

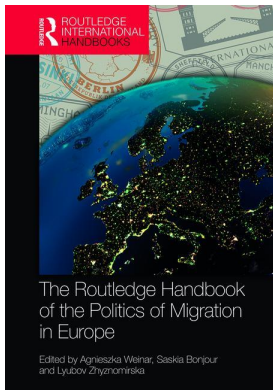
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THE POLITICS OF EU EXTERNAL MIGRATION POLICY

Natasja Reslow

Introduction

The arrival of over one million migrants at Europe's southern borders in 2015 has been called a migration 'crisis'. European countries scrambled to put together a response to the inflow of migrants, amid desperate and chaotic scenes. The public response oscillated between concern and rejection of asylum-seekers, to outpourings of support and donations of goods to charities. At the European Union (EU) level, one policy response to the 'crisis' was externalisation, meaning that the solution was seen to lie in cooperation with neighbouring countries. The European Agenda on Migration promised to act 'together with partner countries to put in place concrete measures to prevent [migrants undertaking] hazardous journeys' (European Commission, 2015, p. 5). One of the most well-known examples of this approach was the agreement reached with the Turkish government, allowing irregular migrants to be returned from Greece to Turkey. In return for Turkish cooperation on this matter, European politicians promised eventual visa-free travel for Turkish citizens to the EU, a reinvigoration of the Turkish accession process, the resettlement of Syrian refugees from Turkey to the EU, and €3 billion in funding to the Refugee Facility for Turkey (European Commission, 2016a; European Council, 2016). This agreement is to be the model for new 'migration compacts', which will be the main framework for cooperation with non-EU countries (European Commission, 2016b).

Despite the supposedly unprecedented migration situation in Europe, externalisation is not a new phenomenon. Since the 1990s, EU policy documents have emphasised the need for cooperation with non-EU countries on migration – in other words, migration should be incorporated into external relations, as one of the tools available in negotiations with non-EU countries: with neighbours, but also countries of origin and transit of migrants (e.g. European Commission, 2002). This was emphasised as a necessary step towards 'effective and efficient' migration policies, in the context of increasing irregular migration to Europe (e.g. European Commission, 2006, p. 4). However, EU policy documents have also acknowledged that cooperation with the EU on irregular migration is not a priority for partner countries; such cooperation must therefore be 'incentivised', through the use of both positive and negative incentives (e.g. European Commission, 2016b). Over the years, the EU has built up a substantial tool-kit of policy instruments (see Andrade *et al.*, 2015; Carrera *et al.*, 2015). This includes legally binding instruments such as readmission agreements and visa facilitation agreements;

these two agreements are often presented as a package: the non-EU countries which sign a readmission agreement may in return be offered a visa facilitation agreement. The EU also makes use of 'softer' policy tools, notably the Mobility Partnerships that take the form of political declarations, implemented on a project basis. Migration is discussed in various regional and bilateral dialogues, such as the Rabat Process, which brings together EU member states and countries in North and West Africa. Finally, the EU funds migration-related projects in the countries of origin and transit through the Asylum, Migration and Integration Fund.

EU external migration policy raises interesting questions for scholars of governance. First, it combines two policy fields (migration policy and foreign policy) which are politically sensitive, divisive, and often seen as being central to national sovereignty. Why, then, do the EU member states permit a role for the EU in this area? Logically, one would expect them to try to restrict the role of the supranational EU institutions. And yet initiatives have been agreed and implemented, the necessary support rallied. There is thus a need to understand the nuances of member states' preferences, in order to explain the circumstances under which they submit to policy cooperation in this field. Second, the non-EU countries with which the EU seeks cooperation are likely to have very different preferences on migration than do the EU and its member states. Particularly cooperation on readmission is unpopular both with non-EU countries' authorities and populations (e.g. Cassarino, 2007; Ellermann, 2008; Weinar, 2011). However, the EU conditions other types of cooperation on non-EU countries' willingness to readmit both their own and other nationals (e.g. Council of the European Union, 2005). Why do non-EU countries agree to cooperate with the EU on migration issues?

In this chapter I discuss how the literature has approached these puzzling questions. As many authors examine these two sets of issues separately, I will first examine the strand of literature related to the intra-EU dimension (interactions between the member states and the EU institutions) and then to the international dimension (interactions between the EU and non-EU countries). I will conclude by highlighting those analytical contributions that attempt to bring these separate strands together, for a complete conceptualisation of the policy-making system.

EU external migration policy: intra-EU dynamics

The literature on EU external migration policy can be divided into two strands: the literature dealing with internal EU processes; and the literature examining how 'the EU' interacts with non-EU countries. The literature on the internal dynamics that lead to EU external migration policy being agreed and adopted focuses on the nature of the interactions between the EU institutions and the member states. It has often been critical of the content of EU external migration policy, arguing that the policy-making style results in policies that focus (too much) on migration control and prevention. This section summarises the main features and arguments of this research.¹

In both migration policy and foreign policy, the EU has gradually expanded its competences over the past decade. Migration has been 'supranationalised', meaning that on most migration-related matters the European Commission has the right to propose legislation, and the European Parliament acts as an equal co-legislator with the member states (in the Council). The resulting legislation is subject to the jurisdiction of the European Court of Justice. The EU still conducts its external relations on an intergovernmental basis, with strong roles for the member states and the use of flexible, non-legally binding policy tools. However, the EU's diplomatic role has strengthened with the establishment of the European External Action Service in 2011 and the creation of EU delegations in non-EU countries.

External migration policy raises particular questions surrounding EU decision-making dynamics because it brings together these two policy areas, which are both central to what

nation states do: control the national territory and decide who shall be admitted to it (migration policy), and conduct diplomatic relations and represent the national interest at the international level (foreign policy). This gives potential for tensions between the EU institutions and the member states for control over EU external migration policy. One group of contributions to the literature therefore focuses on intra-EU dynamics in the decision-making process: which actor(s) play(s) a leading role and why? Several authors argue that the member states have a dominant role (e.g. Sterkx, 2008), and in particular the role of justice/home affairs officials is inflated through bodies such as the High Level Working Group on Asylum and Migration (Boswell, 2003; Lavenex and Kunz, 2008; Chou, 2009). The High Level Working Group consists of senior representatives of the member states, and its purpose is to develop a common EU policy towards countries of origin and transit of migrants and asylum-seekers (Council of the European Union, 2014). The central role of the High Level Working Group in developing external migration policy gives a large role in this policy to its members, namely national justice/home affairs officials.

Other authors focus on the EU institutions, and even disagree that member states play a leading role: Chou and Riddervold (2015), for example, argue that the European Commission strongly influences policy developments in EU external migration policy, despite having limited formal competences. They explain it by its 'expert authority' (knowledge and organisational resources available to it). But how exactly does this expert authority translate into more power? The European Commission is sub-divided into Directorates-General (DGs). Migration is mainly the purview of DG Migration and Home Affairs, but DG International Cooperation and Development (Devco) also plays a role, particularly through its control of EU external funding instruments, while in the past DG RELEX included migration-related policies in its instruments. Boswell (2008) conducted an intra-Commission analysis to show that different DGs adapted differently to external dimension of migration policy; for instance, DG Devco was unable to play a leading role due to being understaffed. Coordination problems arise between DGs, each of which seeks to protect its own portfolio and preferences (Wunderlich, 2010), leading to destabilising turf-wars. Also outside of the Commission, other institutions enter the rivalry and try to carve a place for themselves in the field dominated by inter-governmentalism. Lavenex and Kunz (2008) find that the European Parliament has been sidelined due to the extensive use of non-legally binding instruments by the Council and the Commission. Currently the European Parliament's role in external migration policy is limited to approving readmission and visa facilitation agreements.

Besides these more functional explanations for decision-making dynamics, various theoretical approaches are applied to explain the interaction between the EU institutions and the member states. Lavenex (2006) adopts a venue-shopping type argument, namely that the externalisation of EU migration policy occurred because immigration ministers sought to escape constraints at the EU level. Placing the activities in the realm of foreign policy was an exit strategy that allowed for intergovernmental approaches to flourish. When trying to explain the role of the European Commission in such a setting, Menz (2015) proposed a principal-agent approach, arguing that there are advantages to the member states of appointing the European Commission to conduct external negotiations on migration, but also that there is evidence of 'principal slippage' when member states engage in bilateral relations with non-EU countries. Some authors take a policy analysis approach instead: Trauner and Wolff (2014) focus on the policy instruments themselves, explaining how they are designed and evolve. They argue that the meaning, rationale and functioning of EU external migration policy instruments may change as these instruments move from one governance setting to another (for example from the EU to the non-EU country), and that policy goals can be diluted at the implementation stage. Thus

the relationship between actors along this route can explain the evolution. Turning attention from the EU towards the member states, Triandafyllidou (2014) analyses approaches to externalisation adopted by the southern member states (Italy, Greece, Spain, Malta). These national approaches can be described as either gate-keeping or fencing: 'Gate-keeping policies aim at restricting practical legal access to a nation and its institutions, while fencing measures actively target illegal migrants in order to arrest and then expel them' (p. 10). Their emergence is linked to the national policy agenda, not driven by an explicit EU policy. Some elements go against EU guidelines and even directives, putting in the spotlight the tensions between EU and national sovereignty.

In terms of policy content, several contributions examine the type of instruments that emerge from the decision-making process sketched above. The terms used may differ but the argument these authors make is the same: EU external migration policy is overly concerned with migration management at the expense of development concerns and migrants' rights. Chou (2009) calls this the dominance of a 'security discourse'. Lavenex and Kunz (2008) argue that EU policy is 'repressive'. Sterkx (2008) finds that EU external migration policy focuses on 'control' rather than a comprehensive approach including for example also development policy. Carrera and Hernández i Sagera (2011) call the Mobility Partnerships 'insecurity partnerships' because they increase vulnerability of non-EU citizens by not ensuring a clear framework of rights. Papagianni (2013) questions whether EU external migration policy really takes a 'balanced, comprehensive' approach, due to the lack of action on the migration-development nexus and circular migration, and lack of human rights guarantees. Finally, Boswell (2003) argues that a 'control' approach has prevailed over a 'preventive' approach addressing the root causes of migration. These academic assessments line up with the decades-long criticism directed by non-governmental organisations (NGOs) at EU external migration policy: namely that through its focus on migration control it fails to consider human rights implications and puts migrants' lives in the hands of regimes which are unable or unwilling to guarantee their rights. More recently, Amnesty International has been particularly critical of the 'fatal flaws' in the EU-Turkey agreement, as Turkey has been accused of forcibly returning migrants to Syria (Amnesty, 2016). Cassarino (2007) is critical of the use of informal mechanisms (such as administrative arrangements and memoranda of understanding) in EU external migration policy because they are not subject to political or judicial accountability, and therefore potentially endanger migrants' rights. The criticism expressed by the scholars and activists is a sign of disappointment with the European institutions, which are seen as unwilling, or incapable of, standing up to the member states' political agenda and delivering on the core European values of human rights.

EU external migration policy: negotiating with non-EU countries

A second strand of literature examines how 'the EU' interacts with non-EU countries. Here, 'the EU' is taken as the unit of analysis, meaning that member states' preferences are not unpacked. Instead, the focus is on how the policy instruments that have been agreed on within the EU are then negotiated with non-EU countries in the international system. There are three main approaches adopted by authors writing within this strand: a domestic politics approach to the preferences and interests of the non-EU countries concerned; an EU governance approach to the strategies adopted by the EU; and an international relations approach examining the position of EU external migration policy within the international system and relations between the EU and non-EU countries of origin and transit.

Geographically, authors who examine how non-EU countries' national preferences and domestic political contexts shape the outcomes of EU external migration policy focus on one of

three regions: Africa, Central Asia, or Eastern Europe. The question about preferences is asked quite often. Why would a country engage or not engage in cooperation with the EU on a given instrument? Chou and Gibert (2012) and Reslow (2012) explain the failure of the EU–Senegal Mobility Partnership by the preferences of the Senegalese government, which was not interested in cooperation with the EU, seeing potentially more promise in bilateral cooperation. Cassarino (2014) argues that the Tunisian government of Ben Ali used the rules promoted by the EU for other ends, namely to exercise power and control over Tunisian society and even Tunisians abroad. For example, it adopted a law criminalising illegal migration which officially aimed to respond to EU expectations about tackling unauthorised migration, but the implementation of this law also allowed the Tunisian government to reinforce monitoring and control of society as a whole because the law encouraged all Tunisians to act as informers and essentially punished those left behind. Wolff (2014) looks at a number of domestic veto players and the regional position of the non-EU country concerned. She analyses the readmission negotiations with Morocco and Turkey and shows, for instance, that the Moroccan government faces opposition from high-level domestic veto players, like the king (cf. Wunderlich, 2010).

Most authors writing within this strand of literature, however, adopt an EU-centric approach, questioning how much influence the EU has had on migration issues in non-EU countries. Makaryan and Chobanyan (2014) argue that EU impact on migration policy in Georgia has been greater than in Armenia and Azerbaijan, because the latter two countries developed their national migration policies in a time before the EU was active in the region. In seeking to explain differences in EU influence over migration issues, the most common theoretical framework adopted is the conditionality approach. Trauner (2009) has argued that ‘conditionality’ should not only be taken to mean membership conditionality but also what he terms ‘policy conditionality’, particularly when the non-EU country concerned has no membership prospects. The example he gives is the use of visa policy as a source of leverage in the Western Balkans (see also Trauner and Kruse, 2008). Bürgin (2012) argues that the European Commission’s initiative in offering Turkey a visa liberalisation dialogue (instead of only visa facilitation) changed the Turkish government’s cost–benefit calculation in favour of signing a readmission agreement. At the other end of the spectrum, Franke *et al.* (2010) argue that the EU has failed to provide adequate rewards for Ukraine’s cooperation on justice and home affairs issues, which decreases its impact.

Finally, a number of authors zoom out and take a broader IR approach, for instance by analysing the power relations between the EU and the non-EU country concerned. Hernández i Sagrera (2010) argues that the power symmetry between the EU and Russia has led to convergence towards bilaterally agreed migration norms. Maisenbacher (2015) challenges the notion of the EU as soft/normative power by arguing that socio-economic power dynamics between EU and non-EU countries shape EU external migration policy. Kunz and Maisenbacher (2013) conduct a productive power analysis, and argue that EU Mobility Partnerships and Swiss migration partnerships are not consent-oriented and technical but actually sites of discursive struggles. Some authors have also analysed the role of international organisations in delivering EU external migration policy – in other words, the means used to achieve EU migration policy ends at the international level. International organisations such as the International Organisation for Migration (IOM), UNHCR (the UN refugee agency), and the International Labour Organisation (ILO) play various roles in EU external migration policy: they act as counterweights, whereby they complement or correct EU policy; they act as subcontractors, implementing projects on behalf of the EU; or they act as transmitters, transferring EU rules to non-EU countries (Lavenex, 2016). These organisations may also be competing against each other, thereby forming an obstacle to the realisation of EU external migration policy (Korneev, 2013). International organisations are

not merely instruments of the EU: they possess agency and act in a self-interested way. Korneev (2014) shows that IOM has sought to extend its mission and has shaped policy outcomes, for instance in EU–Russia migration relations.

EU external migration policy: bridging the gap

These two main strands – the literature dealing with internal EU processes and the literature examining how ‘the EU’ interacts with non-EU countries in the international system – rarely meet. Most authors writing about EU external migration policy are either examining the intra-EU dynamics between the EU institutions and the member states (internal dimension) or the negotiations between the EU and the non-EU country (external dimension). And yet the decision-making process consists of three sets of actors: the member states, the EU institutions, and the non-EU countries. In order to conceptualise the policy system in its entirety, these three sets of actors should be considered as a whole.

Some authors do try to bridge the gap, by considering the roles and preferences of all three sets of actors. Chou and Gibert (2012), in addition to analysing the Senegalese government’s preferences and the European Commission’s negotiation strategy, consider the position of the French government too. Bürgin (2012) acknowledges that some member states oppose visa liberalisation for Turkey. Lavenex and Stucky (2011) link intra-EU competence to the difficulty of negotiating with non-EU countries: non-EU countries are most interested in concessions on mobility, but this remains a member state competence. Coleman (2009) traces the development of EU readmission policy and looks both at intra-EU dynamics (for example how countries are selected for readmission agreements) as well as non-EU countries’ strategies in the negotiations. Wunderlich (2010) argues that relations between EU member states and a non-EU country can either facilitate or hinder the EU’s cooperation with that country.

The three-level game model has been developed as a comprehensive conceptualisation of the decision-making process in the area of EU external relations (Reslow and Vink, 2015), building on the concept of two-level games (Putnam, 1988). The model brings together the three actors involved in the making of EU external migration policy: at the international level (level I), the EU and non-EU countries negotiate on migration issues. The EU level (level II) is the decision-making process within the EU, between the EU institutions and the member states, on external migration policy. Level III consists of the member states’ domestic preference formation on EU external migration policy. The three levels are linked through two interactions: the policy that is decided upon by the EU institutions and the member states (levels II and III) becomes the subject of negotiation between the EU and the non-EU country (levels I and II). Member states and non-EU countries may also be linked directly through bilateral relations, bypassing the EU. Such bilateral relations are relevant because they may affect member states’ and non-EU countries’ preferences on whether or not to participate in EU external migration policy instruments.

The domestic preferences of member states and non-EU countries are crucial to the dynamics of the three-level game. According to the Europeanisation literature, member states’ preferences will depend on the level of ‘fit’ between the proposed EU policy and their national policy positions, because a significant degree of ‘misfit’ implies high adaptation costs. Member states adopt one of three strategies towards EU policy: pace-setting (actively shaping EU policy to match domestic preferences); foot-dragging (slowing down or containing policies which would have negative domestic consequences); or fence-sitting (displaying an ambiguous position, neither consistently pace-setting nor foot-dragging) (Börzel, 2002).

The policy conditionality model presents the strongest account of non-EU countries’ preferences (Schimmelfennig and Sedelmeier, 2004). The EU sets certain conditions for non-EU

countries to reach, and rewards compliance/sanctions non-compliance. Non-EU countries' governments conduct a cost-benefit calculation: if the benefits of compliance outweigh the costs, they will cooperate with the EU. The cost-benefit calculation is positive in case there is resonance between EU and national policy; in case there is administrative capacity for complying with EU policy; or in case the costs of adopting EU policy are low.

The willingness of each actor to agree to a policy outcome will depend on two factors: first, the cost of no agreement; and second, the domestic ratification procedure. If the cost of no agreement is high then agreement can be more easily reached: the actor concerned has a significant stake in an agreement being reached, and is thus prepared to be more flexible on the content of that agreement. If the domestic ratification procedure is easy, then agreement can be more easily reached: the central negotiator does not need to have an agreement approved by domestic institutions and therefore has more room for manoeuvre in the negotiations.

In this way, the three-level game allows us to see the interactions between the different actors involved in a negotiation and how the domestic constraints that they face limit what they can agree to. For example, a non-EU country may be wary of an agreement, knowing that it will have to be ratified by domestic actors opposed to its content. The Senegalese government knew that the parliament, which had previously refused to ratify bilateral readmission agreements with European countries, would not agree to the EU-wide readmission agreement that would be required as part of a Mobility Partnership (Reslow, 2012, p. 408). The three-level game can also uncover the awkward negotiating position that an actor finds itself in, trapped between the preferences of the two other 'levels' of a negotiation. The European Commission finds itself in such a position on readmission agreements: it knows that the clause on third-country nationals is unpopular with non-EU countries and has argued that this should be removed (European Commission, 2011), but member states insist on maintaining it (Council of the European Union, 2011). This model can also give analytical insight into current events, such as the responses to the 'migration crisis': given the dramatic events in 2015, the EU institutions and member states were desperate to prevent further arrivals of migrants in Europe. Their cost of no agreement was thus very high going into discussions with the Turkish government, which may account for the significant concessions made: visa liberalisation for Turkish citizens; reinvigoration of the accession process; €3 billion Refugee Facility; and resettlement of Syrian refugees from Turkey (European Council, 2016).

Conclusion

There is a wealth of literature examining how EU external migration policy comes about, both in terms of the intra-EU dynamics between the EU institutions and the member states, and in terms of the negotiation of EU external migration policy within non-EU countries and in the international system. Future research should therefore increase its focus on policy implementation and evaluation. The importance of policy implementation has been emphasised in existing research on EU external migration policy: Papagianni (2013, p. 292) finds that, 'despite the good will and intentions, implementation [of the Global Approach to Migration and Mobility] often proves problematic', thus implying that the policy on paper may not necessarily be the policy in action. Collyer (2012, p. 520) comments on the deaths of migrants at the borders of Ceuta and Melilla in 2005: 'The introduction of new laws and policies would not have helped at all; the correct implementation of the existing ones would have prevented everything that happened.' Unfortunately the literature on implementation of EU external migration policy is at its very beginning (Wunderlich, 2012; 2013a; 2013b; Reslow, 2015), and literature seeking to evaluate EU external migration policy outcomes in a systematic manner is non-existent

(Reslow, 2017). Future research must be guided by the following questions: how is EU external migration policy put into practice? How successful is it? And why is it successful/unsuccessful? EU external migration policy has very real implications for migrants' rights and ultimately their lives. We therefore need to understand what this policy means in practice and which impacts it has.

Note

- 1 It will not trace the development of EU external migration policy over time (see instead Haddad, 2008; Sterkx, 2008; Papagianni, 2013).

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