

LOBBYING FOR MIGRATION POLICIES IN THE AREA OF LIBERTY, SECURITY AND JUSTICE

**Adrian Daniel STAN¹
Brîndușa Nicoleta PINCU²**

ABSTRACT:

ONE OF THE MOST IMPORTANT TOPICS NOWDAYS ON THE EUROPEAN AGENDA IS THE MIGRATION. WITH THE NEW DEVELOPMENTS IN THE EUROPEAN UNION, THE ADDITION OF ITS 28th MEMBER AND THE FURTHER DEVELOPMENT OF THE SINGLE MARKET, THIS TOPIC IS NOW PRESENT NOT ONLY IN THE NEW DIRECTIVES, BUT ALSO IN THE PUBLIC OPINION` DEBATES. LOBBYING FOR MIGRATION HAS BECOME A COMMON PRACTICE IN BRUSSELS AND IN THE MEMBER STATES AND THUS THIS ARTICLE EXAMINES THIS PRACTICE EMPHASIZING ITS IMPORTANCE.

KEY WORDS: LOBBY, ADVOCACY, MIGRATION POLICY, SCHENGEN AREA.

INTRODUCTION

The end of Cold War brought forward a new dynamics in dealing with immigration flows. States saw their role as a management force for the migratory fluxes mainly through serving their national economic benefit. Whereas national approaches towards immigration changed after the decay of communism in Europe the whole puzzle switched to how this phenomenon can be addressed by liberal democracies, at least at a general level.

There is a need for a solid bridge between the aims and objectives laid forward by the immigration policy research and the expected outcome of the state`s policy dealing with those proposals. The nation-state, as we know it, has its limits when dealing with such sensitive problems, so its internal capacity of controlling the movement of persons seems to be an ever pressing issue.³ Another issue arises when we address the question why the policymakers pursue a certain immigration policy instead of another? The effects are then distributed upon the social welfare and of course upon the immigrants.

LOBBYING FOR MIGRATION POLICIES IN THE EU - A PRELIMINARY ASSESSMENT

¹ PhD, Babeş-Bolyai University, Cluj- Napoca, adrian.stan@ubbcluj.ro

² PhD, Babeş-Bolyai University, Cluj- Napoca, brindusa.pincu@gmail.com

³ V.Guiraudon, *International human rights norms and their incorporation: the protection of aliens in Europe*. European Forum Working Paper (Florence, European University Institute, Robert Schuman Centre, 1998), 8.

One cannot define the lobby for immigration policies without operating with concepts such as network, think-tank groups or advocacy coalitions. When dealing with the European immigration policy it is highly important to analyze every step of this process. That involves making drafts for a project, building support for an initiative, finding the best solutions to build confidence among the EU institutions regarding the proposal, convincing the policy makers that this is the path to follow, building a support coalition, validating the proposal and then implementing it with the right partners and agents.

When we refer to migration we tend to address first of all labour movement which is normally the avanguard of this phenomenon. This category is not so internationally regulated like refugees migration or the right to seek asylum. The political and international relations science has focused mainly upon using rational choice theories or behavioural theories in order to address migration issues.⁴

In order to have a correct approach to projects concerning the need of regulation migration fluxes we need to be sensitive to social networks, to the position of the actors and stakeholders within the policymaking system, and of course their credibility.⁵ The role of technical expertise in bringing forward better immigration policies is crucial. Haas uses a dialectics process in order to explain policy change, but replaces the classic phases with another trinom called uncertainty-interpretation-institutionalism.

CIVIL SOCIETY AND ITS IMPACT UPON MIGRATION ISSUES IN EUROPE

As a means to address the problem of EU's democratic deficit the academic community, as well as the political environment, have started to use NGO's lobby in order to make their policies much more reliable. Although it is hard to consider that the NGO's are a democracy force many scientist saw their potential in rising democratic legitimacy.⁶

The European Union migration policy still needs to take extra steps in order to consolidate an integrated program for the most deeply affected by policy decisions, third country nationals. Many issues concerning with the migration process were addressed by the Tampere Programme (1999-2004). Unfortunately this program followed an intergovernmental logic offering the decision only to the Council and not to the Parliament. The last had only a consultation role. This situation was offering just an indirect path for citizens to provide support to correct deficient choices.

It is widely assumed that efficient policy towards regulating migration fluxes can only come from a direct implication of the European civil society. At this level an intensified lobby and advocacy campaign could impartially address the most sensitive issues on the agenda setting. The participation of lobby groups, advocacy groups and of all civil society groups is encouraged also by the Treaty of Lisbon.⁷

In order to find the right balance between freedom and mobility EU institutions need to protect their citizens through a more integrated cooperation between security and justice both as independent, as well as supranational.

⁴ A. Balch, *Managing Labour Migration in Europe: Ideas, Knowledge and Policy Change* (Manchester, Manchester University Press, 2010), 5-7.

⁵ P. Haas, "Knowledge, power and international policy coordination" *International Organization* 46 (1992): 1-35.

⁶ T. Hüller, & B. Kohler-Koch, "Assessing the Democratic Value of Civil Society Engagement in the European Union" in *Opening EU-Governance to Civil Society: Gains and Challenges*, ed. B. Kohler-Koch, D. De Bièvre & W. Maloney (CONNEX Report Series No 5, Mannheim, 2008) (<http://www.connex-network.org/series>), 145-181.

⁷ C. Lord, *A Democratic Audit of the European Union* (Basingstoke: Palgrave Macmillan, 2004), 219.

The nation-state should also develop a wider consensus towards the type of regulation regarding migratory fluxes, as well as bringing forward an efficient set of skills and competences that should govern the securization of the citizens and of their human rights in the years to come.

SHAPING THE LEGAL FRAMEWORK ON IMMIGRATION

The harmonization of Member States' immigration policy is achieved through EU legislation and assessed by counting the number of binding and non-binding provisions in the directives. When we have a large number of non-binding provisions it is a sign that this aspect reduces the extent of harmonization between the Member States' policies. The fact that a lot of freedom is given to the Member States when it comes to implement an immigration directive, has led some of the legal experts⁸ to conclude that the directives in this area are only partially binding and their implementation depends mainly on the national bodies. According to Barbou des Places and Oger⁹ the member states attempt to hold their power in the field of immigration by jogging between the national and European level of regulation. Thus, they hope to maintain their prevalence within the European Strategy.¹⁰

The binding provisions in the EU directives mean that the goal of member states' actions is limited within the boundaries set by EU legislation. The European Court of Justice and the European Commission have the authority to ensure that the member states' actions are in line and according to the agreed EU legislation. Even a small aspect of the EU legislation cannot be easily modified and thus to a certain extent it binds member states in their immigration policy. Moreover, if the member states did not have rules/ legislation before adopting the directives, the EU legislation shapes their immigration policy to a great extent. Approaching the EU level means that the members states lower their standards permitting at the same time that the EU directives shape their core line for internal policies.

Generally speaking, policies are assessed in terms of their restrictiveness and expansiveness. Immigration policies determine the condition for entering and ability to stay. An institutional multi-level framework stands for various actor preferences and their interaction process in shaping EU immigration policies.

INTEREST OF THE MEMBER STATE IN EU IMMIGRATION POLICIES

The integration process within European Union framework was initiated by states who shared the belief in and benefits of economic liberalism- which pervades the founding treaty of the EU. The role of member states in relation to this process is ambivalent because their interest in common policies is neither exclusively driven by the idea of completing the single market, nor forced by spill-over from the market. As Moravcsik states, the EU integration is a process mainly shaped by member states' individual economic interests.¹¹ Regarding immigration, it must be said that harmonized EU policies offer opportunities to either expand or restrict freedoms and rights of the immigrants.

As a general rule, a state's interest in regulating immigration is motivated by concerns regarding its sovereignty and national identity. Control over cross-border mobility and immigration is highly important to a states' power over its population and territory and thus the state cannot afford to lose authority over immigration control because this will

⁸ We refer to Barbou des Places and Oger (2004), Groenendijk (2004), De Bruycker (2007).

⁹ Barbou des Places and H. Oger, *Making the European Migration Regime: Decoding Member States' Legal Strategies*, *European Journal for Migration and Law* (2004), 361-362.

¹⁰ Barbou des Places and Oger, *Making the European Migration Regime...*, 361-362.

¹¹ Andrew Moravcsik, *The Choices for Europe. Social Purpose and State Power from Messina to Maastricht*, (Routledge, 2003), 28-29.

impose a serious threat to its very existence.¹² This is why a restrictive attitude towards immigration serves the state's own sovereignty and security interests. Still, if member states were only concerned about security and sovereignty, no cooperation on immigration issues in the EU would have been possible simply because any EU involvement in this sensitive field would be objected to.¹³

THE SCHENGEN AREA AND ITS IMMIGRATIONAL LAYOUT

Although the Schengen area was expanded, there are still issues regarding visas for countries in Central and Eastern Europe. Important measures have been taken to make this space more fluid. Starting with the abolition of identity checks at the internal frontiers of the EU and continuing with extensive controls at the external borders of this Area. Schengen Information System helps coordinating all these different administrations and rules. In terms of having a uniform visa policy there has been an intensive lobby which made the policy much more coherent after Lisbon due to the codecision procedure.¹⁴

The Schengen visa regime covers 4 types of visas: for airport transit, for general transit, for short stay (available to third country nationals) and long-term visa.¹⁵ The need for a secured visa policy has been forged by the domestic debates in several European states that previously had problems with immigrants and asylum seekers. Lobby activities on behalf of the civil society groups have proved successful taking into consideration the fact that many consulates of the member states with fewer barriers become much popular to obtain visas than others. An efficient policy for this situation would imply: a much shorter processing time, online registration for interviews, an extensive information in the applicant's language, solid requirements in terms of sufficient funds and so forth.

Despite the fact that legislation has become much more clear in the last years, there are still lots of obstacles for those that advocate a visa free movement.¹⁶ The new acceded states in the EU had such a proposal but there is not enough political will on behalf of Western EU member states. Their restrictive policies are a firm response to the issues caused by opening borders arrangements. Many issues concern also the Neighborhood Policy of the EU and now the recently formed Eurasian Customs Union, that face even higher challenges.

Another important step to provide consistency to civil society in supporting the actions of central and local administrations should take into consideration the regulation of lobby and advocacy activities. A regulation of this kind would be mostly efficient in offering legal inputs to the projects run by the European institutions. The legal framework in terms of who has the right to influence the European decision makers still needs proper arrangements. At this point, the logic of access, the points of access and the rules that facilitate the entrance must be clearly defined so that the policymaking process keeps up with the new trends that stimulate progress.¹⁷

¹² Myron Weiner and Michael Teitelbaum, *Political Demography, Demographic Engineering* (Berghahn Books, 2001), 9.

¹³ Cristof Roos, *The EU and Immigration Policies: Cracks in the Walls of Fortress Europe?*, (Palgrave Macmillan: Lonn, 2013), p. 30.

¹⁴ Joanna Parkin, *The Schengen Information System and the EU Rule of Law*, INEX Policy Brief, Nr 13(June 2011): 1-2.

¹⁵ Henk van Houtum, "Human Blacklisting: the global apartheid of the EU's external border regime", *Environment and Planning D: Society and Space* (2010): 959-963.

¹⁶ Jennifer Gordon, *Free movement and equal right for low-wage workers? What the United States can learn from the New EU migration to Britain*, (Berkeley Law, University of California, Issue Brief, May 2011): 7-8.

¹⁷ Sean D. Ehrlich, *Access Points: An Institutional Theory of Policy Bias and Policy Complexity*, (Oxford University Press, 2011), 40.

EU INSTITUTIONAL INFRASTRUCTURE MEETING THE IMMIGRATION COMPLEX

In the fields where local and national authorities are competent, the EU tried to establish a minimum of standards in order that the member states should not put further pressure on people beyond the lines among the EU acts.¹⁸

It is common knowledge that the member states exercise their authority on a various number of levels. First of all, their head of states or government comprise the European Council where they approve during summit meetings the main directions of EU policies and set the top priorities for action, or shape the Agenda of the EU institutions such as the Commission or the Council of the European Union.¹⁹

The Council of European Union has around 200 working groups and 19 of those deal with the of Justice and Home Affairs issues which include integration and migration, visas, asylum, frontiers, terrorism, customs cooperation, civil law matters, co-operation in criminal matters, civil protection, etc²⁰.

The most important of these 19 groups is the Strategic Committee of Immigration, Frontiers and Asylum (SCIFA), a preparatory body responsible for migration policy among other things, which prepares on a monthly basis the Agenda for the Council. SCIFA submits the Agenda to the COREPER where all the items are discussed and eventually approved.

The issues covering visa facilitation to visa liberalization are first discussed within the framework of Working Party on Visa and the corresponding working party from the field of external relations. The working parties are defined geographically according to the regions.

The advocacy groups must establish contacts with members of the working parties from the EU member states that share the group's aims²¹. They can further provide civil society organizations with information and alert them to new developments in connection to their interests.

Since July 2010 the Directorate-General for Home Affairs focuses on migration related issues among other things and coordinates also the EU activities aimed at strengthening the capacity of third countries to manage the migration flows.

With a few exceptions, the Commission has the right of legislative initiative, however, following the Treaty of Lisbon, one-quarter of the member states can initiate a proposal in the areas of judicial co-operation in criminal matters, police co-operation, and administrative co-operation²².

For civil society activists to be effective in providing input into legislative proposals, they are required to properly identify the unit responsible for drafting a certain proposal and thus try to influence its purpose or direction.

Not being able to launch legislative proposals is one of the limitations when speaking about the European Parliament power. Another limitation is its controlling function- its

¹⁸ We are referring to EU Visa and Border Codes and other sets of directives which guarantee access to fundamental freedoms- including freedom of movement.

¹⁹ For further details on this subject please refer to the extended version of the Treaty of Lisbon, available at http://europa.eu/lisbon_treaty/full_text/index_en.htm

²⁰ Piotr Kozmierkiewicz, *The Road to an open Europe. An Advocacy Handbook for Civil Society: Understanding and Influencing the EU Policy Making in the Area of Migration and Visa Policies.*, PASOS, (Praha, 2012), 34.

²¹ Roos, *The EU and Immigration Policies...*, 42-44.

²² Kassim Hussein (et al.). *The European Commission of the twenty-first century.* (Oxford: Oxford University Press, 2013), 82.

approval is required for the EU budget and its refusal would force the Commission to resign²³.

Still, it is widely accepted that the parliamentary bodies represent a strong entry point for advocacy for civil society organizations. Being compared to other European institutions, the European Parliament- but also national parliaments- are more transparent and opened to various inputs from external actors.

The European Parliament has several committees which represent the entry point for advocacy efforts as they formulate amendments to the Commission`s proposals which are then submitted to a plenary vote. Plenary debates are much more politicized, and they involve bargaining and formation of informal voting coalitions²⁴.

The advocacy groups should approach first of all the rapporteur of the proposal of interest, but it is also useful and advisable to contact the members of the political parties that share their opinions and goals²⁵.

ADVOCACY FOR BETTER IMMIGRATION POLICIES IN THE EU OR IS THIS THE ROAD TO FOLLOW?

There are many interpretations on how lobby and advocacy activities should be taken into consideration. Consequently we would like to establish the difference between lobby and advocacy activities directed to a more adequate migration policy in the Area Freedom, Security and Justice. Advocacy groups tend to reach policy makers with an interest in a public policy mainly to determine a change of course.

The European civil society groups cover a very extensive policy agenda. Their activities can refer to raising awareness to a certain issue, to function as a primary alerting system for the decision-makers, to advancing policy proposals and to provide efficient solutions. Lobby groups represent mainly private interests, and the main function here is to help a certain group to achieve its objective following the legal path. Both of them seek to provide alternatives to policy-makers in order to make their outcomes much more transparent and faithful to the civil society.

Visa policies have entered only recently on the administration of the EU institutions but there are still many chapters where the nation state holds the final word.

CONCLUSION

There are issues related to immigration more sensitive to the national governments as well as strong human rights norms, such as asylum or non-discrimination where the legal international framework bares the final decision.

Lobby and advocacy groups are focused on establishing and maintaining a position, based on a set of values and representing the needs of a certain group. Another strategy that can provide useful tool in dealing with immigration policies is to acknowledge the concerns of the opponents of your cause, mainly to establish a common ground. Another key to obtain good result in your lobby or advocacy activity is to know the legal framework and to relate mainly to the right stakeholders. Choosing the right channel and finding the proper timing is fundamental to achieving your goals.

²³ Nicholas Mousis, *Access to the European Union. Law, Economics, Policies, 20th Edition*, (Rixensart, 2011), 168-170.

²⁴ Mousis, *Access to the European Union...*, 171.

²⁵ Kleine Mareike. *Informal governance in the European Union: how governments make international organizations work*. (Ithaca: Cornell University Press, 2013) 95.

At a governmental level it is highly indicated to benefit from a good management of borders and from a well- established neighborhood policy. If we attach the economic benefits that come from the cross-border movement to a good relation with the public opinion the results can only show a wider consensus with gains on all sides.

In order to have efficient imigration policies that could imply even to change the actual ones, one must consider to engage the stakeholders by providing a transparent persuit of the objectives combined with a thorough analysis of the context and implications of the policy reform.

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