



universität
wien

MASTERARBEIT

Titel der Masterarbeit

**“Two case studies on EU Migration Policy and Irregular Migrants:
Germany and Italy”**

Verfasserin

Neli Kail

angestrebter akademischer Grad

Master of Arts (MA)

Wien, 2012

Studienkennzahl lt. Studienblatt:

A 066 824

Studienrichtung lt. Studienblatt:

Politikwissenschaft

Betreuer:

Ao. Univ.-Prof. Dr. Otmar Höll

Acknowledgements

I would like to thank my supervisor Ao. Univ.-Prof. Dr. Otmar Höll for making it possible for me to work on this topic, for his support and guidance.

I would like to thank to Iris Gachowetz, Boiko Valchev, Yassen Georgiev, Vessela Kovacheva and Katerina Kratzmann for their helpful suggestions.

I am grateful to my family for all they gave me.

I expand my thanks also to my family in Vienna for their help and support during these years.

Finally, I would like to thank my husband Georg for his love, patience and precious advices.

Abstract (English)

This master thesis deals with migration policy at EU level as well as at national level. Two case studies are chosen for this purpose: Germany and Italy. They are interesting cases for this work because of the different experience in migration they have and because of their country specifics. At the same time, they are both EU member states and are taking part in the European integration.

This work looks at different theories trying to explain the process of migration. Furthermore, the theory of liberal intergovernmentalism underlines the role of the states in the integration process and the role of their past experiences in the current developments.

Irregular migration poses challenges to the member states as well as to the EU as a whole. This work will look not only on protection of the borders as a measure against it, but also on the influence of internal factors e.g. structure of the labor market and the welfare system. Informal economy attracts also irregular migrants. Compared to Germany the share of the Italian underground economy is bigger and plays a significant role for the flow of irregular migrants. The welfare state leads to increased demand on the labor market. Furthermore, this thesis dwells on measures against irregular migration on different stages: pre-entry, at the borders, detection and termination of the irregular stay.

Parallel to the increasing creativity of smugglers the EU puts even more emphasis on the „fight against illegal immigration“. At the same time, member states are not ready to fully give up their sovereignty. This work looks at border control (e.g. FRONTEX) as well as further steps for establishment of common standards e. g. the Return Directive.

Abstract (German)

Diese Masterarbeit beschäftigt sich mit Migrationspolitik auf der EU- und nationaler Ebene. Zwei Fallbeispiele wurden zu diesem Zweck ausgewählt: Deutschland und Italien. Wegen ihrer unterschiedlichen Erfahrung mit Migration und ihrer spezifischen Situation stellen sie interessante Fälle für diese Arbeit dar. Zugleich sind sie EU-Mitgliedstaaten und nehmen an der europäischen Integration teil.

Diese Arbeit setzt sich mit verschiedenen Theorien auseinander, die die Migrationsprozesse zu erklären versuchen. Weiters betont die Theorie des liberalen Intergovernmentalismus die Rolle der Staaten beim Integrationsprozess und die Rolle ihrer früheren Erfahrungen für die gegenwärtige Entwicklung.

Irreguläre Migration stellt eine Herausforderung für die Mitgliedstaaten, sowie für die EU dar. Diese Arbeit wird sich nicht nur mit Grenz-Bewahrung als eine Maßnahme dagegen auseinandersetzen, sondern auch mit dem Einfluss interner Faktoren wie z.B. Struktur des Arbeitsmarkts und Wohlfahrtsstaat. Informelle Wirtschaft lockt auch irreguläre Migranten an. Im Vergleich zu Deutschland ist der Anteil der italienischen informellen Wirtschaft viel größer und hat eine wichtige Rolle für irreguläre Migrationsebewegungen. Auch der Wohlfahrtsstaat hat eine Rolle für die Nachfrage des Arbeitsmarkts. Weiters beschäftigt sich die Masterarbeit mit Maßnahmen gegen irregulären Migration in verschiedenen Phasen: vor der Einreise, an der Grenze, Feststellung und Beendigung des irregulären Aufenthalts.

Parallel zu der zunehmenden Kreativität der Schleuser verstärkt die EU weiter den „Kampf gegen illegale Migration“. Gleichzeitig sind die Mitglieder-Staaten nicht bereit ihre Souveränität vollkommen aufzugeben. Diese Arbeit beschäftigt sich mit Grenz-Bewahrung (z.B. FRONTEX), so wie mit weiteren Schritten für die Etablierung gemeinsamer Standards, wie z.B. der Rückführungsrichtlinie.

Contents

INTRODUCTION	1
PART I.....	7
1 LIBERAL INTERGOVERNMENTALISM.....	7
1.1 COMPARISON	7
1.1.1 Comparison with realism	7
1.1.2 Comparison with institutionalism.....	7
1.2 LIBERAL INTERGOVERNMENTALISM – CORE ELEMENTS	8
1.2.1 Rational state behaviour.....	8
1.2.2 National preference building.....	9
1.2.3 Intergovernmental bargaining theory	12
1.2.3.1 The role of the institutions	15
2 THEORIES ON MIGRATION	19
2.1 ECONOMIC THEORIES.....	19
2.2 SOCIAL AND FAMILY THEORIES	24
2.3 OTHER REASONS FOR MIGRATION	26
3 MIGRATION POLICY IN EUROPE	27
3.1 COMMON MIGRATION POLICY	27
3.1.1 International or supranational?	28
3.1.2 Top-down Europeanization	34
3.1.3 Lobbying	35
3.1.4 Decision-making	35
4 IRREGULAR MIGRANTS	37
4.1 MIGRATION, MOBILITY AND POPULATION	37
4.2 IRREGULAR IMMIGRATION.....	37
4.2.1 Push-pull factors	38
4.2.2 Labor market	38
4.3 DEFINITION OF IRREGULAR MIGRANTS.....	39
4.3.1 Definition of the EU.....	39
4.3.2 Numbers of people crossing irregularly.....	40
PART II	41
5 GERMANY	41
5.1 WHO ARE “THEY”?	41
5.1.1 Gastarbeiter, (Spät)Aussiedler, refugees	41
5.1.2 Undocumented migration	42
5.1.3 Social exclusion	42
5.1.4 Statistics about irregular migrants in Germany.....	43
5.2 MAIN DEVELOPMENTS OF THE GERMAN MIGRATION POLICY	46
5.2.1 Politization	47
5.2.2 Country of non-immigration?	48
5.2.3 From Foreigners’ policy to the Immigration Act	49
5.2.4 Germany- citizenship.....	49
5.3 WELFARE SYSTEM, LABOR MARKET AND UNDERGROUND ECONOMY	50
5.4 NATIONAL PREFERENCE BUILDING – ACTORS	51
5.4.1 Lobby groups	52
5.4.2 Trade unions	52
5.5 MEASURES AGAINST IRREGULAR IMMIGRATION.....	52
5.5.1 Prophylactic measures	53
5.5.2 At the borders	53
5.5.3 Detection and control of irregular stay.....	54
5.5.4 Termination of irregular stay.....	55

5.5.4.1	Voluntary return	55
5.5.4.2	Deportation.....	56
5.5.5	<i>International cooperation</i>	58
5.6	EUROPEANIZATION	59
6	ITALY.....	61
6.1	IMMIGRATION TO ITALY	61
6.1.1	<i>History of migration</i>	61
6.1.2	<i>Laws and problems of migration policy</i>	62
6.1.3	<i>General trends – irregular immigrants</i>	64
6.1.4	<i>Statistics about irregular immigrants in Italy</i>	64
6.1.4.1	Difficulties for making statistics in Italy.....	70
6.1.5	<i>Fears</i>	71
6.2	ITALIAN ECONOMY	72
6.2.1	<i>Overview</i>	72
6.2.2	<i>Regional differences and informal sector</i>	73
6.3	WELFARE SYSTEM AND LABOR MARKET	73
6.3.1	<i>Gender and migrant domestic workers</i>	74
6.3.2	<i>Demographics</i>	74
6.4	IRREGULAR MIGRANTS ON THE LABOR MARKET	75
6.4.1	<i>Pull factors</i>	75
6.4.2	<i>Informal sector and irregular migrants</i>	75
6.4.3	<i>Regional differences in migrant occupation</i>	76
6.4.4	<i>Exclusion of migrants</i>	77
6.5	MEASURES AGAINST IRREGULAR MIGRATION	77
6.5.1	<i>Pre-entry measures</i>	78
6.5.2	<i>At the borders</i>	81
6.5.3	<i>Irregular stay</i>	82
6.5.4	<i>Termination of irregular stay</i>	83
6.5.4.1	Regularizations.....	83
6.5.4.2	Assisted (voluntary) return.....	85
6.5.5	<i>National preference building - actors</i>	86
6.5.6	<i>Europeanization</i>	87
7	EU AND IRREGULAR MIGRANTS.....	89
7.1	EU’S “FIGHT AGAINST ILLEGAL IMMIGRATION”	89
7.1.1	<i>EU actions against irregular immigration</i>	89
7.1.2	<i>Policy options for the EU</i>	90
7.1.3	<i>Migration control</i>	91
7.1.3.1	FRONTEX	92
7.1.3.2	The Return Directive	93
7.1.3.3	The Labor Migration Directive	93
7.2	SOUTHERN VS. NORTHERN EUROPE	94
7.3	EU, LABOR MIGRANTS AND IRREGULAR MIGRANTS.....	95
7.3.1	<i>Overview</i>	95
7.3.2	<i>Domestic workers</i>	97
7.3.3	<i>Restrictive policies and smuggling</i>	97
	CONCLUSION	101
	BIBLIOGRAPHY	109
	CURRICULUM VITAE	115

List of tables and figures

TABLE 1 – IDENTIFICATION OF IRREGULAR STAYING TCN BY NATIONALITY, 2008-2010 ..	43
TABLE 2 – PEOPLE WHO WERE SENT BACK, MAIN NATIONALITIES, 2008-2010	45
TABLE 3 – NEGATIVE RULING BY THE COURT OF FIRST INSTANCE, BY NATIONALITIES, 2008-2010	45
TABLE 4 – TOTAL OF THE RULINGS ON ASYLUM APPLICATIONS, 2005-2010	46
TABLE 5 – LEGALIZED MIGRANTS: GENDER AND NATIONALITY. AMNESTIES: 1990, 1995, 1998, 2002	68
TABLE 6 – UNDOCUMENTED MIGRANTS RESIDING IN ITALY, BY ENTRY CHANNEL (PERCENTAGE). YEARS 2000-2006.....	68
TABLE 7 – UNDOCUMENTED MIGRANTS IDENTIFIED BY ITALIAN POLICE FORCES WITHIN THE ITALIAN TERRITORY, 1997-2006	70
TABLE 8 – ISMU ESTIMATES OF DOCUMENTED AND UNDOCUMENTED MIGRANTS LIVING IN ITALY (THOUSANDS), 2003-2007	71
TABLE 9 – ISMU ESTIMATES OF DOCUMENTED AND UNDOCUMENTED MIGRANTS LIVING IN ITALY, AREA OF RESIDENCE, 1ST JULY 2005	71
TABLE 10 – ITALY. IMMIGRANTS' COUNTRIES OF ORIGIN AND COUNTRIES RECEIVING OFFICIAL DEVELOPMENT ASSISTANCE - ODA (2009)	79
TABLE 11 – ITALY. APPLICATIONS SUBMITTED FOR THE REGULARIZATION OF IRREGULARLY STAYING NON-EU CITIZENS (1980-2009)	83
TABLE 12 – SYNOPTIC EVALUATION OF CONTROL MEASURES RELATED TO GETTING OUT OF IRREGULARITY	86
FIGURE 1 – TOTAL OF REFOULMENT CASES, 2000-2010	44
FIGURE 2 – UNDOCUMENTED IMMIGRANTS SHORE LANDED AND REFUSED ENTRY AT THE BORDER, 1986-2006	66
FIGURE 3 – UNDOCUMENTED MIGRANTS BY AREA OF ORIGIN, 1ST JULY 2005	67
FIGURE 4 – ISMU DATA: LABOR MARKET STATUS OF IMMIGRANTS IN ITALY, BY LEGAL STATUS, 2005	69

Introduction

In this master thesis I will deal with migration policy at EU level as well as at national level. In this context I consider the two EU member states Italy and Germany. News about migrants appears in the media very often. Many theories try to explain why migration happens; some of them underline economic reasons and other social and political factors. According to Castles and Miller (2009, p. 21), research on migration should be interdisciplinary.

Migration is also occupying politicians at the EU level. According to Tomei (1997, p.15), the EU common migration policy started with the project for the Single Market. Other international treaties, such as the Dublin Convention and the Schengen Treaty deal with the movement of people in Europe. At this stage, the migration issue was still part of the sovereignty of the member states. An important step was made with the Treaty of Amsterdam and later with the Treaties of Nizza and Lisbon, which transferred some responsibilities of the states to the EU level.

According to Moravcsik's liberal intergovernmentalism, national governments still decide how far integration goes (in Puchala, 1999, p. 319). In addition to that, understanding domestic policy is connected to past legacies and current policies (see also Moravcsik, 1993, p.481). Germany is dealing with migration since the 1950s. It started with the guest workers coming from countries like Turkey, Italy and Tunisia. After the Fall of the Berlin Wall this issue culminated in the high numbers of refugee-seekers. For many years Germany stated in its official documents that it is not a country of immigration.

Compared to Germany, Italy has much less experience in immigration. Italy was a country of emigration until 1970. The foreign population in Italy rose to 2,5 million people in the 1980s (Schierup, 2006, p.164) and now their number is about 30 million people (Bade, 2001, p.105). Taking into account the different experience of Germany and Italy as immigration countries and, at the same time, their membership in the EU, both countries are an interesting combination for research.

But still migration is a very broad topic and in this master thesis the case of irregular migration will be discussed. Most irregular migrants cross the border in a regular way, but then overstay their visa. Some of them are smuggled through the borders. This master

thesis will look at irregular migration and measures which Germany and Italy as EU member states undertook.

Migrants have different background and immigration flows are complex, still there are some estimates about the number of irregular migrants. Statistics are important so that entry routes can be identified and measures against that kind of migration can be taken. According to Eurostat, there were 50.250 people irregularly staying in Germany in 2010. Many of them were coming from Turkey, Afghanistan, Iraq and Serbia (Schneider, 2012, p.80). Politicians in Italy did not want to recognize that many of the migrants were not just temporarily staying and that they are going to be part of the future development in Italy. Home Office and Ministry issued their first report on migration in Italy just in 2007. Private research institutes started publishing statistical information long before the government did, e.g. Fondazione ISMU, Istituto Cataneo and authors like Emilio Reyneri from the University of Milan (Fasani, 2009, p.26).

Germany and Italy try to prevent migration through pre-entry measures such as information campaigns about the risks of irregular migration and, on the other hand, further measures which aim at different stages of irregular migration – pre-entry, at the borders, detection of irregular status in the country and termination of the irregular status. Important actors for the formation of the national policies and measures include non-governmental organizations, political parties as well as churches. Moravcsik calls this process national preference formation. Internal factors as labor market and welfare states also play a role for immigration flows.

Irregular migration is often seen as a threat to security and as a challenge with regard to the EU-territorial borders. The EU is making border controls tougher in order to stop traffickers and smugglers, which makes them more creative for alternative routes (Boswell / Geddes, p.135). The European Agency FRONTEX carries out the management of the external borders and co-ordinates EU member states' activities in implementing these measures. Additionally, the EU tries to regulate migration flows through co-operation with the sending and transit countries. Another important measure is the adoption of the Return Directive, which introduced one procedure for all member states for the expulsion of irregular migrants.

Still member states have different approaches against irregular migration. For example, Germany does not undertake large-scale regularizations, which took place in Italy.

Another important issue is the divergence between law and practice, which among other things strongly influences the structure of the labor market (Boswell / Geddes, 2011 p.143). Irregular migrants are attracted by the possibility to work in the informal economy, which is easier in Italy than in Germany.

An important question is what measures are taken to limit irregular migration and what the roles of the EU and the member states are. Furthermore, Germany and Italy are interesting cases for researching this issue because of their different experience with migration.

Scientific interest

News on people crossing the EU borders on boats, in truck compartments or planes appear very often in the media. Stories about their lives describe in detail the way they reached Europe and the difficulties they have with irregular status. The acute problem of irregular migration is reflected, on one hand, by the policy of the EU with its tendency to supranationalism and, on the other hand, by the policies and measures of the national governments. Italy is an interesting case for research because of its recent experience as country of immigration. Due to its geographical position, it is also exposed to a relatively big flow of immigration. Germany has more years of experience in immigration although it took it longer to recognize that it is a country of immigration. I will try to put both countries in the EU context and discuss the interaction between the governments and the EU.

Structure

In the theoretical part I will discuss the liberal intergovernmentalism of Moravcsik, who sees the states as the main propeller of integration, but not as „black boxes“ which one could not understand. This means that there are national actors important for the formation of the national policy. Economical and socio-political theories help explain migration. Neoclassical theory sees the individual as the main decision-maker for immigrating and new economics of labor migration describes the social group as the unit of analysis. According to Castles and Miller (2009, p. 21), migration is a multifaceted issue and it could not be explained with just one theory. Therefore, I consider socio-economic theories such as migration networks and migration systems theory focusing not only on receiving countries, but also on sending countries.

The Common Migration Policy of the EU, its formation and development are also observed in this part. Furthermore, the definition of an irregular migrant is an important issue

for this master thesis. Therefore, I consider the definition in the Schengen Border Code as well as in documents from researchers like Heckmann, Geddes and Riedel.

The developments of the migration policy in Germany and Italy are discussed in the second part. The main actors in building national preference are observed in connection with Moravcsik's liberal intergovernmentalism. Special sections are dedicated to measures which Germany and Italy undertook against irregular migration. They take place on different stages: pre-entry, entry, stay and termination of irregularity. One chapter treats problems and measures of the EU against irregular migration.

In the end, I summarize the findings, particularly the different national approaches of Germany and Italy in the context of the EU. Furthermore, I check the hypotheses which are posed in the beginning of the thesis.

Methodology

I look at the development of EU migration policy as well as at the national migration policies of Germany and Italy (in a historically descriptive way). Furthermore, I treat on the measures taken by Italy and Germany and their co-operation with the European Union.

Sources: The literature I used was primary and secondary. Among the most useful articles were those of the research project CLANDESTINO, as well as articles from EMN (European Migration Network) and SWP (Stiftung Wissenschaft und Politik). Literature in English and German was used for this master thesis. Literature about Italy in English or German turned out to be rather scarce.

Issues and Questions

1. What is irregular migration?
2. What are the ways for getting irregular?
3. How did the EU migration policy begin and how did it develop?
4. What is the development of migration policies in Germany and Italy?
5. Which actors are important for defining the national policy in this field?
6. Which are the main issues connected to irregular migration at national and European level?
7. Which measures were taken for preventing irregular migration?

Hypotheses

H1: Measures against irregular migration comprise border controls as well as regulations of labor market and co-operation with the sending countries.

H2: The approaches of Germany and Italy (both of them EU member states) towards irregular migrants differ due to their different experience in this field, their different labor market and their geographical position.

H3: In the field of migration states still want to keep their sovereignty and are unwilling to delegate all their powers to the EU.

PART I

1 Liberal intergovernmentalism

1.1 Comparison

1.1.1 Comparison with realism

According to Steinholder (Steinholder, 2005, p. 167), Moravcsik's contribution to European Integration theory is often seen as realistic. As a state-centred theory, liberal intergovernmentalism shares a common view with realism, that when it comes to an integration process states are examined as closed entity. The governments of the member states are the connection between the inner and the international level. For making progress in the integration process it is important that the leading member states have diverging interests. When this is present interstate negotiations may lead to adopting common rules, which are also in favour of the national interests.

What distinguishes liberal intergovernmentalism from realism is that national interests are formed not by distribution of power between the states, but by national preference formation process. Which interests will gain influence and will be represented by the country at international level depends on the political system and the distribution of power between the competing social actors (Steinholder, 2005, p. 174).

1.1.2 Comparison with institutionalism

Puchala tries to explain liberal intergovernmentalism through differentiating it from institutionalism (Puchala, 1999, p.318) Although international integration may rest on agreements between the governments, once these institutions were created, their influence becomes stronger. One of the main reasons for that is their ability to manage information and their efficiency in problem-solving methods. The agents of the supranational institutions are political actors who direct these institutions. They aim at the welfare and the security of the international society which is under their jurisdiction. Their interest lies in increasing their power through increasing the authority of the institutions they direct.

Although intergovernmentalists recognize that international institutions support the co-operation between the member states, they are not seen as the main propeller of the integration. The leading role in this process is performed by the nation states. When national interests of the member states converge, integration moves forward. In addition to that, according to intergovernmentalists the bargaining power of the governments is

reflected in "the terms of international co-operation, the accompanying rules that guide it and the institutions that frame it" (Puchala, 1999, p.319). At the same time, they do not give up their sovereignty. In contrast to institutionalism, agents who are connected to the institutions have little power. The main actors are national governments and especially the governments of the major EU countries, heads of governments, heads of states and influential ministers.

Institutionalists and intergovernmentalists have different explanations for the happenings during the period of the Cold War. For the former one, the influence of the supranational agents is deciding and for the latter group of researchers (represented by Moravcsik) the national governments and leaders have the leading role (Puchala, 1999, p.327). This gives another perspective on the role of European leaders like Jean Monnet and Jacques Delors and national leaders like Margaret Thatcher and Charles de Gaulles. In his book "The Choice for Europe" Moravcsik studied documents, memoirs and diaries and arguments that de Gaulles' diplomacy between 1954 and 1966 aimed at achieving French interests e.g. Common Agriculture Policy in the process of European economic integration (Moravcsik in Puchala, 1999, p.329). He calls this the Supranational bargaining theory, which has its basis in the neo-functional theory. It claims that supranational officials are very important for the integration process and they exercise leadership in the following ways:

- by manipulation of information and ideas
- by transaction costs for states
- by their privileged access to information and ideas

These factors allow them to initiate negotiations, to mediate among governments and to mobilize domestic groups (Moravcsik, 1999, p. 59).

1.2 Liberal intergovernmentalism – core elements

The core elements of this theory, according to Moravcsik, are:

- rational state behaviour
- liberal theory of national preference formation
- intergovernmentalist analysis of interstate negotiations

1.2.1 Rational state behaviour

The rationalist approach tries to explain the actors preferences and "the collective outcomes as a result of aggregated individual actions based on these preferences"

(Schimmelfennig, 2004, p. 77). In contrast to realism and neo-realism, where states are seen as black boxes, according to liberal intergovernmentalism, states are aiming at certain goals, which are defined domestically. Foreign policy goals may change if the domestic interests change (Moravcsik, 1993, p.481). This could happen through the political conflict between societal groups which want to gain more political influence. Moravcsik explains this with the help of liberal theory of international relations, which has its focus on the relationships between state and society. Therefore, he underlines that understanding domestic policy is a precondition for understanding interstate relations.

Moravcsik tries to find out how the preference building process is working and if economic or geopolitical interests have the leading role (**liberal Theory**); what the role of these preferences in interstate relations is (**bargaining Theory**) and why states give part of their sovereignty to international institutions (in Bieling, 2005, p. 177).

1.2.2 National preference building

Actors

According to this theory, the state is not a homogenous agent, but a result from the different power relationships in the society. On the other hand, **social actors** are competing against each other in order to influence the decisions of the government (Moravcsik in Bieling, 2005, p.177). Moravcsik assumption is that the most important actors are "private individuals and voluntary associations with autonomous interests, interacting in civil society" (Moravcsik, 1993, p.483). On the other hand, politicians also have an important role as they determine state priorities and policies. The politicians are seen as part of the civil society at domestic and international level, which influences their identities and purposes. The interests of the groups are not fixed, but they vary according to the "net expected costs and benefits of potential foreign policies" (ibid.).

Preferences

Preferences are understood as comparing different alternatives of activities (ibid., p. 178). The preferences are not a result of the international activities or connections with other states. Moravcsik (1997, p. 517) calls also this a bottom-up view, in which individuals and societal groups are forming the politics. Although classifying national institutions and structures with lower rank, they still influence possibilities for societal actors to implement their preferences. When talking about preference formation it is also important to underline the main interest of the governments: to stay in power. Aiming at this, it is

important to have the support of voters, parties, interest groups, which transmit their views "through domestic institutions and practices of political representation" (Moravcsik, 1993, p.483). In this way, the author explains the emergence of the national interests that states represent at the international stage.

A **central moment** in this theory is to find out which are the most important social groups, to define their relative influence in politics and to understand the reasoning for their preferences (Bieling, 2005, p.178). In order to define the leading groups, Moravcsik uses the theory of Mancur Olson to find an answer to the first question (ibid.). According to him, smaller groups are more influential, because they have more homogenous interests. Conversely, bigger groups have more diverging interests, and this makes it more difficult to exert powerful influence. He takes as an example the consumers' and producers' groups. He defines the producers (or employers) as the most influential group in the European integration especially in industry, agrarian policy and supply of services (ibid., p. 179). When interests in the groups are divided, the governments have also more freedom to act and vice versa (Moravcsik, 1993, p. 484)

In this theory the **geopolitical interests** have a minor role in comparison with the economic ones:

"We should see geopolitical rhetoric adapted to support economic objectives, not the reverse" (Moravcsik, 1998 cited in Bieling, 2005, p. 180)

The **explanation for intergovernmental co-operation**, according to this theory, lies in economics (e.g. economic interdependence and externalities). Co-operation in the EU is aiming at market liberalization that could eliminate trade barriers and to support trade interests (ibid., p.179). In a situation where governments are interdependent, international policy externalities can arise. They are characterized through costs and benefits for a significant social group and the government does not have jurisdiction upon that group (Moravcsik, 1993, p. 485). The author explains the incentives for co-operation through positive and negative externalities. In case of positive externalities (**benefits**), domestic policies benefit foreign groups and, at the same time, they strengthen national policies. Negative externalities (**costs**) happen when one government creates through its policy costs for another government and undermines its policies. In this case costs could be decreased through co-operation, when there are benefits (positive externalities), there is no big incentive for co-operation.

He defines **two goals for this co-operation**: reciprocal market liberalization, which creates the economic interdependence, and policy harmonisation, which tries to "assure the continued provision of public goods, for which the state is domestically responsible, such as socio-economic equality" (ibid., p. 486).

Probability for co-operation

When costs arise just for one government in the process, the government responsible for creating them may decide to "free ride on the domestic policies of their neighbours, rather than co-operate" (Moravcsik, 1993, p. 486). Therefore, according to Moravcsik, a co-operation is more probable when negative externalities arise for both governments. Another incentive for co-operation is the distribution of costs within and among states, which is not always even. Possible confrontation or co-operation between nations and societal groups may be predicted through analysing the net societal costs. On the other hand, if some powerful groups are disadvantaged by this co-operation, they might try to prevent it, although it brings profit to a big part of the society (ibid., p. 487). Other aspects which may affect preference formation and policy of co-operation or confrontation later are certainty and risk. If the "net costs and benefits of alternative policies are certain, significant and risky, individual citizens and firms have a strong incentive to mobilize politically" and vice versa (ibid., p. 487). On the other hand, for the achievement of international agreement, it is important that preferences of the domestic groups in different countries converge; otherwise co-ordination could be very difficult.

Political co-operation

Common foreign and security policy cannot be interpreted as a clear response to costs and benefits coming from economic interdependence (Moravcsik, 1993, p.494). As the results from the political co-operation are diffuse and uncertain, private producers let the political elites influence the policy at domestic level. On the other hand, the conducted policy is reasoned by ideologies and symbols. Having in mind this uncertainty of future costs and benefits, mobilizing interest groups is very difficult. This gives "leading executive and parliamentary politicians" the opportunity to influence through their "ideologies and personal commitments" the government policy (e.g. de Gaulle, Thatcher). Activities based on ideological terms may also be dominant when the implications after decisions cannot be predicted. The author also mentions that large, self-sufficient countries are more unwilling to give up sovereignty to supranational institutions than smaller countries.

1.2.3 Intergovernmental bargaining theory

The core element of the bargaining theory is that co-operation "depends on the relative bargaining power of the actors" (Schimmelfennig, 2004, p.77). Information and the benefits of a certain agreement define the bargaining power. For example, actors with more information could influence negotiations to their advantage and actors that do not need very much a special agreement could not be co-operative and in that way they might want concession from the other countries.

According to Moravcsik, integration happened because of rational decisions of the national governments (Steinhilber, 2005, p.180). A precondition for that was the convergence of preferences between the most powerful member states (Great Britain, Germany and France). In addition to that, countries take part in negotiations for integration voluntarily (Moravcsik in Bieling, 2005, p.181). They decline the use of war, and even imposing economic sanctions to one another happens only in rare occasions (Moravcsik, 1993, p. 498). A second assumption is that governments have lots of information in the bargaining situation. They communicate at low cost and they are aware of the preferences of their counterparts. In addition to that, negotiations within the European Community (EC) have low transaction costs and could last longer, which allows the states to make different offers "at relatively little cost". Third, once the government has adopted the preferences of a certain societal group and it represents them at the international stage, the preferences cannot be changed any more by the inner actors. Though governments are seen as gate-keepers between inner political and international field, they are analysed as homogeneous actors from this moment on (Bieling, 2005, p. 181). At the same time, states cannot influence the national preference formation process in other countries.

According to Moravcsik, two problems arise in connection to bargaining: **efficiency of negotiations and distributional implications of interstate bargaining** (Moravcsik, 1999, p.51). The negotiation process may be accompanied by threats, withholding of information and other activities that could make the co-operation difficult. International institutions may help in these cases through proposing agreements and establishing rules for decision-making. The second problem refers to the distribution of costs and benefits from a possible co-operation.

Moravcsik defines certain bargaining factors under the following circumstances:

"The more intensely governments desire agreement, the more concessions and the greater effort they will expend to achieve it. The greater the potential gains for a government from co-operation, as compared to its best alternative policy, the less risk of non-agreement it is willing to assume and, therefore the weaker its bargaining power over the specific terms of agreement" (Moravcsik, 1993, p. 499).

In this situation he qualifies three possible actions: *"(1) unilateral policy alternatives ("threats of non-agreement"), (2) alternative coalitions ("threats of exclusion") and (3) the potential for compromise and linkage"* (ibid.).

(1) unilateral policy alternatives ("threats of non-agreement") – If the alternative policy gives a perspective for bigger benefits, then governments are more inclined to decline co-operation. There is a range ("set") of possible agreements, in which all the gains from an agreement at one end go to one government and at the other end of this alternative all the gains belong to other government. It is possible that governments may reach an agreement in this interval. One basic alternative is the unilateral policy. In this case governments can use only the threat of **non-co-operation**. Giving examples of trade and public good policies, Moravcsik concludes that "large, prosperous, relatively self-sufficient countries" have more influence in negotiations than smaller countries, which have more interest than the bigger ones in a future joint agreement (ibid., p. 500). Therefore, having a weaker bargaining power and being dependent on their foreign governments the smaller countries are more likely to make concessions (Moravcsik, 1999, p. 61). This means: the more these states want a certain agreement, the more they are ready to give more in order to get what they want.

Some agreements are negotiated on the principle of the **lowest common denominator**. It means that the range of possible agreements is bounded by the preferences of the least forthcoming government, whose position is closest to the status quo. One outcome of this situation might lead to the adoption of the lowest possible common standard. Another possibility is that higher standards are adopted than those prevailing domestically. Moravcsik gives an example with the adoption of higher environmental and public health standards (Moravcsik, 1993, p. 502).

(2) alternative coalitions ("threats of exclusion") – Sometimes making an alternative coalition is a better alternative to an agreement than unilateral policy. In this way some

states face exclusion, which increases the bargaining power of the group aiming at coalition. The coalition may involve states which are not part of the European integration, or leave some members out of the agreement: "multi-speed Europe" (ibid., p.503). The threat of exclusion, according to him, might be more powerful than the threat of unilateral non-co-operation. He gives an example with Great Britain which by creating the European Free Trade Association (EFTA) tried to respond to the threat of exclusion (the formation of the Common Market, 1950s – 1960s). This attempt seemed unsuccessful, and finally Great Britain applied later for a full EC membership (ibid., p. 503). On the other hand, he argues that alternative coalitions not always create costs (negative externalities) for the excluded states. If these states have benefits (positive externalities) from the agreement even though they are not parties to it, they might not have an incentive to join it. Moravcsik defines this as free-riding (1999, p. 65). In the opposite case, if exclusion brings them costs, they may want to join it.

(3) compromise, linkage and side-payments – If there is uncertainty during the negotiations (breakdown of negotiations, time pressure), Moravcsik sees a tendency for “disproportionate” concessions. This means governments that expect to lose more of an unsuccessful agreement are ready to make more concessions in comparison with governments in the contrary position.

Linkage may be most successful when governments have differential preferences on different issues (Moravcsik, 1999, p.65). In this case, one government can make concessions in an area that is not so important for it and thus gain concessions in another area of interest which is not so important for the second government. Such linkages may help in having better results from negotiations. According to the author, in this way the major disadvantages of bargaining on the basis of unilateral and coalitional alternatives may be overcome: “namely that governments tend to have the least bargaining power on precisely those issues which are relatively most important to them” (Moravcsik, 1993, p.505). The main problem may be the **domestic opposition**. Having in mind the importance of domestic costs and benefits Moravcsik makes some further remarks. Minor issues where domestic groups do not have intense preferences are more likely to be used for linkages. Second, linkages are more likely to happen in the final stages of bargaining as a mean for balancing gains and losses on issues on which parties are close to "net beneficiaries" in comparison with issues in which the states are losers or winners. In

addition to that, linkages are most likely to happen "between closely related issues" (ibid., p.506). And fourth, domestic side-payment to disadvantaged groups may avoid creating losers' groups at domestic level (ibid., p. 506).

1.2.3.1 The role of the institutions

Institutions are important, but the states have the leading role in the integration process. Institutions support the integration, but they are not a precondition for it. With the exception of the Single European Act, Moravcsik does not see the European Commission as the leading power in the integration. Institutions generally do not have political autonomy and depend on the changes in national preferences (Steinhilber, 2005, p. 170).

According to Moravcsik, institutions are useful and acceptable to governments if they strengthen "their control over domestic affairs, permitting them to attain goals otherwise unachievable" (1993, p. 507). There are two ways for making this. First, institutions may make the result from interstate bargaining more efficient (e.g. being a forum for negotiation, applying the decision-making procedures etc). Moravcsik explains this through the expression "pooling and delegating sovereignty". Second, they strengthen the autonomy of national leaders in comparison with the domestic social groups. They do this by increasing the "legitimacy and credibility of common institutions of common policies and ... the domestic agenda-setting power" (ibid., p. 507).

With the help of functional regime theory he explains the role of the institutions, which provide an environment for negotiations and decrease transaction costs – "the costs of identifying issues, negotiating bargains, codifying agreements, and monitoring and enforcing compliance" (ibid., p. 508). The author defines two ways in which governments may transfer national sovereignty: by **pooling** national sovereignty through qualified majority voting rules (the governments decide to take decisions not through unanimity, but through other voting procedures) and by **delegating** sovereign powers to central institutions which are not fully independent, but are able take a decision "without an intervening interstate vote or unilateral veto" (Moravcsik, 1999, p. 67). The qualified majority voting increases the mutual dependency of governments in decision-making processes and makes them more dependent on the agenda setting of the Commission (Moravcsik, 1993, p. 509). Moravcsik tries to understand why governments choose pooling and delegating instead of unanimity voting for each case. One of the main reasons which he underlines is that states make a cost-benefit analysis of the expected institutional

decisions. Delegating and pooling can lead to linkage and may be more time and cost efficient in comparison with the case-to-case package deals. Once transferring national sovereignty, states have control over the common decision-making procedure. On the other hand, he compares risk and efficiency in both procedures:

"...delegation involves greater political risk and more efficient decision-making, while pooling through qualified majority voting involves less risk, but correspondingly less efficiency" (ibid., p. 510)

The European Community needs an **external representation** when it negotiates with third parties (e.g. customs). In order to trust these institutions, the governments need to perceive them as neutral, at the same time they monitor them closely. Such institutions can act independently when there is time pressure and national governments cannot take a decision (Moravcsik, 1993, p. 512). He explains later that the **European Court of Justice** has expanded its enforcement power to become an independent supranational body.

Moravcsik explains that giving the **agenda setting** function to the Commission as a supranational organisation was due to the wide consensus on a "broad substantive agenda" (Moravcsik, 1993, p.511). In this way, the number of proposals is decreased and the procedure is less time-consuming. As the Commission prepares the proposals, small countries are not likely to be disadvantaged. Neutral **enforcement** (from a supranational legal system) becomes the function of enforcement and "strengthens the credibility of national commitments to the institution".

Moravcsik tries to understand why institutions arise. At the beginning of "The Choice for Europe" he explains three theories which may explain delegation and pooling of national sovereignty: federalism / nationalism, technocratic management and credible commitment (Moravcsik, 1999, p. 69). Using a case study he gives arguments for the plausibility of the third theory. Pooling and delegation activities have an important role here. **Governments** are inclined to accept this as a way to make sure "that other governments will accept agreed legislation and enforcement" (Moravcsik, 1999, p. 74). In this way, they show their own credibility and assure that they will be involved in future decisions despite domestic opposition. Pooling and delegating can be used by the governments to make commitments to decisions which have unclear costs and benefits and therefore do not have a strong

opposition. Following certain rules, procedures and norms, governments still bargain. Under these institutional circumstances a particular level of agreement is ensured (ibid.).

The author also explains how **institutions** increase the credibility of international commitments. Institutions are a mechanism in the international field where no state has a monopoly. After governments have pooled or delegated sovereignty, it is very difficult to "re-establish unilateral control" – this may lead to complicated negotiations with unclear results. On the other hand, institutions often also have ideological support, and attempts from governments to act unilateral may arise suspicions and damage their reputation.

Pooling and delegation to institutions happens when the details about future policies are unknown. Governments' support for this varies across issue and country (Moravcsik, 1999, p. 75). If the status quo is unattractive and the expected gains are bigger, states are likely to pool or delegate sovereignty (Moravcsik, 1993, p. 510). Governments are not willing to take political risk ("probability of a large downside loss to a government or interest groups", ibid., p. 511). Therefore, they do this to a minimal extent in the cases of external representation, agenda-setting and enforcement.

Although Moravcsik recognizes that the theory for the credible commitments explains very good delegation and pooling well, he does not "exclude ideological considerations entirely" (Moravcsik, 1999, p. 488). For example:

"The Anglo-French tradition of general opposition to increased supranational delegation and pooling, as well as the German support for them, appears to reflect public and parliamentary ideology" (ibid.).

Schimmelfennig accuses Moravcsik of "biased case selection" in "The Choice for Europe" (in Wiener / Diez, 2004, p.80).

2 Theories on migration

2.1 Economic theories

Neoclassical theory

The neoclassical theory has a big influence in migration studies, but at the same time, alternative approaches challenge it (Castles and Miller, 2009, p. 21). It is based on the "push-pull" theory. "Push factors" are the reasons that make people emigrate from their home country. This may include demographic growth, low living standards, lack of economic opportunities, political repressions etc. "Pull factors" are those which attract the immigrants to a certain country e.g. demand for labor, availability of land, political freedoms, good economic opportunities etc (ibid.). The neoclassical theory sees the individual as a rational entity whose decisions are based on a calculation of the costs and benefits of moving to another country or stay at the home country. It assumes that the individual have full information about employment and wages in the receiving country. The main point is "human capital" and the decision to invest in migration is similar to the decision to invest in education or some training. People will immigrate if they are expecting to earn more money. Borjas explains that migration flows are result of individual search for the best country (in Castles and Miller, 2009, p. 22). According to him, this would lead to economic equilibrium between developed and underdeveloped countries. Moreover, this may have negative effects of the receiving countries such as decline of average skill levels and lower wages for local low-skilled workers. According to Chiswick, highly skilled people are most expected to move to another country, which often causes a brain drain from the sending country (ibid.).

Massey sees the **neoclassical economics** at macro and a micro level. According to the macro theory, people move from low-wage countries to high-wage countries. It foresees that due to the emigration the supply of labor in the sending country decreases and wages rise. The result from migration to the high-wage countries is that due to the increase in the labor supply, wages fall and finally there is equilibrium in the wages at international level. Some of the assumptions are that:

- International migration is propelled by the difference in the wages and once there is equilibrium international migration will stop
- Governments can easily control migration flows through regulating the labor market

At the **micro level**, individuals are rational actors who decide to migrate after calculating costs and benefits. Before receiving a good wage they must first make some investments such as learning a new language and culture, adapting to new labor market as well as creating new ties (Massey, 1993, p. 434; see also Massey, 1994). Expectations are also important: the higher the expected returns, the bigger the international migrant flow. Here are some of the theory's main assumptions:

- Migration flows are a sum of individual moves which were made after a cost-benefit calculation
- International movements are caused by differences in the employment rates and / or earnings in the sending and receiving states and it continues until expectations are equalized; the more the expected return, the bigger the migration flows
- Labor markets have the biggest influence on decisions to migrate
- Individual characteristics increase the likelihood of international movement (human capital: education, experience etc.)
- Governments can influence immigration through policies concerning expected earning in sending or receiving country: e.g. employers' sanctions, long-term development programmes etc.

Castles **criticizes** neoclassical theory after giving examples on migration. In most of the cases people who migrated were coming from the middle class and they were not the poorest ones. The push-pull theory assumes that people move from densely populated areas to sparsely populated areas, but it cannot explain why there are migration flows to Germany or the Netherlands that are densely populated (Castles / Miller, 2009, p.23). Another weakness is that it cannot give an explanation why a certain group moves to a certain country e.g. Turks to Germany or Algerians to France. Moreover, migrants do not have full information and are subject to many constraints (e.g. employers, governments etc.).

New economics of labor migration

New economics of labor migration (Stark and Bloom, 1985 in Castles and Miller, p. 24), which developed in the 1980s, takes the social groups as a unit of analysis. Here, migration decisions are taken by the family, the household or the community (ibid.). Acting in this way, they expect to maximize expected income and to decrease risks (Stark in Massey, 1993, p. 436). Households can control risks better than individuals as they can diversify the household resources (e.g. through family labor). Some family members may be working in local economy, others may be sent abroad to earn money and another possibility for sustaining the household is through remittances. Families can minimize risk through sending a family member abroad. In comparison to those in developing countries, the income of households in developed countries is secured through government programmes and the credit market can finance new projects (ibid.). The lack of insurance programmes in case of unemployment or disability can also lead to migration of a family member as well as the need of investment capital (Massey, p.437). Massey gives example with cultivating crops. Introducing new technologies and new arts of crops brings risks and if it is not successful, the family could have insufficient food or income. Some of the theory's main assumptions are:

- Families, households or culturally defined units are units of analysis
- Wage differences are not always the only reasons for migration, migration can be a way to avoid risks
- International migration does not stop necessarily when there are no more wage differences, but may continue because of other reasons such as absence of other markets in the sending countries
- Governments can influence migration through labor market policies as well as through policies on investment, capital markets and income distribution (Massey, 1993, p.440)

Although poverty is seen as one of the main push factors, Körner explains that it is not the only one and it is also important whether the unemployed persons have money to sponsor their migration. He shows this in his study about the Maghreb countries (in Nuscheler, 2004, p.106).

Dual labor market theory

Nuscheler also looks at push and pull factors in migration flows. Piore (in Nuscheler, 2004, p. 105; see also Castles and Miller, 2009, p.23) develops the theory about the dual labor market and the reasons for migrant jobs opportunities in the industrial states. According to him, immigration is caused by pull factors in the receiving country: the demand about immigrant labor characterized by the advanced industrial societies and their economies (Massey, 1993, p. 441). Local people avoid bad paid and insecure jobs, which creates demand in these sectors. In contrast to industrial mass production, in the 1990s more workers were needed in small enterprises in the service sector. The development of the world economic system creates very poor regions and causes people to flee from poverty who are attracted by the newly economically developed centres (Fischer, 2006, p. 23). They are unskilled and very flexible. At the same time, there are job opportunities for highly skilled foreign workers, because the domestic education system has not prepared enough workers (Nuscheler, 2004, p. 105; also Castles and Miller, 2009, p.23). In many cases immigrant labor is a good solution for employers' needs (in Massey, 1993):

- Structural inflation: Wages are usually connected to social status and hierarchy. Therefore, if employers try to attract native workers for “unskilled jobs at the bottom of the occupational hierarchy” through wage increase, this would mean that those one who are higher in the occupational hierarchy would also demand an increase in their wages. An easier and cheaper solution is to hire migrant workers who accept lower wages.
- Motivational problems: Work brings not only income, but also social status. There is always a bottom of the hierarchy and therefore motivational problems exist. For many immigrants employment is seen as a way of earning money and is not connected to social prestige and status (at least at the beginning of their migration careers). Some reasons for this may be that they want to use the money at home (for building a house, shop, starting a business) or they have a high status in their home community because of their income abroad that is higher than the standards in the sending country.
- Economic dualism: the labor market is segmented and native workers are attracted by the primary sector, which is secure and where wages are high,

therefore employers search for migrants who can occupy the positions with low wages and unstable positions (Kratzmann, 2007, p.52)

- The demography of labor supply: The first three factors create a permanent demand on workers who are willing to work “under unpleasant conditions, at low wages, with great instability and facing little chance for advancement” (Massey, 1993, p.443). In the past this gap was filled by women who were not the main breadwinner and teenagers trying to earn extra money (ibid.). Nowadays, women pursue a career for social status and the number of teenagers entering the labor force is smaller because of the lower birth rates and the formal education. Migrants respond to this demand.

Native workers avoid low paid and unskilled jobs which creates opportunities for migrant workers. This theory assumes that:

- International labor migration is initiated by recruiting employers and governments based on labor demand
- Employers have incentives to hire workers and keep the wages constant
- Social and institutional mechanisms can keep low-level wages from increasing, but cannot keep them from falling
- Governments are unlikely to change migration flows through changes in the wages or the employment rates because the demand on immigrant workers is based in the economic organization of modern economies (Massey, 1993, p. 444)

The world system theory is based on the dual labor market theory. According to Kratzmann, undocumented migrants are an important part of the labor market and provide cheap labor for the Western economies (2007, p.52).

Both dual labor market theory and new economics of labor migration accept the existence of push factors, but the former emphasises the individual decision to migrate, whereas the latter sees the propeller in the family. Dual labor market theory emphasizes the strong employers' demand on unskilled workers, which can undermine the policies on border control. And still Castles and Miller argue that the economic approach can explain only some aspects of the migration issues.

2.2 Social and family theories

Migration networks

Another important theory is the one about migration networks. Family members who are already in the receiving country can provide a big support for new coming immigrants (material and psychological one). Migration networks are very important for third state nationals and irregular migrants because of the cultural differences and sometimes hostile environment (Hugo in Nuscheler, 2004, p.107; see also Fischer, 2006, p. 24 and Massey, 1993, p. 448). Family networks are part of the push-pull theory (Lee, 1972 in Fischer, 2006, p. 24). The rates of unemployment as well as the wage level are important for the decision to immigrate.

The first migrants' immigration is an expensive endeavour, as they do not have social contacts in the receiving country. Entering the country without documents makes this even more difficult. Settled migrants reduce the costs for their relatives or friends who want to migrate. Böcker calls them "bridgeheads" (1994 cited in de Haas, 2008, p.19). New migrants reduce costs for the next ones coming after them. Migration networks diffuse and at some point anyone who wants can migrate. An implication of this is that migration becomes less selective – "with regards to access of migrants to human and material capital" (Taylor 1986 in de Haas, 2008, p.20). Then migration flows decrease (Massey, 1993, p.450). The size of migration is not so much connected to wage differences and employment rates but to the decreasing costs and risks through the network. Governments have difficulties in trying to manage these migration flows because the reasons for this process are out of the governments' control. De Haas describes also network migration as "chain migration" – it is characterized by the interpersonal ties connecting migrants and non-migrants (2008, p.19).

De Haas criticizes the theory because it focuses on cases where network is really important. In the long term, this type of migration may decrease or stop when its causes disappear. And although governments can hardly control network effects, they can still have "influence on the magnitude and nature of migration, although not necessarily in the intended direction" (ibid. p.20). Another factor are the internal forces. Friend and kin relationships may weaken with the time and have a restrictive role to immigration.

Migration systems theory

A migration system consists of two or more countries which exchange migrants with each other. Distant countries may be also part of one system, e.g. North / West Africa and France (Castles and Miller, 2003, p. 27). This migration theory examines both ends of the migration flow (sending and receiving countries) and the linkages between them. It assumes that there are prior links in sending and receiving states (political, cultural, trade or historical ones). In this way, it gives an explanation why exactly Algerians migrate to France and Turks to Germany.

According to this theory, migration is a result of the interaction between micro- and macro-structures. Macro-structures include institutional factors such as interstate relationships, laws, structures and practices in the receiving and sending countries concerning migration control (ibid., p.28). Informal migrants' social networks are part of the micro-structures. This might be connected to family, employers or the community. Bourdieu and Wacquant (1992, p.119 in Castles and Miller, 2003, p.28) call this social capital. It includes also friendship ties and mutual help in economic and social matters. In many regions decisions for the migration of family members is taken by the elderly members of the family. The meso-structure lies between the macro and micro- structures. It consists of institutions which can help or exploit migrants e.g. recruitment agencies, smugglers, lawyers, agents etc. (Harris, 1996, p. 132-136 in Castles and Miller, p. 29).

Institutional theory

Capital-rich countries have a certain numbers for visa issuance. With the increase of migrants' number, the number of visas becomes insufficient. This creates opportunity for entrepreneurs who support international movement for profit. This creates a black market for migration. Exploitation and victimization are often the case in such underground markets, therefore voluntary humanitarian organizations arise in order to protect rights of the undocumented migrants. Profit organizations and entrepreneurs provide services like smuggling, arranging marriages, counterfeiting documents and visas in exchange for money. On the other hand, humanitarian organizations provide counselling, legal help and social services. When organizations become well-known and institutionally stable they can help migrants to gain access to foreign labor markets (Massey, 1993, p.451). The two hypotheses of the theory descend from the micro level:

“1. As organizations develop to support, sustain and promote international movement, the international migrant flow becomes more and more institutionalized and independent of the factors which originally caused it.

2. Governments have difficulties controlling migration flows once they have begun because the process of institutionalization is difficult to regulate. Given the profits to be made by meeting the demand for immigrant entry, police efforts only serve to create a black market in international movements, and stricter immigration policies are met with resistance from humanitarian groups.” (ibid.)

2.3 Other reasons for migration

Although this work is not focusing on asylum-seekers, it is worth noting that often reasons for immigration are not just economical, but also political ones. These might be wars or repressions against ethnic or religious minorities (e.g. Kurds, Tibetans etc.). Another case is a dictatorship that oppresses opposition. To give some example, Saddam Houssein tried to solve the „Kurds problem“ through genocide and the conflict in Bosnia and Herzegovina created a big movement to Western countries. Another reason can be also a natural disaster (see Nuscheler, 2004, p. 110 and Fischer, 2006, p. 20).

3 Migration policy in Europe

3.1 Common migration policy

The EU Common Migration Policy comprises external border control, policy toward refugees, immigrants and third country nationals (TCN). Ideas for free movement arise in the Rome Treaties (1957). According to Tomei, the common migration policy starts with the project for the Single Market (1997, p. 15), which foresees free movement of commodities, services, capital and people. Though it came into force in 1992, regulation of free movement of people was still in the sovereignty of the member states. An example for this is the **Schengen Intergovernmental Treaty** (1985), which regulated those movements and was not a part of the *acquis communautaire*. By signing this treaty the states relieved the movement of people inside the Schengen area and, at the same time, external border controls were strengthened. Some of its main points are:

- all signatory states must request visas for nationals of countries which most often send refugees
- air companies may be sanctioned if they accept passengers without proper visa documents
- decision for the creation of an information system and exchange of data
- asylum-seekers can apply for a refugee status only in one signatory state in the Schengen area, and if the application is rejected, this would apply for all the countries in the Schengen area (in Nuscheler, 2004, 178)

The second Schengen Treaty was signed in 1990. It complemented the first one and outlined long-term objectives on visa and refugee issues. Still this treaty is applied only when it complies with the *acquis*.

Important international groups working on the issue of movement of people in the beginning of the 1990s are, for example, the Trevi Commission and the ad hoc Immigration group dealing with refugees, external borders and visas (Tomei, 1997, 21).

Another international treaty is the **Dublin Convention (1990)**. It aims at:

- avoiding refugee tourism (looking for the state with the best conditions for applying) and working on the same application in different countries

- guaranteeing that each application for a refugee status will be considered (Nuscheler, 2004, 178)

The last examples point out the importance of the state decisions and the interstate treaties, which Moravcsik also claims in his intergovernmental theory (“The Choice for Europe”). According to him, other important aspects are the interests and influence of social groups in the state (Moravcsik, 1993, p. 481). They may define a certain policy as a national one which is presented and defended at international negotiations (Steinhilber, 2005, 169).

3.1.1 International or supranational?

In the end of the 1980s and the beginning of the 1990s the communist regime collapsed and an increase in the immigration flows to Western Europe was observed (Tomei, 1997, 24). This made the states think about measures for burden sharing. The solution of this question was mostly seen at the European level, rather than at national one (ibid., p. 59).

And still states are the propellers for changes in these issues. An example for this is the summit in Fontainebleau (1984), when France and Germany proposed to reduce border controls. Seven years later at a summit in Luxembourg Germany made a proposal for harmonization of the European policies on refugees, immigration and third states nationals through a treaty (Tomei, 1997, 25). The differing points of view found a compromise in the **Maastricht Treaty** and the separation of the migration issues in the first and third pillar. Visa policy is part of the first pillar where the decision-making process is on a supranational level. Decisions on refugees, (irregular) immigration and third country nationals from the third pillar are taken through unanimity of the Council. This means that member states still keep their right to regulate these areas through national acts e.g. for entering, stay and settlement (Nuscheler, 2004, 179).

An important step

With the **Treaty of Amsterdam** some issues moved from the third pillar to the first one, but on the insistence of Germany decisions on refugees still need unanimity (Nuscheler, 2004, 180; see also Caviedes, 2004, p.6). Title IV “Visas, refugees, immigration and other issues connected to free movement of people” envisaged for the Council to adopt unanimous measures on external border controls, permissions for refugees and immigrants in the next five years. This means that the member states could use a veto and developments in a certain policy depends on the political will of each state. The European

Parliament has just a consultative role. Although the European Commission and the Parliament insist on harmonization in this issues, they do not have such a big influence (Nuscheler). After a certain period of time the co-decision procedure was introduced for the adoption of directives and regulations on immigration policy. The Schengen acquis was incorporated in the legal framework of the European Union through the Amsterdam Treaty. Still the United Kingdom and Ireland opted out because they wanted to keep their sovereignty over the national borders¹. Nevertheless, they participated in some aspects of the Schengen Treaty such as the Schengen Information System which comprises an international computerized database and greater information sharing from consular and police agents. Denmark participated in the Schengen Treaty with a possibility to opt out of the Amsterdam Treaty Title IV². Still the Schengen acquis belongs to the third pillar of the European Union (with the exception of the visum policy which is in the first pillar) and thus further decisions depend on the will of the states.

The **Tampere programme** (1999-2004) aims at fulfilling the political goals of the Amsterdam Treaty through concrete actions. It was announced at the European Council in Tampere 1999 and it aims at the creation of the EU's new 'union of freedom, security and justice', which requires a common asylum and immigration policy (Caviedes, 2004, p.7; see also Geddes, 2003, p.138). It aims at development of common migration policy within some key areas:

- Partnership with countries of origin with respect to political, human rights and development issues in countries and regions of origin and transit;
- A common European asylum system based on the Geneva Convention;
- Fair treatment of third country nationals aimed at granting them rights and obligations comparable to those of EU citizens;
- More efficient management of migration flows based on closer co-operation between Member States and with countries of origin and transit³.

The Commission answered with its Communique from 2000 (757, final), pointing out that measures for legal migration are essential, taking into account migration for humanitarian and economic reasons or family reunion.

¹ Gelatt, Julia (2005) – "Schengen and the Free Movement of People Across Europe",

² Geddes, 2003, Immigration and Integration in Europe, p. 137

³ COM (2001) 387 final, p.5

Open method for coordination

A new approach was formalized at the Lisbon European Council in March 2000. Its purpose was to engage diverse policies (e.g. education and social exclusion) and to spread the “best practices”. Caviedes points out the following steps as important:

- “- allowing the EU to set common guidelines along with specific timetables;*
- establishing a system of common quantitative and qualitative indicators that allows the member states to compare and benchmark their practices and policy performance;*
- allowing the member states to translate these guidelines into national and regional policies that set specific targets and implementation procedures, yet allow for diversity and flexibility in each individual case;*
- periodic monitoring and evaluation through a peer review process whose primary goal is educative”* (Cavides, 2004, p.8)

At European level important actors are the Commission, the Council, committees and European level social actors. The Commission has the right to initiate policies. The European Council coordinates this with the respective committees. After that guidelines are adopted and have to be translated into National Actions Plans. At the national level, governments are expected to involve NGOs, social actors and social society representatives. Open method on coordination is aiming at transparency and democratic participation. Still it is criticized that it is a “soft law” mechanism, goals might not be realistic and their implementation might be even more difficult (ibid).

In 2001 the Commission adopted a Communique involving the open coordination method in the common immigration policy. The Commission will coordinate national policies, and the best practices should be exchanged. On the Commission’s proposal the Council is to adopt future direction for development of the EU. This is to be part of National Action Plans as regional and national differences have to be taken in consideration. The Commission proposed six guidelines (COM 2001 387 final):

- to develop a comprehensive and co-ordinated approach to migration management at national level
- to improve information available on legal possibilities for admission to the EU and on the consequences of using illegal channels, the Commission proposed awareness

campaigns in third countries on smuggling and trafficking, as well as information services in third countries about legal ways of entry

- to reinforce the fight against illegal immigration, smuggling and trafficking by supporting measures such as sanctions against criminal activities and enhancing controls at external borders.
- to establish a coherent and transparent policy and procedures for opening the labor market to third country nationals within the framework of the European employment strategy. National legislations should offer clear procedures on the selection of labor migrants from third countries.
- to integrate migration issues into relations with third countries, and in particular with countries of origin. This aims at encouraging migrants to keep in touch with their countries of origin and to discourage future immigration
- to ensure the development of integration policies for third country nationals residing legally on the territories of the Member States

Due to the increase of irregular immigration in the EU and after **September 11, 2001** and the Council's decisions from 2002 focused mainly on conclusions for measures against irregular immigration, influencing the migration flow and defence of the common borders (Janh / Maurer / Oetzmann, 2006, p. 8).

In 2001 the Commission issued a Working Paper pointing out that the “fight against illegal immigration” is a main priority. Among its main policy areas are: judicial cooperation, cooperation between police and intelligence services, sanctions on financing of terrorism, measures at the border and other measures⁴.

The European Commission issued a “**Communication** on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders and the return of illegal residents” in 2002. It follows the direction of the Sevilla Council aiming at combating illegal immigration⁵. The Commission focused on external border controls, partnership with third countries and return policy. After that it recommended the creation of FRONTEX, which would control the external borders of the EU (cited in Valchev, 2010, p. 102)⁶. At the time of the Tampere Action Plan, the focus of

⁴Asylum : Commission paper seeks balance between improving security and protecting refugees rights, IP/01/1754, Brussels, 6 December 2001

⁵ COM (2003) 323

⁶ ibid.

the common immigration policy was security and combat against illegal immigration. The Qualified Majority Voting was already used for making decisions during the Hague Action Plan that made this process easier.

After the **Treaty of Nizza** the member states could use the co-decision procedure for decisions on migration issues. In this way, some responsibilities are transferred to the European level and decisions do not depend to such an extent on the political will of the states (Council), but to a big extent on the Parliament (Janh / Maurer / Oetzmann, 2006, 9).

The Hague programme had five main areas for the development of the immigration policy:

- A common European asylum system
- Legal migration and the fight against illegal employment
- Integration of third-country nationals
- The external dimension of asylum and migration policy
- The management of migration flows⁷

The Hague programme came after the Tampere programme and was in power until 2004. The **Stockholm Action plan** envisages measures until 2014. Some of them are connected to admission policy, control of illegal immigration and creation of a single asylum procedure (Boswell / Geddes, 2011, p. 53; see also Caviedes, 2004, p.7). Joanne van Selm points out that the Hague programme relied on existing agreements and did not have a clear plan for a future asylum system. Although there was rhetoric on building common immigration policy, legal immigration and immigrants integration is in the powers of the member states⁸. Boswell and Geddes pay attention to the fact that the action plans state objectives, which does not mean that they are achieved. For example, Directives state legal objectives, but they do not specify the means for reaching them. This creates space for national variations (Boswell / Geddes, 2011).

The next step in transferring sovereignty in the area of migration issues was the **Dublin II Regulation**, which was not an international treaty, but a part of the *acquis*. It replaced the Dublin Convention and its main goal was to identify which member state was responsible

⁷ van Selm, Joanne "The Hague Program Reflects New European Realities", Migration Policy Institute, New York, 2005

⁸ *ibid.*

for making a decision on refugee applications. The Dublin II Regulation set criteria according to which the state responsible for decision-making on application is defined e.g. if there are relatives who are residents there, if the entry was illegal or if there was a stay in another member state⁹. A second aim of the regulation is to prevent applying for refugee status in more than one country.

The **European Pact on Immigration and Asylum** was adopted in 2008 under the French presidency and can be seen as an early version of the Stockholm programme. And yet it is a political declaration without juridical powers. There are five main areas:

- organizing legal migration according to the needs of the member states; integration of the migrants
- fight against illegal migration and return issues
- building Europe of asylum
- more efficiency on border control
- global partnership with sending and transit countries¹⁰

The Pact appeals that each country define its current market needs and set a quota for regular migrants and family reunion members. Measures of integration should aim at easy learning of the host country language and access to work.

The **Lisbon Treaty** deepened integration. An important aspect is the solidarity principle, which means fair sharing of responsibility on refugee and immigration issues. The European Parliament got more competencies through the use of the co-decision procedure with the European Council in the area of the legal migration. At the same time, the European Council could adopt measures on immigration and asylum with qualified majority voting (QMV). It is still responsible for political planning and development of strategies. The Court of Justice can annul legislation and can "rule on failure to act on part of EU institutions and in cases of infringement where member states have failed to fulfil their obligations" (Boswell / Geddes, 2011, p. 10).

The European Commission got new competencies, but at the same time it cannot act on its own and it is still dependent on the member states. Although the European Commission is responsible for the implementation of the legislation, it employs 23.000 people and does

⁹ Dublin II Regulation – Summaries of EU legislation

¹⁰ Carrera, Sergio and Elspeth Guild "The French Presidency's European Pact on Immigration and Asylum: Intergovernmentalism vs. Europeanisation? Security vs. Rights?" CEPS Working Document No. 170, Centre for European Policy Studies, Brussels, 2008, p. 2

not have the resources to monitor the implementation of the legislation in all the member states (ibid., p. 56).

Another important role on immigration and asylum topics is that of Justice and Home Affairs Council (JHA). It is composed of the justice and interior ministers of the member states, who meet almost every two months. They are supported by the Council's Secretariat and by member states' permanent representatives (Boswell / Geddes, 2011, p. 56).

The Lisbon Treaty set out provisions on border, asylum and migration (Article 77-80) and incorporated them into the Treaty framework (Box 1.2, Boswell / Geddes, 2011, p. 10).

The quick overview on the migration policy development shows that in the beginning the process was regulated by the states and gradually some (but not all) competencies were transferred to the EU.

According to Moravcsik (see the first chapter), transferring sovereignty to the European institutions can make decisions less time-consuming and a particular level of agreement is secured. At the same time, a common migration policy can provide ideological support for certain actions, otherwise unilateral actions could damage the reputation of the governments. Another reason for delegating rights to international institutions is that in this way, there is less risk when details about the future are unknown.

3.1.2 Top-down Europeanization

Pre-existing conditions connected to migration and asylum policy shape government preferences and have a bottom-up influence to Europeanization. At the same time, top-down Europeanization also exists (Menz, 2010, p.81). Menz points out two modes of top-down Europeanization. The first one is the national implementation of the EU regulations which may modify them and change their original impetus (p.83). The second one is the bottom-up Europeanization, which can influence the formation of the EU regulations according to the national preferences. However, asylum and immigration policy in the EU-12 member states is part of the *acquis* and product of top-down Europeanization. In Central and Eastern Europe the labor market interest, associations have stronger influence in comparison to humanitarian NGOs, which are very weak (ibid., p.86).

3.1.3 Lobbying

Menz points out two main factors which define the influence of the nongovernmental actors: the "*institutional framework of the state-society nexus*" and the "*internal organizational characteristics*". The first one relates to the way in which governmental and nongovernmental actors communicate. Nongovernmental organizations may be autonomous or self-governing. They may be consulted by government actors or may work together in the distribution of services to new immigrants. At the same time, governments do not want to share the control over migration management as they may tolerate lobbying, but no co-management (Menz, 2010, p.88). The internal characteristics of the organizations depend on the degree of centralization (large number of representatives for one camp – low centralization), internal cohesion (control over the sectoral members, participation of members in the decision-making process) and the representation among clientele ("measured in terms of the percentage of total potential constituents that are members of the interest associations", *ibid.*, p.89). German unions and employers are characterized as having "medium" influence as well as those in Italy. According to Menz, labor market interest associations are much more influential in shaping migration policy than humanitarian NGOs. The first ones are more professional and institutionalized and the second ones are more based on scholarly work of interest groups and less powerful organizational characteristics.

3.1.4 Decision-making

Asylum and migration policy used to be a national domain and steps toward Europeanization are very slow sometimes including resistance. Until 2004 the Commission and the member states had the right to jointly propose directives. According to Menz, most of the proposals were coming from the Commission and the states initiated joint deportation measures. The Council decided to exchange the procedure of unanimous decision-making with qualified majority voting (Menz, 2010, p.99). The Commission proposals often encountered the resistance of the Council of Ministers. Countries with established migration regimes like Germany were not willing to accept immediately top-down Europeanization of this issue. For new member states and the Mediterranean countries that had relatively few regulations on migration EU regulations had a significant influence on the national legislation.

4 Irregular migrants

4.1 Migration, mobility and population

Boswell and Geddes make a difference between mobility and migration. The first one happens when citizens of the European Union exercise their right for free movement. The second term refers to movements from outside the EU by third country nationals (TCNs). The free movement of workers has been supported with the development of the single market, but the extra-EU migration by TCNs is a new topic for the policy-makers. It was introduced with the Maastricht Treaty (1993), and with the Amsterdam Treaty (1999) it was incorporated in EU's legal and political framework (Boswell / Geddes, 2011, p. 2).

Population

Immigrants are seen as an important resource for growth considering the ageing population of Europe. In 2008 there were 4 persons in working age for each person over 65 years (Boswell / Geddes, 2011, p. 5). The expectations by 2060 are that the ratio will be 2:1. As migrants are also getting old, this process is supposed to be sustained so that new migrants come. This is a very hot topic for European politicians. Other solutions to the problems arising from the demographic changes could be the increase in the retirement age or in the female participation in the labor market (ibid.).

4.2 Irregular immigration

In the beginning of the new century there were lots of incidents with boats trying to cross the Mediterranean Sea and reach EU Member states. FRONTEX reported that the number of the attempts for irregular crossing of the land or sea border of the EU increased between 2007 and 2008. In March 2009 a boat with 200 people on board crashed near the Libyan shore¹¹. And in April 2009 people coming from Africa were saved after their inflatable boats sunk near the Turkish shore. These examples show an aspect of the irregular immigration question (Geddes, 2011, p. 122). But these are not the only ways in which irregular immigration can happen (Portes / DeWind, 2007, p. 288)

¹¹ Bad weather caused Lybian migrant boat to sink; <http://www.reuters.com/article/2009/04/01/us-libya-migrants-idUSTRE5302EA20090401>

The EU has played an important role in ensuring "that new member states accord with EU border control requirements" and in exporting "EU border control and security practices to non-EU member states" (Geddes, 2011, p.123).

But irregular immigration is also closely related to the admission policies of the states and their changes. New immigration countries such as Spain and Italy introduced visa requirements in 1991 in accordance with the Schengen requirements. Shortly after that there was an increase in the smuggling activities across their land and sea borders (Geddes, 2011, p. 123).

Geddes criticises some countries that "talk tough" about border controls, but they do little to prevent the irregular entry in fact (Geddes, 2011, p. 123).

4.2.1 Push-pull factors

In most of the cases irregular migration is described as a threat to the society for the receiving countries. Migrants are pulled by the image of wealth in these countries and at the same time conflict, environmental changes and poor development pushes them to the EU states (Geddes, 2011, p. 127).

4.2.2 Labor market

Düvell and Jordan pay attention to the connection of irregular migration with the economics of the host country. They claim that irregular migration is closely connected to globalisation.

In the 1990s the number of asylum-seeker (mostly black and Asian migrants) rose and in many countries this was accepted as disguised irregular migration. Illegality was seen as a threat to the standards of living and cultures of the citizens of the First World (Düvell / Jordan 2002, p. 15). The political debate in Europe was, on the one hand, concerning handling ethnic diversity and, on the other hand, it was focusing on the possible advantages of recruitment for the EU labor market from outside.

From the perspective of the shadow economics, irregular migrants are flexible, mobile and willing to accept low wages and hence an important resource. Despite the large number of irregular migrants, the EU governments try to manage the migration flow and to allow skilled workers to enter and settle (Düvell / Jordan 2002, p. 16).

4.3 Definition of irregular migrants

According to Geddes, irregular migration is first defined through regular migration and what it is. Some sectors (as construction and agriculture) need cheap labor, this may be provided by migrant workers. This explains also why irregular migrants find jobs in certain sectors (Geddes, 2011, p. 127).

Düvell and Jordan (2002, p. 15) define irregular migrants as unauthorized entry to another country. According to Riedel (2011, p.12) the difference between “illegal” and “irregular” migration is that “illegal” refers to breach of the (inter)national norms and laws and “irregular” refers more to the violation of the immigration laws.

4.3.1 Definition of the EU

The EU has a more detailed definition in its EU Return Directive (2008, article 25):

“illegal stay means the presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State”¹²

Article 5 of the Schengen Border Code¹³ states the necessary conditions for legal entry of a person:

- possession of a valid travel document
- possession of a valid visa if required
- justification of the purpose to stay and means of subsistence and for stay, return and onward travel
- no alert in the Schengen Information System
- no threat to public policy, internal security, public health or the international relations of any member state

According to Geddes and Boswell (2011, p. 128), some terms may refer to wrong impressions about the character of irregular immigration. For example, "clandestine" immigration has the hint of people smuggled through sea or land borders. This might not

¹² Article 3, Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (EU Return Directive)

¹³ Article 5, Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)

be the case, in fact – more often people enter the country with a tourist visa and they stay after it expires. Another misleading term might be "undocumented" migration. Their entry might have been authorised at some point, but their further stay, residence or employment is not allowed. According to them, the term "illegal" migration is most neutral and does not refer to criminal acts, smuggling and the absence of documents.

Irregular migration is not just connected to irregular crossing of border. It might be connected to irregularity of residence and employment status, as well as to the type of employment (Boswell / Geddes, 2011, p. 125). Geddes / Boswell talk about thirteen different forms of irregular migration which are made after combining the four characteristics (Boswell / Geddes, 2011, p. 130). In this work the term “irregular” will be used.

Heckmann points out that irregular migration is mostly associated with an unauthorised way of crossing the border. He gives an example of Moldavians trying to secretly cross the German-Czech border. And Romanians, who do not need a visa to enter, travelling by bus, but nevertheless intending to work in the shadow economy (in Portes / DeWind, 2007, p.286). He describes three main forms of irregular immigration:

- Irregularly crossing of a border
- Crossing the border in a seemingly legal way, using falsified documents one is not entitled to, or using legal documents for illegal purposes
- Staying after expiration of the legal status (Portes / DeWind, 2007, p.288)

4.3.2 Numbers of people crossing irregularly

Heckmann claims that official statistics about irregular immigrant population in Germany come close to the true numbers because internal controls by law enforcement agencies occur very often – e.g. in comparison to Great Britain (Portes / DeWind, 2007, p.289). Therefore, it is more difficult that an irregular stay becomes permanent or long-term. Welfare organisations and churches have recognised the existence of a population of irregular migrants who need help. Social workers working with such people often can help for the estimation of the size of this population (Portes / DeWind, 2007, p. 292).

PART II

5 Germany

5.1 Who are “they”?

5.1.1 *Gastarbeiter*, (*Spät*)*Aussiedler*, refugees

Among the main groups of immigrants in Germany are “Gastarbeiter”, family members, “Aussiedler” and refugees. *Gastarbeiter* were seen as a temporary labor force that would come back to the sending country. But this did not happen because, as Max Frisch points out, that it came not just labor force, but also people with their families (Nuscheler, 2004, 124). Between 1950s and 1960s Germany concluded contracts with Italy, Turkey and Tunis, which were sending countries. The Berlin Wall stopped migration flows from East Germany and this increased the need on labor force (ibid., p.137).

Guest workers were recruited mainly for low-skilled jobs and had no political rights. They had an insecure residence status and separate social services. These measures were aiming at preventing permanent immigration (Schierup, 2004, p.146). In the mid-1970s to the late 1980s after the introduced restrictions on immigration (*Anwerbestopp*) it still continued in the form of family reunion. The introduced measures to restrict this process were unsuccessful partly because of the employers who wanted foreign labor and partly because of the legal system protecting family rights (p.146).

Aussiedler has the right to immigrate to Germany according to the German Basic Law (*Grundgesetz*). They are German citizens or persons, who have German nationality and have lived in the Eastern areas of the country before 1945 ¹⁴. After 1990 with the increase of the immigrants, refugees and the fears of immigration flows to Germany, it was created a new definition “Spätaussiedler”, which aimed at decreasing the number of immigrants e.g. through tests in German and subsidies, which could make them stay in the sending country (Nuscheler, 2004, 131). Integration problems were very common in the 1990s. At that time *Spätaussiedler* were coming from Eastern Europe and the Soviet Union (Geddes, 2003, 83). Their education and qualifications were often not acknowledged, which made their inclusion in the labor market more difficult. On the other hand, their children had

¹⁴ **Definition** of Aussiedler, <http://www.sign-lang.uni-hamburg.de/projekte/slex/seitendvd/konzepte/150/15046.htm>, (accessed 25.11.2011)

language problems, which created additional integration problems. Some of them had drug problems or were connected with criminal activities.

The number of refugees increased four times between 1988 and 1992. Still in the 1980s court decisions aimed at decreasing this number. The interpretation of the refugee law in the Court changed. A refugee status could be given if there is an impartial assessment of the persecution danger and not just “fear of persecution” in the home country. Nuscheler criticizes this practice and explains that this downgrades the Geneva Convention on Human Rights which uses the fear as reason for the refugee status (2004, p.130).

Reasons for immigration can be different and difficult to identify. In the beginning of the thesis were presented some theories, which focus on the economic aspects and explain some reasons why people migrate. At the same time, they can only explain certain aspects of the irregular migration. As Massey explains, migrants might be sent from their families or may have calculated that they will earn more money abroad. But once they enter the EU in an unauthorized way or overstay the legal period, this makes them irregular.

5.1.2 Undocumented migration

Although the German regulated market has always been a good example against the informal markets in Southern Europe, nowadays the number of small enterprises and deregulations makes informal employment often reality. Undocumented workers might be irregular migrants, legal entrants without work permit or asylum seekers waiting for a decision. Wilpert and Laacher (1999) point out other examples: young adults from Turkish origin or people who came legally through family reunion and are waiting for work permits (in Schierup, 2004, p.154). In most cases low-skilled unemployed people are taking part in the informal sector.

5.1.3 Social exclusion

German employers try to restore the flexible labor supply from the guest-worker period through this new type of employment and the informal sector. The dual labor theory recognizes the role of the employers in the process of migration as migrants are the best group for low-skilled jobs. According to Schierup, the protection and inflexibility of the German labor market create crisis in the German welfare state (2006, p.155). A result from this is the economic and fiscal crisis and privileged and marginalized positions for employees. Bommes (2003) explains that the welfare state takes care of the basic needs for the excluded people and is no longer providing equity (in Schierup, 2006, p.155).

Migrants are more often part of the marginalized group. According to him, they are more exposed to social exclusion because of lower education, training, job experience as well as discrimination. Low qualification is also a result of the past institutional discrimination in the guest-worker period. Discrimination is connected with ethnic exclusion and racism (ibid.).

Irregular entries

The flow of successful attempts to cross the border is measured by the German Border Police. The authors refer to asylum statistics as an indicator for "successful" illegal crossing of the border. Although one can cross the border illegally, an asylum procedure could be started and he / she obtains a (temporary) legal status. This is an interesting feature of the asylum migration in Germany (Portes / DeWind, 2007, p.291).

5.1.4 Statistics about irregular migrants in Germany

Immigration flows are complex, migrants have different backgrounds and reasons to move. It is therefore very difficult to estimate the exact number of the irregular immigrants. On the other hand, an important role for the estimation have the birth and death rates, overdue stay or applications for a legal stay (Schneider, 2012, p.78). Marriage and an asylum application could be also a way to end illegality (Marx in Schneider, 2012). Irregular transit also creates another group of irregular immigrants. Estimations about irregular migration play an important role for further political actions (ibid.).

In the statistics of Eurostat irregularly present people are those one who entered the country in an irregular way or they had proper entry documents, but overstayed. German Bundespolizei provided Eurostat with data. According to these data, 50.250 person were caught for an irregular stay in Germany (Schneider, 2012, p.80).

Table 1 – Identification of irregular staying TCN by nationality, 2008-2010

	2008	2009	2010
Total	53.695	49.555	50.250
Turkey	6.675	5.610	5.565
Afghanistan	880	2.665	3.700
Irak	4.715	4.530	3.060
Serbia	5.920	2.590	2.920
Vietnam	3.010	3.010	2.680
Russian Federation	2.415	2.085	2.125
China	2.565	2.285	1.975

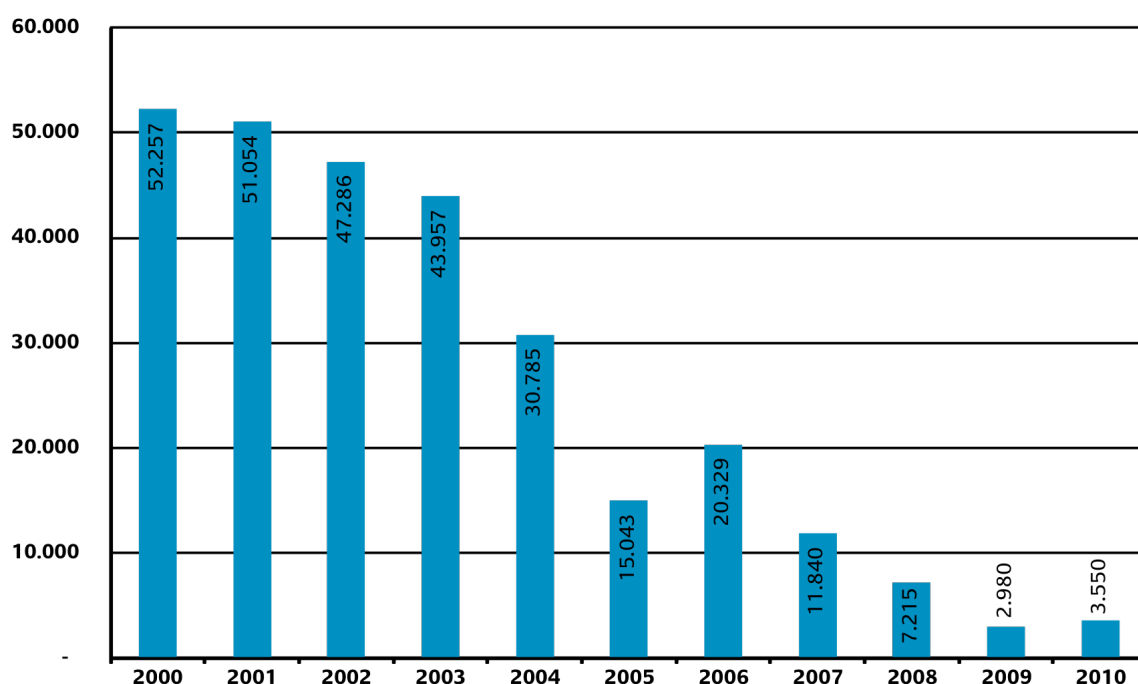
Republic of Kosovo	:	1.605	1.935
India	1.420	1.615	1.615
Iran	1.090	1.205	1.605
Other nationalities	24.970	22.340	23.050

The sequence of the most important nationalities is based on 2010

Source: Eurostat (rounded data) in Schneider, 2012, p.80

Refoulment happens when immigrants at the borders are not allowed to enter the country. According to Eurostat statistics, the number of such cases decreased since 1997. In 2000 there were 52.257 refoulment cases and in 2009 2.980 such cases (Schneider, 2012, p.80). According to the author, an important reason for this is the decrease in the number of refugee-seekers. Among such other factors are the EU enlargement, the Schengen area entry of Poland, the Czech Republic and Switzerland which allowed the free movement without border controls.

Figure 1 – Total of refoulment cases, 2000-2010



Source: 2000-2007: Bundespolizei / CIREFI; 2008-2010: Eurostat (rounded data) in Schneider, 2012, p.81

The next table shows where most people facing refoulment were coming from in 2010. Turks constitute the biggest number, they are followed by Chinese and Russian Federation citizens.

Table 2 – People who were sent back, main nationalities, 2008-2010

	2008	2009	2010
Total	7.215	2.980	3.550
Turkey	980	420	445
China	405	260	335
Russian Federation	295	265	275
Serbia	1.450	100	245
Ukraina	110	75	165
Nigeria	235	215	140
FYROM Macedonia	530	35	120
Phillipines	60	35	110
India	125	90	100
Brasil	165	110	95
Other nationalities	2.825	1.370	1.480

Source: Eurostat (rounded data) in Schneider, 2012

The sequence of the most important nationalities is based on 2010

According to Düvell / Vollmer 2001 (in Schneider, 2012, p. 84) another way for going in illegality is when an asylum application is rejected. Statistics on asylum conclusions could show us the number of possible irregular immigrants. The second table represents the citizens who are most probably forming groups of irregular migrants (ibid., p. 84).

Table 3 – Negative ruling by the court of first instance, by nationalities, 2008-2010

	2008	2009	2010
Total	11.465	17.090	34.955
Serbia	1.350	665	4.800
Iraq	1.445	3.100	3.015
Afghanistan	195	645	2.775
FYROM Macedonia	85	70	2.475
Republic of Kosovo	:	1.275	2.170
Turkey	1.075	1.410	1.645
Syria	460	690	1.620
Iran	505	525	1.285
Russia	560	590	1.240
Vietnam	1.035	1.345	1.145
Other nationalities	4.795	6.825	12.840

Source: Eurostat (rounded data) in Schneider, 2012, p.84

The sequence of the ten most important nationalities is based on 2010. Formal rulings (e.g. cessation of proceedings due to application withdrawal or ruling according to the Dublin procedure) are part of the negative statistics by Eurostat.

If the asylum application is rejected, according to the German law, the applicants can take legal actions. In 2010 more than 46% of the rejected applications were appealed in court.

This means that more than half of the rejected applicants stay in touch with the institutions.

Table 4 – Total of the rulings on asylum applications, 2005-2010

	2005	2006	2007	2008	2009	2010
Total	48.100	30.760	28.570	19.335	26.855	45.400
positive rulings	3.120	1.950	7.870	7.870	9.765	10.450
negative rulings*	44.980	28.805	20.705	11.465	17.090	34.955

**Rulings according to the Dublin procedure are part of the negative rulings in Eurostat statistics (in contrast to national statistics on asylum).*

Source: Schneider, 2012

I will take a look at the domestic policy. According to Moravcsik, it is essential in order to understand interstate relations (see first part). Domestic policy is also connected to past legacies and policies.

5.2 Main developments of the German migration policy

- (1) Migration was an important question between the political parties. In West Germany the far right had a limited success in the 1950s and the 1960s. But this is not the case nowadays. The Christian Democrats had adopted a restrictive line on order to provide an alternative to the xenophobic movements. This is the reason for drafting a restrictive foreigner law in 1990 (Green, 2004 in Menz, 2010, p.168). Churches had a more centrist position and the employer organizations saw advantages in the labor migration in the 1990s. Moravcsik explains in his theory on national preference formation, how important social groups are for the development of national policy (see part one)
- (2) At that time temporary labor migration schemes were introduced. Menz explains that they were mostly concerning people coming from Central and Eastern European countries working in agriculture and construction. Compared to this, the Green Card for employing highly skilled migrants was not very successful (p.169). This can refer to the new economics of labor migration that considers that Governments can influence migration through labor market regulations and policies (see part one). The Süßmuth Commission made a proposal for a point system for labor migrants and an annual quota to be included in the migrant law.

This did not become part of the law because of the opposition of the Christian Democrats.

5.2.1 Politization

According to Geddes, the question on migration is an issue of debate between the left and right parties still in the 1970s. He gives the example of the left Chilean refugees coming in the 1970s and the fears of the right parties that they would bring communism in Germany (Thränhardt in Geddes, 2003, 86). Geddes claims that *Aussiedler* were not very popular in the left and they were seen as supporters of the right parties. One of the political parties came to the 1999 elections with the motto “Yes – to immigration, No – to double citizenship”, which attracted lots of voters (see also Nuscheler, 2004). It played also an active role in adopting the Citizenship Law in 2000. Article 16 of Germany's Basic Law (giving right to apply for asylum) was also a topic of debate between the Christian Democratic Union and the Social Democratic Party of Germany (Nuscheler, 2004). As a consequence, it was amended and restricted the right to enter Germany to seek asylum. It offered only temporary protection for war refugees coming from former Yugoslavia (Schierup, 2004, p.148).

The increase in the number of the asylum-seekers in the beginning of the 1990s caused a big public debate. Helmut Kohl as a chancellor (Christian Democratic Union) was advocating a common EU approach to border control and asylum policy as well as sharing of the costs of migration costs ("burden-sharing").

According to Hollifield and Joppke, organizations on human rights, churches and the discussions in the society had influence on the political process for improving the legal status of the immigrants. According to Kleger, it is important that the topic on human rights gain on influence in the last years (Nuscheler, 2004, p. 157).

If we go back to Moravcsik's theory, the important actors for national preference formation here are left and right parties, employers, churches and organizations on human rights (see first chapter). On the one hand, in times of unemployment and xenophobic feelings, parties were introducing restrictive measures on migration and on the other hand, actors like churches, organizations on human rights or the independent Süssmuth commission were trying to convince the society that migration is needed.

(3) The fall of the birth rates will create labor market shortages that are already to be seen in sectors for highly skilled and low paid unattractive jobs. Lots of scholars hope that immigration will solve this problem. Menz doubts that migration is the only solution for the demographic challenge to the welfare state. First, he points out that after one generation the birth rates of the migrants are equal to those in the host society. Second, replacing the "missing generation" will take about 20-25 years and in the meantime the states will need more migrants who will encounter political resistance (p.195). According to a UN study, Germany will need 487.000 migrants a year (Grimblatt, 2003 in Menz) in order to maintain a constant population of working age. Therefore, Menz is very sceptical about the incoming immigration as a solution to the problems.

5.2.2 Country of non-immigration?

(4) Germany changed its perceptions for its identity. It declared in its official documents for a long period of time that it is not a country of immigration (Geddes, 2003, 4). The Süßmuth Commission played also a role in the change of this attitude¹⁵. Its report dwelled on the integration problems and proposed solutions for improvements. An important aspect is the recognition that Germany needs immigration. One of the main strategies in this case is the search for qualified migrants (<http://www.migration-info.de/>, see also Menz, 2010). The economic and demographic situation is imposing the need for immigrant labor (Schierup, 2004, p.150). This refers to the dual labor market theory, which claims that migration is caused by the economic situation in the modern economies and governments do not have the ultimate powers to control the flows (see first chapter).

Before this report the **Citizenship Law** entered in force in 2000 which introduced the principle of *ius soli* instead of that one of *ius sanguinis*. This means that foreign citizens can become German citizens if their parents have been settled legally in Germany for at least eight years (Nuscheler, 2004, 156). This shows that Germany slowly began to accept that it is a country of immigration. It was also a

¹⁵ it is an independent commission on integration including scientists and representatives of important social groups in the society, under the auspices of the Ministry of Foreign Affairs

consequence of the Social Democrat-Green coalitions tries to reform naturalization and citizenship conditions (Schierup, 2004, p. 148).

5.2.3 From Foreigners' policy to the Immigration Act

(5) Permanent migration was seen as a threat to Germany's national identity and social cohesion. Before the adoption of the Citizenship and Immigration Act Germany had "foreigners policy" (Ausländerpolitik), which was aiming at temporary integration of migrants and their families. The shift to a multicultural society did not happen all of a sudden (Schierup, 2004, p.145). Trade unions, church groups, migrants associations and the Green party began to look at immigration as permanent and saw solutions of the migrant problems in equal rights for everyone and a possible citizenship to immigrants. In the beginning of the 1990s the federal and *Länder* authorities introduced measures for "temporary integration" in the schools, but at the same time, they prepared the children for an eventual return to their country of origin.

The *Immigration Act (2004, Zuwanderungsgesetz)* introduced measures for immigration of highly skilled workers and entrepreneurs and continued the halt of low-skilled labor from 1973. Foreign graduates of German universities may receive a permission to stay and look for a job. The law established also a new federal office of Immigration and Refugees. Integration courses are introduced for foreign residents in Germany. As an aftermath of the terrorist attacks provision for deportation and surveillance are introduced (Schierup, 2004, p.151).

After accepting that Germany is an immigrant country, lots of debates about assimilation, integration and citizenship arose. But with large numbers of incoming *Aussiedler* and *Übersiedler*, it imposed restrictive measures (Schierup, 2004, p.151).

5.2.4 Germany- citizenship

Until the 1913 law on citizenship each region had its own regulations on citizenship. It remained in force until 1998 and it was ethnically based. At the time of the division West Germany had the ambition to speak on behalf of the whole Germans who defined also the ethnic concept of citizenship. Art 116a of the Basic Law allows access to ethnic Germans from Eastern Europe to its territory. Art.16 of the Basic law is also very liberal and it guarantees the right to political asylum. The citizenship concept of the West German

Federal Republic was not universal and had a specific geographical range (p. 63). Germany lost its colonies in 1918 and it was not expecting returning settlers. Therefore it conceived any labor migration as temporary. The end of the active labor recruitment (*Anwerbestopp*) showed that *Gastarbeiter* did not return to their countries of origin and migration continued mostly in the form of family reunion. The fall of the Berlin Wall and the war at the Balkans in the 1990s caused big migration movements to Germany. On the other hand, East Germany was trying to create national identity through the rejection of fascism and building on the communist ideology. Later it called for constitutional patriotism. Anyway, non-ethnic and political-ideological identity was not very successful (Menz, 2010, p.65).

5.3 Welfare system, labor market and underground economy

In 2001 Germany had 7,3 million foreign residents, which amounted to nearly 9 % of the total population. This group consisted of Turks, naturalized immigrants and ethnic Germans coming from Russia and Eastern Europe (Menz, 2010, p.137). The Citizenship Act of 1999 and the Immigration Act of 2004 trying to manage migration represented the recognition that Germany is a country of immigration. Schierup points out that this process is not completed and issues like immigration, cultural diversity and minorities are highly controversial in the society. At the same time, the “social state” is in crisis (the model of full employment, high wages, short working hours and etc, p.138). The main elements of the welfare system (Sciortino, 2002 in Schierup, 2006, p.139) are compulsory social insurance; the family as the main care-giver and strong labor market regulations. According to him, the male breadwinner model is dominant and women have traditionally the housekeeping role. *The welfare state model is important because it can shape the labor migration policies and the extent of integration for the migrants.* The new economics of labor migration also consider the importance of government policies and their influence on the labor market (see first part). Some countries that have strong welfare states might tend to support restrictive policies in order to preserve privileges for nationals (Bommes / Halfmann, 1998 in Schierup, 2004). He mentions also the existence of underground economy that tries to evade the high costs of the employment model. Based on Offe's arguments (2000), Schierup (2006, p.143) draws the conclusion that long-term unemployment in the conditions of global competition makes difficult the financing of the generous social insurance system. It gets even worse when the state tries to keep a

relatively high level of wages and social benefits, which it cannot finance. Globalization and the decrease in the working age population also exacerbate the situation. Schierup sees the need for reforms, but expects also a large opposition to the growing income inequality and declining welfare (2004, p.144).

After the Second World War reconstruction and success came. The "economic miracle" brought high incomes, long holidays, short working hours and social protection for the most people in Germany. Due to globalisation, change of the welfare system and the settlement of guest workers, the situation changed. In addition to that, Germany did not want to accept the fact that it was a country of immigration. Birth rates and workforce were shrinking. Schierup sees the belated and incomplete reforms as conditions for ethnic and social exclusion (2006, p. 162).

5.4 National preference building – actors

Moravcsik explains in his theory the importance of the national actors for building the policy. Here are some of them in Germany: employers, government, trade unions and NGOs.

Employers' organizations had interest in the guest worker system, but due to the established connection between migration and security and xenophobic attitudes, they did not gain influence (Menz, 2010, p.175). This was also difficult because of the divisions among the Christian-Democrats and the rising unemployment. In the early 1980s BDA (*Bundesvereinigung der Deutschen Arbeitgeberverbände – Confederation of German Employers*) supported the end of the active labor market recruitment, restrictive border controls, repatriation measures and efforts for educating the second generation. Later it adopted position for quotas on legal labor migration under the influence of BDI (*Bundesverband der Deutschen Industrie – Federation of German Industry*).

The German authorities favoured temporary migration in specific sectors like agriculture, building or catering. An example for this trend is the seasonal worker programmes, which are based on bilateral agreements with central and Eastern European countries. In 2001, 278,000 seasonal workers came mainly from Poland as well as from Romania, Croatia and Hungary (Schierup, 2004, p.151). Another possibility is the foreign "contract worker". German companies rely on foreign companies to implement certain construction projects. They negotiate their work conditions with their non-German employers and this could save lots of costs for the German companies.

As a whole, the government supported the short- and long -term labor migration depending on the needs and more stringent procedures, which are to make asylum less attractive (Menz, 2010, p.176). At the same time, it was interested in minimum EU regulation, so that it can have more freedom at the national level (e.g. for establishing quotas).

5.4.1 Lobby groups

According to Menz, all actors can take part in informal lobbying. The influence of unions and employers decreased after a shift of authority in migration policy making from the ministry of labor and social affairs to the interior one (p.178). Although they are represented in two expert committees on immigration, their connections are not formalized. Humanitarian NGOs have even more problems. They have financial and organizational difficulties, as well as ideological differences. They can influence mostly in a soft way: through participation in public and sector hearings, and making publications.

5.4.2 Trade unions

The official position of the Federation of Trade Unions (*DGB – Deutsche Gewerkschaftsbund*) has been favouring non-discrimination and antiracism. It has focused on the integration measures of the resident migrant populations. It supported highly regulated sector-specific labor migration, controlled by annual quotas, as well as long-term migration. According to Menz, although trade unions had a good organizational structure and ideational consensus, they were not as active as the employers (ibid.).

5.5 Measures against irregular immigration

Schneider classifies a few types of measures aiming at prevention and reducing irregular immigration:

- prophylactic measures
- preventing illegal entry into the country at the borders
- detection and control of irregular stay
- termination of irregular stay

Other important aspects of the measures against irregular migration are:

- international cooperation
- influence of the EU measures on the German policy

5.5.1 Prophylactic measures

Information campaigns about the risks of irregular migration are part of these measures. The purpose is to make possible that irregular migrants stay at home. Germany has treaties with EU member states and as well as with third states (e.g. Turkey, Albania, Montenegro) which provide workers for certain sectors and periods (Schneider, 2012, p.41). In addition to that, Germany is having mobility partnerships with Moldova and Georgia which aim at preventing irregular immigration and supporting legal entry and stay, as well as development and cooperation on refugee protection.

German provinces and the state are supporting projects on return and reintegration of migrants in their country of origin (ibid., see also Schneider / Kreienbrink 2010).

Issuance of visas is seen as an important obstacle to irregular migration by Germany and other EU member states (Schneider, 2012, p.42). Institutions responsible for the issuance of visas are diplomatic representations of the Ministry of Foreign Affairs and the provinces */Länder/* (see Parusel, 2010, p. 43). But still control measures are important for preventing the counterfeit of visas.

In order to prevent visa abuse and irregular entry the German Bundestag adopted a law, which creates a visa data system starting from mid-2013. It will contain information about persons who were convicted for crimes relevant to visum process (Schneider, 2012, p. 43).

5.5.2 At the borders

Protection of the borders is aiming at preventing irregular entry into the country as well as smuggling and other criminal activities. The protection of the external borders is of great importance for every member state. According to the adopted Schengen Border Code¹⁶, the member states are responsible for the fight against irregular immigration, human trafficking, prevention of threats to the security, public order and health. In the 1990s Germany invested a lot in border control and increased the personnel of the Border Control Authorities (Dietrich, 1998, p.17).

After December 21, 2007 there are no more border controls between Germany, Poland and the Czech Republic¹⁷. And when Switzerland entered the Schengen zone in 2008

¹⁶ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)

¹⁷ Poland in Schengen zone, <http://en.poland.gov.pl/Poland,inSchengen,zone,7248.html>

there were no more border checks at the German-Swiss border¹⁸. Therefore there are no stationary controls at the land border. The *Bundespolizei* (Federal Police) is allowed to do this only at international airports. This means that refolement is possible in general only at these places (Schneider, 2012, p. 46). The *Bundespolizei* can check at railway stations, trains and sea ports if people are having documents for legal stay in Germany. According to Schneider, the German concept for integrity border management is connected to the ideas of the EU for such management. It consists of pre-entry measures, external border control and police co-operation.

According to the Schengen Border Code, there should be minimum control measures at the external borders of the member states if the documents have been counterfeited or not. These measures are applied to persons moving freely in the EU according to the community law (*acquis communautaire*) (art.7, para.2, Schengen Border Code¹⁹). Documents of third country nationals must be observed in detail (art.7, para.3, Schengen Border Code, *ibid.*) and be checked if they comply with the requirements for entry. People who do not fulfill the requirements for entry are subject to refolement to the country of their usual stay (art.13, Schengen Border Code, *ibid.*). This can happen at sea and air external borders. If the identity of the passenger is not clear or the next flight to the home land is not on the same day, the German Federal Police (*Bundespolizei*) will keep the passenger in detention (see also Legislation summaries²⁰). If the airport has a transit area, they could stay there until it is time for their departure (Schneider, 2012, p.47).

5.5.3 Detection and control of irregular stay

The *Bundespolizei* can search passengers and check their identity without a certain reason or suspicion 30 km inland for prevention of undocumented entry (§ 23 para.1, N3, see also § 44 para.2 in Federal Police Act / *Bundespolizeigesetz*). If the police officers have the reason to think that the person has recently crossed the border, they can do identity checks inland (Schneider, 2012, p.50). Therefore, the *Bundespolizei* can do such checks at transitways, railway stations and airports. This is also the case of cross border motorways and railways. The checks do not happen systematically, but on a random principle. Also a knowledge of the place or experience with irregular migration is required. Random checks

¹⁸ Jorio, Luigi (2009) – “Swiss reflect on Schengen progress one year on”

¹⁹ Regulation (EC) No 562/2006 of the European Parliament and the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)

²⁰ Schengen Border Code – Legislation summaries

can happen also after leaving the plane. The random character of these checks should distinguish them from the normal border control. 5689 unauthorized entries in Germany were detected at German airports and these passengers were coming mainly from Greece, Italy and Spain.

There is a finance commission on illicit employment, which is part of the border administration. Irregular employment is seen as unacceptable because it takes away workplaces and social funds do not receive money from these persons (Schneider, 2012, p.51). In addition to that, all the actors (employer, employee, clients etc.) can get a sanction for their involvement in this situation. In connection to irregular migration the commission is checking permission for work as well as documents for their legal stay. The law on illegal employment is the basis for the work of the commission. Therefore, it is focusing more on migrants and their work relation than on their residence permit status (Schneider, 2012, p.51).

5.5.4 Termination of irregular stay

The EU member states use different ways for termination of migrants' irregular stay. Among the return measures, some countries use regularization measures (see Baldwin-Edwards / Kraler 2009; Kraler 2011 and Riedel 2011). It can happen on rare occasions, that some people who are living in Germany without a residence permit can get the right to stay (Schneider, 2012, p. 55). As a whole, the Ministry of Internal Affairs is focusing on return measures for people, who are staying illegally in Germany. Legalizations are not foreseen as it is the case in Spain and Italy. Still there are possibilities for individuals to get a legal status.

If an immigrant does not possess a residence permit e.g. it has expired or it was cancelled (§§ 50, 51 Residence Act (Aufenthaltsgesetz)) he / she must leave Germany. Priority is given to the voluntary return. If this does not happen, measures for compulsory return come into force. The aliens Department takes care of checking the situation and organization of the deportation.

5.5.4.1 Voluntary return

In 1979 the programme REAG / GARP („Reintegration and Emigration Programme for Asylum-Seekers in Germany“ / „Government Assisted Repatriation Programme“), which is mainly focusing on asylum-seekers, whose application has been rejected, was started.

The programme is providing assistance for their travel and its expenses as well as for their reintegration in the home country. People coming from countries which are important for Germany in a migratory and political aspect have priority (Schneider, 2012, p. 56). The amount of money for starting the reintegration process depends on the home country. The Ministry of Internal Affairs issues every year a list of sending countries and the amount of that kind of contribution from Germany. The programme was reformed and irregular staying immigrants could also get assistance from the programme. They must take a document for their crossing of the border from the Aliens Department (*Ausländerbehörde*). In this case the Aliens Department can decide if it will issue the document or if it will issue an order for deportation.

In addition to the mentioned programme, the provinces (*Bundesländer*) provide also support for return of irregular staying migrants (Schneider / Kreienbrink 2010, p. 66 and p.65; see also Kreienbrink, 2007, p. 93).

5.5.4.2 Deportation

With the message for deportation, the person is granted also a period in which he / she could voluntarily leave the country (§§ 58, 59 Residence Act). Persons who must leave the country can be arrested after a court order (§ 62 Residence Act).

Depending on the case, the involved institutions are varying. They could be the Central Alien Department, the departments of the *Länderpolizei*, the Inner and Justice administration of the *Bundesländer* (in case of detainment) and *Bundespolizei* in case of accompanied deportation. The *Länderpolizei* (State police forces) is not conducting accompanied deportations abroad. The deportation is connected to a ban on return in Germany. This ban could be lifted after a certain period by applying for it (see § 11 Residence Act). A limitation of this period could be refused due to criminal activities against peace, humanity or a war crime.

There are some problems in connection to compulsory deportation. One aspect might be that migrants are not ready to travel away and they do not cooperate with the authorities (Schneider, 2012, p.57). A disease, lack of money or a suitable transport connection might be other reasons for problems in returning to the homeland. On the other hand, communication with diplomatic or consular organs of the sending countries might be difficult, e.g. in connection with clarification of the identity or of the issuance of missing documents (see also Kreienbrink 2007, p. 115.).

In some cases, deportation of groups could be temporarily postponed for six months because of humanitarian reasons or because of political interests of Germany. After this period and after a consultation with the Ministry of Interior the persons concerned might receive a residence permit (§§ 60a para.1, 23 para.1 Residence Act). Still the supreme Länder authority (*Landesbehörde*) can decide to deny a permit to some persons, e.g. because of criminal activities or an affiliation to a certain group.

Postponement of deportation for individuals can happen e.g. because of a ban on deportations to the home land, lack of transport connection, longer times for preparing the travel documents, inability to travel due to a disease. Another case is if the information a person can give is needed in the court. Humanitarian reasons or the public interest might cause the postponement. However, postponement of deportation does not give the right for residence (Schneider, 2012, p.58).

Some other situations for receiving a residence permit for irregular residing persons

According to the Residence Act (*Aufenthaltsgesetz*) some irregular staying persons can get a residence permit because of humanitarian or political reasons or some other one related to international law. They are not part of the *acquis communautaire*.

The Supreme State Authority can decide in accordance with the Residence Act (§ 23 para.1 *Aufenthaltsgesetz*) to issue a residence permit for certain groups of immigrants (religious or ethnical one) due to the above mentioned reasons. This happens after a decision of a commission comprising representatives at the *Bundesländer* und Federal level (Parusel, 2010, p.26). In 2006 the commission decided to give the right to stay to third country nationals who must leave the country, but they are economically and socially integrated (Schneider, 2012, p. 59). This precedes the introduction of a regulation dealing with integrated immigrants (Grandfather Clause / *Altfallregelung*, §§ 104a and 104b *Aufenthaltsgesetz*). It was introduced in accordance with the EU directive in 2007 and was in force until 2011. A condition for receiving a residence permit was eight or six years of legal or tolerated (*geduldet*) stay until 1. July 2007 (deadline) (Schneider, 2012, p. 59). In addition to this, other pre-condition were oral knowledge of German and the absence of criminal activities. On the basis of this regulation the residence permit was issued for two years. A possibility to prolong it was given when he / she was able to earn independently his / her future living.

The minister of internal affairs and the senators of the internal affairs (*Innensenatoren*) at the Bundesländer adopted a regulation on young people in 2010. According to it, teenagers and adolescent people could receive a residence permit if they fulfilled some conditions (e.g. if they have graduated or undergone some training qualification and if they are well integrated). Their parents could also receive a residence permit if they were good integrated and they could secure the living of their family (Schneider, 2012, p. 60; see also Parusel, 2010, p. 36).

5.5.5 International cooperation

An important aspect for the fight against irregular migration are readmission agreements. Germany signed readmission agreements with Denmark, Sweden and Norway in 1954 and 1955. This was long before the EU started signing such agreements with third countries. The first steps were initiated by two recommendations from the EU institutions on lessening differences on national bilateral agreements with third states (Billet, 2010, p. 47). After Yugoslavia was not more existing, Germany concluded readmission agreements with Bosna and Herzegovina, Croatia, Macedonia, Serbia and Montenegro. The readmission agreement with Serbia and Montenegro is based on the agreement with Yugoslavia, but still EU agreements have a priority. Germany has such agreements with Bulgaria, Romania and Albania as well as with the Maghreb states Algeria and Morocco (Schneider, 2012, p. 63). Germany has signed thirty bilateral readmission agreements with other countries.

Police agreements include cooperation between institutions of the neighbouring states so that criminals, who try to escape, could be chased across the border and in the neighbouring state. Policemen who are after the criminal can just detain him / her at the territory of the neighbouring country and give him / her to the police authorities of the country they are at. Policemen who are at the territory of the neighbouring country can use weapons only in cases of self-defense. Each treaty defines how many kilometres in the neighbouring country the policemen are allowed to chase the criminal.

Cross border cooperation is playing an important role and in 2005 Belgium, Germany, Spain, France, the Netherlands and Austria signed the Prüm Treaty. One of its goals is cross boarder cooperation which should support the fight against irregular immigration. It focuses on the automatical exchange of data between the signatory states (e.g. DNA data, fingerprints, data about motor vehicles). After a German initiative the main points of the

Prüm Treaty became part of the EU acquis with a Council Decision (Schneider, 2012, p. 65).

Germany and FRONTEX

At the European level Germany is part of the FRONTEX agency. The agency is responsible for the organisation and coordination of missions at the external Schengen Borders. There are joint operations which are organized for the fight against irregular migration²¹. Another possibility are Rapid Border Intervention Teams (RABIT). They are built up when a lot of third state nationals want to enter a member state at its external borders. The first case was Greece in 2010 (Schneider, 2012, p. 67). The *Bundespolizei* took part in this team for handling asylum seekers flows at the greek-turkish border. Policemen of the *Bundespolizei* are regularly taking part in seminar, projects and workshops organized by FRONTEX.

The organization is also supporting readmission operations²². It co-finances them as well as coordinates national measures. Germany is taking part in this activities and in 2010 it organized four flights to Georgia and Kosovo (Schneider, 2012, p. 69). After that there were 16 flights. As a whole there were 226 persons who were sent back to their countries. In addition to that, FRONTEX is increasing its co-financing part and this leads to saving for the German part.

5.6 Europeanization

According to Menz, the Schengen Treaty was a result of the Franco-German cooperation. Being the Chancellor, Kohl was aiming at developing a common EU regulation mechanism of asylum and migration (Menz, 2010, p.185). This was not only due to pro-European attitude, but also because of the big number of asylum seekers and refugees in Germany. German activities for "burden sharing" encountered opposition from European Governments that wanted to preserve their state monopoly in these areas. The German *Länder* also doubted the right of the federal government to represent them at negotiations.

As the bottom-up Europeanization did not prove to be a fruitful strategy, the Kohl Government changed the approach. The decision was to introduce restrictive domestic measures on the asylum topic. After the Dublin Convention, the German lawmakers

²¹ FRONTEX, Mission and Tasks, <http://www.frontex.europa.eu/about/mission-and-tasks>

²² Return, <http://www.frontex.europa.eu/operations/return>

adopted the concepts of "safe third countries"²³ and "safe country of origin"²⁴. They were criticized for being contradicting or undermining the right on political asylum declared in the constitution. Under the argument that the Basic Law must be amended in order to harmonize it with the Schengen and Dublin rules, the Kohl Government wanted to persuade the society and break the opposition. German activities lead also to the creation of the third pillar of justice and home affairs in the Maastricht Treaty. Although the German government (Red-Green) was supporting European initiatives in refugee and asylum policy, that was not the case for (labor) migration (Menz, 2010, p.187). Austrian and Germany opposed together the Commission's proposal on labor migration by TCNs as they wanted to preserve the national policy. The negotiations ended unsuccessfully in 2002. Both countries claimed that the Commission had no authority to regulate the labor market access.

The trend is towards restrictive external border control measures and avoiding undesired forms of migration such as asylum seekers and refugees. Non-state actors try to influence policies and to form preferences, but this depends on their internal organization and cohesion. Trade unions put an emphasis on the integration of the resident migrants and business lobbies are interested in the qualities of the incoming migrants. The migration issues have also turned into question of political debate (Menz, 2010, p.190).

Germany tries to share the immigration burden with the other member states and to find a solution to the refugee crisis from the end of the 1990s through cooperation and transferring competencies to the European level. On the other hand, it tries to create a buffer zone of Central and Eastern European countries, which could receive a part of the immigration flow. In Spain and Italy, the adoption of the *acquis* led to the focus on issues such as external borders control and less on external controls. The second one is connected to the informal sector and its benefits to employers and immigrants (Geddes, 2003, 152).

²³ An application for asylum in a European country could be rejected because the applicant „already enjoyed, could or should have requested and, if qualified, would actually be granted asylum in another country”, Safe Third Countries, Myths and realities, p.8, see <http://www.unhcr.org/refworld/pdfid/403b5cbf4.pdf>

²⁴ „A non-EU country designated as a safe country of origin may be considered as such for a given applicant for asylum only if he/she has not put forward serious reasons suggesting that it is not safe because of his/her personal situation, in view of the conditions required for claiming refugee status in accordance with Directive 2004/83/EC “ in Council Directive 2005/85/EC – Minimum standards for procedures for granting and withdrawing refugee status, http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33140_en.htm

6 Italy

6.1 Immigration to Italy

6.1.1 History of migration

Until 1970 Italy was a country of emigration (Menz, 2010, p.68). Italians were heading mainly to Northern Europe (Germany, France, Benelux and Switzerland) after the Second World War. Most of them were coming from the South, which was considered positively by the political elites. This was expected to solve various political and social problems connected to the large unemployment rates in Southern Italy. The expectations were that migrants' remittances and investments in the homeland would contribute to the economy (ibid., p.163).

In the 1980s the foreign population rose to 2,5 million people, which was about 4,6% of the total resident population in Italy. Immigrants were coming from Asia, Africa, Latin America and Europe. They were mainly occupied as domestic workers, in building, in agriculture and in the private service sector (Schierup, 2006, p.164).

With the increase of immigration and the following discussions at political level Italy began to pay more attention to border control and labor market access (Menz, 2010, p.233). The far right gained influence, as migrants were perceived as security threats. The legacy of the weak migration policy still has influence on shaping the current migration policy.

In the 1980s most of the migrant population was coming from non-OECD countries and was in most cases undocumented (*clandestini*). Becoming a member of the Schengen zone and the EU was followed by introduction of restrictive immigration control and a populist discourse in Italy, which made the social inclusion of the migrants more difficult. In addition to that, the dual labor market, familistic welfare system and "political and administrative system imbued with clientilistic networks of power" contributed to the social exclusion of the migrants (Schierup, 2006, p. 164). Being in such situation of marginality migrants are called extra-communitarians (*extracomunitari*). The term also describes "their persistent status of non-belonging to the Italian nation" and is associated with immigrants coming from poorer countries.

6.1.2 Laws and problems of migration policy

The Law 943 of 1986 points out the three main priorities in the Italian migration policy: implementation of restrictive border control, integration of existing migrant communities and management of labor migration by the creation of migration quotas based on the labor market needs and the country of origin (Menz, 2010, p. 67). Italy used the latter as “carrot and stick” depending on their participation in joint migration control, border enforcement and deportation. This law was amended by the 1990 *legge martelli*, the 1995 decree no. 489, the 1998 Law on the regulation of immigration and the Living Conditions of Foreigners (EMN, 2005, Irregular Migration in Italy, p. 12). Although these acts are perceived as liberal, the recent policy is restrictive with legalization campaigns for irregular migrants (p. 68). The 1998 Consolidation Act and the Bossi-Fini Law (20.July, 2002) continued the restrictive trend. Few asylum seekers are recognized and the Italian authorities have often made attempts to make them move across the Northern border. The South was not prepared to deal with the incoming refugees.

Problems of immigration policy

The immigration laws between 1986 and 2005 are in most cases ambiguous and open for interpretation at the local level. The first Italian law on immigration in 1986 was putting an accent on the equal treatment of foreign and Italian workers and right to family reunion. At the same time, it adopted sanctions against employers hiring irregular migrants. Restrictive policy on entry was adopted later producing obstacles to legal immigration. At the same time, the labor market demanded cheap workforce.. The stricter migration control was supposed to give equal rights for migrant and Italian workers. But on the contrary, it encouraged irregular migration (Schierup, 2006, p.189). Migrants were excluded from social rights and the bureaucracy implemented the policy in a confusing way (Mingione, Qassoli, 2004 in Schierup, 2006). The police and local authorities created conditions for reproduction of informal practices. Practices are very often acting against the law ignoring unwanted provisions and creating new ones (Zincone, 2009, p.45).

The **1990 Martelli Law** (see also EMN, 2005, Irregular Migration in Italy, p. 12) set the main points for the Italian immigration policy: a stricter border control, integration of the existing migrant communities and regulated labor migration. Menz criticises that there is an implementation gap at the local level and that legalization programmes were accompanied the legislative measures (Menz, 2010, p.246; see also Zincone, 1998, p.53).

The 1995 Law provided three types of regularizations: for subordinate work, for family reunification and for registration on employment rolls (EMN, 2005, *Irregular Migration in Italy*, p.12).

The **Turco-Napolitano Law of 1998** aimed at integration and social inclusion of the immigrants. It came at the time when employers began to prefer regular instead of clandestine migration and it addressed the "long-term incorporation of migrants in the Italian society and welfare system" (Schierup, 2006, p.189). The law introduced a residence card, which guaranteed access to the welfare system. Among its provisions were equal treatment of migrant and Italian workers and access to social services. It partly separated the measures for work and residence permit and in this way it was easier for immigrants to legalize their status in Italy. The law was adopted after pressure from the EU for restricting irregular immigration. It adopted measures for expelling irregular migrants and for conclusion of readmission agreements with the sending countries. The author is critical of the law and its implementation. Restrictive interpretations allowed only a small number of migrants to obtain a permanent residence card (see also Zincone, 1998, p. 58). The quota system for labor migrants was administered on temporary basis and this led to an increase in the number of irregular migrants (*Irregular Migration in Italy*, 2005, p.13). They were also used as a carrot-and-stick policy toward sending non-EU countries in connection to control measures (Menz, 2010, p.247). Albania, Tunisia and Romania were rewarded for arresting trans-Mediterranean immigrants, by allowing annual quotas of 6.000 labor migrants each (in 2000). The annual quota for non-EU labor migrants for the same year was set at 45,000 including Egypt, Moldova, Nigeria and Sri Lanka (see also EMN, 2012, *Practical responses to irregular migration: the Italian case*, p. 64).

The Bossi-Fini Law (2002) went further in the restrictive direction. It connected obtaining a residence permit with the possession of a work permit, which criminalized undocumented migrants (Schierup, 2006, p.191). It gave control and expulsion power to the police and strengthened local administrations. However, after the law was adopted, the largest legalization programme took place, which regularized about 650.000 migrants. All mainstream parties opposed it and few NGOs supported it (Menz, 2010, p.248; see also EMN, 2012, *Practical responses to irregular migration: the Italian case*, p.64).

Regularizations do not constitute a real immigration policy, but are an emergency intervention (EMN, 2005, Irregular Migration in Italy, p.14).

Citizenship

Italian citizenship concept is based on *ius soli* and *ius sanguinis*. Constant residents who were born in Italy can choose Italian citizenship on their 18th birthday. Ethnic Italians receive it automatically. People with Italian ancestors can apply for citizenship, but they must have been residents prior to the 18th birthday. There are few traditions of assimilation or integration of foreign residents, and due to the regional and historical difference, it will be difficult in the future to define Italian identity and citizenship.

6.1.3 General trends – irregular immigrants

Schierup looks at the general trends of immigration in Italy based on statistics from Calavita (2004), Blangiardo (2004), Garosi (2004), and Zanfrini (2004). According to these, older immigrants were coming from Morocco and the Philippines and newer ones mainly from Eastern European countries like Romania, Ukraine and Moldavia. They represented also the largest group of undocumented migrants, which became clear with the legalization from 2003 (2006, p.167). In most cases, new migrants enter the country in an irregular way and then become part of the underground economy. The older migrants are often legal residents and have a regular job. In most cases, there is an equal gender distribution with the exception of services such as housekeeping and taking care of the young and the elderly, in which women are more heavily represented. Most work permits are given to workers and only a small part of it to asylum-seekers, which according to Schierup shows the underdeveloped refugee and asylum policy. Another trend is that immigrants in the North are more often legalized in comparison to the South, where there is a larger number of undocumented migrants (2006, p.168).

6.1.4 Statistics about irregular immigrants in Italy

Contrary to the famous image of irregular immigrants trying to enter Italy by boat, according to statistics most of the undocumented immigrants are overstayers (about 60-75%). Another significant group is formed by people avoiding controls at the Northern borders, international airports and ports (Fasani, 2009, p. 14). On one hand, Italy attracts immigrants with the increase in labor demand and the existing shadow economy. On the other hand, it is a transit country for immigrants trying to reach countries such as

Germany, Great Britain and France (ibid.). Some of the rejected asylum seekers start an unauthorized residence in Italy (Fasani, La Dolce Vita, p.10).

The specific geographic position (proximity to wealthy and unstable regions, peninsular conformation in the Mediterranean Sea) of Italy plays a major role for migration flows. One of the main entry channels is the Italian-Slovenian border, which is mainly crossed by Eastern Europeans, as well as by migrants coming from Central Asia, Middle East, Indian Subcontinent and Eastern Asia. The Italian-French border is mainly crossed by Africans coming from the Strait of Gibraltar through Spain and France. Southern regions are very often reached by boats. They arrive from the coast of former Yugoslavia and Albania and Northern Africa. In the recent years the number of undocumented immigrants coming from the Balkans decreased due to the stabilization of the region. On the other hand, the number of irregular crossings from Africa and Libya increased because of the instability there (Fasani, 2009, p. 15; see also Fasani, 2010, p. 4-8).

The situation of undocumented immigrants in 2005 is the following:

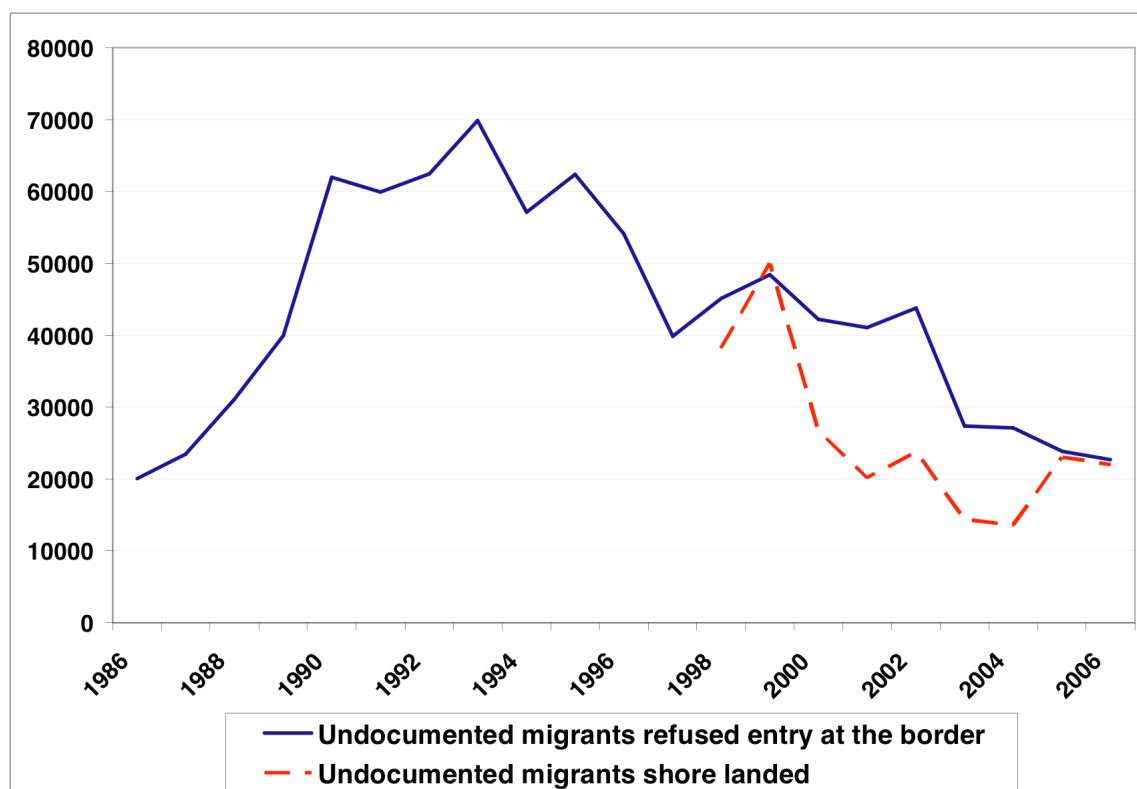
“In 2005 more than half of the undocumented migrants were citizens of some Eastern European country (in particular, Albania, Romania, Ukraine and Poland), almost one sixth was originally from Northern-Africa (especially from Morocco and Tunisia), while Asia and Oceania, Sub-Saharan Africa and Latin America each represented around one tenth of the stock.”²⁵

With the EU enlargement EU citizens cannot be considered as irregularly residing, but they might not receive the right to work in the “old” member states. Each country can impose temporary limitations which are called transition periods (Fasani, 2009, p.50).

According to Fasani, it is difficult to make estimations about the exact numbers of irregular immigrants, but looking at official data about undocumented immigrants who shore landed or those who were refused to enter could be useful (Fasani, 2010, p. 8).

²⁵ Fasani, 2009, p.15

Figure 2 – Undocumented immigrants shore landed and refused entry at the border, 1986-2006



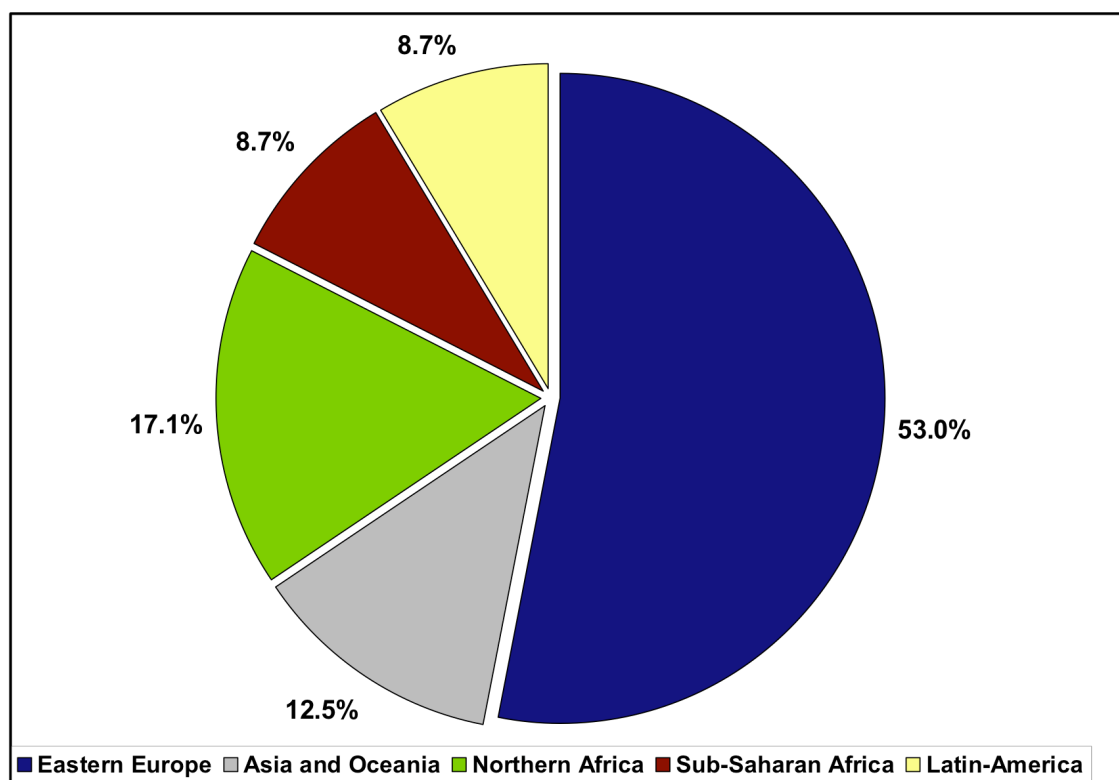
Source: Fasani based on data from the Italian Ministry Of Internal Affairs

According to him, the change in the values is due to the enforcement and not due to change in the flows:

“Border rejections were fluctuating between 40 and 70 thousand per year in the ‘90s and have gradually decreased to 20-30 thousand in the last few years. Similarly, recorded shore landing dropped from 40-50 thousand per year in the late ‘90s to 15-20 thousand in more recent years.” (Fasani, 2009, p.9)

The figure below shows that most of the undocumented migrants are coming from Eastern Europe (53%). 17,1% are coming from North Africa, which is followed with 12,5% from Asia and Oceania and 8,7% from Latin America.

Figure 3 – Undocumented migrants by area of origin, 1st July 2005



Source: (Blangiardo and Tanturri 2006)

in Fasani, 2009, p. 51

Information about amnesties and quotas can also provide information about the undocumented migrants. In 1990 12,7% of the immigrants were coming from Europe. Their number increased in the 1990s and reached 59.2% of legalized immigrants. Albanian citizens were the main group of irregular residence between 1995 and 1998. Later Romanian and Ukrainians became the dominating groups with respectively 20.9% and 15.7% of the legalized population. The number of African residents decreased: in 1990 it was 58,4% of the total legalizations and in 2002 it was 16,8%. In comparison to these numbers, irregular presence of Asian and South American immigrants appears more stable: in 1990, 21,6% of the legalizations were for Asian citizens, which number declined in 2002 (13,6%). The percent of Latin Americans slightly increased in the same period: from 7,1% to 10,4%.

Table 5 – Legalized migrants: gender and nationality. Amnesties: 1990, 1995, 1998, 2002

Geographical area and nationality	Law 39/90			Law 489/95			Law 1998			Law 189/02 e 222/02		
	MF	% F	%	MF	% F	%	MF	% F	%	MF	% F	%
Total legalized	217,626	26.0		244,492	31.0		217,124	28.0		646,829	46.2	
EUROPE	27,699	41.5	12.7	63,128	31.9	25.8	81,672	29.8	37.6	383,107	56.9	59.2
Eastern Europe	22,650	35.4	10.4	61,673	31.2	25.2	81,024	29.7	37.3	382,992	56.9	59.2
of which: - Albania	2,471	11.7	1.1	29,724	18.4	12.2	38,996	16.9	18.0	47,763	19.3	7.4
- Moldova	-	-	-	-	-	-	950	69.2	0.4	29,471	71.7	4.6
- Poland	5,366	51.8	2.5	7,926	66.8	3.2	5,077	72.4	2.3	30,021	78.0	4.6
- Romania	760	56.2	0.3	11,099	28.8	4.5	24,098	33.4	11.1	134,909	45.2	20.9
- Ukraine	-	-	-	295	79.0	0.1	2,050	79.0	0.9	101,651	85.3	15.7
AFRICA	127,027	15.2	58.4	96,926	17.8	39.6	72,012	17.4	33.2	108,540	14.3	16.8
of which: - Morocco	48,670	8.9	22.4	34,258	10.2	14.0	23,850	11.3	11.0	48,174	13.5	7.4
- Senegal	15,966	2.9	7.3	9,889	2.6	4.0	10,727	5.3	4.9	12,372	9.3	1.9
- Tunisia	26,318	7.0	12.1	10,362	9.6	4.2	5,565	6.1	2.6	8,843	4.6	1.4
ASIA	46,973	33.2	21.6	61,349	36.4	25.1	47,768	27.7	22.0	87,949	25.3	13.6
of which: - Bangladesh	3,861	1.0	1.8	6,162	0.9	2.5	6,689	0.7	3.1	10,687	0.7	1.7
- China	8,580	37.3	3.9	14,445	41.4	5.9	16,787	39.1	7.7	33,950	37.8	5.2
- Philippines	13,684	62.3	6.3	21,406	62.7	8.8	6,696	64.7	3.1	9,821	60.1	1.5
- India	2,819	11.8	1.3	5,623	3.6	2.3	4,697	3.8	2.2	13,399	2.9	2.1
- Pakistan	4,510	2.1	2.1	4,499	1.4	1.8	6,592	1.1	3.0	9,649	0.7	1.5
- Sri Lanka	5,258	22.6	2.4	6,993	26.2	2.9	4,090	27.6	1.9	7,030	20.0	1.1
AMERICA	15,501	64.2	7.1	23,021	69.5	9.4	15,597	68.5	7.2	67,143	64.6	10.4
- Ecuador	344	70.3	0.2	2,066	72.1	0.8	5,178	70.3	2.4	34,292	64.7	5.3
- Peru	2,057	60.8	0.9	12,753	69.2	5.2	4,960	67.5	2.3	16,213	65.5	2.5
% over documented migrants	120.9		100	45.9		100	24.9		100	47.8		100

Source: Istat and Italian Home Office

in Fasani, 2009, p. 94

According to statistics of the Italian Ministry of Internal Affairs, the “overstayers” account for 70% of the undocumented migrants in Italy in 2005. These are people who entered Italy with a valid visa and did not leave after it expired. The next table shows that 51-75% of the undocumented migrants in the period 2000-2006 were “overstayers”. The rest managed to avoid border controls (15-34%) or to shore land (4-17%) in the Southern parts of the country without being arrested. According to the authors, a higher level of border control would prevent entries of undocumented migrants, but it would not prevent migrants from overstaying their visas.

Table 6 – Undocumented migrants residing in Italy, by entry channel (percentage). Years 2000-2006

Type of entry	2000	2001	2002	2003	2004	2005	2006
Overstayers	59	61	51	75	67	60	64
Migrants that illegally crossed the border	24	27	34	15	29	26	23
Migrants that shore landed	17	12	15	10	4	14	13
Total	100	100	100	100	100	100	100

Source: Italian Home Office (aa.vv. 2007) in Fasani, 2009, p.111

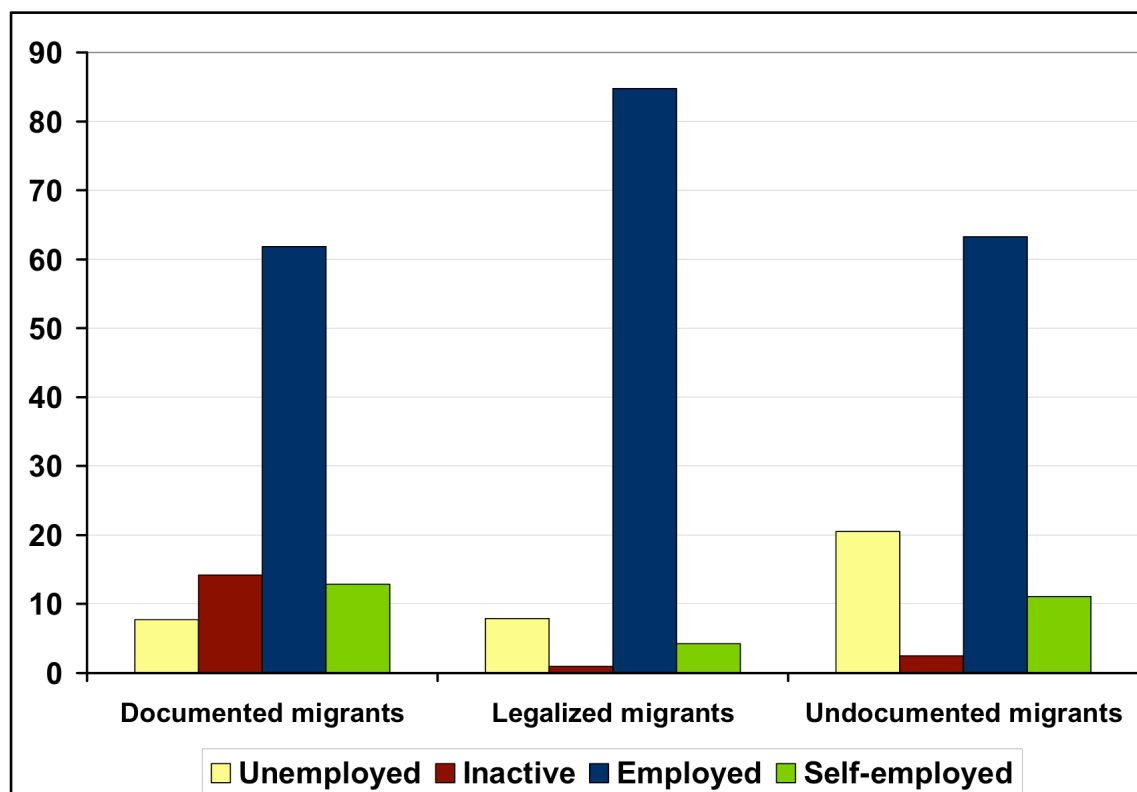
Labor market statistics

A national ISMU survey from 2005 looks at the employment status, occupation and monthly wage of migrants. There are three types groups of migrants, which are observed in the survey: documented migrants (who were already legal before the 2002 amnesty),

legalized migrants (in 2002) and undocumented migrants.

According to the authors, these statistics help understand the the movement from irregularity to regularity and integration in the Italian society (Fasani, 2009, p. 54).

Figure 4 – ISMU data: labor market status of immigrants in Italy, by legal status, 2005



in Fasani, 2009, p. 55

The number of unemployed individuals varies in the different categories. It is about 8 percent among the legalized and documented migrants and reaches 20 percent for the unauthorized migrants. The most inactive migrants (students or individuals looking after family / home) are among the documented migrants (14 percent). Their proportion is very small in the group of undocumented (2.5 percent) and legalized migrants (1 percent). This is due to the higher percentage of students (4,1 percentage). In addition to that, a considerable part of the female documented migrants have their family or household as their main occupation (Fasani, 2009, p. 54).

6.1.4.1 Difficulties for making statistics in Italy

Statistics on irregular migrants population are very important for the political debates as well as for judgement of the implementation policies (Fasani, 2009, p.25). But the process of drafting official statistics in Italy was slowed down because politicians did not want to recognize that migrants were to be an important part of the country's future and the perception that migrants are just temporarily in the country (ibid.). There are some secondary sources for drawing the picture of irregular migrants:

- through numbers of regularized persons
- “the work monitoring activities carried out by the INPS (National Social Security Institute), INAIL (National Disability Insurance Institute) and by the Provincial and Regional Offices of the Ministry of Labor to counteract illegal labor involving numerous irregular foreigners;
- the activities of the Nucleo Ispettivo del Comando dei Carabinieri (Inspection Unit of the Italian Military Police) at the Ministry of Labor and Social Affairs, which also controls the workplace;
- Ministry of the Interior data regarding expulsions, rejections and repatriations;
- ISTAT (National Statistical Institute) data (EMN, 2005, Irregular migration in Italy, p.10)

The first report on immigrants in Italy was published in 2007 from the Home office and the Ministry of Labor. Due to the reluctance of the government lots of private research institutes played a central role in producing statistical information, e.g. Fondazione ISMU, Istituto Cattaneo and Emilio Reyneri from University of Milan (Fasani, 2009, p.26).

But still the Italian Ministry of Internal Affairs has made some statistics on the undocumented migrants in the country (ibid., p. 98).

Table 7 – Undocumented migrants identified by Italian police forces within the italian territory, 1997-2006

Year	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Total	57,509	61,720	64,444	88,750	92,561	105,988	77,583	77,517	96,045	101,704
% change with respect to previous year	44.7	7.3	4.4	37.7	4.3	14.5	-26.8	-0.1	23.9	5.9

Source: Italian Ministry of Internal Affairs (aa.vv. 2007)

The number of documented migrants increased with more than two thousands between 2003 and 2007. The percentage of undocumented migrants living in Italy among the total foreign born population was about 16 percent in 2005, 18 percent in 2006, and 9 percent

in 2007.

Table 8 – ISMU estimates of documented and undocumented migrants living in Italy (thousands), 2003-2007

	1.1.2003	1.1.2004	1.1.2005	1.1.2006	1.1.2007
Total documented migrants	1800	2570	2740	3012	3633
of which:					
residents	1549	1990	2402	2671	2939
non-resident	251	580	338	341	694
Total undocumented	-	-	541	650	349
% of undocumented			16.1	17.7	8.8
Total presence	-	-	3358	3662	3982

Source: (Blangiardo 2006), (Blangiardo 2007) (Blangiardo 2008)

in Fasani, 2009, p.93

There are also regional differences in the migrant population. About 75 percent of the undocumented migrants are settled in Northern and Central Italy. The table shows that, among migrants in the South, the percentage of irregular migrants to the South is higher (26,9 percent) than in Northern and Central Italy (Fasani, 2009, p. 33).

Table 9 – ISMU estimates of documented and undocumented migrants living in Italy, area of residence, 1st July 2005

Area	Total migrants	Documented migrants		Undocumented migrants	% of Undocumented migrants
		Residents	Non-residents		
		Thousands			
Northern & Central Italy	2863	2188	267	408	14.3
Southern Italy	495	311	51	133	26.9
Italy	3358	2499	318	541	16.1
		Percentage			
Northern & Central Italy	85.3	87.6	84	75.4	
Southern Italy	14.7	12.4	16	24.6	
Italy	100	100	100	100	

Source: (Blangiardo and Tanturri 2006)

in Fasani, 2009, p. 93

6.1.5 Fears

Between 1900 and 2000 Italy had more than 30 million emigrants. Now Italy is an immigration country for many people (Santel / Bade p.105). This entails lots of changes in political, economical and cultural aspect. According to Santel, racism also takes rises. In Italy it is mainly focused on the Albanian minority, which Italians often connect with criminality, drug trade and prostitution. Fears about losing the national identity also rise.

Giacomo Biffi (the cardinal of Bologna) even proposed that Italy should accept only catholic immigrants in order to preserve its national and cultural identity (Santel in Bade, 2001, p. 106). Islam, the religion that immigrants bring with them, is a point for hot political debates. The public debates focus not at topics like integration and naturalization, but mostly on immigration control, residence of irregular immigrants and regulation of the labor market.

6.2 Italian Economy

6.2.1 Overview

Menz gives an overview of the Italian economy (2010, p.237):

- lots of small firms, product competition based on price and not on quality
- strong employment protection in large firms, tendency to dualism in employer relations in smaller firms
- "moderate levels of social protection with a high concentration on pension provision and low expenditures on education"
- Short-term precarious contracts

He also points out the **regional differences** in Italy. The North is more wealthy, it has almost full employment, iron, steel and automobile production, foot wear and textiles. The South is much poorer, as well as the islands of Sardinia and Sicily. They are economically active in agriculture, fishing and tourism (Confindustria, in Menz, p.238; see also Reyneri, 2003, p.122). Northern employers are more active to labor recruitment in contrast to the Southern employers.

Micro-companies account for 50% of all companies in Italy. This is a result of the attempts to avoid taxation and labor law that refers to certain employment levels. According to Chaloff (2004, p. 6) immigrants are to be seen mostly in gastronomy, tourism, health care, transportation, food processing, textile and furniture industries and agriculture (in Menz, 2010, p.238). Migrants are generally concentrated in the North and centre and have a diverse origin. Their number is lower in the South and on the islands, where they can mostly find irregular employment in the primary sector (ibid.).

The employers' organizations (*Confartigianano*, *Confcommercio* and *Confesercenti*) are lobbying in favour of labor migrants. Their main interests are: more comprehensive approach on immigration regulation, improved integration of resident migration and

active management of labor migration due to economic and demographic reasons (Menz, 2010, p.241).

6.2.2 Regional differences and informal sector

Schierup points out that it is very difficult to talk about Italy as a whole because there are differences between the regions in economic, political and cultural aspects. On the other hand, it is important to keep in mind that formal legislation differs from its *de facto* implementation and interpretation by the political-administrative system defined by clientilistic power relations (Schierup, 2006, p.165).

Informal sector poses challenges

The existence of the informal sector poses lots of challenges in a long-term perspective, e.g. to the financing of the welfare system and the pension system. At the same time, management of immigration is connected to conflicting interests. The EU wants to restrict irregular immigration, but the informal sector welcomes the cheap migrants labor. Inspections from authorities are complex and insufficient (Irregular Migration in Italy, 2005, p. 20). Reyneri points out that underground economy did not start with the immigration flows but already existed (2003, p.132). Migrants are seen as the main cause for the problems in the Italian society and they are the scapegoat for populist movements. Berlusconi used the immigration issue in his re-election campaign. On the other hand, NGOs pay attention to the humanitarian side of the issue and work a lot with immigrants in Italy (Schierup, 2006, p.194).

6.3 Welfare system and labor market

According to Schierup, Italy has a familistic welfare system and a large number of family and small firms. The family is an important element of the welfare system involving relations of interdependence, responsibility and labor (Saraceno, 1994 in Schierup, 2006, 168). Women in the family have the function of the main carers of the young and the elderly. Depending on the local practice the caretaking role may be extended to sisters, brothers etc. The male breadwinners are responsible for their "dependants" according to the labor law. The retirement benefits are work-related and there is no public income support for the young with no work experience. Therefore, they rely on their family.

The labor market is male dominated and it privileges middle-aged, less educated men in larger firms who are heads of households (Reyneri, 1999 in Schierup; see also Reyneri,

2003, p.121). Women and educated young people are often unemployed and depend on their family for a long time. According to Fasani (2010, p. 4) the welfare state has a role for the flow of immigrants not because of its generosity, but because of the demand for affordable household workers so that shortcomings in the Italian welfare system are compensated. On the other hand, undocumented migrants are the group that is most excluded from the welfare system. They are “entitled only to emergency medical care and to a limited extent of education for their children” (Sciortino, 2004, p. 124).

6.3.1 Gender and migrant domestic workers

Job opportunities for native Italian women have been improving. A full-time job for women in administration, education and science was facilitated by the universal access to education (Schierup, 2006, p.171). Nevertheless, the welfare regime remained static as well as the traditional role of women as mothers in the family. This defined the need for their substitutes – migrant domestic workers, mainly women. They can take care of elderly relatives, children and / or the household and "live-in" (to live with the family). Domestic workers used to be employed in the urban middle- or upper class families in Italy and are thus a status symbol (Reyneri, 2003, p.123). Nowadays, this is a common strategy for the middle-class families. Until the 1970s native women were available for this sector, but they found more opportunities for work in the industrial or service sector and insisted on hourly pay instead of "living in". Therefore, migrant women were preferred for this job. At the same time, migrant women have a weak legal and social position, which makes their services cheaper and often leads to irregular employment. This may provide more possibilities for exploitation and employer control (Schierup, 2006, p.173).

6.3.2 Demographics

Job opportunities for women outside their home have increased, but still they had their responsibilities at home. In this situation some women chose to work instead of getting married and / or having children. As a consequence, the birth rates are decreasing. Calavita predicts (2004 in Schierup, 2006) that the lack of working population will define the "need for large-scale immigrant labor" in certain sectors and occupations (p.174). It is estimated that the labor market requires about 2,2 million immigrants a year for the next thirty years. Still youth unemployment is a big problem, especially for the South. Therefore, young unemployed native Italians rely on the family. They are not encouraged

to take low-status jobs, and therefore only immigrants take them (see also Reyneri, 2003, p.121, p. 128). Immigrants have also replaced also Italians in the underground economy.

6.4 Irregular migrants on the labor market

6.4.1 Pull factors

By joining the Schengen area Italy harmonized its visa and asylum law with the other EU member states. Immigration to Europe became even more difficult, which made the immigrants look for alternative illegal ways for entering the "Fortress Europe" (Santel / Bade, 2001, p.110).

Santel pays attention to the pull-factors that are very important for immigration to Europe. The fast economic development led to a deficit in labor force and at the same time, a high level of unemployment – around 12% in Italy (20% in Southern Italy). This was due to the fact that many Italians were not willing to take less paid, physical jobs. Immigrants from the "third world" were filling these labor gaps. In contrast to the immigrants in the European countries in the 1950s and 1970s, the immigrants are not employed in the industry sector, but in the agriculture or service sector. About one third of the cleaning workers are migrants. Further possibilities for work are enhanced by the informal sector and shadow economy in restaurants, retail trade and fishing.

6.4.2 Informal sector and irregular migrants

The dual economy in Italy is, on one hand, characterized by large industrial enterprises, e.g. steel production and shipbuilding, mainly in the North. State employment in the administration and service institutions provides also high social status and favourable retirement conditions (Schierup, 2006, p.176). On the other hand, there is a wide network of small firms and workshops, which have more traditional activities in the South and more technological in the North.

The labor market of the formal sector was one of the most regulated in Europe (e.g. for hiring practices and job security, in Calavita 2004, Schierup, 2006). Employees in state administrations and industrial enterprises have high wages and privileged pension conditions. At the same time, the informal sector is very large and employed a quarter of the total labor force in the late 1990s (see also Reyneri, 2003, p.131). Small and family firms often rely on irregular labor force, avoiding in this way the regulations of the formal sector. Reyneri points out that the solution to unauthorized migration is a strict policy

toward the domestic market. He uses the latin proverb “Cura te ipsum” (Heal yourselves), which refers to first solving the problems inside the country and then looking at reasons causing irregular immigration outside the country (2003, p.139).

The **informal sector** provided supplementary income for some households (work in restaurants, workshops etc.). It was characterized through rural-urban and interregional migration. With the restructuring of the Italian economy in the 1970s the participation of irregular migrants in the informal sector increased (Schierup, 2006, p.178).

With the relocation of traditional industries (e.g. metal and textile), the Italian economy experienced lots of difficulties. Small and family firms contributed to the recovery of the economy and to the rise of the gross national product. But the success was also due to tax evasions, informal recruitment and employment practices (Schierup, 2006, p.179).

6.4.3 Regional differences in migrant occupation

The occupation of immigrants varies across regions, wages and sectors. Particular migrant groups are heavily represented in certain sectors e.g. Filipina and South African women in domestic work and North African men in building and construction (ibid., p.180). Irregular migrants often work in the agrarian sector in poor conditions. At the same time, some immigrants may obtain formal contracts in this sector in order to get a residence permit. After that, they may take a better-paid job in the industry or migrate to the North. There are less job opportunities in the South, but there is also less police control and less bureaucratic involvement compared with the North (p.181). In the informal sector immigrants can easier reconstruct their (ethnic) social networks. In the North the informal economy is not so dominant and there is more bureaucratic control (p.182). In spite of this, there is a high demand on migrant labor in industry and service.

In the 1980s and the 1990s migrant workers were extensively recruited in the informal sector. At that time, there was high unemployment in the South and also in the working-class in the North. Being in the informal sector without regular permit and work conditions migrants were always in a situation of insecurity. As they often work for sub-minimal wage and employer do not pay for social security, migrants represent a cheap and flexible labor force (p. 183). According to Reyneri (1998 in Schierup, p.183; see also Reyneri, 2003, p.122) the underground economy in the receiving state is causing the irregular migration. In the media, poverty and underdevelopment in the sending countries are mainly represented as the dominant reasons for irregular migration. The informality in

the labor market that offers work for irregular migrants is often overlooked in the public discourse.

Reyneri (2001 in Schierup, 2006, p. 184) observes that the proportion of irregular migrants working on irregular basis decreased. It was due also to the regularization measures in the beginning of the millennium. Still irregularity varies across sectors. It is still dominant in agriculture and building. There are more migrants which are regularly hired in domestic work and manufacturing (Zanfrini, 2004 in Schierup, 2006, p. 184). The attitude of employers in medium and small business changes – they regard immigrants as regular and permanent labor force.

6.4.4 Exclusion of migrants

Borders in Italy exist not only in geographical sense, but also in reference to the welfare state that in big extent excludes migrants from the social services. In most cases migrants seem to be ineligible for public housing and the creation of reception centres for migrants with the Turco-Napolitano 1998 Law 40 was not implemented as envisaged. The informal sector accounts for 25 up to 40 percent of the GDP and migrants without work permit can easily get a poorly paid employment in it. Receiving work permits is impeded through the heavy bureaucracy and poor administration. Getting a permanent residence is also not easy – six years of residence prior to application are needed. Recognition rates for asylum seekers are very low. They are not available to the public and asylum is not present in media and public debates (Menz, 2010, p.234). Citizenship is ethnically based. In spite of this, there are some exceptions for residents born in Italy.

Closed borders and many opportunities for working in the underground economy pull lots of unauthorized migrants. Furthermore, working irregularly and living without documents produces negative attitudes among the locals. In contrast to activities like housekeeping and agricultural workers, street sellers are seen by the society as unnecessary. Furthermore, irregular migrants do not pay social insurance and may appear as claimants for social subsidies, which is used in populist way by some media (Reyneri, 2003, p. 137; see also Irregular Migration in Italy, 2005, p. 72).

6.5 Measures against irregular migration

Menz points out that laws are partially implemented. Legalization programmes occurred regularly between 1986 and 2006, in contrast to the restrictive intentions of the

Government. At the same time, police is arresting with a high media attention undocumented migrants (mostly foreign prostitutes).

In its study EMN (2012, Practical responses to irregular migration: the Italian case, p. 19) has described some practical measures undertaken by Italy to reduce the flow of irregular migrants. Measures vary according to the different stages:

- Pre-entry
- Entry
- Stay
- Ways for terminating irregularity

6.5.1 Pre-entry measures

Italy has signed some agreements with sending countries in connection to irregular entry, e.g. bilateral agreements on readmission and tackling irregular migration or on the regulation and management of labor migration flows (EMN, 2012, Practical responses to irregular migration: the Italian case, p. 19). Police agreements are another aspect and they aim at developing “a joint action to combat the exploitation of irregular immigration and trafficking in human beings” (ibid., see also EMN Italy, 2010, Satisfying labor demand through migration. The Italian case, Idos, Rome, p. 35).

The authors are critical towards the assumption that development cooperation can limit immigration. According to some researches, it may also have other effects. For example, if the cooperation creates development in poor countries, this may lead to an increase in the migration flow because more people can afford travelling abroad.

Some of the main projects are “MIDA” (Migration for Development in Africa), “MIDLA” (Migration for Development in Latin America) and WMIDA (Migrant Woman for Development in Africa²⁶). They aim at “enhancing the leading role of immigrants in the socio-economic growth of countries of origin, through the identification of sustainable pathways for channelling financial, human and social resources, and possible synergies between the territories of origin and of destination” (EMN, 2012, Practical responses to irregular migration: the Italian case, p. 21).

Scholarships and contributions for university degrees are also part of the development cooperation. Applications for scholarships are submitted by government authorities of the

²⁶ IOM – “Engaging Migrant Women for Development in Africa”

Countries of origin of candidates at Italian Embassies abroad, and then the formal request is transferred to the Directorate General for Development Cooperation. There are mainly four fields of preferences for the studies (ibid., p. 20):

- management of primary resources (water, agriculture, environment)
- development of small and medium businesses (planning, financing, marketing, industrial design, production techniques)
- strengthening of health sector
- capacity and institution building (good governance and peace-keeping)

The table below shows which countries receive development assistance. The countries which receive the most assistance are Afghanistan, Ethiopia and Palestina. As the table shows, sending countries are mostly the ones with medium income because these migrants can pay for the trip to the receiving state.

Table 10 – ITALY. Immigrants' countries of origin and countries receiving official development assistance - ODA (2009)

Ranking foreign residents			Ranking recipient countries of Official Development Assistance			
Countries	Residents	Income classes	Countries	Residents (nr and ranking position)	Euros disbursed (thousands)	Income classes*
Albania	466.684	3	Afghanistan	3.372 (57°)	43.081	1
Morocco	431.529	3	Ethiopia	8.350 (39°)	36.538	1
China R.P.	188.352	3	Palestine	494 (97°)	28.038	3
Ukraine	174.129	3	Albania	466.684 (1°)	24.574	3
Phillipines	123.584	3	Lebanon	3.860 (53°)	17.903	4
India	105.863	3	Mozambique	301 (107°)	16.688	1
Moldova R.	105.600	3	Senegal	72.618 (15°)	13.084	1
Tunisia	103.678	3	Sudan	2.436 (64°)	12.744	1
Macedonia	92.847	3	Uruguay	1.643 (70°)	8.277	4
Peru	87.747	3	Jordan	2.638 (60°)	8.207	3
Ecuador	85.940	3	Iraq	2.547 (61°)	8.000	3
Egypt	82.064	3	Egypt	82.064 (12°)	6.495	3
Sri Lanka	75.343	3	Pakistan	64.859 (16°)	6.369	2
Bangladesh	73.965	3	Yemen	218 (111°)	6.128	1
Senegal	72.618	1	Somalia	7.728 (40°)	5.452	1

**Classification of the Assistance Committee (DAC): 1: Least Developed Countries, 2: Countries with low income; 3: Countries with low and middle income; 4: Countries with*

upper middle income.

Source: EMN Italy. Elaboration on ISTAT data, Ministry of Foreign Affairs and OECD in EMN, 2012, Practical responses to irregular migration: the Italian case, p. 20

Among the measures for pre-entry are awareness campaigns and preferential quotas. Since 1998 countries which have signed readmission agreements receive preferential quotas for migration (ibid.). According to the author, in 2006, 2008 and 2009 Flow Decrees²⁷ the quota was higher than the real number of migrants and in the recent years vice versa. In 2010 Egypt and Moldova received the highest quota (8.000 and 5.200 places). Bulgaria and Romania are not taking part in the preferential quotas as they are EU member states and their citizens have the right to free movement.

Co-operation in the field of work Immigration and economic migration

Italy has linked efforts against undocumented immigrants with the management of economic migration. This concurs with the new economics of labor migration which states that governments can influence migration through labor market regulations (see first part). If sending countries cooperate they receive preferential quotas. The 1998 Law 40 (Turco-Napolitano Law) stated that for defining the quotas it is necessary to take into account the state of the labor market and the unemployment rate among natives and resident non-EU citizens. The Bossi-Fini Law of 2002 allowed regions to formulate requests for certain contingents (Menz, 2010, p. 236). Preferential quotas are given to some neighbouring Mediterranean countries such as Albania, Morocco, Tunisia and Somalia. They include seasonal workers, temporary limited contract workers as well as e.g. university professors and researchers (see Chaloff, 2004, p. 59).

Italy has also signed agreements on work with Morocco, Egypt and Moldova. The agreement is supposed to regulate the connection between labor supply and demand.

One of the central parts of the agreements is the exchange of information about the demand of the Italian labor market and the suitable qualified workers who can fill these workplaces. There is also a special list of workers who are ready to immigrate to Italy (EMN Italy, 2010, Satisfying labor demand through migration. The Italian case, Idos, Rome, p.36).

²⁷ Flow decrees are issued by the Italian government and establish the quota of employees needed on the labour market

It must also provide reciprocity in the treatment of citizens – foreign citizens in Italy are provided equal treatment as Italian citizens in the sending country. Another important aspect is the selection of qualified foreign workers and the promotion of their professional and linguistic training (EMN, 2012, Practical responses to irregular migration: the Italian case, p.28).

The bilateral agreements also contain executive protocols which deal with the implementation of the treaty. The agreement concerns all types and cases of workers (EMN Italy, 2010, Satisfying labor demand through migration. The Italian case, Idos, Rome, p. 36).

6.5.2 At the borders

According to FRONTEX, 8289 irregular persons were detected at the Italian borders between January and September 2009. In 2010 their number decreased to 2866 persons (EMN, 2012, Practical responses to irregular migration: the Italian case, p. 41). Due to the situation in the North African countries in Spring 2011 their number increased to 60.000 people. Border controls have become so important for the Italian authorities that the authors describe it as “a living matter” (ibid.). In the following paragraphs there is an overview on the measures for control on sea and air borders.

Sea and Air borders

The Italian authorities use modern technologies in order to prevent irregular migration at the sea borders. Among these are a monitoring system and new “technical and scientific equipment for the analysis of identity papers and travel documents that are able to tackle the increasingly sophisticated technologies of document fraud (stereoscopic microscopes and light sources)” (ibid.).

A study conducted by the SEA Milan Airports Management Society (Malpensa and Linate) in 2010 shows what types of irregular migration can be found at the airport (EMN, 2012, Practical responses to irregular migration: the Italian case, p. 45):

- Irregular immigration from outside the Schengen area (still predominant);
- Irregular immigration in the Schengen area;
- Irregular emigration to outside the Schengen area (especially to the United States, United Kingdom, Canada);
- Cases of readmission due to the Dublin II Regulation

Ways for irregular entry could be:

- The use of false documents;
- The substitution of person (i.e. the use of authentic documents, but belonging to another person);
- The use of the transit area to change destination (ibid., see also Reyneri, 2003, p.3)

Some factors for irregular migration are visa policies, availability of particular routes, smugglers and corrupt practices in third countries. Except from national authorities and supranational agencies such as FRONTEX, the authors emphasize the importance of air carriers in the fight against irregular migration. Upon police request air carriers are obliged to give information about passengers. Smugglers play an important part in irregular entries. They organize the details of the trip and can provide tickets and false documents. With the increase of cheap flights smugglers might change fast flight routes in case of difficulties (EMN, 2012, Practical responses to irregular migration: the Italian case, p. 45).

Foreigners without proper documents (visa, documents for purpose of stay etc.) can be rejected by the border police and escorted to the borders. If the persons are asylum-seekers they will not temporarily be rejected because of humanitarian reasons (EMN, Irregular Migration to Italy, 2005, p. 16). Air, sea and land carriers must return passengers without proper documents to their departure point or country of origin on carrier's expenses.

Falsification and trafficking of visas is seen as a big challenge to the Italian authority (EMN, 2012, Visa policy as migration channel in Italy, p. 24). Italy started investigating visas in 1998. Further investigations involved Algeria, Albania, Argentina, Byelorussia, Bulgaria, Croatia, Ethiopia, Iran, Nigeria, Pakistan, Romania, Russia, Somalia, Turkey and Ukraine. The latest cases involved Kosovo Albanians and Morocco citizens.

6.5.3 Irregular stay

In 2009 a "security package" entered into force. The Law no. 94 of 15 July 2009 (see also Fasani, 2010, p. 16) concerned migrants and public security. It criminalized the irregular entry and introduced a fine of 5.000 until 10.000 euro. Any public officials who did not report irregular migrants are also subject to punishment. A permit of stay is also needed for certain services (except from healthcare and education). Another condition is that in the case of family reunion certain living conditions regarding accommodation must exist. Most of the measures of the security package are described as restrictive. In 2011 the European Court of Justice rejected the criminalization of irregular entry. The reason was that the punishment of imprisonment did not comply with the EU Return Directive:

"While, in fact, Italian law provides the forced accompaniment of the

foreigner to the national borders by the public authority as ordinary mode of expulsion, the European directive provides for a voluntary return within a period of 7 to 30 days.” (EMN, 2012, Practical responses to irregular migration: the Italian case, p. 58)

Undeclared work is another aspect of irregularity. It concerns tax collection and social insurance. A Committee for the Emergence of Undeclared Work was created under the auspices of the Presidency of the Council of Ministers and the regional and provincial committees for the emergence of the underground economy. Its main aim is the fight against undeclared work. According to the Penal Code employers who are hiring irregularly are subject to penalty including a fine and a possible imprisonment (*ibid.*, p. 58).

6.5.4 Termination of irregular stay

Most often possibilities for getting out of irregular status are assisted voluntary return or regularization of the status.

6.5.4.1 Regularizations

The first administrative measure from 1980 was in the form of a departmental circular and concerned 5.000 foreign citizens. The first legalization programme was launched in 1986. It was estimated that out of about 400.000-500.000 irregular migrants only 118.706 used the possibility to get a residence permit. Many of them were afraid of being fired. It was also better for the employers to have illegal workers because in that way they did not need to pay insurances (Bade, 2001, p.113). In the beginning the regularizations concerned mainly Africans, later Eastern Europeans were more interested, and in the last regularization in 2009 the number of Ukrainians was higher than that of Morrocans and Moldovians (EMN, 2012, Practical responses to irregular migration: the Italian case, p. 64 and p.49 from this work; see also Bade, 2001, p.113 and Reyneri, 1998). The peak of regularization was in 2002 (about 700.000 applications of which 647.000 were approved) and in 2009 (about 300.000 applications of which 230.000 were approved).

Table 11 – ITALY. Applications submitted for the regularization of irregularly staying non-EU citizens (1980-2009)

Regulation	Year of measure	Applications for regularizations	Approved applications
Circ. Ministry of Labor 17.12.1979, 8.3.1980, 2.3.1982, 9.9.1982	1980-1982	5.000	5.000
Law 943 / 1986 and further extensions; from last Law 81 / 1988	1986-1988	113.349	105.000
Decree Law 416 / 1989 converted into Law 39 / 1990	1990	234.841	222.000
Decree Law 19 / 1995 converted into Law 617 / 1996	1995	258.761	246.000
Pres. of Council of Ministers Decree 16.10.1998 and Decree Law 113 / 1999	1998	250.747	214.000
Law 9.10.2002 no. 222 / 2002; Law 30.07.2002 no. 189 / 2002	2002	704.350	647.000
Decree Law 78 / 2009 converted into Law no. 102 / 2009	2009	295.126	230.000*

* *provisional data (June 2011)*

SOURCE: EMN Italy. Elaboration on data from the Ministry of the Interior in EMN, 2012, Practical responses to irregular migration: the Italian case, p. 64

These programmes underlined the importance of the migrants as labor force as well as the fact that they also have rights. The repetition of the programmes proves, on one hand, that border controls are not so efficient and, on the other hand, it gives a signal for incoming immigrants that there is a chance for them to become legal. Santel underlined that Italy should pay attention not only to border control policy but also to integration policy (Bade, 2001, p. 113).

Reyneri sees as one of the main problems with regularizations that after expiration of the residence permit migrants go back to the underground economy. According to him, one third of the migrants who were regularized in 1990 worked in an irregular way two years later (2003, p. 134). In some cases an irregular working status started immediately after the regularization because many of the employers continued hiring migrants in an irregular way.

Spain has also had legalization programmes as well as programmes for migrant recruitment. It has a treaty with Morocco that about 300.000 migrants per year are supposed to get a visa. Madrid was also to take care of transportation and accommodation within 9 months. Italy went further and defined a quota system based on which 63.000 visas were calculated for the year 2000. About 6.000 visas for Albanians and 3.000 for Moroccans and Tunisians were included in this calculation. The rapid economic development in the North caused the need for more labor force. At the same time, another factor for this was the low birth rate (Santel, 2001).

The regularisation programmes lead to a smaller rate of irregular migrants and a bigger rate of officially registered foreigners. And still compared to Germany and France the numbers of foreigner are still not so high (ibid.).

6.5.4.2 Assisted (voluntary) return

It happens very often that immigrants are trying to cross the Mediterranean Sea by boats. According to the media, Italian authorities caught 1700 boats and detained more than 40.000 irregular immigrants in 1999 (Menz, 2010, p.108, see also Fasani, 2010). Therefore, Italy (as well as Spain) signed a treaty with Morocco for returning the immigrants. Furthermore, they supported Morocco financially in securing its borders. In October 2000 Italian helicopters were stationed in Tirana and Vlore in order to patrol the Albanian coast.

Italy has bilateral agreements on repatriation with sending countries. In exchange for their co-operation the sending countries are supposed to receive quota for workers. In spite of the agreements, sometimes results are not very effective (EMN, 2005, Irregular migration in Italy, p. 24).

It depends on the individual and their personal decision to return voluntarily to the country of origin. The voluntary return consists of three stages: preparation for departure, travel and accommodation details and reintegration programmes. Once repatriated there is no bar against later for return to Italy (EMN, 2012, Practical responses to irregular migration: the Italian case, p. 70).

Assisted voluntary return for victims of trafficking was regulated with the Law no. 286 / 98. This group was extended to asylum applicants, refugees, holders of a residence permit for humanitarian reasons and ex Dublin Convention cases. EU minors working as a prostitute are also subject to assisted return. This is not the case for immigrants with a decree for expulsion (EMN, 2009, Programmes and strategies in Italy fostering assisted return and re-integration in third countries, p. 31). Between 1986 and 2000 there was a return fund for foreign workers. It applied to them if they had paid at least one contribution to the National Institute for Social Pensions. A new return fund was established in 2009 within the Ministry of Interior. Half of the fund consists of payments of the immigrants for issuance and renewal of residence permits, and the rest comes from contributions from the EU (EMN, 2009, Programmes and strategies in Italy fostering

assisted return and re-integration in third countries, p. 32). The table below shows the evaluation of the control measures.

Table 12 – Synoptic evaluation of control measures related to getting out of irregularity

Title of measure	Users: Type	Geographical Impact	Effectiveness*	Learnt lesson (a)
	~ Number	~ Time	~ Traditional**	~ Suggestions for the policy-makers (b)
Regularizations	Irregular migrants and employers ~ Hundreds of thousands	Third countries ~ Immediate	High ~ Traditional	(a) lack of exceptionality of the measure (b) since it amends the lack of annual quotas, some experts propose a regularization system on a personal basis
Assisted voluntary return	Migrants in difficult situation ~ Hundreds	Third countries ~ Immediate	High ~ Traditional	(a) Low effectiveness in the recent past for the lack of inclusion of regular immigrants (b) Perspectives to strengthen according to available resources

* Effectiveness: achieving the actual goal of the project (high, medium, low);

** Innovativeness: added value in respect to past practice and legal provisions (traditional, experimental)

in EMN, 2012, Practical responses to irregular migration: the Italian case, p. 70

6.5.5 National preference building - actors

The main aspects of the migration policy vary according to the ruling party – external border controls, legal immigration and integration of migrant communities. The Left is more liberal. It wants to avoid social exclusion and exploitation in the informal economy through regularizations and more possibilities for legal migration (Menz, 2010, p.235). The Right is more restrictive, e.g. the adoption of the Bossi-Fini Law. Due to the economic interests of the business, which it supports, it has a more pragmatic approach to labor migration. This is an example how the national actors influence the national preference (Moravcsik, see first part).

Another example for the division among Left and Right parties are the detention centres (1998 Law). Irregular migrants must be detained, but the methods for that are not specified in the law. In addition to that, “they are run by voluntary associations (such as the Red Cross) and patrolled by the police” (Zincone, 1998, p. 57). Undocumented residents, people crossing the border in an irregular way and people who are requested to leave the country are subject to detention in the special centres. Residents who came in an irregular way before the law was enacted are an exception because they are ordered to leave and not detained. According to Zincone, it depends on local police authorities to

decide if irregular migrants must be put in detention. She criticises the law as a “self-contradictory”, ambiguous and discretionary piece of legislation “ and looks at it as a compromise between Right and Left Parties (ibid.):

“The Right wanted clandestine immigrants caught at the borders to be put in prison when it is impossible to identify and expel them, and the Left was not prepared to consider clandestine entry as a crime.”

Unions and pro-immigrant associations also have some influence. Members of the unions who are part of key committees can influence the migration policy-making, or this can happen because by law the opinion of the unions is to be heard (Zincone, 1998, p. 72).

6.5.6 Europeanization

At the domestic level the immigration issue was vastly discussed in the public in the beginning of 2000s. At that time political pressure was mostly coming from Schengen countries that insisted on stricter border controls. With the increase of immigrants entering the EU through Italy, the interest in migration policy grew. As for asylum issues, the Italian government accepted top-down Europeanization because of its underdevelopment at national level. If we refer to Moravcsik's theory, this can be an example of negative externalities for both countries. The EU member states wanted burden sharing and Italy adopted the regulation because of their underdevelopment at national level and the arising public debates. Thus co-operation was possible. Examples for this are the establishment of reception centres for asylum seekers and introduction of electronic transfers of asylum seekers' dossiers as in the Netherlands (Menz, 2010, p.250). Italians offered that a quota system is introduced at European level, which is connected to readmission agreements and cooperation in "managing" migration (ibid., p.250). Member states did not want to give this right to the EU and the EU labor migration directive 2001 was not launched (unsuccessful bottom-up Europeanization). The Italian approach to immigration includes: border control, integration of resident migrants and regularizations. Asylum is a recent topic, which is not very developed and is restricted by the Bossi-Fini Law. It is mostly a product of top-down Europeanization. NGOs are not very successful in influencing policy shaping.

7 EU and irregular migrants

7.1 EU's "fight against illegal immigration"

The fight against irregular immigration is a main priority of the EU²⁸. With the accession of the new member states the external borders of the EU moved to the South. Boswell and Geddes point out that irregular migration is also a consequence of the national policies aiming at restricting irregular entry (Boswell / Geddes, 2011, p. 33, also Guiraudon / Joppke, 2001, p.5). The restrictive provisions make legal routes for entry to Europe more complicated. Another factor supporting the persistence of the irregular migration is the possibility to live and work in Europe on an irregular basis. The labor market welcomes cheap migrant labor. The topic of irregular migration is connected to regulation of external borders as well to the regulation of the labor market and welfare states of the host country.

7.1.1 EU actions against irregular immigration

In the last decade the EU has placed an emphasis on the "fight against illegal immigration". However, the process of illegal immigration is very complex and it is not only in the interest of the migrants themselves, but also of future employers (Geddes, 2011, p. 126).

The EU Commission defines the most important elements of EU strategy against irregular migration in its "Policy Priorities in the fight against illegal immigration of third- country nationals"²⁹:

- co-operation with non-EU states, particularly in sub-Saharan Africa and the Mediterranean countries
- integrated border management, development of e-borders that require carriers such as airlines to communicate data contained in passengers' passports to the immigration authorities
- fight against human trafficking
- combating illegal employment and reducing informal work

²⁸ COM (2006) 735 final, The Global Approach to Migration one year on: Towards a comprehensive European migration policy

²⁹ COM (2006) 402 final, Communication from the Commission of 19 July 2006 on policy priorities in the fight against illegal immigration of third-country nationals, Summary

- return policy and Return Directives
- improving information exchange
- carriers' liability

We can see that the main priorities are border security and external dimensions of migration policy. The EU tries to involve the neighbouring countries in its migration and asylum policy. This can happen as part of the accession process (Croatia and Macedonia). As for non-candidates for membership, the EU uses development aid and economic assistance. According to Massey and Capoferri (2007), the changes in controlling the external borders affects the way in which the smuggling networks act. This causes further changes in the border controls and further adaptations from the network. It seems like an arms race, which will end when one of the participants is exhausted (Heckmann in Boswell / Geddes, 2011, p.134).

As irregular migration is seen as a threat to security, the EU sees this as challenging the territorial borders. Taking into account also the exploitation of migrants by traffickers and smugglers, the EU sees the solution in making the external border controls tougher (Boswell / Geddes, 2011, p.135).

7.1.2 Policy options for the EU

States decide through admission policies who can enter their territory, for what reasons and for what duration. This defines the existence of irregular migration. According to Boswell and Geddes (2011, p.135), the EU has then three possibilities for its policies:

- Tolerating irregular migration – reforms might be too expensive and possible migrants are needed on the labor market. However, irregular migrants may be exploited as cheap labor
- Regularizing irregular migrants – migrants become part of the society through obtaining a legal status which is in coherence with immigration laws. Regularizations can lead to an increase in the number of irregular migrants as the newcomers hope that they will also obtain legal status at a certain point
- Expelling irregular migrants – it is consistent with restrictive policies as well as border controls, admission policies and managed migration. On the other hand, it is expensive and time-consuming.

An important aspect of the EU policy toward irregular migrants is the return issue. The EU has spent millions of euro in measures concerning returning migrants and border security.

Policy implementation

EU's response to irregular immigration is its focus on external borders and co-operation with non-members states (e.g. from North Africa). However, the EU is not responsible for the policy implementation. It depends on the states and the administrative authorities. The EU tries to coordinate this through e.g. the Return Directive and FRONTEX. The Southern European countries argue that irregular migration is a common problem of Europe, which needs common solutions. Spain has developed an Integrated System of External Vigilance (SIVE) spending about 150 million euros between 1999 and 2004. It concerns the coastline of the Canary islands of Fuerteventura and Lanzarote and the Andalusian coastline (Boswell / Geddes, 2011, p.145).

Germany and Austria do not support the idea of regularization, which countries like Spain, Italy and Greece use relatively often. This measure and external frontiers' control refer to the consequences of migration and not its causes.

The regularization programmes concern Third State Nationals (TCNs) who are not citizens of the state of residence or another member state and do not complying with the rules of migration in this country. (Boswell / Geddes, 2011, p.145; see also Reyneri, 2003; Reyneri, 1998).

7.1.3 Migration control

Guiraudon and Joppke point out two possibilities of national policy responses for migration control: visibility at the border and in law enforcement, and remote control, delegating controls to third parties (Guiraudon / Joppke, 2001, p.12). In the late 1990s Spain installed a double fence on the border between Morocco and the colonial enclave city Ceuta. It increased the number of border guards also. This is an example of highly visible border management. This was not the case in Germany. Looking at the recent memories of the Berlin Wall such methods were unacceptable. Here police presence was increased and random checks were allowed. Visibility can be very useful for electoral objectives because it gives an appearance of control and the feeling of security (ibid., p.13).

The second option is remote control. This means "externalizing" controls beyond national borders so that aspiring migrants or asylum-seekers do not reach the territory of the receiving country' (p.13). The methods might be visa regimes, carrier sanctions and cooperation with transit and sending countries. In this way states want to prevent unwanted migrants or asylum-seekers to reach them. Part of these measures is forcing airlines to check passengers' passports and visa. Germany signed agreements with Eastern European and Mediterranean states in the early 1990s for the return of undocumented migrants in exchange for financial help. With the *Schengen acquis* and the Amsterdam treaty cooperation between the states was further developed.

7.1.3.1 FRONTEX

It is important to note the difference between smuggling and trafficking. In 2000 the UN defined the second term as connected to coercion and deception (Geddes / Boswell, 2011, p.130). Smuggling is assumed as voluntary. Their networks arise when there are people looking for irregular routes for immigration.

Smuggling is one of the main issues connected to irregular immigration. According to some statistics around 1200 people may have lost their lives trying to reach Spain through the Mediterranean Sea.

FRONTEX was set up in 2005 and it defines its main goals in its annual report (2007): "to strengthen the border security by ensuring the coordination of the Member States' activities in the implementation of the implementation of Community measures relating to the management of the external borders". It works also with other agencies like EUROPOL and CEPOL.

Its main roles are³⁰:

- Carrying out risk analysis
- Coordinating operational cooperation on external border management
- Offering training to external borders guards
- Serving as a platform for research relevant to border control and surveillance
- Technical and operational assistance to member states
- Coordinating (supporting) joint (return) operations

³⁰ FRONTEX, Mission and Tasks, <http://www.frontex.europa.eu/about/mission-and-tasks>

- Providing a rapid response capability
- Developing and operating systems for sharing information

According to FRONTEX, borders exposed to most irregular crossing are:

- land and sea borders of South-Eastern Europe
- air borders in Western and Northern Europe (Geddes, 2011, p. 124)

In its annual report FRONTEX presents statistics which show the most preferred ways for some nationals to cross EU borders. Moroccan irregular migrants cross the sea as well as the land border of Spain. Chinese and Brazilian nationals are mainly detected at air borders and those of Algeria, Egypt and Somalia are mostly at the sea borders. Migrants from Serbia, Pakistan and Palestina are mostly seen at the land border (Geddes, 2011, p. 124).

Although the security aspect is important, it is not the only one which relates to irregular migration.

7.1.3.2 The Return Directive

The Return Directive (2008) is an important document and it is the first one adopted with the co-decision procedure. This procedure gives much more influence to the European Parliament in the decision-making procedures on some immigration and asylum questions. That was previously reserved to of the member states (Boswell / Geddes, 2011, p.140; see also Menz, 2010). The Return Directive followed the Hague Programme, which planned development in the immigration and asylum policy. It lasted three years after the original proposal of the Commission until the Directive was adopted. The aim was to introduce one procedure for the expulsion of irregular migrants. The member states can introduce more liberal rule in comparison with the Directive, but they cannot be more restrictive.

7.1.3.3 The Labor Migration Directive

This case example shows that countries are not willing to give up their sovereignty on certain topics.

In 2000 the Commission started an initiative aiming at labor migration regulation at the EU level. This was met with resistance of the member states. The Commission wanted to set common criteria for the admission of third country nationals based on the market demand. Another proposal was the creation of a single application procedure for obtaining work and

residence permit, which was very progressive for some national legislations failing to link work and residence permits (Menz, 2010, p. 112). The Communication on open method of coordination³¹ was supposed to facilitate the exchange of best practices between the countries.

A draft directive was issued on July 11, 2001 dealing in detail with a detailed labor migrant recruitment. It included individual examination of the application by the member state connected to factors such as labor market demand and failed attempt for recruiting local or EU citizens for this position. The main opponents of the directive were Germany and Austria, which were afraid of losing their sovereignty over labor market access.

Menz describes the German employers organizations (BDA) as an important actor for the policy of resistance toward the directive. They were afraid of losing their influence over this topic and the national regulations aiming at highly skilled workers. Therefore, it „communicated its preference to the Ministry of Interior“ (ibid., p. 14).

Although the Commission withdrew its proposal in 2003, the Italian presidency „revived the negotiations by suggesting a common EU labor approach“ (ibid., p115). An example for this was the labor migration quotas by Italy. Quotas were supposed to be a tool for negotiations with the sending countries and the exact national quota was to be determined by the national authority. Due to resistance from member states (e.g. Germany) the idea for general regulation over the procedures and conditions for admission of immigrants was abandoned (ibid., p. 118). In this case we could say that there was no convergence of interests between the states and therefore the agreement did not take place (see liberal intergovernmentalism of Moravcsik).

7.2 Southern vs. Northern Europe

Although there is often rhetoric about tough controls of irregular migration, the implementation of these policies is very complex. The member states have different approaches to dealing with irregular migration. Southern European countries launched large-scale regularization programmes. Compared to this, Northern European countries made smaller-scale regularization programmes and did not support the dimensions of regularizations undertaken by countries like Spain, Greece and Italy (Boswell / Geddes, 2011, p.143; see also Reyneri, 2003; Reyneri, 1998).

³¹ COM (2000) 757 final

Boswell / Geddes describe five factors that could influence the **divergence between law and practice** (2011, p.143):

- Labor market structure. The bigger the informal economy is, the higher the possibility for inserting irregular migrants
- How people perceive ("sanctity") the law – if they respect it or they try to be pragmatic
- Timing. The administrative capacity of the country might be less developed if it is a new country of immigration
- Asylum policy. If the failed asylum applicants stay on the territory of the states they may become irregular migrants
- Admission policies. If the policies provide labor which replaces the need of irregular migrants (see also Guiraudon / Joppke, 2001, p.11)

7.3 EU, labor migrants and irregular migrants

7.3.1 Overview

Between 1943 and 1973 the labor migration in Northern Europe came mainly from Central and Eastern European countries. These people come as refugees and filled the losses following the war. They contributed to the post-war boom. In the 1970 the migration from the South reached its peak:

"...over 700 000 new foreign workers entered the Federal Republic of Germany (nearly 125 000 from Turkey and over 200 000 from Yugoslavia) and over 300 000 (of which 140 000 from Spain) entered France" (Böhning in Düvell / Jordan 2002, p. 39)

These countries tried to restrict the immigration through bilateral agreements for recruiting workers, but only half of those entered were recruited in this way. The oil crisis of 1973 slowed down the economies in Europe and was followed by measures for reducing the migration flow. Although this period is described as "zero immigration" because of the decrease in the migrant recruitment, migration continued in the form of family reunion (ibid.). In the 1980s Spain, Greece and Portugal entered the Community and received returning labor migrants as well as migrants from outside the European Community.

The creation of the single market provided conditions for the movement of workers within the European Community. Düvell / Jordan say that the migration from the poorer

periphery to the richer centre was declining in the 1980s. Workers in the North were going more often back to their home countries – e.g. Southern European countries (2002, p. 36). This was partly because of the changes in the political freedoms and social rights in Spain, Greece and Portugal, and partly because of the EU policy for redistributing resources to poorer regions (ibid.). At that time, the migration flows were already coming from outside the EU. This was related to the new world political situation – the collapse of the Soviet Union, the conflicts in former Yugoslavia and in the Caucasus. In addition to that, the globalization and the new geopolitical order in the developing countries contributed to the increase in migration (Düvell / Jordan 2002, p. 37).

Two problems

Schierup connects two issues to migration. The first one is the restructuring of the welfare state. This leads to social exclusion of certain population groups. Connected to this are e.g. problems of unemployment, shrinking social assistance, poverty among young people and feminization of poverty (Schierup, 2006, p.1). In many cases the socially excluded tend to be people with a migration background. Examples for this are the undocumented migrants working irregularly in agriculture, in building sites or as family carers, which are deprived of social, political and civic rights. Asylum seekers living in detention camps or working irregularly are also excluded from the welfare state. The second one is transformation of the nation and the established identities. Populism uses the social crisis as a reason for the exclusion of people not belonging to the nation on a cultural or religious basis (Schierup, 2004, p.3). Such trends can be seen in France (the party of Jean Marie Le Pen), in Austria (Jörg Haider, Freedom Party) and in Italy (Berlusconi). This leads to tightening rules for immigration, asylum rules and the societal incorporation of immigrants. Populism stimulates fears connected with migration issues and sees the solutions in building frontiers, e.g. building barriers on free labor mobility, which leads to criminalization and increase in irregular migration. Excluding ethnic minorities from the political process and population with migration background from citizenship rights jeopardize their integration in society. To the contrary, influential politicians and employers point out the need for low and highly skilled workers because of the labor market and the demographic decline (Schierup, 2006, p.4).

An important aspect is that most irregular migrants have entered e.g. Italy in a regular way but overstayed. On one hand, visas were regulated by the Schengen rules, and on the other, Italy had treaties for seasonal workers.

Labor market regulation

Düvell / Jordan point out that even in the high-wage and regulated market, it was possible for irregular migrants to enter informal economy. The less regulated markets provided even more possibilities for evading the internal controls (2002, p.56). As a whole they see the problem in the "overregulation of the European economies, the over-generosity of their welfare systems, and the excessive costs of social insurance contribution" (p.58). This is seen as making countries' economies less dynamic.

7.3.2 Domestic workers

The breadwinner model accepted men as the main earners of the family. Women were perceived as second earners until the early 1970s, when the focus of labor-market policies shifted to the service sector and toward the employment of women (Düvell / Jordan, 2002, p. 65). The involvement of women in the labor market created the need for domestic workers who take care of children, older people, cleaning and etc. The two-earner model was established in many countries, but countries like Germany and France decided to have low rates of female participation and private sector growth and in this way they sacrificed the employment growth (p.67). The usual domestic worker is female, young and from a certain ethnicity. The authors claim that in the case of domestic labor, it is very difficult to make difference between the categories of migration (chosen / forced, legal / irregular etc.). This kind of work is difficult to regulate and the workers are often very vulnerable to personal and sexual abuse (p.68).

7.3.3 Restrictive policies and smuggling

A result from restrictive policies

An unintended consequence of restrictive policies is that migrants prefer to contact smugglers instead of taking the risks to cross borders on their own. According to Koslowsky the number of people using smugglers' 'services' has increased in comparison to the number of asylum-seekers (in Guiraudon / Joppke, 2001, p.108).

Historical context for smuggling

After the Second World War the welfare state was seen as "a crucial factor in shaping responses to immigration and settlement" and it aimed at elimination of mass insecurity and poverty. The new development of the immigration in the 1990s – the increase of the number of asylum seekers and irregular migrants shaped perceptions and policies. Welfare policies can cause inclusion or exclusion of immigrants. Schierup defines undocumented immigrants as people coming from less developed countries looking for jobs. They are in most cases young and highly educated in their country of origin, but get an unskilled job in the receiving country. Trafficking of irregular migrants is perceived as a crime. Political discussions as well as the media panic urge for more controlled borders (Schierup, 2006).

Immigration control and external borders

In the beginning of the 1990s restrictive measures on mobility were introduced. They were justified with the fears of uncontrolled immigration to European Community coming from poorer and less stable countries and some xenophobic actions (e.g. attacks on asylum-seekers in Germany in the early 1990s). This was followed by attempts to coordinate the development of border control regimes, to harmonize visa policies and asylum and admission aspects. On the other hand, the EU began negotiations with sending and transit countries, which mainly focused on control measures (Düvell / Jordan, 2002, p. 42). The increasingly restrictive measures and the inequalities between the EU members and the sending countries increased the pressure for irregular migration.

Legal ways for entry vs. smuggling

Guiraudon and Joppke (2001) describe the current trends of migration flows. On one hand, the number of legal immigrants was decreasing. The restrictive policies in Europe led to a decline in the number of asylum seekers (in Germany from 438.200 in 1992 to 116.400 in 1996, p.7). Recruitment was mostly on temporary basis, at the bottom and top ends of the skill hierarchy. An example for this is the German "green card", which is limited to five years and is not renewable.

The 1990s were marked by changes in the EU legal framework, which gave more possibility for the mobility of EU citizens. At the same time, TCNs still did not have full rights for free movement, but there are still legal channels for immigration. In the UK there are programmes e.g. for working holidaymakers, seasonal agricultural workers and

students which allow legal access. In the case of Germany many families of ethnic German origin living in the Soviet bloc were allowed to return. Another possibility was to start a procedure for seeking asylum. This was the main focus for tighter control policies (Düvell / Jordan, 2002, p.44). Liberal benefit regimes were assumed to attract applicants. Member states started adopting measures like dispersed accommodation and fast-track procedures. The EU authorities tried to establish common standards for procedures and to harmonize asylum regulations (ibid., p.45). In countries with no experience in ethnic minority settlements (e.g. camps), there were also some xenophobic attacks. The tougher controls made irregular migration more attractive (Guiraudon / Joppke, 2001, p.7). In the EU member states there are many citizens, migrants and refugee support organizations which oppose the harsh treatment of asylum seekers from poorer countries. Churches also play an important role.

Smuggling and human trafficking

Irregular migration may be organized in different ways. One possibility is that a certain organization or a network can organize the entire smuggling operation, or the smuggling services may be bought on the way to their destination (Portes / DeWind, p.294). The authors describe a few cases of smuggling. In the first case, a person stays at the railway station in Prague and searches for possible "clients" to bring them to the German border by car. Then they cross the border by foot. In the other cases, an important role is played by foreigners who have lived longer in Western countries for a longer period. The process may be propelled by ethnic and kin ties, but in many cases it is seen as a business with "entrepreneurs" and "helpers" (p. 299). The human smugglers' networks are highly asymmetrical and centralized. On one hand, they may be characterised by "relationships of prestige, mutual sympathy, trust and help; hence they are mutually supportive and complementary" (p.300). On the other hand, although there are ethnic ties in some cases, relationships of sympathy and help may be absent (ibid.).

Interaction between law enforcement and smugglers

Heckmann points out that law enforcement institutions and smugglers are always competing. The institutions try to introduce measures for stopping this process and smugglers want to avoid this. Among the main law enforcement measures are "an increase in financial means and personnel for border control, an increase in material and technological resources; changes in legislation and administrative rules; and cooperation with other cases and training of their personnel" (Portes / DeWind, p.303). Smugglers try

to adapt through changing routes, increasing the use of technologies, professionalization and specialization, improvement of recruitment and "services", special fees for certain groups and attempts to corrupt state officials (ibid.). Heckmann calls the competition between law enforcement institutions and smuggling an arms race. But he does not assume that there will soon be an exhaustion of the competitors (ibid.).

Conclusion

This work looked at different theories trying to explain migration and why it happens. Still there is not one universal theory which could explain this process, but it is connected to complex factors existing in the receiving country as well as in the sending country. The situation in Europe is special because the EU also wants to have a say in this field.

Ideas about the free movement of people arise with the Rome Treaties in 1957. International treaties regulated this question. They were not part of the *acquis communautaire*. The Schengen Intergovernmental Treaty established an area whose external border controls were strengthened. Visas for third country nationals are to be requested in the signatory states and air carriers can be sanctioned if they accept people without proper visas. Another international treaty is the 1990 Dublin Convention which co-ordinates the processing of asylum applications in different countries.

The EU member states are not ready to easily give up their sovereignty over migration issues and it is important that migration policy has different dimensions. With the Treaty of Maastricht migration issues were separated in the first and third pillar. Visum policy went in the first pillar, where decisions were taken at supranational level, and issues about refugees, (irregular) immigration and third country nationals went in the third pillar where decision are taken with unanimity. This means that member states can still regulate these areas at national level. The tendency to supranationalism goes further with the Treaty of Amsterdam which moves some issues to the first pillar, but still decision on external border controls, permissions for refugees and immigrants followed the unanimity principle. Important aspects were the introduction of the co-decision procedure for adoption of directives and regulations on immigration policy and the incorporation of the Schengen Treaty in the *acquis communautaire*. Afterwards, the Tampere programme and the open method for co-ordination came, which were supposed to help translating political goals into concrete actions.

The fight against irregular migration became priority for the EU after the observed increase in the irregular migration and the events of September 11, 2001. The subsequent action plans are criticized by some authors because they state objectives, but in many cases they do not specify means for reaching them. The Lisbon Treaty is also important because it introduced the solidarity principle and qualified majority voting on immigration and asylum issues.

National actors can influence policy through informal lobbying. Unions and employers' organizations in Germany have more influence compared to humanitarian NGOs which have financial and organizational difficulties. The government plays a major role and it supports stringent procedures, which could reduce the attractiveness of asylum. In Italy migration policy depends to a large extent on the political position of the ruling party. The Left is more liberal and the Right is restrictive. Furthermore, it happens more often that irregular migrants are excluded from society and social services. They are often a scapegoat for social problems and face populism and hostility.

After the Second World War and with the erection of the Berlin Wall Germany needed more labor force. Guest workers came from Turkey, Italy and Tunisia. They were seen as temporarily residing and had no political rights and separate social insurances. Restrictions on immigration were introduced in the 1970s and the 1980s with the halt on labor recruiting (*Anwerbestopp*). With the increase in immigration in the 1990s the government added more conditions for entry for the category of *Aussiedler* e.g. language tests.

Due to labor shortages Germany needs migrant labor, but the authorities looked at migration as temporary for a long time. An important issue is that Germany was not accepting itself as country of immigration. Germany had Foreigners' Law until 2004 when it was changed to Immigration Law. This showed that the country was finally aware that it was a country of immigration. The law had measures aiming at highly skilled immigrants and was supporting the recruitment halt from the 1970s. The report of the expert commission Süßmuth also paid attention to the qualified immigrants. As a whole, there is a tendency to restricting the entry of some migrant groups, but there is selectivity and highly skilled migrants are preferred. **National actors** also influence policy. Depending on their internal organizational structure their influence is different. Humanitarian NGOs influence through soft skills, employers' organizations favor quotas on legal labor migration and the government is interested in different types of labor migration, but would like to decrease the number of asylum-seekers.

The number of irregular migrants in Germany in 2010 was around 50.250 persons. If asylum seeking is seen as a successful attempt to enter the country, the number may rise. There is also a possibility that after a rejected application the asylum-seekers do not leave the country and become irregular. Although the size of the **informal economy** in Germany can hardly be compared with that in Italy, there are still possibilities for informal employment.

This may concern irregular migrants, asylum-seekers waiting for application results and regular entrants without work permit.

The recent legislation on migration in Italy is perceived as restrictive with legalization campaigns for irregular immigrants. The Law of 1986 focused on restrictive border controls, integration of migrants communities and labor migration regulations. The 1990 Martelli Law continued that focus of the migration policy. Implementation of the laws is often criticized as well as local administrations which have freedom in their implementation. An example for this is the residence card introduced with the 1998 Turco-Napolitano Law. It was supposed to give migrants access to the welfare system, but due to restrictive interpretations a small number of migrants received it. The introduced quota system for labor migrants was connected with the arrests of irregular migrants from the partner countries. The **restrictive trend** continued with the 2002 Bossi-Fini Law when obtaining a residence permit was linked to the possession of a work permit. Legalization programmes were the easiest way to legalize immigrants, but they are not a long-term solution and in some cases they can attract even more irregular migrants.

Crossing the borders in an irregular way by boat, at airports or at ports is one way to become irregular. According to statistics, about 60-75% of the irregular immigrants in Italy are overstayers. One of the reasons for the big interest of irregular migrants is the geographic position. The Italian-Slovenian border is one of the main entry channels, the Italian-French border is mainly crossed by Africans which entered Europe through Spain or France and the Southern borders are often reached by boats with people coming from Yugoslavia and Albania. The Milano airport is also an entry channel for irregular immigrants.

Labor market specifics and underground economy also attract migration flows. The level of unemployment in Italy is about 12 percent. This is due to the fact that Italians are not willing to take less paid jobs. Immigrants from the third world are ready to take them. This happens mainly in sectors like agriculture, services, cleaning, restaurants and retail trade. Most often irregular migrants are hired in small and family firms.

Another aspect are the **regional differences** in Italy. The South is significantly poorer than the North. Employers in the North are actively recruiting labor force. Therefore, 75 percent of undocumented migrants are in Northern and Central Italy.

Germany and Italy rely on pre-entry measures for preventing migration. Both of them account on co-operation with the sending countries. Germany has treaties for recruitment of workers as well as for preventing irregular migration. Italy has agreements on readmission and

mangement of migration flows with sending countries. Awareness and information campaigns are important for both countries in order to prevent irregular migration. Italy also uses preferential quotas which are connected to the needs of the labor market and the unemployment rate.

The Schengen Border Code states that each member state is responsible for the fight against irregular migration. An important role for external border controls in Germany and Italy is that of the EU agency FRONTEX. According to its reports, the borders most exposed to irregular migration are land and sea borders in South-Eastern Europe and air borders in Western and Northern Europe. Both Germany and Italy are co-operating in this framework.

After detection of an irregular stay in the country there are a few possibilities for action. Italy prefers mass regularization. With the last regularization in 2009 about 230.000 persons received a residence permit. Germany does not support that type of regularizations and conducts individual legalizations on very rare occasions (in this master thesis, p. 52).

Voluntary return is another measure against irregular immigration. The Italian and German governments provide assistance in this case. In addition to that, after the repatriation there is no bar against returning to Italy. The EU Return Directive sets one procedure for expulsion of irregular immigrants.

Hypotheses

H1: Measures against irregular migration comprise border controls as well as regulations of labor market and co-operation with the sending countries.

H1: The hypothesis was confirmed. But still it is not comprehensive because there might be also additional factors influencing these measures such as regional differences inside the country, actors at the national level and welfare state.

H2: The approaches of Germany and Italy (both of them EU member states) towards irregular migrants differ due to their different experience in this field, their different labor market and their geographical position.

H2: The hypothesis was partially confirmed. As a new country of immigration one of the most common, but short-term measures in Italy are mass regularizations. Due to its geographical position Italy is exposed to irregular migratory flows entering through the sea, land and air borders. Germany mainly pays attention to land and air borders. Regulations of

the official labor market exist, but as long as the underground market attracts and employs a big part of irregular migrants and it remains unregulated, the stricter border measures are not enough to prevent irregular migration. Country specifics play a significant role. The establishment of the two earners model in Italy caused a demand for domestic workers, who are most often irregular female migrants. Numbers of irregular migrants vary in the different regions according to the possibilities for work.

H3: In the field of migration states still want to keep their sovereignty and are unwilling to delegate all their powers to the EU.

H3: The hypothesis is partially confirmed. It is difficult to speak for migration as a whole. In some cases EU member states are willing to establish common standards as is the case with the Return Directive. In other cases, they prefer to deal with the question at national level, e.g. the failed Labor Migration Directive.

Measures against irregular migration at the national level are important as well as measures at the EU level. The European Commission set policy priorities for the fight against „illegal“ migration in 2006, and in 2008 the Return Directive was adopted, establishing one common procedure for the expulsion of irregular migrants. The EU agency FRONTEX plays also an important role in the cooperation between countries for protection of borders. And still member states do not want to give up their sovereignty. This is shown through the example of the failure of the Labor Migration Directive.

Another aspect of irregular migration is smuggling. Smugglers help irregular migrants on their way of to the aimed country. The EU has taken steps towards development of border control regimes, harmonization of visa policies and asylum and admission policies. But the more complicated and restrictive procedures for entry become, the more creative smugglers become. Therefore, it is important to also pay attention to other measures such as cooperation with the sending countries.

Out of the theories discussed in Chapter 2, each explains some particular aspect of migration. On the whole, some of them are more suited than others to explain the specific situation in the EU. A combination of economic and social theories may provide a good basis for a more complete analysis.

The economic theories of Section 2.1 (neoclassical theory, new economics of labour migration and dual labour market theory) do not look at the EU as one entity – rather, they focus on specifics in the sending or receiving state. Neoclassical theory puts an emphasis

on the push-pull model. Its predictions for a wage fall after an increase in labour supply in the receiving country are not true in the EU, as far as Germany and Italy are concerned. The assumptions at the micro level can also be disputed. Migration is not always a decision of the individual on its own, in some communities the family has an important role for such decisions. Although the labour market in Germany and Italy attracts migrants, factors like wars and political instabilities can also cause migration (e.g. migration from the former Yugoslavia to Germany in the 1990s and from Northern Africa to Italy in 2011 and 2012). Furthermore, the theory cannot explain why certain groups have a preference to move particularly to Germany or Italy, e.g. Turks in the first case and Albanians in the second case. A more general weakness of neoclassical theory is that individuals do not have full information about wages and employment opportunities in the receiving state.

New economics of labour migration claims that families and households take decisions for migration, which explains one aspect of migration to Germany and Italy. Again, the claim that from a certain moment there will be no more wage difference has not proven true. In accordance with the theory, Italy and Germany try to influence migration not just through labour market policies, but also through different kinds of cooperation with the sending countries. The theory gives some good points for discussion, but as a whole it does not seem to explain the situation in the EU sufficiently.

Among the economic theories discussed here, the dual labour market theory reflects the situation in Germany and Italy best. Firstly, European countries have a demand for people willing to work in badly paid and insecure jobs, which are avoided by the local population. Secondly, people fleeing from poor regions are ready to take these jobs. Thirdly, there are also job opportunities for highly skilled foreign workers (cf. the results of the Süßmuth Commission). This scenario matches the dual labour market theory. However, like the two previous ones, this theory concentrates on the economic aspects of migration, largely disregarding other aspects.

Social theories like the ones discussed in Section 2.2 (migration networks theory, migration systems theory and institutional theory) explain a different aspect of the migration issue. Migration networks were important for migration to Germany in the 20th century. After the halt on recruitment in the 1970s family reunion was the most common way for immigration. Although there are cases of family reunion in Italy, it is not a mass

phenomenon because of the restrictive legislation on this question. Migration networks theory is a good complement to economic theories, since it explains a particular aspect that they disregard.

In a similar way, the narrow aspect covered by institutional theory is highly relevant in Germany and Italy. Smuggling organizations are present in both countries. The more restrictions on migration are introduced and the more consistently they are implemented, the more demand exists for smuggling. On the other hand, humanitarian organizations in Germany and Italy provide help for migrants like counselling, legal help and social services.

Migration systems theory is a particularly good complement to the economic theories because it considers prior links between the receiving and sending countries. This explains why Turks have a preference to migrate particularly to Germany. In accordance with the theory, migrants can use the help of relatives already settled in the receiving country or employers' recruitment activities. The theory also reflects how Italy and Germany try to control migration through their legislation and practices and how humanitarian NGOs or smuggler organizations contribute to migration.

Finally, the theory of liberal intergovernmentalism discussed in Section 1 is of central significance for a complete analysis of migration in the EU. The theory explains how integration of member-states policies goes further when national preferences coincide. One example for this is the Return Directive, which was adopted in 2008, establishing one standard for the expulsion of irregular migrants. A few years earlier the proposed Labour Migration Directive was rejected due to the opposition of Germany and Austria, who wanted to regulate access to their labour markets on their own. This was partly due to national actors' resistance to the directive. According to Menz, lobby groups in Germany have significant influence on the migration policy. Depending on their organizational structure they can exert stronger or weaker influence on shaping a certain policy. Menz states that employers' organizations have more influence than humanitarian NGOs, because they have a better structure and communicate their ideas better. Migration policy in Italy strongly depends on the ruling political party. This is consistent with Moravcsik's statement that national policies and past legacies of the member states are important for governments' positions at the EU level. Although he does not deny the importance of institutions, he sees governments as the main players. Since governments are not ready to

give up their sovereignty in migration related questions (e.g. irregular migration, labour migration, smuggling, asylum seeking etc.), but adhere to their particular national preferences on these topics, integration of their policies proceeds in a different way for the different topics.

Bibliography

Angenendt, Steffen/ Parkes, Roderick (2009) – „EU-Migrationspolitik nach Lissabon und Stockholm, Neue Kompetenzen, bessere Politik?“, Stiftung Wissenschaft und Politik, Deutsches Institut für Internationale Politik und Sicherheit
http://www.swp-berlin.org/fileadmin/contents/products/aktuell/2009A71_adt_pks_ks.pdf, (accessed on 25.11.2011)

Bade, Klaus (2003) – *Legal and Illegal Immigration into Europe: Experiences and Challenges*, Netherlands Institute for Advanced Study in the Humanities and Social Sciences (NIAS), 2003

Baldwin-Edwards, Martin / Kraler, Albert (2009) – *REGINE. Regularisations in Europe. Study on Practices in the Area of Regularization of Illegally Staying Third-Country Nationals in the Member States of the EU*, International Centre for International Policy Development, Vienna, January 2009

Boswell, Christina/ Geddes, Andrew (2011) – *Migration and Mobility in the European Union*, Series: The European Union Series, Palgrave Macmillan, 2011

Düvell, Frank / Jordan, Bill (2002) – *Irregular Migration: The Dilemmas of Transnational Mobility*, Edward Elgar, 2002

Billet, Carole (2010) – “EC Readmission Agreements: A Prime Instrument of the External Dimension of the EU’s Fight against Irregular Immigration. An Assessment after Ten Years of Practice”, in: *European Journal of Migration and Law* 12, 2010, p.45-79

Chaloff, Jonathan (2004) – „From Labor Migration to Labor Recruitment, The case of Italy” in: *Migration for Employment. Bilateral Agreements at a Crossroads*, Organization for Economic Development and Co-operation (OECD), Federal Office of Immigration, Integration and Emigration, 2004

Castles, Stephen / Miller, Mark (2009) – *The Age of Migration: International population and movements in the modern world*, Fourth edition, The Guilford Press, New York / London, 2009

Carrera, Sergio / Guild, Elspeth (2008) – “The French Presidency’s European Pact on Immigration and Asylum: Intergovernmentalism vs. Europeanisation? Security vs. Rights?”, CEPS Working Document No. 170, Centre for European Policy Studies, Brussels, 2008

Caviedes/ Alexander (2004) – “The open method of co-ordination in immigration policy: a tool for prying open Fortress Europe?” in: *Journal of European Public Policy*, 11:2, 2004, p. 289-310

COM (2000) 757 final – Communication from the Commission to the Council and the European Parliament on a Community immigration policy
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52000DC0757:EN:NOT>

COM (2001) 387 final – Communication from the Commission to the Council and the European Parliament, An open method of coordination for the community immigration policy
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2001:0387:FIN:EN:PDF>

COM(2003) 323 – Commission Communication on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders and the return of illegal residents, Summary.
http://www.europa-eu-un.org/articles/en/article_2387_en.htm

COM (2006) 402 final – Communication from the Commission of 19 July 2006 on policy priorities in the fight against illegal immigration of third-country nationals, Summary.
http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l14525_en.htm

COM (2006) 735 final – The Global Approach to Migration one year on: Towards a comprehensive European migration policy
http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=COMfinal&an_doc=2006&nu_doc=735

Council Directive on 2005/85/EC – Minimum standards for procedures for granting and withdrawing refugee status, Summary.
http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33140_en.htm

Definition for Aussiedler, <http://www.sign-lang.uni-hamburg.de/projekte/slex/seitendvd/konzepte/150/15046.htm>, (accessed on 25.11.2011)

Deutschland: Bericht der Süßmuth-Kommission, Juli, 2004, http://www.migration-info.de/mub_artikel.php?Id=010401 (accessed on 25.11.2011)

Dietrich, Helmut (1998) – “Feindbild „Illegale“. Eine Skizze zu Sozialtechnik und Grenzregime” in: Dominik, Katja; Jünemann, Marc; Motte, Jan; Reinecke, Astrid (Hrsg.): *Angeworben, eingewandert, abgeschoben. Ein anderer Blick auf die Einwanderungsgesellschaft Bundesrepublik Deutschland*. Münster (Westfälisches Dampfboot) 1999, p. 290-323
<http://www.ffm-berlin.de/dampfboot.pdf> (accessed 24. September, 2012)

Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (EU Return Directive), Article 3, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:pdf>

Dublin II Regulation – Summaries of EU legislation,
http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33153_en.htm (accessed 17. September 2012)

EMN (2012) – „Practical responses to irregular migration: the Italian case”, European

Migration Network, Italian National Contact Point, Idos Rome, 2012

EMN (2012) – „Visa policy as migration channel in Italy”, European Migration Network, Idos, Rome, 2012

EMN Italy (2010) – „Satisfying labor demand through migration. The Italian case”, European Migration Network, Idos, Rome, 2012

EMN (2009) – “Programmes and strategies in Italy fostering assisted return and re-integration in third countries”, European Migration Network, Italian National Contact Point, Idos, Rome, 2009

EMN (2005) – “Irregular migration in Italy. Illegally resident third country nationals in Italy. State approach towards them and their profile and social situation”, European Migration Network, Italian National Contact Point, Idos, 2005

Fasani, Francesco (2010) – “The quest for La Dolce Vita? Undocumented migration in Italy”: in Triandafyllidou, Anna (edited by) *Irregular Migration in Europe: Myths and Realities*, p.167-187, Ashgate Publishing, 2010

Fasani, Francesco (2009) – “Undocumented Migration. Counting the Uncountable. Data and trends accross Europe”, Country Report Italy, Research project CLANDESTINO.

Federal Police Act (Bundespolizeigesetz) – http://www.gesetze-im-internet.de/bundesrecht/bgsg_1994/gesamt.pdf (accessed 17. September 2012)

Fischer, Daniela (2006) – *Spaniens Umgang mit Migration. Eine Studie zum migrationsbedingten Kulturkontakt (1990 - 2005)*, Verlag Karl Stutz, Passau, 2006

FRONTEX, Mission and Tasks – <http://www.frontex.europa.eu/about/mission-and-tasks> (accessed 14. September 2012)

Geddes, Andrew (2003) – *The Politics of Migration and Immigration in Europe*, Sage publications, London, 2003

Geddes, Andrew (2000) – *Immigration and European Integration. Towards Fortress Europe?*, Manchester University Press, Manchester, 2000

Geddes, Andrew / Favell, Adrian (1999) – *The Politics of Belonging: Migrants and Minorities in Contemporary Europe*, Ashgate Pub Ltd., 1999

Gelatt, Julia (2005) – “Schengen and the Free Movement of People Across Europe”, Migration Information Source, Washington, DC, Migration Policy Institute, October 2005 <http://www.migrationinformation.org/Feature/display.cfm?ID=338>

Guiraudon, Virginie / Joppke, Christian (2001) – *Controlling a New Immigration World*, Routledge / EUI Studies in the Political Economy of the Welfare State, London / New York, 2001

Heckmann, Friedrich (2007) – Illegal Migration: What Can We Know and What can We Explain? The Case of Germany in Portes, Alejandro/ DeWind, *Rethinking Migration. New Theoretical and Empirical Perspectives*, Berghahn Books, 2007

Heckmann, Friedrich/ Tomei, Veronica (1996) – *Freizügigkeit in Europa, Migrations- und europapolitische Aspekte des Schengen-Vertrag*, Europa-Union-Verlag, 1996

IOM – “Engaging Migrant Women for Development in Africa”, International Organization on Migration
<http://www.iom.int/jahia/Jahia/activities/by-theme/migration-development/engaging-migrant-women-for-development-africa> (accessed 17. September 2012),

Janh, Daniela / Maurer, Andreas / Oetzmann, Verena / Riesch, Andrea (2006) – „Asyl- und Migrationspolitik der EU, Ein Kraftspiel zwischen Freiheit, Recht und Sicherheit“, Diskussionspapier, Forschungsgruppe EU-Integration, Stiftung Wissenschaft und Politik, Deutsches Institut für Internationale Politik und Sicherheit, <http://www.swp-berlin.org/>

Joppke, Christian (1998) – *Challenge to the Nation-State: Immigration in Western Europe and the United States*, Oxford University Press, USA, 1998

Jorio, Luigi (2009) – “Swiss reflect on Schengen progress one year on”
http://www.swissinfo.ch/eng/specials/switzerland_schengen/Swiss_reflect_on_Schengen_progress_one_year_on.html?cid=7884928

Kraler, Albert (2011) – “Fixing, Adjusting, Regulating, Protecting Human Rights – The Shifting Uses of Regularizations in the European Union” in: *European Journal of Migration and Law* 13 (2011), p. 297–316

Kratzmann, Katerina (2007) – *Auf einmal war ich illegal. Undokumentierte Migranten in Österreich*, Dissertation, Verlag des Instituts für Europäische Ethnologie, Vienna, 2007

Kreienbrink, Axel / Currle, Edda / Schmidt-Fink, Ekkehart / Westphal, Manuela and Behrens, Birgit unter Mitarbeit von Magdalena Wille und Mirjam Laaser. (2007) – “Rückkehr aus Deutschland. Forschungsstudie 2006 im Rahmen des Europäischen Migrationsnetzwerk”, Forschungsbericht 4, Bundesamt für Migration und Flüchtlinge

Massey, Douglas (1993) – “Theories of International Migration: A Review and Appraisal” in: *Population and Development Review*, V.19, N3, p. 431-466

Massey, Douglas/ Joaquin, Arango/ Hugo, Graeme/ Kouaouci, Ali/ Pellegrino, Adella/ Taylor, Edward (1994) – “An evaluation of International Migration Theory: The North American Case” in: *Population and Development Review*, Vol.20, N4, p.699 – 751
Menz, Georg (2010) – *The Political Economy of Managed Migration. Nonstate Actors, Europeanization and the Politics of Designing Migration Policies*, Oxford University Press, 2010

Moravcsik, Andrew (1999) – *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*, Cornell University Press

Moravcsik, Andrew (1997) – “Taking Preferences Seriously: A liberal theory of International Politics” in: *International Organization* 51, 4, Autumn 1997, pp. 513–53

Moravcsik, Andrew (1993) – “Preference and Power in the European Community: A liberal Intergovernmentalist Approach”, in: *Journal of Common Markets*, Vol. 31, N4, Dec. 1993

Nuscheler, Franz (2004) – *Internationale Migration: Flucht und Asyl*, VS Verlag für Sozialwissenschaften, 2004

Parusel/ Bernd (2010) – “Europäische und nationale Formen der Schutzgewährung in Deutschland. Studie II/2009 im Rahmen des Europäischen Migrationsnetzwerk (EMN)”, Bundesamt für Migration und Flüchtlinge / EMN, Working Paper 30

Regulation (EC) No 562/2006 of the European Parliament and the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), Article 5

[http://eur-](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:105:0001:0032:EN:PDF)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:105:0001:0032:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:105:0001:0032:EN:PDF)

Residence Act (Aufenthaltsgesetz) –

[http://www.arbeitsagentur.de/zentraler-Content/A01-Allgemein-Info/A015-](http://www.arbeitsagentur.de/zentraler-Content/A01-Allgemein-Info/A015-Oeffentlichkeitsarbeit/Publikation/pdf/DA-Aufenthaltsgesetz.pdf)

[Oeffentlichkeitsarbeit/Publikation/pdf/DA-Aufenthaltsgesetz.pdf](http://www.arbeitsagentur.de/zentraler-Content/A01-Allgemein-Info/A015-Oeffentlichkeitsarbeit/Publikation/pdf/DA-Aufenthaltsgesetz.pdf) (accessed 17. September 2012) and <http://www.aufenthaltstitel.de/aufenthaltsg.html> (accessed 24, September 2012)

Riedel, Sabine (2011) – “Illegale Migration im Mittelmeerraum. Antworten der südlichen EU-Mitgliedstaaten auf nationale und europapolitische Herausforderungen“, SWP-Studie (Stiftung Wissenschaft und Politik / Deutsche Institut für Internationale Politik und Sicherheit), Berlin, 2011

Santel, Bernhard (2001) – “Italien und Spanien: Einwanderung zwischen Abwehr und Normalität” in: Bade, Klaus (2001) – *Einwanderungskontinent Europa: Migration und integration am Beginn des 21. Jahrhunderts*, Beiträge der Akademie für Migration und Integration, Osnabrück, 2001

Schengen Border Code – Legislation summaries,

http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/114514_de.htm(accessed 17. September 2012)

Schimmelfennig, Frank (2004) – „Liberal Intergovernmentalism“ in Wiener, Antje / Diez, Thomas, *European Integration theory*, Oxford University Press, 2004

Sciortino, Guiseppe (2004) – “Immigration in a Mediterranean Welfare State: The Italian Experience in Comparative Perspective” in: *Journal of Comparative Policy Analysis*, Vol. 6, No. 2, p. 111 – 129, August 2004

Schneider, Jan (2012) – “Maßnahmen zur Verhinderung und Reduzierung irregulärer Migration. Studie der deutschen nationalen Kontaktstelle für das Europäische Migrationsnetzwerk (EMN)“, Working paper 41, Bundesamt für Migration und Flüchtlinge / EMN, 2012

Schneider, Jan / Kreienbrink, Axel (2010) – “Rückkehrunterstützung in Deutschland. Programme und Strategien zur Förderung von unterstützter Rückkehr und zur Reintegration in Drittstaaten. Studie I/2009 im Rahmen des Europäischen Migrationsnetzwerk (EMN)“, Working paper 31, Bundesamt für Migration und Flüchtlinge / EMN, 2010

„Poland in Schengen zone“ – Official Promotional Website of the Republic of Poland <http://en.poland.gov.pl/Poland,inSchengen,zone,7248.html> (accessed 14. September 2012)

Press Release – „Asylum. Commission paper seeks balance between improving security and protecting refugees rights“, IP/01/1754, Brussels, 6 December 2001
<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/01/1754&format=HTML&aged=1&language=EN&guiLanguage=en>

Puchala, Donald (1999) – „Institutionalism, Intergovernmentalism and European Integration: A Review Article“ in: *Journal Of Common Market Studies*, Vol.37, No. 2, p. 317 - 331

Reuters (2009) – „Bad weather caused Lybian migrant boat to sink“
<http://www.reuters.com/article/2009/04/01/us-libya-migrants-idUSTRE5302EA20090401>

Schierup, Carl-Ulrik (2006) – *Migration, Citizenship, and the European Welfare State: A European Dilemma*, Oxford University Press, USA, 2006

Steinhilber, Jochen (2005) – Liberaler Intergouvernementalismus, p.169-196 in: Bieling, Hans-Jürgen / Lerch, Marika (2005) – *Theorien der europäischen Integration*, VS Verlag für Sozialwissenschaften

Tomei, Veronica (1997) – *Europäische Migrationspolitik zwischen Kooperationszwang und Souveränitätsansprüchen*, Europa Union Verlag, 1997

UNHCR (1995) – „Safe Third Countries, Myths and realities“
<http://www.unhcr.org/refworld/pdfid/403b5cbf4.pdf>

Valchev, Boiko (2010) – Bulgaria and integration processes toward the EU, security aspects, Dissertation, University of National and World Economy

van Selm, Joanne (2005). The Hague Program Reflects New European Realities. Migration Policy Institute, New York.
<http://www.migrationinformation.org/USfocus/display.cfm?ID=276>

Curriculum Vitae

PERSONAL INFORMATION:

- **Name:** Neli Evgenieva Kail
- **Date and Place of Birth:** 20. 7. 1987 in Plovdiv, Bulgaria
- **Citizenship:** Bulgarian
- **Civil Status:** Married
- **Languages:** Bulgarian, English (fluent), German (fluent), French (Basic)

EDUCATION:

- Oct. 2009 – Dec. 2012 **University of Vienna** (Vienna, Austria), Master program in Political Science
- Sept. 2005 – July 2009 **University of National and World Economy** (Sofia, Bulgaria), Bachelor program in International Relations
- 1997 – 2005 **Secondary school "Peyo Yavorov"** (Chirpan, Bulgaria)

WORK EXPERIENCE:

- since Oct. 2012 **HYPO NOE Gruppe Bank AG / Institutional Customers & Market Development**, Student trainee (Vienna, Austria)
- March – April 2012 **United Nations Office on Drugs and Crime** / Human Resources Management Service / Staff Development Unit, Internship (Vienna, Austria)
- since Sep. 2011 **Magazine “The Bulgarians in Austria” / “A4”**, Freelancer
- Sep. – Oct. 2010 **Institute for the Danube Region and Central Europe (IDM)**, Internship (Vienna, Austria)
- Aug. 2008 **Austrian Institute for International Affairs (OIIP)**, Internship (Vienna, Austria)
- Nov. – Dec. 2007 **"Atlantic Club in Bulgaria" and "The Manfred Wörner Foundation"**, Internship (Sofia, Bulgaria)
- July 2007 **Bulgarian Ministry of Foreign Affairs / Diplomatic Institute**, Internship (Sofia, Bulgaria)