Immigration policy of the EU: Common challenges, common responses, common policies?

Paper for the Fourth Biennial International Conference
of the European Community Studies Association
May 11-14, 1995
Hawthorne Suites Hotel
Charleston, South Carolina

Albrecht Funk
Department of Political Science
University of Pittsburgh
4101 Forbes Quadrangle
Pittsburgh, PA, 15260
Tel: (412)648-7277
Fax: (412)648-7288
E-mail: Funk@vms.cis.pitt.edu

Albrecht Funk

Immigration policy of the EU: Common challenges, common responses, common policies?

When Jacques Santer introduced his new team to the press in October 1994, he not only presented new faces but also a reorganized commission. For the first time, a Commissioner (Anita Gradin from Sweden) will be responsible for justice and law enforcement, immigration and asylum, internal security and policing, finance control, and fraud detection. This innovation stands for the intention of the member states to put the European Community on a broader foundation. Besides the Single Market and a Common Foreign and Security policy, the heads of state tried to erect a third pillar of the European Union: a coordinated, even common policy of the member states covering justice and home affairs. Which significance should be attached to this third pillar of the EU, defined in Title VI of the Maastricht Treaty?

Experts in European law and political scientist agree in stating that the third pillar creates a "new decision making process ... between classical, intergovernmental cooperation and Community law."[1] The Maastricht treaty redefines already existing areas of intergovernmental cooperation as "matters of common interest." However, it does not change the decision making process itself. This new sphere was established outside Community law and remains under the control of the national governments. They

[1] However, it is still very much the question whether this third pillar is "half way between classical cooperation and Community law" like Wenceslaw de Lobcowicz assumes(Lobcowicz, 1995, p.100).

developed common policies by defining joint positions or actions and by drafting conventions which the Council recommends to the member states to adopt according to their respective constitutional law (TEU, K.3.2.c). The competencies of the Commission are strictly restricted to the right to participate in the meetings of the working group on immigration and asylum, the committee of the "hauts-fonctionnaires, coordinating the working groups on justice, internal secuity and immigration)the "K.4 committee) and the Council. In addition, it has the right to propose joint positions, actions or conventions. The Court of Justice has no right to review the legislation of the Council. Finally the European Parliament is excluded from the policy-making process (Monar, 1995,p.70ff)

This legal structure of cooperation in the field of justice and home affairs is subject to very diverse interpretations. The majority of experts on the EU polity and European law tend to frame the third pillar as an immanent consequence of the Single European Market Act and the more or less self sustaining process of economic integration.

"The liberalization of the internal market could be seen ... as a triumph for the principle of so called 'negative integration,' the removal of barriers to the free movement of the forces of production". The free movement of goods, capital and services presupposes the free movement of persons, equal right of all citizens in the new European territory. "When it comes to the integration of society," however, new "measures for the management of interdependence...for 'positive integration'" have to be developed (Morgan, 1995,p.15).

If you suppose that such an immanent logic ("Sachzwang") operates in the third pillar, the specific forms of cooperation and the concrete problems involved in the policy areas under discussion are of secondary importance.

Such a functionalist approach offers a consistent interpretation of the normative structure of the Third pillar as a transitional one. In particular the provision in Article K.9, which open up the possibility to shift fields of common interest from intergovernmental cooperation to the decision making process of the Community, seem to prove such a transitional interpretation of the actual structure of the third pillar (Lobcowicz,19995, p.120f). Equating the complex and often vague legal norms and institutional patterns of the third pillar legal system with instruments of "positive integration," many EU experts consequently imply an inherent trend towards common policies and institutional integration. This assumption first needs to be proven empirically, though.

The growing demand for transnational coordination in fields that had been traditionally defined as matters of "home affairs" and "internal security" is without any doubt closely related to the ongoing process of economic globalization. The way in which social problems are framed as a European matter of "justice and home affairs," however, is not at all determined by definite functional prerequisites. In addition, the outcome of this process is contingent. The third pillar does not follow from a definite material input and a coherent policy referring to it. The legal structure and organization emerged much more from different "garbage can processes" (Cohen et. al. 1972, p.1 ff., March & Olsen, 1989, p. 28 ff.) in which national institutions looked for intergovernmental cooperation in many fields -- from drug use to terrorism and immigration. The political decision for a Single European Market and the initiative to remove internal borders in the Union only acted as a catalyst.

At first, this project resulted in efforts to integrate and formalize the rather hypertrophied network of existing intergovernmental cooperation, which national security organizations had developed long before the SEA was under way and immigration received growing attention. It subsequently gave rise to a system of complicated political bargaining processes on the national and European levels in which national security agencies asked for compensation measures. Out of this debate, immigration emerged as the crucial issue in the late eighties. The momentum carried over into further expansion of police cooperation (Bigo, 1992, Den Boer, 1994, Busch, 1995). Finally, the existing institutional structure enhanced the policies of national government to redefine immigration as a problem of internal security.

The multitude of different policies and institutional interests included in the third pillar are clearly channeled trough the new decision making process of the third pillar. In some cases, this process may produce a definition of common goals; however, the process does not necessitate further integration at large. Any explanation and evaluation of the impact of this decision-making process consequently requires research on concrete policies involved. General assumptions about the impact of this new decision making structure, derived from conventional wisdom about the community procedures, inevitably fall short.

For this reason I restrict myself to a discussion of the impact of the third pillar in one particular case: the way member states deal with immigration, asylum-seekers and refugees. In this paper, I will argue that the Europeanization of national immigration policies is not a process in which the member states "communitarize" their immigration, asylum, and refugee policies. Policy harmonization and decision-making on the European level

consist primarily of "negative coordination" (Scharpf, 1993): national policies that cancel each other out are abolished and the central policy instruments -- policing -- are made to work more consistently with each other in the newly created framework of intergovernmental negotiations. To discuss this argument, I will first describe how the shifting pattern of immigration in the eighties finally resulted in a clear policy shift: national policies were replaced by intensive intergovernmental cooperation, which was finally institutionalized in the third pillar. In a second step, I will try to explain this cooperation as a process of "negative coordination" in which the national governments sought to avoid negative external effects for their policies, while simultaneously fending off every demand for a common immigration policy. Finally, I will discuss the fallacies stemming from the reduction of immigration policies to control strategies and policing and the chances for the development of a common European immigration policy.

1. The challenge of immigration and the rise of intergovernmental cooperation

Immigration was a permanent issue in post-war Europe. It is important to remember the involvement of the European Community in this field right from the beginning. Regulating immigration played an important role in negotiations with Greece, Spain, and Portugal. In addition, the Commission tried to guarantee equal rights for migrant workers from southern Europe in Germany, France and the Benelux (for an overview Meehan, 1993,85ff). However, the situation in the sixties and seventies was rather different from today: "immigration policies" of the nation-states in the sixties did not go beyond the recruitment of laborers. At the same

time, this identification of immigration with employment policies legitimated the involvement of the Commission (Art. 117/118).

After the oil price shock in the seventies, the focus shifted from hiring temporary workers towards efforts to stop further immigration and to integrate the long-term residents in their host society. Countries like France, Germany, or the Netherlands subsequently had to redefine the legal and social status of those guest-workers as permanent immigrants. This did not only happen in national law and politics, but also in bilateral treaties. However, the member states fended off any attempts of the Commission to deal with the social and legal status of immigrants from non-EC countries in general. In 1985, the Commission asked the member states to submit national regulations and bilateral agreements to the Commission first. When it did that, five member states (Germany was among them) resisted and argued that the Commission had no competence in this field apart from its narrowly defined function to control the impact of migration policies on the labor market and working conditions (Callovi, 1993,p.353ff).

At the same time, the national governments pushed aside proposals of the European Parliament that tried to discuss the question of how Europe should deal with a growing number of refugees from other continents. The numbers of asylum seekers from African or Asian countries in 1985 were still rather low compared with those og 1990/92. Tamil, Ghanian, or Iranian refugees. however, already indicated that structural changes were down the road. In a retrospective view on the Vetter report of 1985 and other resolutions, many proposals are not realistic any more.[2] The underlying

[2] The parliament centered on the will of the applicant in defining the right of asylum (European Parliament (1987) and pleaded that the police should not have powers to refuse asylum requests. Lobkowitz states corretly, that this

idea, however, is still noticeable: that Europe needs a consistent European immigration, asylum, and refugee policy that sets up common political standards of social and political integration. Common methods of policing are not enough.

In contrast to such proposals, the member states still acted more or less on their own. It is interesting, however, that they acted in the same way: they introduced new visa requirements for many Third World countries and subsequently introduced carrier sanctions for those airlines transporting passengers without valid visas. When more and more Tamils entered the Federal Republic of Germany (FRG) through the former German Democratic Republic (GDR), the German government reached an agreement with the GDR in exchange for additional loans: only persons with a valid entry visa for the FRG would be able to enter the territory of West Berlin. Subsequently, Denmark and Sweden experienced an increase in the number of Tamil immigrants and tried to reach similar treaties with the GDR.

These 'cash-for-control' negotiations illustrate the way Western European nation states generally responded to the new stream of immigration in the eighties. All countries perceived trans-European immigration as a new challenge; all responded to it by similar entry restrictions; however, no member state tried to define immigration as a substantial common problem of the EU.

---

decision " marked an end during which the Western countries had become more preoccupied with the abuse of the right of asylum than with the absolute respect of this fundamental right":(De Lobcowicz 1995, p.103)

This statement needs to be qualified. While the member states still insisted on strict national policies, the issue had been placed on the agenda of the EC for other reasons. Any plan to remove internal borders in Europe presupposes an agreement on the function of the external borders and entry-rules in the common territory. The countries engaged in Schengen, as well as all member states of the Union therefore had to discuss equal visa requirements, standards of border controls, or expulsion policies. In addition, they had to solve the question of whether alien residents, refugees, or asylum-seekers in different nation states should be granted the same rights of free movements as European citizens.

It is important to realize, however, that the problem of immigration which the nation states are confronted with was neither induced, nor determined by this political project. The shift from a national to a European border regime does not alter the underlying problem of global migration. The pressure of immigration on the highly industrialized Western European states would not be less if the European Union did not exist at all. In addition, the effectiveness of frontier and border controls as instruments to monitor people and catch illegal immigrants or criminals is also greatly limited for sovereign nation states. They, too, have only limited opportunities to tighten up their controls. Even Great Britain, which still resists to take part in Schengen and the removal of internal border controls, cannot intensify its controls much beyond the given level without endangering business or tourism.

For this reason, it is even questionable whether the shift from national towards a European border regime results in a "loss of security," which requires a whole set of "compensatory measures." I do not want to discuss this question here in detail (cf. Funk, 1994). The only important

point I want to make in the context of this paper is the coincidence of interest that developed in the discussion of a "Europe without borders." Pressing for stricter policies of border control -- legitimated as compensatory measures -- proved to be a perfect approach for the national security forces and governments to pursue their national policies aimed to restrict immigration at the European level.[3]

It is therefore no accident that it was Great Britain in 1986 which took the initiative for an ad hoc Immigration Group. Great Britain often led the way to direct cooperation of national agencies (for instance in the case of TREVI), in which the government retains total control of policy decision. Like TREVI, the ad hoc group was intergovernmental in character; in contrast to the former, however, the ad hoc group involved the Commission. The task of this group was originally restricted to the discussion of the impact of the free movement project on immigration matters. In the beginning, this group was insofar only one of many in a diffuse network occupied with the free movement of persons in Europe.

However, the immigration issue and the ad hoc group soon became more significant. In December 1988, the European Council in Rhodes set up a free movement coordination group, which had to scrutinize the work of these different working groups and to define the future goals. At the same time, the debate on internal borders was more and more superseded by the question of how to deal with the growing number of refugees and asylum-seekers. This concern about immigration was further stimulated by the break-down of the Eastern bloc

[3] Meanwhile, the relation between the two policy aims was even reversed. Any further step towards a removal of internal borders in the EU will depend on the efficency of the border controls at the outer European frontiers. Schengen and its elaborated control regime will be the decisive test to determine the efficency of a European border control regime.

and the Berlin Wall in November 1989. Ironically, the Berlin Wall was -- as a German security expert stated -- a "bulwark for the internal security" not only for Germany, but for the whole Community (Maier, p. 60). The net immigration rate in many Western European countries rose significantly not only in Germany or the Benelux countries, but also in member states such as Spain and Italy.[4]

Regular meetings of "immigration ministers" (WGI) (in most cases identical with the "police ministers") starting in 1989 indicates the growing demand of member states for cooperation on questions of immigration. From the outset the WGI ministers unanimously focused on measures to restrict the influx of asylum-seekers and immigrants, in combination with proposals for tighter border controls. European and national frontiers became increasingly significant as instruments of immigration control.

Compared to other policy areas, the national governments came to quick and rather far-reaching agreements. They were laid down in the Dublin Convention on Asylum and the Draft Convention on the Crossing of External Borders, for instance. The only, but crucial point at issue was whether the nation states should "communitarize" immigration and asylum policy in general. Kohl had proposed just that in June 1991, when the number of refugees from former Yugoslavia and asylum-seekers increased dramatically. The majority, however, insisted on the strictly intergovernmental character of all regulations, regardless of whether the objective involved was the restriction of immigration, or the removal of internal borders. In the

[4] In Germany the average net immigration was 389.000 in the years 85 to 89 ,(Great Britain 24.000, Italy 74.000) it rose to 788.000 in 1992 (GB 37.000,Italy 110.000) The net immigration rate of Germany towered those of classic immigration countries like Kanada 7.3 or USA 3.5, Baldwin-Edwards, Schain, Martin A.(1994)p.ff, Dinkel/Lebok, 1994, p. 28f

following years, the latter goal faded more and more in the background of the discussions in the European Council and its working groups. Finally, in November 1991, the immigration ministers approved a program "which for the first time, made no explicit link with the abolition of internal borders" (Lobkowitz, p. 115).

This program summarizes objectives that the national governments intend to implement step by step in the following years: coordinated policing of illegal immigration, standardizing rules of admission, enforcing the uniform procedure for asylum applications drafted in the Dublin Convention, harmonizing expulsion and re-admission procedures.

The Single European Market and the Maastricht treaty have not had any substantial impact on this policy agenda and the way it was implemented. The areas of intergovernmental cooperation, codified in Art. 6 of the Treaty, are hardly more than a specification of the objectives defined earlier by working group and immigration ministers. Leaving aside the special case of visa requirements, the "sui generis cooperation structure" of the third pillar refers strictly to intergovernmental decision-making procedures set up before (Lobcowitz, p.107).

This does not mean that the Commission is of no importance in the ad hoc group and now in the K.4 committee of high officials of the memberstates. Without concrete empirical case studies, however, it is impossible to evaluate exactly the role of the Commission in the decision making process.5 Looking at the outcome, though, it should be possible at

5 Another open question is the relation of this commitee to COREPER, preparing traditionally the work and the decisions of the Council

least to draw some conclusions about the general impact of the established decision-making process on immigration policy of the Union and its member states.

II. Coordinating national immigration policies in a "suis generis cooperation structure"

It is hard to miss the plea for a common immigration policy of the EU in documents of the European Parliament, as well as the Commission and the Council. The Commission in particular emphasized a comprehensive immigration policy, including steps to reduce migration pressure through regional development programs and integration measures for those immigrants living in the EU. "Our societies cannot allow themselves to be driven by the fact that part of the population is not integrated in the mechanisms of solidarity set up by the welfare state" argued the Commission in its communication on immigration policies in 1991. "The time has come to give serious considerations jointly to the various elements of integration, with a view to taking the necessary steps to ensure that the social fabric is not disrupted".[6]

In fact however, the intergovernmental cooperation in the third pillar does not aim at such a comprehensive immigration policy, which combines measures of inclusion and integration on the one hand, with those of exclusion and entry control on the other hand. The majority of member states insist on their sovereignty in all major fields of immigration policy. Apart from all political differences however, the member states respond to actual immigration in similar ways. In fact, national policy makers definitely share one common interest which defines the rationale of national policies, as well as the positions of the WGI

[6] Commission , Experts's Report 1990, p. 27, and Commission Communication 1991

ministers and officials in the intergovernmental negotiations of the third pillar. These goals are clearly stated in the report for an immigration policy of the Union in preparation for Maastricht. There, cooperation in immigration issues is defined in terms of three objectives: to stop immigration except in cases of family (re-)unification, to reduce the influx of asylum-seekers or refugees, and finally to harmonize national contol policies (Commission, Ad hoc group, Ad December 3, 1991).

The problems at stake in intergovernmental negotiations on this policy are consequently different and fewer than in areas, in which the commission tries to develop an optimal new strategy in order to achieve complex objectives like a single currency. First of all, negative coordination is needed to avoid interference and deterioration of national policies in situations in which national policy makers are highly interdependent. This goal perfectly matches up to an open "suis generis" decision-making process in which all actors involved can prevent measures of other member states which conflict with their own policies; simultaneously, they can maximize the profits of coordinated action. Such an approach deliberately seeks to avoid the risks of difficult and lengthy debates on an optimal common immigration policy of the EU and the contribution the different nation states have to make. It is indeed hard to imagine that the national actors in the European cooperation process find any agreement on basic questions of citizenship, naturalization, legal standards of asylum, or the necessity of immigration laws.

This is plainly visible in the case of refugee politics, in which the member states only agree in one objective: that they do not want to discuss a European refugee law, even if it is obvious that the Refugee Convention of 1951 is insufficient to deal with potential

emergencies. On the one hand, they fear that any change in the status quo may result in additional obligations; on the other hand, it restricts the sovereign foreign policy. With the exception of those states that actually have a high burden of refugees -- especially Germany with the majority of refugees from former Yugoslavia -- the member states involved in the coordination process block any attempt to discuss a European refugee convention.

The lack of a common European immigration policy is similarly obvious in the way the asylum problem is perceived in the intergovernmental decision-making process. The underlying problem -- how to deal with human rights violations and its victims in countries like Turkey or Algeria -- is more or less excluded; for obvious reasons, a unanimous agreement is hard to imagine in this field. Instead of pursuing such a far reaching goal, the member states defined common procedures in the Dublin Convention of June 1990, relying on two principles. On the one hand the country which allows a person to enter has to take responsibility for application procedures; on the other hand, this procedure excludes further applications in any other member state. In addition, they set up a list of negative criteria to refuse unreasonable applications which consequently allow to send back or expel the subject immediately.

The Dublin Convention set minimal legal standards for applicants of asylum in Europe, as well as for the asylum procedure as supporters convincingly argue (Lobcowicz,1995,p.111). At the same time however, the principles of the convention induced a disastrous competition. The convention itself has not yet entered into force. Nevertheless, many countries use the outlined principles to reduce their number of asylum-seekers by leveling down the legal procedures and referring as many as

possible to other countries. Germany was the first country which used the "first country concept" of the Dublin Convention and the argument of an indispensable "synchronization" of national law and European regulations to legitimate its suspension of the right to asylum in the Basic Law. Germany now turns back every potential applicant who entered Germany by neighboring "safe states." Other European states followed along this line (King, 1994, p.67ff). As a result of this "chain reaction," the UN Commissioner of Refugees in Bonn complained that "the system for protecting the politically persecuted is collapsing." (Süddeutsche Zeitung, May 26,91)

I refrain from discussing further examples which all demonstrate the same tendencies.[7] The national actors in the intergovernmental negotiations of the third pillar tend to reduce the immigration issue to a problem of "internal security" and to harmonize different policies at the lowest level. The resolution and conclusions of the Council and its working group predominantly focus on policing. If it makes sense at all to talk about an immigration policy of the Union, then it is in the sense of a policing option which is based on four objectives:

1. Common regulations on the crossing of external borders of the EU

The idea of an outer European frontier replacing the national ones presupposes a uniform border regime with standardized rules on entry visa, residence permits, exclusion and control procedures. These objectives are

[7] These include the lack of common standards of naturalization of alien residents, the nonexistence of long-term concept for future immigration in the EU or the absence of a comprehensive policy toward emmigrant states in the South and the East of the EU.

consequently at the heart of the project to remove internal borders. However, as the pressures of migration grew, these objectives simultaneously became more significant as instruments of immigration control. The Council and the Commission consequently insisted that the member states harmonize "the control of persons crossing external borders," even if the removal of internal borders in the EU is called into question.[8] Haunted by the experience of the breakdown of the Eastern bloc and the influx of refugees from Yugoslavia, the member states even took a big step towards a "visa union" in the framework of Community law (TEU. Art.100c).

In these spheres, the Commission has a more powerful role than in any other mentioned in Title VI of Maastricht. In addition, the Commission uses its competencies without hesitation to overcome friction in the intergovernmental decision-making process. More or less copying the Schengen concept, the Council had already drafted a convention in 1991 in which the member states agreed to common control arrangements and visa standards. Stalled because a conflict between Spain and Great Britain over Gibraltar, this draft was never signed. Only six months after the TEU came into force, the Commission presented a revised version of the stalled convention to the Council. Furthermore, it drafted visa regulations, referring to Art. 100c, which aim "to harmonize the regulations and practices of the Member states."

Some of the member states definitely question this excessive interpretation of the power of the Commission according to Art. 100c of the TEU. They insist on the intergovernmental character of any regulation that tries to harmonize the visa policy of the member states, even taking into account the fact that the Commission concedes the

[8] New convention...

member states the right to require visas of nationals not listed in the draft (O'Keefffe,1995,p.147, Proposal of the Commission Art.1.2 ,p. 174).

Nonetheless, all actors in the coordination process agree on the principles of external border controls, as well as on the negative list of visa countries. In fact, most of the EU member states even adjusted to the stricter standards of Schengen, which is setting the pace of harmonization. The actual harmonization of national policies by imitation and adjustment towers far above the legal agreement. The procedures of the third pillar were the ones which fell short.

2. "Intelligent border control"

The fact that legal regulations are lagging behind actual cooperation is even more obvious in the efforts to create new common systems of border control. This goal refers to the exchange of computerized information and the construction of a European Information System (EIS). The latter did not yet exist and it even may be that the EIS will never be more than an annex to the Schengen Information System (SIS), which just took up operation. However, security agencies had started to intensify the data exchange long before SIS and EIS had been placed on the agenda of the intergovernmental decision-making process. Data protection officers in different countries regularly criticized these developments. Even in the case of Schengen, which started with a delay of five years, the executive committee has not yet drafted the multitude of regulations on the so-called "long term measures" crucial for immigration control and the implementation of SIS (Hrbelay, 1994, p. 59 ff.).

3. Harmonized expulsion/deportation rules and procedures

To deter potential immigrants (and asylum-seekers) is one of the goals mentioned in the immigration program for Maastricht. Therefore, the officials proposed a ban on measures which legalize illegal immigrants. France, Spain or Portugal used such amnesties before to alleviate the friction caused by illegal immigrants, however, witout any lasting effect.

The WGI group proposed instead a strict policy of deportation. This presupposes a rationalization of rather complicated different regulations -- especially in the case that non-member states are involved. At their London meeting in December 1992, the WGI ministers adopted a whole package of recommendations and guidelines for expulsion procedures and transit. The main problem, however, are less the legal or bureaucratic difficulties of such procedures; rather it is the fiscal cost of mass deportation.

4. An extensive system of re-admission and cooperation treaties

There is another, far more important problem linked with expulsion. It presupposes the compliance of those countries into which the EU states want to deport illegal immigrants. The traditional legal re-admission procedures had not been created for mass deportation of illegal immigrants or rejected asylum-seekers. It was not the WGI ministers, however, who designed new "re-admission treaties" for this purpose. They had first been developed in bilateral negotiations.

Confronted with a growing number of immigrants from Eastern Europe entering the territory illegally or without chance for asylum, Germany began to sign bilateral re-

admission agreements with its Eastern neighbor-states. The main purposes of such treaties -- Germany has meanwhile ratified fifteen -- are twofold: on the one hand they bind these countries to take back not only their own citizens, but everybody entering Germany through their territory. In binding these countries in the "first-country" rule set up in the Dublin convention and then elaborated in the German asylum legislation, the German government created a "cordon sanitaire" towards the influx of immigrants from Eastern Europe. On the other hand these re-admission treaties simplify deportation, especially in those cases when the deportees destroyed their identity papers.

In a next step, the Schengen countries and Poland signed a re-admission agreement in which these principles had been elaborated (main criterion is the illegal stay, not the illegal entry) and the obligations to take deportees back extended (no time limits). Finally, the WGI ministers picked up the scheme of the Schengen States treaty in three documents of the Union: the principles of re-admission agreements with third countries adopted in November 29&30, 1993; a draft Council recommendation concerning a specimen bilateral agreement between a member state of the European Union and a third country; and finally in a draft Council recommendation for standard travel documents for the removal/expulsion of third country foreign nationals (both, adopted December 1, 1994). In distinction from Schengen, the Council refrained from negotiating a treaty, which would have been a risky and time consuming enterprise. The WGI officials instead drafted a "specimen agreement" under the realistic assumption that the member states will not deviate from the proposed regulations in this case.

III. The future of immigration policy in the Community

The immigration issue does not fit in with the skepticism about Maastricht. National politicians increasingly insist on national sovereignty. At the same time, governments pinpoint migration as a crucial European problem that requires intense cooperation and a far-reaching harmonization of national policies. Douglas Hurd, who is more often than not reluctant to joint Community projects, even argued in 1992 that migration is "one of the most serious, perhaps the most serious problem" for Europe and in this case "events, not a treaty, have forced the pace" (Collinson, 1993, p.115).

This perception of (im-)migration on the one hand helps to explain why even staunch advocates of national sovereignty finally agreed on a transfer clause (K.9) or emergency powers on visas for the Commission in the Maastricht treaty. On the other hand this perception may result in a decision of the 1996 intergovernmental conference on the revision of the Maastricht Treaty to shift some tasks and instruments of immigration policing to the responsibility of the Commission and the realm of Community law. Such a selective transfer of some coordination tasks to the Commission, however, will not change the overall character of the ongoing harmonization of national immigration policies in Europe. Similar responses of the member states, their search for the most efficient instruments of policing immigration are definitely not the results of the type of immigration policy the Commission looked for in its reports and communications. The decision making process is determined by the interest of the national actors: their own country should not offer better chances to potential immigrants than others, while at the same time the

other countries do not open a window of opportunity for immigrants which automatically affect everybody else.

This interest results not only in efforts to copy any promising method of control and legislation in which national standards had been leveled down. Asylum is only one example. It forces the nation states into many different forms to coordinate policies in bi- and multilateral negotiations. The cooperation established in the Schengen convention and the EU is only one, however unique form of outstanding importance. The member states constructed a new expanded European territory of control, which may in the long run be more efficient to police than the national borders. This at least is the realistic assumption of many professionals in the police community. But Schengen also demonstrates nicely that such a system can not work only in the lofty world of intergovernmental working groups. It presupposes an executive structure such as the Commission in the EU, a structure Schengen to construct outside the Union had in form of an executive committee.

The manifold demands for a stronger involvement of the Commission can not be missed. This pressure towards Community structure and law, however, is hardly fueled by national interests to build up a common immigration policy in general in the way the Commission outlined. It is the result of the shortcomings of the existent intergovernmental decision making procedure. The national bureaucrats and governments clearly prefer the existing procedures of the third pillar for the simple reason that it circumvents public debate and the involvement of the EP. Ironically, this does not speed up the production of common norms, even in cases in which no substantial differences are involved. Ratifying treaties or conventions is a time-consuming process. The tools of international law are essentially useless for the legal standardization of complex

bureaucratic procedures. Legalizing Schengen is a perfect example of the difficulties involved (Hreblay,1994).

Whatever the member states may transfer to Community competencies in 1996, it will hardly be a step towards a common immigration policy. Germany, one of the most ardent supporters of a "communitarized" immigration policy, nicely demonstrates this reluctance. All governments have until now denied that Germany, de facto the EU country with the highest net immigration rate in the Union, is an "immigration society." They ferociously insist on a citizenship law that impedes integration. Like all the other member states, Germany will hardly accept a EU competence in the sensible field of citizenship or political and social integration of immigrants. The national governments will hardly give up their opportunities to reach bilateral agreements in favor of a European foreign policy towards the states South and the East of the EU.

The further transfer of tasks will be restricted to specific control functions. This may even reinforce the bias in national immigration policies towards tougher policing. The demand of the Council for stricter control of illegal immigration on their meeting in Copenhagen in June 1993 may illustrate this self-enforcement mechanism (Baldwin-Edwards/Schain 1994, p. 186). In the Schengen Convention, this general demand is put in concrete terms. In Art. 92 it commits the member states to creating and to running an information system which adds up to a tight network of control over aliens. Such systems do not yet exist in Italy, Greece, Spain, and Portugal; once established, they will enforce the legal discrimination of aliens in Europe. The control-reach of these alien surveillance systems is going far beyond the legal limits defined by the rights to informational self-determination of full citizens (Baldwin Edwards/Hebenton, 1994,p137ff)

In addition, effective strategies of internal control require easy means of identification of persons. This results in a whole variety of measures: machine-readable identity cards for alien residents (carte de séjour), or even better for everybody (now introduced in all countries besides great Britain), and personalized social security cards for controls at the work place. It is important to remember that the national governments and not the Union are the driving forces behind this harmonization by adopting efficient control strategies.

There are no reasons to assume that a further involvement of the Commission will result in a shift in the actual policy. Nonetheless, there are many good reasons even for skeptical analysts of the European immigration policy to favor a transfer of legislative power to the institutions of the Union. Such a transfer will first of all open up an intergovernmental decision-making process which is dominated by bureaucrats and security experts with a clear bias towards control options. Furthermore, it will dispel all doubts about the competencies of the European Court of Justice. At last, the Community framework will involve the European Parliament, which will provoke a much broader public debate in the member states on this highly controversial issue. I am not very optimistic about the results (a rather positive evaluation offers Soysal, 1994). Without such discussions, however, the Union and its member states will not overcome the negative policy of "positive integration" (Morgan, p.15) and they are unlikely to develop a concept for a multi-ethnic and integrative society, which Europe as whole needs urgently.

References

Baldwin-Edwards, Schain, Martin A.(1994a): The politics of immigration, in, West European Politics, Vol 17, 2, p. 1-15.

Baldwin-Edwards, Hebenton, Bill (1994b), Will SIS be Europe's Big Brother, in, Anderson, Malcom, De Boer, Monica (Ed.), Policing across national boundaries, Pinter, London New York, 1994, p. 137-160.

Bigo, Didier (Ed)(1992), L'Europe de polices et sécurité intérieure, Editions complexe, Bruxelles.

Busch, Heiner (1995), Grenzenlose Polizei? Neue Grenzen und polizeiliche Zusammenarbeit in Europa, Verlag Das Westfälische Dampfboot, Münster 1995.

Callovi , Guiseppe (1992): Pieces of the European Community Jug-Saw Puzzle, in , International Migration Review, 26, 2, p 353-72.

Collinson, Sarah (1993): Europe and Internation migration, Pinter, London New York, 1993.

Cohen M.D., March J.C., Olsen J. (1972): A garbage can model of administrative choice, in, Administrative Sciene Quarterly, 17, p.1-25.

Commission of the European Communites (1990):Policies on Immigration and the social integration of miogrants in the European community, Expert's report on behalf of the Commission of the European Communites, SEC 90, 1813 final, September 1990.

Commission of the European Communities (1991): Commissions communication to the council and the European parliament on immigration, SEC 90 1855 final, October 23, 1991.

Commission of the European Communities (1994): Final communication to the council and the European parliament on immigration and asylum policies, COM Documents 1994/23 final.

Council of the European Union, Ad hoc Group on Immigration(1991), Report from the ministers responsible for immigration to the European Council meeting in Masstricht on immigration and asylum, SN 4038/91, December 3 1991.

De Lobkowicz, Wenceslas (1995): Intergovernmental cooperation in the field of migration-from the single European act to Maastricht, in, J. Joerg Monar and Roger Morgan (Ed.), The Third Pillar of the European Union, European Interuniversity Press, Brussels, p. 99-122.

Den Boer, Monica (1993), Immigration, Internal Security and Policing in Europe, Working paper VIII in Series "A System of European Police Co-operation in 1992", Department of Politics, University of Edinburgh.

Dinkel, Hans Reiner, Lebok Uwe, Demographische Aspekte der vergangenen und zukünftigen Zuwanderung nach deutschland, in, Aus Politik und Zeitgeschichte, Beilage zur Wochenzeitung Das Parlament, B 48/94, Dezember 1994, p. 27-36.

European Parliament (1987): Report by H.O.Vetter in the name of the committee on civil liberties and internal affairs, DOC A 2-227/86 of Feb. 26, 1987.

Funk, Albrecht (1994): Control myths: the Eastern border of the federal Republic of Germany before and after 1989, paper presented to the ECPR planning session on 'police and migration'in madrid, 17-22 April 1994.

Hreblay, Vendelin (1994): La libre circulation des personnes. Les accord de Schengen, PUF, Paris, 1994.

King, Mike (1994), Policing refugees and asylum seekrers in'Greater Europe': towards a reconceptualisation of control, in,Anderson, Malcom, De Boer, Monica (Ed.), Policing across national boundaries, Pinter, London and New York, p. 69-84.

Maier, Franz Ulrich (1992): Die neuen Bundesländer auf dem Weg nach Europa, in, Bundeskriminalamt (Ed.), Verbrechensbekämpfung in europäischer Dimension, Wiesbaden.

Monar, Joerg (1995): The evolving Role of the union institutions in the framework of the third pillar, in , J. Joerg Monar and Roger Morgan (Ed.), The Third Pillar of the European Union, European Interuniversity Press, Brussels, 1995, p. 69-84.

Morgan, Roger(1995): The Third Pillar: An introduction., in, J. Joerg Monar and Roger Morgan (Ed.), The Third Pillar of the European Union, European Interuniversity Press, Brussels, 1995, p. 13-18.

O'Keeffe, David (1994): The new draft external frontier convention and the draft visa regulation, in, in, J. Joerg Monar and Roger Morgan (Ed.), The Third Pillar of the European Union, European Interuniversity Press, Brussels, 1995, p.135-177.

Scharpf, Fritz (1993): Positive und negative koordination in verhandlungssystemen, in, Adrienne Héritier (Ed.), Policy-Analyse, Politische Vierteljahresschrift, Sonderheft 24/1993, Westdeutscher Verlag, Opladen, p. 57-83.

Soysal, Yasemin N, (1994): Limits of citizenship, Migrants and postnational membership in Europe, University of Chicago, Chicago and London.