it comes to migration and asylum, “return and readmission is a priority in the Union’s external relations”. (2010:34) In terms of security it is to “combat serious organised crime, terrorism, drugs, trafficking in human beings and smuggling of persons,” (2010:35) in this way focusing security efforts on prevention.

5.2. Principles and norms related to the internal market and Competition

Labour migration makes the EU more competitive

A basic assumption behind the EU migration policy is that immigrants are needed in the European societies. The principle is that labour migration can make the EU more competitive on the global market. “The European Council recognises that labour immigration can contribute to increased competitiveness and economic vitality.” (Stockholm Programme 2010:29)

“European policy in the organisation and facilitation of legal migration and mobility within the GAMM is based on the premise of offering employers wider opportunities to find the best individuals for vacancies on the global labour market.”(2011:12)The dominating

norm behind labour migration is to satisfy employers wishing for special types of labour, either because the competence can be scarce on the EU market or because it is nonexistent. In the text it also becomes clear that labour migrants the EU needs are “highly skilled workers”. (GAMM 2011:12) And the access to the EU for these skilled workers must therefore be facilitated. As a logical sequence to this comes the ambition for the EU to strengthen the “capacity to anticipate labour market and skills need”. (GAMM 2011:13)

Because of this principle the migration policy becomes closely connected to the Europe 2020 Strategy. Ameliorated integration policies are strongly needed because the EU faces labour market problems and mismatches. Migration and mobility are here seen as a way of “Securing an adaptable workforce with the necessary skills which can cope successfully with the evolving demographic and economic changes.” (GAMM 2011:4)

Circular migration is the ultimate way to manage migration

Applying the idea of circular migration allows the Commission to combine labour migration to the EU in order to increase competitiveness, when it is needed, with a valid excuse for sending the migrants "home" when they're not needed in the EU any more. It is a way to “help migrants to move in orderly fashion and take back home the resources and skills their countries of origin often badly need”. (GAMM 2011:19) The idea is that they should enrich their home countries with the valuable new knowledge they have gained in the EU- and in this way the problem of brain drain is avoided. What is often forgotten in this idea of a very well managed circular migration is that people have a tendency to root themselves wherever they go, getting friends, perhaps finding a partner, learning a language, buying a home and to then make that person go back to his or her home country is not always that easy nor really in accordance with human dignity which seems to be one of the values the EU wants uphold.

Availability of jobs for irregular migrants attracts them to the EU

The backside of the focus on facilitating labour migration is that unscrupulous employers might take advantage of the migrants. Actions targeting “unscrupulous employers” (GAMM 2011:16) are favoured in order to protect the human rights of the migrants. Moreover, there is a belief that it is the availability of jobs, often in the black economy, that attracts migrants to the EU even though they might not have legitimate reasons, according to the rules, to travel

there. In the texts you can also trace a strong belief that the majority of the migrants coming to the EU are neither refugees nor skilled workers and that targeting available jobs for these illegal immigrants therefore could have the effect of diminishing the migration flows.

The reception of migrants is costly

There is a need for solidarity also between the Member States when it comes to receiving asylum seekers. “Effective solidarity with the Member States facing particular pressures should be promoted.” (Stockholm Programme 2010: 32)

Because receiving many migrants is inherently seen as something negative, processing asylum applications is seen as a burden that should be shared. However, it is obviously a delicate issue, and therefore only voluntary sharing of responsibility between the Member States is discussed in the Stockholm Programme.

Again you can question this principle, assuming that asylum seekers will not contribute to their new society. It is probable that people coming from war and other horrors might need time to acclimatise, but they can be equally skilled persons as labour migrants, just coming for other reasons.

5.3. Principles and norms related to security

Irregular migration undermines the safety of the migration system

“The European Council is convinced that effective action against illegal immigration remains essential when developing a common immigration policy”. (Stockholm Programme 2010:30) Irregular immigration is seen as an extensive problem within the EU, this is to be understood by the emphasis put on it in both the documents that I have analysed. In the GAMM the framework is set by the following statement “Safe and secure migration is undermined by those who operate outside the legal framework.” (GAMM 2011: 15) In the next paragraph follows: “A broad understanding of security means that irregular migration also needs to be considered in connection with organised crime and lack of rule of law and justice, feeding on corruption and inadequate regulation.”

“An effective and sustainable return policy is an essential element of a well-managed migration system within the Union. The Union and the Member States should intensify the efforts to return illegally residing third-country nationals.” (Stockholm Programme 2010:30) To understand the logic behind this conclusion it is important to keep in mind the principles and norms that I have presented earlier. Not all migrants are welcome in the EU, some have legitimate reasons to stay because they are trying to escape horrible circumstances in other parts of the world and some have legitimate reasons to stay because they are highly talented and can contribute to make the EU more competitive. The ones in between, who don't have sufficiently horrible reasons for protection and are not enough talented in the right area should not be encouraged to come to the EU, and therefore they need to be sent back. Not to send back this type of immigrants would send the message for more to come, according to this logic, and would play right in the hands of the unscrupulous employers.

Irregular immigration is also connected to activities such as smuggling and trafficking. By accepting irregular immigrants you also seem to accept the means by how they arrive in the EU. However, the fact is that even asylum seekers with legitimate reasons to stay in the EU often take this illegal way into the EU, because there is no other way. In this perspective the fight against illegal immigration with border controls becomes multifaceted.

Neighbouring countries can stop the migration flows to the EU

The fact is that almost all of the operational priorities in the GAMM related to asylum policy are concerned with the actions of non EU-countries. A higher standard of international protection for asylum seekers is sought for and in order to achieve this “the EU should increase cooperation with relevant non-EU countries in order to strengthen their asylum systems and national asylum legislation and to ensure compliance with international standards.” (2011:17) The majority of the operational priorities related to asylum policy in the GAMM concerns this type of partnership with neighbouring third countries. Interestingly many of these neighbouring countries that should be helped to improve their asylum reception are what is usually called transfer countries in migration literature, this means that they are not the origins of the migrants. The ambition might be very good indeed, but it is striking that the only action proposed in the GAMM which is not related to improvements that other countries have to make, when it comes to asylum policy, is a resettlement programme where

more resettlement places should be offered in the EU. One paragraph out of seven is concerns proper actions within the EU.

“The Union should act in partnership and cooperate with third countries hosting large refugee populations”. (Stockholm Programme 2010:33) Solidarity is a word not only used related to fellow Member States of the European Union but also towards third states in helping to build capacity for handling migration.

5.4. Summing up the principles and norms

In the first paragraph of the first chapter of the Stockholm Programme it is stated that the focus will be on citizens "interests and needs "but that the challenge will be to "ensure respect for fundamental rights and freedoms and integrity of the person while guaranteeing security in Europe".(2010:4) Applying the concept of regime complexity, my initial estimation of intersecting areas seems to be quite correct. Concerns of Human rights, economy and demography are raised in the documents that I have been analysing. The GAMM is putting more attention to the economic aspects visualised in the Europe 2020 strategy while the Stockholm Programme is emphasizing human rights to a greater concern. The categories, irregular immigrant, labour immigrant and refugee are rigidly upheld.

6. Decision-making procedures and governing elite

“Decision-making procedures are prevailing practices for making and implementing collective choice.” (Krasner 1983:2)

6.1. Decision-making procedures and the role of the EU institutions.

The basic rules for decision-making procedures are provided for under the article 67 EC. From December 2004 decisions on issues of irregular migration and border control are taken with the co-decision procedure. In December 2005 the co-decision procedure was introduced in the field of asylum. (Lopatin 2013:742) With the Lisbon treaty the co-decision procedure was made the ordinary legislative procedure and all issues of migration and asylum amongst the EU competences became covered by this, including now also the field of legal immigration. (Boswell & Geddes 2011:10, Lopatin 2013:742) This means that nowadays the decisions being taken by the EU on the subject of migration and asylum are taken by the Council of Ministers and the European Parliament together. In the Council the decision is agreed upon by Qualified Majority Voting and the Court of Justice are fully entitled to rule on annulment of legislation, on failure to act on the part of EU institutions and in cases of infringement where Member States have not fulfilled their obligations. (Boswell & Geddes 2011:10)

Because of the number and the complexity of the institutions involved in the decision-making, bargaining is an everyday component of the process. (Boswell & Geddes 2011:56) Moreover, in an area with such complex regulations and task of harmonization as migration the group of people actually developing policy becomes quite limited, centred on networks with experts, connecting the formal lawmaking to more informal social resources. (Boswell & Geddes 2011:55)

The Commission has the sole right of initiative when it comes to EU legislation in the area of common migration policy. (Boswell & Geddes 2011: 63) The Commission is supposed to take into consideration the interest of the whole of the EU, and since there is

generally very little common public debate on EU issues the Commission tries to promote its credibility by technical expertise. Technical expertise that they many times get from committees including interest groups a necessity usually explained by the fact that the Commission that has not the administrative capacity carries out all investigations by themselves and is therefore in need of expert opinions and assistance from interest groups. The initiation and policy formulation phase is usually the time when most interest groups try to influence even though the Commission also is responsible for the implementation together with the Council. (Eising 2008:12) The Commission is generally known to adopt a relatively liberal and modernizing position in comparison to the Council of Ministers. However, as Boswell and Geddes put it, the institution is “far from being a depoliticized bureaucracy, or ‘impartial broker’ between Member States.” (Boswell & Geddes 2011:63) Instead they argue that it is possible to see a clear set of preferences, in the case of asylum policy this would be an attachment to norms of human rights and international refugee law and a strong support for an increased harmonization of national policies such as the common asylum system that recently has been approved by the Council and the Parliament. The latter might be little surprising since further harmonization and more common laws mean more regulating power to the EU and more importance to the Commission.

The Council of Ministers, on the other hand, has a reputation of being more conservative and as always a lot more hesitant to further harmonization and everything meaning more competencies to the EU. This is, according to Boswell and Geddes because the Council is typically headed by national control oriented officials. A common tendency also seems to have been to try to impose national approaches and standards on EU legislation, something that has caused frustration within the Commission as well as amongst international organizations. (Boswell & Geddes 2011:64-65) However, in recent years the voting procedure in the Council has been Qualified Majority Voting, which means that individual Member States are no longer capable of blocking a decision, something that has the possibility to open up for more progressive migration policy.

The European Parliament has a tradition of being more progressive and more open, criticising the idea of Fortress Europe. (Boswell & Geddes 2011:66) However, Lopatin shows in her research that there is a correlation between the gain in power of the Parliament and the tendency of the Parliament to promote more restrictive migration policy. This is mainly due to a shift in the two biggest party groups, the Party of European Socialists (PES) and the Alliance of Liberals and Democrats for Europe (ALDE). The PES has maintained the support for liberal policies as a group but with loss of cohesion, meaning that more individuals have

started voting for more conservative options. The ALDE group shifted its policy and went from supporting liberal policies before 2005 to a voting behaviour more similar to the Conservatives after 2005. (Lopatin 2013:751) Also, in the last elections, 2009, several representatives for the extreme right entered the European Parliament (from, for example French Front National and British National Party). (Boswell & Geddes 2011: 67) However, this has not influenced the result of Lopatin since she has compared changes within party groups as well. Her results indicate that the decision procedure has a big influence on positions taken by the parliamentarians. Lopatin means that when co-decision was introduced and the Council was no longer able to dismiss the amendments from the Parliament, parliamentarians realized that in order to be more effective and increase the chance of gaining the consent of the Council they had to propose less radical amendments. (Lopatin 2013: 752) Moreover, the ordinary procedure includes rules which make the position of the Parliament more difficult when voting on amendments for the second time compared to the first. This has also created a larger uniformity between the parties in the Parliament, because the Parliament can stand stronger if the big party groups agree (Lopatin 2013:752).

6.2. Is there any migrant's interest representation?

With the increasing legal powers and importance of the EU, the interest to influence the supranational bodies of the EU has grown. The number of interest groups present at the European level has gone from being mostly business interests in the 1980s to include a broader range of public interests that also mobilise around ideas and norms and not only money. (Eising 2008: 14) As EU migration policy has developed and EU competencies in the areas have been increased so has the interest and the activity of different interest groups trying to influence the migration policy. (Geddes 2000:133)

An interest group is described by Eising as including the key features: organization, political interest and informality. (Eising 2008:5) This definition also suits my purposes; an interest group is a kind of consciously organized entity with the purpose of promoting a political interest usually through informal channels rather than creating policy by themselves.

The EU is not only an opportunity for interest groups to bypass national levels and try to circumvent reactionary governments, it is also a set of institutions that encourages intermediation by interest groups. Interest groups participate as experts in different committees and regularized consultation and some of them are even supported financially

(Eising 2008:9) In June 2011 an Interinstitutional Transparency Register was created by the European Commission and Parliament. The register makes the information on active interest groups in the EU more accessible although registering is voluntary. On the 4th of July 2013, 5826 persons/organizations/associations were registered in total (EU Transparency Register).

The website is not that easily navigated and it is not really a tool for measuring the influence of the different interest groups, but when you make a search with the keyword “migration” 76 organisations are listed (Including Human Rights Watch, International Organization for Migration but also Film France and European Association of Corporate Treasures meaning that the range is wide). It is possible to see how much every organization’s estimated spending on lobbying in the EU is, but it is not possible to include this in the search criteria on the webpage in order to see what kind of organisations put most money on this business. If the interest groups receive financial support from the EU it is also listed here.

The question remains whether the moving of decision and power from national to EU level also means new possibilities of influence for pro-migrant interest groups that usually are not strong enough on a national level.

“Inclusion may be of more relevance to the stability of the system than the interest of the included.. A risk such groups (pro migrant interest groups) face is that their participation and implicit compliance legitimise policy developments that are more likely to exclude than include the groups whose interests they seek to represent.” (Geddes 2000:136)

Geddes means that by operating at EU level, the interest groups legitimizes that the migration policy should be a common issue which demands increased European integration. Thereby they become the potential allies for the supranational EU institutions while the common migration policy constructed might actually mean a step back in the openness of some Member States.

As we have seen there is a fair amount of interest groups who take an interest in migration policy, even though we don’t know how much resources they use for this particular issue. It is easy to question the influence of a group of people such as asylum seekers or economic migrants. You can imagine that forming political networks or group in order to influence society is generally not the first thing you do when trying to settle in a new country. Moreover, this group usually experiences cultural and language barriers when trying to make their voice heard.

7. Rules

“Rules are specific prescriptions or proscriptions for action.” (Krasner 1983:2)

7.1. The Convention relating to the Status of Refugees

It was in 1951 that the key to asylum policy and refugee reception was created by the Geneva Convention, a diplomatic conference in Geneva uniting representatives from 26 states. (UNHCR Convention and Protocol:8) This Convention was first created to protect European war refugees from before 1st of January 1951 but was later amended with the protocol in 1967 to include all refugees without geographical limitations. (Article 1, paragraph 3) As of September 2011 148 states were party to one or both of these instruments related to the status of refugees. (UNHCR FAQ : 2) The Convention relating to the Status of Refugees is basic foundation for EU asylum policy and the conviction that the Convention is still important is shown in the documents that I discussed before, in the chapter concerning principles and norms.

One of the most important rights granted by the Convention and its protocol is non-refoulement in article 33 §1: “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” The Convention and its protocol also include rights such as the right not to be punished for illegal entry or presence, a granted refugee also has the right to work (art. 17-19) and to education (art 22) as well as the right to freedom of movement within the territory (art 26) and the right to courts (art 16) and the right to get traveling documents (art. 27 -28) . However, there are also obligations set out for the refugee; “[e]very refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.” (art 2)

7.2. The EU Asylum System

The Common European Asylum System (CEAS) is a set of rules constructed to meet refugees in need of international protection as has been established by the Convention relating to the Status of Refugees and its Protocol. Following an agreement made in the European Parliament on the 12th of June 2013, a new common asylum system will be in place from the second half of 2015². (EP News 2013)

The current EU Asylum System include the Asylum Procedures Directive (2005/85/EC) which indicates norms for the application process, the Reception Condition Directive (2003/9/EC) which set down minimum standards for the reception of the applicants such as accommodation, food, medical care and access to education for minors and the Qualification Directive (2011/95/EU) for a uniform status of refugees. These directives all generally set out minimum standards making it possible for Member States to exceed the requirements in national law. The doctrine of direct effect makes it possible for individual asylum seekers to take states to the domestic courts if standards set out in the directives are not followed. (Kaunert 2009:155-156)

The directives have contributed to major improvement when it comes to migrants' rights. The reception conditions directive guarantee not only food, shelter and medical care but also the access to education for minors. However, the access to the labour market for asylum applicants depends to a large extent upon the state. (Summaries of EU legislation- Receptions Directive) The Asylum Qualification Directive uses the same definition of a refugee as the Geneva Convention, but adds to this a definition of persons eligible for subsidiary protection that falls outside of the refugee definition: "A third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face real risk of suffering serious harm." (Kaunert 2009:153)

The Asylum Procedures Directive has been criticized for controversial concepts such as: 'first country of asylum', 'safe country of origin' and 'safe third country'. These are all reasons for rejection of asylum applications or transferring of responsibility to another country. First country of asylum applies when the applicant has been recognized as a refugee in another country with sufficient protection. Safe country of origin means that a group of

² New Dublin rules on transfers of asylum seekers will take effect already by the start of 2014.

applications can be seen as unfounded and therefore enter an accelerated process only because their home country is considered safe. The last concept of ‘safe third country’ allows for the transferring of responsibility for the asylum application to the transit countries to the EU. (Kaunert 2009:154) This clearly follows the norm explained earlier that neighboring countries can stop migration to the EU by acting as some form of shield.

The three directives cited above have an important function in the EU common asylum system, but it is two regulations that build the framework of the whole cooperation. The Dublin II regulation ((EC) No 343/2003) determining what Member State is responsible for the asylum seeker and the EURODAC regulation ((EC) No 2725/2000) providing the legal basis for a database with fingerprints of asylum seekers. The basis of the EU common asylum system is built on the premises that multiple asylum applications sometimes called “asylum shopping” should not be possible. The Dublin II establishes this basic principle that “only one Member State is responsible for examining an asylum application” (Summaries of EU legislation- Dublin II regulation). There are several principles included, such as the one regarding family unity valid for unaccompanied minors whose application should be filed in the country where there is a family relative; however the basic principle is that the asylum application should be filed in the first country entered, either with or without visa illegally crossing a border. The EURODAC regulation works as a support to the Dublin II regulation in the sense that when someone applies for asylum in the EU their fingerprints are taken and transmitted to the EURODAC central system. (EC, DG Home Affairs) In this way the Member States can assure themselves for each asylum application that the person has not filed an asylum application in another EU country.

The Dublin II regulation has been extensively criticized by Human Rights Organizations. Considering the fact that legal ways of entering an EU country for an asylum seeker is extremely limited, illegal crossings of the EU borders is very common and therefore it is the border countries (especially to the south) that becomes responsible for disproportionate amounts of asylum applications. Legal ways of entering an EU country depends on your country of origin; citizens of some countries do not need a visa to enter the EU while others do, and if you are susceptible of applying for asylum when entering the EU, a visa is normally refused.(asylumlaw.org) This is a general problem of the EU asylum system not immediately caused by the Dublin II regulation. However, the basic problem with the Dublin II regulation is that it is built on the idea that asylum seekers receive equal access to justice and protection in all Member States. As it is now this is far from true and there are huge differences on standards of protection. (Ippolito and Velluti 2011:33) The asylum

system shows several traits of a security concern that could be traced back to an EU security regime. But, more importantly the Dublin II regulation serves as a kind of forced solidarity within the EU when it comes to share the costs of receiving asylum seekers.

7.3. Rules for regular and irregular labour immigration

As you have already noted earlier, labour migration plays a big part in the EU vision of an increased competitiveness. However, the right to determine volumes of labour immigration from third-countries lie in the hands of the Member States and measures on EU level have no right to infringe on that. (Boswell & Geddes 2011: 76) Of course, the Commission has pushed for greater harmonization in this area anyways, using the argument of competitiveness as we have seen earlier. (Boswell & Geddes 2011: 95) The first major advance for the Commission in this area came in 2009 with the agreement on an EU Blue Card, a directive (2009/50/EC) that gives conditions for entry and residence for third country nationals in high-skilled employment. (Boswell & Geddes 2011:95) Still the admission volumes are decided by the Member States. The Commission has also presented proposals on a Directive on seasonal employment and a Directive for intracorporate transfer of non-EU skilled workers. (EC, DG Home Affairs)

Generally for a third country national to work in the EU they need to comply with certain criteria. In order to get a temporary residence permit they need for example, a job offer, adequate financial resources and health insurance. To use immigrants as a way to fill the needs on the labour market, as presented above in the Global Approach of the Commission, is tricky.

“The study carried out by the Commission shows that it is difficult to assess legal migration flows on the one hand, and to estimate labour market needs on the other. Even if the quality of Community statistics has improved, the sources, definitions, data collection and practices still vary from one Member State to another. The report nevertheless estimates that migration for the purpose of employment currently accounts for less than 15% of persons admitted to Member States. Most third country nationals legally admitted to the EU enter by way of family reunification or humanitarian protection.” (EU legislation summaries- Links between legal and illegal immigration)

That regular labour immigration and irregular immigration generally is discussed separately is also visualized by the work division of the EU. The irregular migration is an EU competence and as I have already mentioned, nowadays decided upon by co-decision between the Council and the Parliament. However, there are reasons to discuss irregular migration together with the regular migration as many researchers argue that the availability of jobs is also a pull factor for irregular migrants. There are strong business interests in favour of a certain amount of irregular immigration since this contributes to cheap and flexible labour. Often, as you can also see in the later example of Spain, irregular migrants or seasonal regular labour migrants tend to seek jobs in specific sectors that native workers reject because of harsh working conditions or low pay. (Boswell & Geddes 2011:127) Boswell and Geddes argue that there is a strong tendency nowadays for centre right governments to pursue stricter border controls and decrease the amount of regular labour migrants while at the same time ignoring measure on reducing irregular employment. This way the government can profit from the popular support against immigrant labour while at the same time not challenge organized business interest in favour of this kind of cheap and flexible labour resources. (Boswell & Geddes 2011:143)

The Return Directive (2008/115/EC) from 2008 was the first directive passed under the co-decision procedure in the area of irregular migration. The objective of this directive was to harmonize the procedures for the expulsion of irregular immigrants. Member States cannot adopt harsher rules than the ones established in the directive but they are allowed to be more lenient.(Boswell & Geddes 2011:140) Once again minimum rules are used, this time as a way of harmonizing the return of third country nationals who cannot claim asylum.

8. Practices

“The 27 Member States of the European Union registered 296,700 new asylum claims in 2012, a 7 per cent increase compared to 2011 (277,800). These 27 States together accounted for 83 per cent of all asylum claims in Europe.” (UNHCR 2013:2) According to UNHCR statistics Afghanistan (36,600 asylum claims lodged during 2012) remains the most important source country of asylum seekers in the 44 industrialized countries that they have investigated (EU 27+ Albania, Bosnia and Herzegovina, Croatia, Iceland, Liechtenstein, Montenegro, Norway, Serbia (and Kosovo S/RES/1244 (1999)), Switzerland, the former Yugoslav Republic of Macedonia, Turkey, USA, Canada, Australia, New Zealand, Japan and the Republic of Korea). Followed by Syrian Arab Republic (24,800), Serbia (and Kosovo) (24,300), China (24,100) and Pakistan (23,200). The five biggest receiving countries of asylum seekers were during 2012 USA (83,400), Germany (64,500), France (54,900), Sweden (43,900) and the UK (27,400). (UNHCR 2013:3) The numbers presented above are those of asylum applications, some asylum seekers may file applications in different countries during the same year and therefore the actual number of asylum seekers is not always known. The data for the USA refers not to the number of individuals but to the number of cases which may include various individuals.

Out of a total of 479,300 asylum applications in the 44 industrialized countries of the UNHCR report, the EU registered 296,700 applications. Within the EU the old Member States stood for 93 % of all these applications. (UNHCR 2013 :7) Sweden had an all time high, and the Nordic countries with the exception of Finland had a 38% increase of asylum. Southern Europe on the other hand had a decrease of applications of 27% (mainly due to fewer boat arrivals in Italy) (UNHCR 2013:7)

“Despite the fact that Syrians constituted the second largest group of asylum-seekers among industrialized countries in 2012, their number remains modest compared to the number of Syrian refugees hosted by countries in the Middle East. On 6 March 2013, UNHCR reported that a total of one million Syrian refugees had been registered or were awaiting registration in Egypt, Iraq, Jordan, Lebanon, and Turkey.” (UNHCR 2013 :15) The EU and

the industrialized world receive a lot of asylum seekers, but the majority of the world's forced migration is within a country or to a neighbouring country. In 2011, 42,5 million people were forced migrants, and out of these 15 million were considered refugees. (CEAR 2013:7) UNHCR states in its publication *The State of World's Refugees: The Search for Solidarity* from 2012 that the institution of asylum is being threatened and large disparities are being found between the signatories of the Refugee Convention also between the Member States of the EU. (UNHCR Summary 2012: 10)

Toshkov and de Haan have recently presented an assessment of the EU impact on asylum applications and recognition rates in the *Journal of European Public Policy*. (2013) They test three hypotheses on the Europeanization of asylum policy in their assessment; whether it has led to a race to the bottom, if it has caused greater convergence between Member States and if it has led to a more equal distribution of the applications and recognitions of Asylum in the EU. In their study they include the 27 EU Member States plus Switzerland and Norway and they conclude that the common asylum policy established in the EU during the last 10 years at least not has meant a race to the bottom. Furthermore, they see a slight tendency to convergence which means that differences between the states are a little bit less compared to ten years ago. (2013:680) However, this does not in any way mean that neither application rates nor recognition rates are on equal levels in the Member States. A comparison of the asylum decisions regarding applicants from one of the most common source countries Afghanistan shows in 2009 30 % positive decisions³ in Austria while only 3% in the Netherlands. Regarding Iraqis the recognition rate was 79% in France and 8% in Great Britain.(Toshkov & de Haan 2013:676) Even though Toshkov and de Haan have not analysed every case in detail but only compared the numbers of positive decisions to the total number of decisions, what they call recognition rate, it is questionable whether groups of applicants from the same country of origin present such different cases depending on which country they go to. It lies closer to hand to believe that it is the specific rules and the Member States that make the big difference.

When they compare the "Burden-sharing", as they call it, between the Member States they use the GDP as a comparison. The 'fair' share of the applications and the recognised protection should for one Member State be the same as the share of the GDP to the total amount of GDP in the EU Member States plus Switzerland and Norway. The countries in the top of their investigation, with more than the double "fair" share of applications are Cyprus,

³ Positive decision means here a decision that grants either full convention status or any type of protection. (Toshkov & de Haan 2013:669)

Malta, Sweden, Greece and Norway. When it comes to recognised protection the only big difference is Greece that grants less than half of its ‘fair share’ some kind of protection⁴. The other countries in this group are Portugal, Slovenia, Spain, Estonia and Latvia. The bigger Member States such as France, UK and Germany all come quite close to the normal ‘fair share’. What is quite surprising, considering their geopolitical positioning is that Portugal, Spain and Italy have all registered a decreasing amount of asylum applications in relation to their GDP levels for each year between 2000 and 2010. (Toshkov & de Haan 2013:678-679)

8.1. France

8.1.1. A long history of immigration

Immigration to France started already at the time of industrialisation. Unlike other European states at the time, France was early to accept foreigners as settlers and even citizens. Hollifield argues that this was because of the republican tradition, promoting values such as equality, popular sovereignty and the rights of man. (Hollifield 2004:183f) However, the founding of France and the national identity can be dated back to the time for the French revolution, and extensive labour immigration starting in the 1850s never became part of the national history in the same way as in other old nations of immigration such as the USA or Australia. (Hollifield 2004:184)

The first steps toward immigration control in France were made during World War I by the creation of national identity cards. (Hollifield 2004:185) After the wars labour shortages made the employers demand cheap foreign labour. It was necessary to import labour from neighbouring countries such as Spain and Italy to be able to boost the economy and catch up with Great Britain and Germany. In the meantime a welfare state was created which included civil and human rights for foreigners and especially refugees, which made up, all in all, a quite permissive and extensive immigration policy. Although, turbulence connected to decolonialization of the French empire and the Algerian war created several controversies around immigration control and is still affecting the nationalist lines in France until today. (Hollifield 2004: 186)

⁴ This resulting in extremely low recognition rates for Greece. In fact, out of 11.195 first instance decisions taken 2012 only 95 were granted some form of protection. (Bitoulas 2013 Table 9)

8.1.2. Efforts to stop labour and family immigration in the face of unemployment

In 1973-1974 the consensus of an open immigration regime disappeared, instead efforts were made to try to stop or curb labour immigration to France. The reason for this was the decline in economic growth and the rise in unemployment among French citizens. The control actions were also made in response to rising xenophobia and the belief was that a stop of immigration could solve the unemployment problems and weaken the nationalist movements. (Hollifield 2004:190f)

To stop the arrival of immigrants proved not to be as easy as first thought. “By decreeing an immigration stop, France inadvertently accelerated the process of settlement and family reunification.” (Hollifield 2004:191)

With a xenophobic party as Front National rallying support in France the other parties needed to define how they would confront the immigration issue. The solution of the right has been to try to toughen up the rules of immigration and to roll back some of the rights that foreigners have had in France. Socialist governments have had a more liberal approach trying to call upon the republican ideals while not daring to go all the way. (2004: 200-210) In the last ten years France has started to open up for labour immigration again, as Sarkozy put it in an interview from 2006 in the French News Paper *Le Monde*: “France is the only developed country which robs itself of the possibility to invite on its territory migrants that it needs to contribute to growth and prosperity” (*Le Monde* April 15, 2006 in Menz 2008:147) The rhetoric promoted by the government at the time was one of chosen and non- chosen immigration, where the chosen one constituted high skilled labour immigrants while the non-chosen one was set up by family migrants and refugees. The Sarkozy II law of 2006 regarding Immigration and Integration (Loi n° 2006-911) provided the legislative framework for a more restrictive approach to family reunion⁵ and asylum seekers while providing new work permits for highly qualified professionals. (Menz 2008: 148)

⁵ Family reunion requires proof of economic self sufficiency and long waiting periods. (Menz 2008:148)

8.1.3. Asylum in France

Already in the Constitution of 1793 asylum was mentioned.⁶ Despite the long tradition of asylum, France has been criticized for treating asylum seekers together with other types of immigration and as a consequence of this often looking upon asylum seekers as bogus or disguised economic migrants. (Delouvin 2000: 61)

The beginning of the nineties saw a definite end to generous migration policies. French president and leader of the Socialist Party Francois Mitterrand admitted in an interview in December 1989 that the capacity to receive immigration had been reached already in the 70's. (Menz 2008:141) Since then the asylum policy has been dominated by a restrictive approach making the recognition rates fall from around 45 % in the mid 80's to 14-15 % now. (Menz 2008:151, Bitoulas 2013 Table 9)

According to the CFDA⁷ a decentralized process, where the regions are responsible for the first admission to the asylum process, has resulted in an unequal treatment for asylum seekers. (2013:54) At this stage the application can be deemed unfounded because of three different reasons as well as for the reasons in the Dublin II regulation; safe country of origin, threat to the public, and for being judged as false or abusive, but also because the asylum seeker lacks an approved postal address.

Last year (2012), France was the third largest country in terms of asylum applications in the report by UNHCR on industrialized countries, second in the EU after Germany. Of the 54,900 asylum requests filed 2012, the Russian federation was the biggest source country followed by the Democratic Republic of the Congo and Serbia (+Kosovo). (UNHCR :10-11) Even though making the double amount of decisions, Sweden granted more positive decisions placing France the third largest country in the EU when it comes to total positive decisions in 2012. (Bitoulas 2013 Table 9)

During the last 10 years the fight against irregular migration has been stepped up in France and in relation to this the French government introduced deportation of rejected asylum seekers as a core part of new asylum law reforms in the beginning of 2000. (Menz 2008: 143)

⁶ Article 120: "Le peuple français donne l'asile aux étrangers bannis de leur patrie pour la cause de la liberté et il le refuse aux tyrans."(OFPRA)

⁷ La Coordination Francaise pour le Droit d'Asile. A cooperation between different NGOs engaged in asylum in France.

Another criticized issue in French management of asylum and irregular immigration has been detention zones in relation to entrance points such as airports, ports and train stations. These are considered international transit zones and thus no demands of asylum can be made, since this has to be made on national territory. Instead undocumented migrants can be held while their cases are examined ready to be deported in the case of unfunded claims. (Menz 2008:145)

Economic arguments seem to stand strong in relation to French immigration and asylum policy. Even though France is a country with long tradition of human rights, the human rights regime seems to have limited effect on asylum policy the last 20 years. However, that rights have been rolled back means at least that there has been a tradition of human rights and at some occasions too restrictive laws has been ruled as unlawful by the Constitutional council (Menz 2008:144)

8.2. Spain

8.2.1. A latecomer to immigration

It was not until the 1980s that Spain began to change from being a labour-exporting country to become labour-importing. (Cornelius 2004:387) During the 1960s and early 1970s during Franco dictatorship, Spanish people were emigrating or fleeing to northern Europe to find work. After Franco's death (1975) when Spain was becoming more democratic, many of these repatriated themselves. By the time of the accession of Spain to the EC (1986) the country was experiencing an economic boom that attracted immigration and since then the number of foreigners living in Spain has risen from 241,971 in 1985 to 895,720 in 2000 and further on to 1,647,011 in 2003. In addition, in 2003 around 650,000 illegal immigrants were believed to also be living in Spain. (Cornelius 2004:387f)

Since the democratic transition and the entry into the EC the composition of the immigrant group has also changed. Before the 1980s it was mostly tourist and retirees from Germany, Scandinavia and the United Kingdom coming to Spain for the warmer climate, not taking part in the labour market. Nowadays the immigrant population is more diverse both when it comes to background and socioeconomic status. In 2003 as much as 65 % of foreigners living in Spain were labour immigrants from third countries mostly in northern Africa, Latin America or Asia (mostly China and the Philippines). (Cornelius 2004:388)

8.2.2. Labour migration in between legality

Labour immigrants are filling jobs that native-born workers do not want. That is at least the belief of the Spaniards, making them as a people unusually positive in European comparisons when it comes to immigration. (Cornelius 2004:422) There is a strong segmentation on the Spanish labour market, where some areas are seen to be having too low wages (without being illegal) and too poor working conditions to be attractive for Spanish citizens. Therefore there is constant demand of migrant workers even though the unemployment rates in Spain always have been high⁸. (Cornelius 2004:402) However, since the system of work permit is cumbersome and sometimes counterproductive, because it is only given for shorter periods, while the penalties for employers are not too severe, many employers choose to employ immigrants illegally saving themselves the cost of Social security. (Cornelius 2004:402)

The most robust sectors of Spanish economy, such as tourism, agriculture and construction, rely on foreign workers. This combined with extremely low fertility rates⁹ makes the domestic sector and the care for elderly other areas where immigrants are needed. Furthermore, it is only the influx of immigrants that has made the Spanish population grow in the recent year.

When it comes to labour immigration it seems that, unsurprisingly, economical concerns have been of high priority. In the case of Spain, pleasing the national industry has often meant going easy on control of irregular immigration. That the Commission has placed a proposition for a directive on seasonal workers shows that this is a dilemma for more than one EU Member State. The issue of irregular labour migrants is definitely discussed on other arenas as well and it is an important issue to be solved within the realm of the internal market regime for reasons of workers' rights but also when it comes to unemployment within the EU.

8.2.3. Asylum with a history of high rejection figures

Initially Spain had a quite generous refugee admissions policy. This is because "Title One, Article Thirteen of the liberal, democratic constitution adopted by Spain after the demise of

⁸ Another reason for that is systematization of taking out unemployment compensation amongst Spaniards and meanwhile work in "unregistered jobs".

⁹ In 1999 1.2 children per woman was registered, the lowest in the world together with Italy and Japan.

the Franco regime in 1978 includes the right to asylum as a fundamental, constitutionally protected human right, and states that “for humanitarian reasons”, asylum petitioners have the right to housing, public education, public education, and social assistance.” (Cornelius 2004:411) The early generous asylum system led to the number of asylum applications rising from 1000 in 1984 to 12000 in 1993. In the 90’s the asylum system became challenged for its generosity and Spain was also encouraged from the EU to reinforce its external borders. (Fullerton 2005:667) In 1994 a new law was introduced that deleted the distinction between refugee status and asylum, and added a preliminary phase in the shape of an inadmissibility procedure that by the beginning of 21st century was eliminating three-quarters of the asylum applicants. (Fullerton 2005: 667,687) Its six bases of inadmissibility included, in addition to the Dublin Convention requirement of first country of asylum, the request that one of the grounds for recognition of refugee status should be invoked and that facts presented should be seen as plausible and allegations not openly false. A decision on admissibility was to be made in no more than 2 months and was usually based on only one first interview with the asylum seeker that only in rare occasions attends in the company of a lawyer. (Fullerton 2005: 670)

The number of asylum seekers to Spain is much lower in comparison with the other two countries that I have chosen for my study. In 2012 only 2.580 applications were registered according to UNHCR. The three top countries of origin were Syria Arab Republic (255), Nigeria (204) and Algeria (202). (UNHCR 2013: 20, 45) Cornelius means that this trend is due to many unfunded asylum applications in the beginning of the 1990s, leaving the denial rate extremely high scaring off potential asylum seekers, in 1991 at nearly 96% and somewhat lower in 2000 of 71 %. (Cornelius 2004:411) The recognition rate of 2012 was only 8,5% and less than the year before, 2011 being 9,5 %. (Tobella 2013) CEAR, a Spanish organization to help refugees, explains the decreasing numbers of asylum application with the increased externalization of the European borders. The organization is critical to how the EU uses the border countries of Spain, Italy and Greece to close the border to Europe. This has been done by successful readmission agreements with countries of transit and origin, by development aid to border control projects as well as with an increased border control with the help of FRONTEX and pure physical barbs and wire. (CEAR 2013:9) This in combination with a Visa regime and transporters sanctions makes it harder for people in need of asylum to reach Spanish territory. In 2012, 26.457 persons were repatriated. (CEAR 2013: 11-12)

Some of the criteria of inadmissibility mentioned above were not compatible with the Asylum Procedures Directive and in 2009 a new asylum law was approved in Spain. The new

procedure states that the asylum seeker should be informed within a month if the application is admissible and the criteria for inadmissibility include safe third country and safe country of origin. (Ley 12/2009 Art. 20) However, the new law has also been heavily criticized by the UN amongst others for demanding that an application of asylum should be presented at the latest one month after arrival (Ley 12/2009 Art. 17) and for discriminating by excluding all EU citizens from the procedure. (San Martín 2009)

When it comes to Spanish migration policy it seems that concerns for human rights in the new born democracy quickly faded in the face of outside pressure for border control directed at Spain from other EU Member States. EU harmonization has actually led to a slight improvement of the asylum procedure and it seems that Spain has landed on the same level as France in terms of restrictive rules, but not in terms of asylum applications as already mentioned. Perhaps it is easier to live as an irregular immigrant in Spain than to seek asylum?

8.3. Sweden

8.3.1. A generous but explicit immigration policy

Around the turn of the last century a quarter of the Swedish population emigrated, mostly towards the west and the American continent. With the end of the Second World War Sweden became a country of net immigration instead of emigration. At this point in time it was mostly labour immigrants coming to Sweden and by the end of the 60s they were around 40,000 arriving each year, asylum applications were on the other hand only around 5, 000 per year. It is probable that it was easier to find a job than to seek asylum at the time and therefore the asylum applications might not be representative for the actual amount of people seeking protection that came to Sweden. In the mid 70s the situation changed again, economic stagnation in relation to the oil crisis brought a stop to the labour recruitment programmes. But the high international profile of international solidarity and generosity in refugee policy could go on another decade, until 1985 almost every applicant was granted asylum. (Abiri 2000:12-13)

When the number of asylum seekers was low the Swedes could easily afford the high reputation of international solidarity that the recognition rates gave them. However, when the rates of asylum applications started to increase so did the wrinkles in the foreheads of Swedish politicians. During the 90's Commissions were formed in order to discuss how to

limit the influx of asylum seekers while still keeping humanitarian principles and a generous appearance. During this period a nationalist party called New Democracy also entered the Swedish Parliament making the government aware of the popular discontentment. (Abiri 2000:15)

Abiri argues in her relate of the period that migration policy was special because the two main opposing parties, The Social Democrats and the Moderate Party, were agreeing on the issue overriding the smaller parties that preferred a more liberal line. The measures provided for in the end were to extend visa requirements to make it harder for the people in need of protection to reach Sweden and seek asylum, this also lead to Swedish emphasis in the EU for further harmonization. (Abiri 2000:20-21) One of the arguments used by the government at the time was that a large number of asylum seeker didn't have a need for protection, they were so called bogus immigrants. Interestingly this argument was used during ongoing civil war in the Balkans. A similar attitude can be seen today as well, when the age of asylum seeking minors is being questioned. A bill passed in 1996 meant a reduction of categories to be given asylum, a narrower definition of the family (husband/wife plus children) and that the possibility of temporary protection (instead of permanent) was extended. (Abiri 2000: 17, 24) A paragraph was also added to clarify that it was important to decide upon international commitment first considering the economic condition of the state. A view that was by no means new.

During the 20th century Sweden has experienced a similar development as the other two countries of my investigation. In the last elections a party (Sverigedemokraterna) from the extreme right entered the Parliament putting pressure on limiting immigration. The other parties have so far refused to cooperate. In 2008 a reform opening up for more labour immigration was introduced. This one has later been criticized for being too lenient, encouraging unscrupulous employers. (SR 2013) A year after, in 2009 the government gave the instructions for a new project to put further emphasis on the repatriation of rejected asylum seekers and other persons without permission of residence. (Swedish Migration Board- Project REVA) This, together with an even more recent initiative of medical investigations to decide the age of asylum seeking minors has been heavily criticized by several human rights organizations (SR Nyheter 2013)

8.3.2. Recent development in Swedish asylum policy

Sweden was the fourth largest country in asylum requests in the UNHCR report on Asylum Trends in 2012. The 43,900 applications received in 2012 were the second all time high, only beaten in 1992 during the war of former Yugoslavia. The three biggest source countries of the asylum seekers were Afghanistan, Somalia and the Syrian Arab Republic. (UNHCR :11)

Compared to last year asylum seekers coming to Sweden have decreased by half, until now. This despite the war in Syria and that the amount of refugees from Syria is increasing in the world. Christer Zettergren, head of the department for external affairs, at the Swedish Migration Board comments on development in an interview made in the Swedish radio channel P1 on the world refugee day, the 20th of June 2013. He sees the decrease in amount of asylum applications as temporary and explains that it has become harder to enter the EU. Greece has built a long fence that is patrolled by 1700 border policemen and right now Zettergren says reports let him know that there are lot of asylum seekers waiting in Turkey, and especially Istanbul, trying to find a new way into Europe. He believes that they will eventually find ways, there are always people helping them, either paid or unpaid. (SR Studio Ett 20130620)

Actions taken in the other countries of comparison also point towards a more closed EU, with externalizations of borders and detention zones. To make it harder to enter the country is one way of limiting the asylum seekers, it doesn't however, decrease the amount of persons in need of protection. At the same time labour immigration is being promoted as something positive, and in both Sweden and France new policies have extended the possibilities of labour immigration. In Sweden the labour immigration has received criticism for encouraging abuse of workers' rights and in Spain labour immigrants are doing the heavy work that doesn't attract the natives. The arguments for increased competitiveness seem to have a big influence in the immigration debate of all three countries, and it seems to be a tendency that it not limited to the last economic crisis.

9. Conclusions

9.1. An EU migration regime

Through this paper I have tracked common norms, principles, decision-making procedures, rules and practices; this in order to define whether there is an EU immigration and asylum regime. The formal organisation in terms of decision-making procedures is highly developed since several competencies for the migration policy now can be found on an EU level. According to the written documents of the Council and the Commission there seem to be a general understanding of what the common norms and principles are. As a product of this there are common rules in the form of three directives and two regulations that constitutes the EU Asylum System and a couple of directives in relation to labour immigration and irregular immigration. Interestingly the directives all set out minimum standards, placing the ambition level quite low and uncover thereby the difficulties of agreeing on the matter. When we look on the national practices in asylum policy Toshkov and de Haan (2013) conclude that there has been no race to the bottom as an effect of these minimum rules, instead they manage to trace a slight tendency towards convergence.

To me it seems that the actual race to the bottom happened in the 90's when demands of harmonisations were raised in several EU countries, and the first Dublin Convention was introduced (97). All of a sudden the EU Member States realized that asylum policy cost too much money and wanted to limit the attractiveness and the possibility for asylum seekers to enter their country. The geographical positioning of Sweden made it possible to use Visa policy and transporter sanctions as powerful weapons while this had little effect in a country such as Spain where conflict zones were found just across the border and illegal crossing of the border was easily made by boat. Interestingly it seems that the last proof of an EU immigration and asylum regime lies in the convergence of attitudes quite different from some of the norms and principles stated in the common documents. All three countries that I have investigated have during the 90's limited their before generous asylum policy. All three countries have stepped up security considerations in order to reduce the amount of asylum

seekers arriving to their territory. All three countries cast doubts on asylum seekers accusing them for being disguised economic migrants while the UNHCR observes a growing number of people who lack protection from their own state and estimates that this will continue to grow due to natural disasters and climate change. (UNHCR Summary 2012: 2)

I think it is safe to conclude that this is the working of a regime legitimating certain behaviour, even though the final results in terms of asylum applications and recognition rates differ a lot between the different Member States. However, further research will be needed to go deeper into especially the practices of different Member States but also the other levels of analysis in order to verify my findings.

9.2. EU asylum policy as explained by theory on Regime Complexity

While economic concerns had dominated the approach to immigration during several decades after the Second World War. Economic crisis and the increase of unemployment made countries hesitant to not only the influx of labour immigrants but also to immigration in general, including asylum seekers. The Human Rights regime that had been easily sustained with the horrors of World War II and the Cold War in mind became harder to promote when the economic situation was tight and the memory was fading. At the same time the world got to know a new type of conflicts, civil wars not related to the bipolarity of the Cold War, and that produced large amounts of refugees. It is not for nothing that an approach called securitization has developed within migration studies. When job opportunities and labour migration have decreased at the same time as asylum seekers have increased, security considerations have come to play an important part of the solution. However, judging by the texts that I have been analysing in this thesis as well as by the actions undertaken by the Member States a lot seems to be related to the economic situation. The internal market promoting the competitiveness of the EU and making the Member States economically extremely dependent on each other constitutes the most powerful regime. The increased security considerations I see merely as a reaction to the increased pressures of harmonization from neighbouring states originating in economic concerns.

Typically it is also possible to distinguish a shift of focus depending on what level the regime is being analysed. The explicit principle and norms are dominated by considerations for human rights. Rules, the actual results of negotiations, are more security oriented. The

practices in the different Member States show the sensitivity of the economic situation and a tendency to see the influx of immigrants as an economic burden.

The tendency of externalization of EU borders and migration policy is a consequence of this regime complex including EU internal market regime, EU security regime and EU human rights regime. The cheapest and the easiest way to decrease the amount of asylum seekers to the EU while increasing the security and concerns of human rights is by making a third country do it. Plus, it makes it easier to reach an agreement on a Council meeting if the ones doing the heavy work are not present. Moreover, the internal control of the population is difficult to pull through in liberal democratic states, without the protest of civil society, the easier solution is to put the problem on others to fix, beyond sight of the own constituency by creating a buffer zone of third country partnership.

The EU internal market is by many regarded as the foundation of the whole EU project. According to my research it is also the one regime that has exercised the most influence on EU migration policy. When the development leads to more and more competencies being entrusted to the EU it is important to remember to evaluate what norms and principles come with this. When analyzing the EU migration policy one has to take into account the larger framework that the migration policy fits into. The same goes for when you are analyzing the EU's role, both externally and internally. The migration policy is one part of the EU foreign policy as well as it is one part of internal mechanisms of trust in the EU system and between fellow Member States. It is not only the migration regime that is affected by other EU regimes; a mal functioning migration regime can also have repercussions on these other regimes.

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