

Conclusions

Jeroen Doomernik and Michael Jandl

1. Ten conclusions towards a new framework for analysis

The chapters comprising this book have analysed mechanisms of migration regulation and control in Europe along the lines of Brochmann's benchmark 'The Mechanisms of Control' and Guiraudon's subsequent 'De-Nationalizing Control'.¹

As we have found, however, much has happened in the field of migration policy since these two influential studies were written. Migration flows – their volumes, forms, types and patterns – have all undergone dynamic changes. Responding to both new migration realities and external developments, policies have subsequently been adapted or, in some cases, undergone fundamental revisions. The dynamic environment of policy and migration interdependence has thus catalysed further changes in migration patterns and, consequently, further policy responses.

While Brochmann and Guiraudon were pathfinders to the starting point for our own analysis, this volume has extended and modified their concepts by examining the mechanisms currently at play in the countries under study. In this final chapter, we limit ourselves to ten general conclusions drawn from the nine reports contained herein. We then follow up our conclusions with a proposed new framework to conceptualise the progressive expansion of state migration controls.

First, we have seen that migration policies in Europe follow three main regulatory practices that are closely associated with three main groups of migrants. Focusing on the groups to begin with, the first category consists of 'unsolicited' or 'unwanted' migrants, e.g. those who are irregular, asylum-seeking or involved in family reunification. The underlying aim of states is to suppress, limit and control such types of movements. By contrast, the second main category of migrants is encouraged and often 'invited' to move. These individuals propel what have come to be desired migration flows, e.g. the migration of highly skilled workers, certain types of temporary and seasonal labourers as well as co-ethnic migration.² Finally, the third category of migrants comprises citizens of EU countries moving within the EU. This group's flows are mostly met with an attitude of *laissez-faire* or benign neglect,

albeit with two exceptions. On the negative side, migration from 'new' to 'old' EU member states is still constrained by restricted access to the labour market across many EU countries. And on the positive side, temporary student migration is actively promoted through EU academic exchange programmes.

The first category of migration policies is the control and suppression of unwanted migration. It is clear that this is the preoccupation of European states when the topic of migration comes up, either in the public discourse or in discussions among their political elites. It is also the main focus of the country reports of this volume and will be the subject of the remainder of this chapter. The third category pertaining to internal EU migration is, almost by definition, a non-issue in the regulation of migration (with the two exceptions mentioned above) and will not be further discussed here. Finally, we should say a few words about the second category, which is substantiated by policies to encourage certain types of migration flows. While labour migration, *per se*, has not been the subject of our study, we still find many examples in our country reports that illustrate state interests to attract 'needed migrants' to their economies, or at least to create the public impression of doing so. Thus, some states have instituted special programmes to attract highly skilled migrants, such as the UK's Highly Skilled Migrant Programme or Germany's (now defunct) Green Card for IT workers. Meanwhile, others like the Netherlands offer special tax incentives, like Austria, issue special quotas or, like Switzerland, have permit systems for key workers from non-EU countries. At the same time, it should not come as a surprise that many states, including the UK, Germany and Austria, have also created special entry slots for needed temporary workers, even if these programmes are less publicised presumably because they are politically less propitious. Finally, it should be noted that some nations like Italy and Spain have introduced preferential quotas for labour migrants from certain countries for reasons that are external (e.g. to promote foreign policy), internal (e.g. to improve the labour market) or both.

Second, returning now to Brochmann's division of control mechanisms into external and internal, we can add the increasingly important category of 'externalised' controls to the inventory. Even a quick look at our country reports suggests that this type of instrument for control has grown enormously in both its range and impact. Today externalised controls encompass a comprehensive EU-wide synchronisation of visa requirements, carrier liabilities and sanctions; a growing network of Immigration Liaison Officers (ILOs), Airline Liaison Officers (ALOs) and document advisors; as well as pre-departure checks and parallel pre-entry checks. Many of these instruments had been applied by individual states for years (e.g. the UK introduced carrier sanctions in

1987), even before becoming part of the EU and/or coming under Schengen-wide policy jurisdiction.

Third, we are convinced by ample evidence that external control measures at or around the EU's external borders have been further strengthened over the past decade. On the one hand, this is clearly the result of compensatory measures that were taken in return for dismantling internal EU borders through the introduction and expansion of the borderless area of Schengen's aspired-to area of 'freedom, security and justice'. On the other hand, increased border-control capacities – occasionally even enlisting the army, as do Austria and Spain – amounted to a doubling, if not more, of border guard staff in many cases (e.g. in Germany and Austria). A move like this goes well beyond a simple redirection of controls from internal to external. It can more accurately be linked to a widespread perception among the general public of 'losing control over one's borders', despite little concrete evidence for or against this populist battle cry. In a number of cases, an increase in resources devoted to external border control can also be linked to political pressure on states with extended external borderlines (e.g. Italy before joining Schengen), rather than mere internal political pressures. The focus of external control measures has more and more shifted to the EU's southern borders. Increased and improved police watercrafts and sophisticated surveillance equipment have been deployed to intercept boats carrying illegal migrants (as in Italy and Spain) and/or to fortify physical barriers (as in the case of the Spanish exclaves Ceuta and Melilla).

Fourth, as the individual country chapters here have shown, the level of internal control measures brought to bear on both authorised and unauthorised aliens varies widely. Nevertheless, there are signs of policy convergence even in an area so tied to the idiosyncratic traditions of states and their means of controlling their own populations' daily lives. Thus, the level of internal controls exercised on a country's residents varies between the extremes of the liberal tradition followed by the UK and the high degree of controls instituted in the German system. An illustration of how the general level of state control directly affects the level of control aimed at non-nationals is found in the differing stances that states take on carrying identification documents in public places. Thus, the mandatory carrying of an identity card at all times is prescribed in Belgium, France, Germany, Spain and the Netherlands, but not in Austria or the UK. Random checks of a person's legal status in the country are thus less consequential in Austria and the UK. Having said that, it should be noted that there are currently moves in both countries towards making it mandatory for non-nationals to carry identity cards with them at all times. Moreover, even in countries where, only a few years ago, random identity checks on the streets were vir-

tually non-existent (e.g. France and the UK), such forms of control seem to have become more frequent.

Fifth, we see how general control of the labour market has up until now experienced little policy convergence. As a result, there has also been scarce enforcement of immigration regulations at the workplace, through either systematic or random checks, and states have failed to unify a corresponding system of fines and sanctions. While relatively few workplace inspections occur in Italy, France, Spain and the UK – and migrants working in the informal economy in these countries may feel relatively safe from detection – the frequency of worksite controls seems especially high in Austria, Belgium, Germany and Switzerland. Moreover, there is a general tendency to both broaden and intensify the control of irregular work (e.g. in Austria, Belgium, Spain) and to significantly raise the fines levied on irregular employers (as in France in 2003, the Netherlands in 2005 and Austria in 2006).

Sixth, we have widely observed a tendency to extend the applicability of penal law to the misuse of immigration stipulations. This happens in two primary ways: first, through the steady rise in fines and potential prison sentences for already existing immigration offences; second, through the introduction of new legal offences previously unpunishable by law. An example of the former is seen in the last decade's progressive increase on the penalty scale for human smuggling activities in Austria, Belgium, Italy, the Netherlands and Spain. Human smuggling was introduced as a criminal offence in most European countries only in the early 1990s. Strictly speaking, criminalising human smuggling (and trafficking in human beings) and providing ever harsher legal penalties is not a 'real' case of independent policy convergence: these provisions were all partly mandatory under EU law.³ However, in many cases, the applicable national legal instruments go well beyond the minimum EU requirements. In fact, as much as national laws are driven by further development in EU standards, individual countries also drive the greater EU legislation.

Regulations expanding criminal sanctions to new forms of immigration offences are visible in checks against 'marriages of convenience' (also called 'sham' or 'bogus' marriages) that are concluded only for immigration purposes. Just a quick glance at the development of national migration laws indicates that the battle against bogus marriages has superseded the fight against bogus asylum applications. While the Netherlands had passed the Marriage of Convenience Act in 1994, France and the UK passed specific legislation in this area just within the past decade. It was only in 2006 that Austria, Belgium and Switzerland introduced specific penal sanctions against both perpetrators and facilitators. The new preoccupation with marriages of convenience is hardly coincidental; it reflects states' growing concern over family re-

unification and family formation, two legal gates to Europe that are rapidly becoming the main entry channels in mature immigration countries. Marriage also adds another dimension to the enforcement of immigration: the verification of 'bona fide' marriages in a migration context requires the cooperation of new actors (e.g. civil registrars, mayors, civil courts, church officials) and a more intrusive screening of personal affairs.⁴

Given this widely observed tendency towards the use of penal law in immigration matters, it may come as a surprise to learn that the simple act of illegal immigration – meaning illegal entry and/or illegal residence – is treated with widely differing measures in the countries under study. While illegal immigration is only an administrative offence in Austria, Belgium, France,⁵ Italy, Spain⁶ and Switzerland, it is considered a criminal offence in Germany and the UK. Limited administrative capabilities and detention capacities notwithstanding, states have unique reasons for refraining from criminalising illegal migration as such. Nevertheless, in practice the range of approaches seems to make little difference in how apprehended illegal aliens are ultimately treated.

Seventh, we see more emphasis being placed on the removal of aliens who are not (or who are no longer) authorised to reside in the territories of European states. In several states under our review, the number of effected returns – whether voluntary, forced or cases of 'assisted voluntary return'⁷ – has either grown considerably or remained at a high level (e.g. Belgium, France, Italy, UK). Again, efforts at the EU level to make returns an efficient and credible instrument of migration policy have played a role here. National concerns to demonstrate the integrity and credibility of the system, however, have usually predominated (as in the UK). This is also evidenced by the low number of readmission agreements that have been concluded at the EU level, compared to the vast number of bilateral readmission agreements European states have succeeded in making.

Eighth – and coupled with the redoubled concern over return and readmission – we see a wider use of detention as a means of ensuring the departure of unauthorised aliens. As of 2005, unauthorised aliens in Spain can be detained if return after refusal at the border is delayed for 72 hours. This often leads to detention capacities being stretched to their limit.⁸ In many countries (such as Austria, France, Italy), the maximum period of detention has increased and detention capacities have grown. France's detention capacity grew by +40 per cent between 2002 and 2005, while in the Netherlands, detention capacities tripled during the same period. In 2005, Germany newly introduced departure centres to facilitate the voluntary departure of failed asylum seekers (today the country has nine such centres). Management of the UK's grow-

ing number of detention centres (fourteen at present) is more and more being outsourced to private firms.

Ninth, over the past decade we have repeatedly witnessed how some states have resorted to official regularisation programmes due to prior failures in their control systems. These incidents have included situations in which external control measures could not, in the first place, prevent illegal migrants from entry, or internal control measures failed to detect them once they were in the country. Other scenarios that have made the removal of migrants non-viable have involved legal obstacles, economic and political considerations as well as the sheer numbers. This has been the case for some of the countries presently under review: France in 1998, Belgium in 2000, Italy in 2002 and Spain in 2005. Such programmes are usually criticised by other countries that consider official regularisation programmes non-effective or even counterproductive (e.g. Austria, Germany, Switzerland). However, it should be noted that even in countries that do not officially announce official regularisation programmes, there is usually some way to regularise long-staying irregular migrants on a case-by-case basis (e.g. France, Germany, the UK). Although the issue recurringly comes to the surface in many countries, massive regularisation schemes remain a contentious issue both within and between countries.¹⁰

Finally, in our tenth observation we note the rising tendency for immigration control responsibilities to be shifted to the lowest level possible: that is, to migrants and to the general public. An example of responsibility falling on the migrant is a measure requiring all aliens to at all times carry identification cards (which are more and more becoming biometrically equipped). This is presently required in Spain and now foreseen in Austria and the UK. An example of responsibility falling on the public is the creation of new legal immigration offences for nationals who facilitate illegal migration, e.g. by entering into marriages of convenience or providing housing to irregular migrants (e.g. Austria, Belgium). The general public is naturally also affected once carrying an identity card becomes mandatory for all residents in the country (as is now the case in Belgium, Germany and the Netherlands).¹¹ Finally, ordinary citizens are increasingly enlisted in migration control efforts in a number of instances. In France, they are called upon to notify the police of all (non-EU) foreign visitors. In Belgium, the public is expected to denunciate an illegal migrant through local police stations. In Germany and the UK, individuals are asked to report suspected irregularly residing migrants to specially created hotlines. This kind of civic involvement has potentially grave consequences for inter-community relations.

2. Conceptualising the dynamics of migration control

The country studies presented in this book provide us with rich material for understanding current realities and likely tendencies in the regulation of migration. While the conclusions drawn here are necessarily incomplete, they do provide a valuable starting point for theoretical analysis. In light of the above analysis, we wish to modify Brochmann (1999) and Guiraudon's (2001) arguments concerning internal and external controls. By taking into account the expansion of traditional migration regulation instruments into new domains, we would propose a revision to their views on shifting migration control upwards, downwards and outwards.

Based on the country case studies contained in this volume, we argue that, rather than a unilateral 'de-nationalisation of migration policy', we can observe today a progressive expansion of state control into other, new areas in which migration-relevant controls are exercised by state actors at various levels. This expansion takes place in three main directions. First, there is a *forward expansion* in which externalised control come outside a country's own borders. Second, there is a *backward expansion*, with more internal controls and checks in public and at the workplace. And third, there is an expansion of the requirements placed on migrants themselves, which is a 'personalisation' process that we may refer to as an *inward expansion*. Concomitant with these three directions of the expansion of state control are the expansions of the actors involved and the terms and conditions attached to migration control. A synopsis of these developments is provided in Table 9.1.

A final thought to conclude. In their monumental study on migration control, Cornelius et al. (2004) draw our attention to the frequent occurrence of the 'unintended consequence' of migration policies. The most famous example of such an unintended – and even perverse – consequence is the effect that the strengthening of immigration barriers in the United States had on the number of undocumented migrants living in the country. By making cross-border movements and returns more difficult, the measure actually increased the illegal residents' average length of stay and thus, by all estimates, the total stock of undocumented migrants in the US. In fact, such counter-intuitive side effects are very likely to arise from current modes of migration regulation as well. To give but one example, the contours of a new set of unintended consequences can already be discerned when viewing current efforts to counter marriages arranged for migration purposes. By progressively raising the barriers for several types of entry paths (labour migration, asylum, illegal entry), family formation and family reunification with resident foreigners and citizens (naturalised or native-born) has now become many countries' main entry channel. It should

Table 1 *The progressive expansion of state migration controls*

	Domain expansion	Actors expansion	Term expansion
Forward expansion	Externalised control: general measures outside national borders	Transport companies, ILOs, public authorities in transit and source countries, travel agencies, multilateral operators of new electronic/biometric datasets (VIS, ⁹ SIS II, EURODAC)	Eligibility rules for visa issuing, carrier liabilities, readmission agreements
Backward expansion	Internal control: limiting access to the labour market, linking administrative datasets	Labour market inspectors, social security services, local authorities, employers	Transitional periods for labour market access, enforcing employer fines, longer detention periods, more expulsions and returns
Inward expansion	Personalised control: checks on fulfilling integration requirements and conditions for marriages with non-EU citizens	Language course providers, civil courts, mayors, civil registrars, church officials	Introduction and enforcement of so-called 'integration contracts' (e.g. language tests and culture courses), minimum-income requirements for highly qualified migrants, naturalisation law, civil status law, marriage law

come as no surprise that, under these circumstances, the strategic use of marriage as a means to gain entry and residency rights has become an ever more viable option.¹² Again, states are reacting to their limited capabilities by fine-tuning their control apparatus on family formation, family reunification and naturalisation. This has potentially wide-ranging consequences on civil liberties and the integration of long-established immigrant communities. Judging from experience, we may assume that the next unintended consequences are just around the corner.

Notes

- 1 Brochmann (1999) categorised control measures as either *external* – pertaining to entry and border regulations – or *internal* – pertaining to what happens inside the receiving country – with a further distinction then made between explicit and implicit regulations. Guiraudon (2001) subsequently argued that competence levels and responsibility assignments in migration control are changing. A designation was thus made between a shifting *upwards*, from the national state to supranational institutions like the EU; a shifting *downwards*, from the national state to local authorities; and a shifting *outwards*, from the national state to private organisations.
- 2 Preferential treatment of migrants with ethnic or ancestor ties in the destination country occurs in many states. Two prominent examples of facilitated migration, which includes the automatic awarding of citizenship, are observed in the case of so-called ‘ethnic Germans’ (*Aussiedler*) from the successor states of the former USSR migrating to Germany and those of ‘ethnic Greeks’ (*Pontians*) migrating to Greece.
- 3 See e.g. the Council Framework Decision of 28 November 2002 on the strengthening of the penal system to prevent the facilitation of unauthorised entry, transit and residence (2002/946/JHA).
- 4 Extended application of penal law to immigration offences is, however, not restricted to marriages of convenience alone. This can also be seen in the new sanctions that have been introduced against fraudulent adoptions (Austria), slum landlordism (Belgium), carrier sanctions against taxi drivers (Germany) or the use of forged or counterfeit documents (UK).
- 5 In France, illegal immigration is a ‘*délit*’, an offence that falls somewhere between an administrative and a criminal offence.
- 6 In Spain, illegal immigration is considered a ‘serious administrative offence’, while people smuggling and trafficking in human beings is considered a criminal offence.
- 7 Migrants required to leave a foreign country or who simply wish to return to their country of origin after having been displaced by conflict are often offered monetary or in-kind assistance to facilitate their return movement. Although return may thus be instigated by the state’s desire to induce the migrant to exit the country, the migrant agrees to return voluntarily in exchange for assistance.
- 8 If removal cannot be effected within 40 days, the aliens are free to move onto the national territory.
- 9 For example, France’s new 2006 immigration law abolished the case-by-case legalisations under which some 20,000 persons had already become regularised. However, only a few months after the law came into force, a renewed debate was opened on the regularisation of specific immigrant categories (e.g. children).
- 10 Before it was ultimately introduced, this measure was repeatedly rejected in the Netherlands for fear of the negative effect it would have on the general public.
- 11 The EU’s Visa Information System (VIS), expected to begin operating in 2009, will centrally store the biometric identification data of visa applicants for all Schengen countries.
- 12 This option becomes relevant the more ‘mature’ the migration system of a given destination country is and how closed it is to newcomers without family ties. Thus, family formation – and the frequently very expensive option of entering into a marriage of convenience – is not yet a concern in Southern European countries such as Italy and Spain, where irregular migration is otherwise relatively widespread.

References

- Brochmann, G. (1999), 'The Mechanisms of Control', in G. Brochmann & T. Hammar, *Mechanisms of Immigration Control: A Comparative Analysis of European Regulation Policies*, 1-27. Berg: Oxford International Publishers.
- Cornelius, W. A. T Takeyuki T., P.L Martin & J.F. Hollifield (eds.) (2004), *Controlling Immigration: A Global Perspective*. Stanford: Stanford University Press.
- Guiraudon, V. (2001), 'De-Nationalizing Control: Analysing State Responses to Constraints on Migration Control' in V. Guiraudon & C. Joppke, (eds.), *Controlling a New Migration World*, 31-64. London: Routledge; EUI Studies in Political Economy.

Other IMISCOE titles

IMISCOE Research

Rinus Penninx, Maria Berger, Karen Kraal, Eds.
*The Dynamics of International Migration and Settlement in Europe:
A State of the Art*
2006 (ISBN 978 90 5356 866 8)
(originally appearing in IMISCOE Joint Studies)

Leo Lucassen, David Feldman, Jochen Oltmer, Eds.
Paths of Integration: Migrants in Western Europe (1880-2004)
2006 (ISBN 978 90 5356 883 5)

Rainer Bauböck, Eva Ersbøll, Kees Groenendijk, Harald Waldrauch, Eds.
*Acquisition and Loss of Nationality: Policies and Trends in 15 European
Countries, Volume 1: Comparative Analyses*
2006 (ISBN 978 90 5356 920 7)

Rainer Bauböck, Eva Ersbøll, Kees Groenendijk, Harald Waldrauch, Eds.
*Acquisition and Loss of Nationality: Policies and Trends in 15 European
Countries, Volume 2: Country Analyses*
2006 (ISBN 978 90 5356 921 4)

Rainer Bauböck, Bernhard Perchinig, Wiebke Sievers, Eds.
Citizenship Policies in the New Europe
2007 (ISBN 978 90 5356 922 1)

Veit Bader
Secularism or Democracy? Associational Governance of Religious Diversity
2007 (ISBN 978 90 5356 999 3)

Holger Kolb & Henrik Egbert, Eds.
*Migrants and Markets: Perspectives from Economics and the Other
Social Sciences*
2008 (ISBN 978 90 5356 684 8)

Ralph Grillo, Ed.
*The Family in Question: Immigrant and Ethnic Minorities in
Multicultural Europe*
2008 (ISBN 978 90 5356 869 9)

Corrado Bonifazi, Marek Okólski, Jeannette Schoorl, Patrick Simon, Eds.
International Migration in Europe: New Trends and New Methods of Analysis
2008 (ISBN 978 90 5356 894 1)

IMISCOE Reports

Rainer Bauböck, Ed.
Migration and Citizenship: Legal Status, Rights and Political Participation
2006 (ISBN 978 90 5356 888 0)

Michael Jandl, Ed.
*Innovative Concepts for Alternative Migration Policies:
Ten Innovative Approaches to the Challenges of Migration in the 21st Century*
2007 (ISBN 978 90 5356 990 0)

IMISCOE Dissertations

Panos Arion Hatziprokopiou
*Globalisation, Migration and Socio-Economic Change in Contemporary
Greece: Processes of Social Incorporation of Balkan Immigrants
in Thessaloniki*
2006 (ISBN 978 90 5356 873 6)

Floris Vermeulen
*The Immigrant Organising Process: Turkish Organisations in Amsterdam
and Berlin and Surinamese Organisations in Amsterdam, 1960-2000*
2006 (ISBN 978 90 5356 875 0)

Anastasia Christou
*Narratives of Place, Culture and Identity:
Second-Generation Greek-Americans Return 'Home'*
2006 (ISBN 978 90 5356 878 1)

Katja Rušinović
*Dynamic Entrepreneurship: First and Second-Generation Immigrant
Entrepreneurs in Dutch Cities*
2006 (ISBN 978 90 5356 972 6)

Ilse van Liempt
*Navigating Borders: Inside Perspectives on the Process of Human Smuggling
into the Netherlands*
2007 (ISBN 978 90 5356 930 6)

Myriam Cherti

*Paradoxes of Social Capital: A Multi-Generational Study of Moroccans
in London*

2008 (ISBN 978 90 5356 032 7)

Marc Helbling

*Practising Citizenship and Heterogeneous Nationhood: Naturalisations in
Swiss Municipalities*

2008 (ISBN 978 90 8964 034 5)