

PASSPORT TO UNITY: European Immigration Policy from Schengen to Amsterdam

Julie Watts
Post - Doctoral Fellow
European Union Center of California

The European Council's plans to harmonize member state immigration policies mark a new step in the European Union after the common market, common currency and Schengen.

Romano Prodi, President of the European Commission, October 16, 1999

Changes in the global economy have caused aspects of national immigration policies to converge. For example, technological advances have made global communication and transportation more accessible to legal and illegal immigrant networks. This, in turn, challenges the state's ability to control immigration effectively. Fearing a crisis of immigration control, government officials in Europe and elsewhere in the industrialized world are developing and enforcing more stringent border control policies.¹

At the same time, economic competition from developing countries has sharpened employer demand for flexible, low-cost immigrant labor willing to do precarious work that natives shun in the textile, agriculture and service sectors. Countries that face acute labor shortages are experimenting with immigration policies

¹ According to Cornelius, Hollifield and Martin, government officials are less confident today about their ability to effectively regulate immigration than fifteen years ago. Controlling Immigration (1994) Stanford: Stanford University Press. And, according to a recent OECD report, in several OECD countries measures have been implemented to combat irregular immigration and the illegal employment of immigrants. OECD (1999) Trends in International Migration. Paris: OECD.

that help meet labor shortages such as employment-based quotas and bilateral agreements with sending states. In addition, high-tech employers in the United States, Canada and Western Europe claim that without skilled immigrant labor, the competitiveness of the computer industry will erode.

Despite these challenges, formal multilateral coordination on immigration is rare because states do not want to cede control over an issue so central to the notion of national sovereignty. The only exception is the European Union (EU), where member states are gradually, but at times reluctantly, moving toward a common European immigration policy.

In this paper, I examine the conflict between EU member states' desires to protect their sovereign control over immigration policy and the drive to complete the internal European market for goods, services and labor. I explore two questions. First, how have intergovernmental agreements among the EU member states evolved into Community policies? Second, how do European initiatives affect domestic immigration policies?

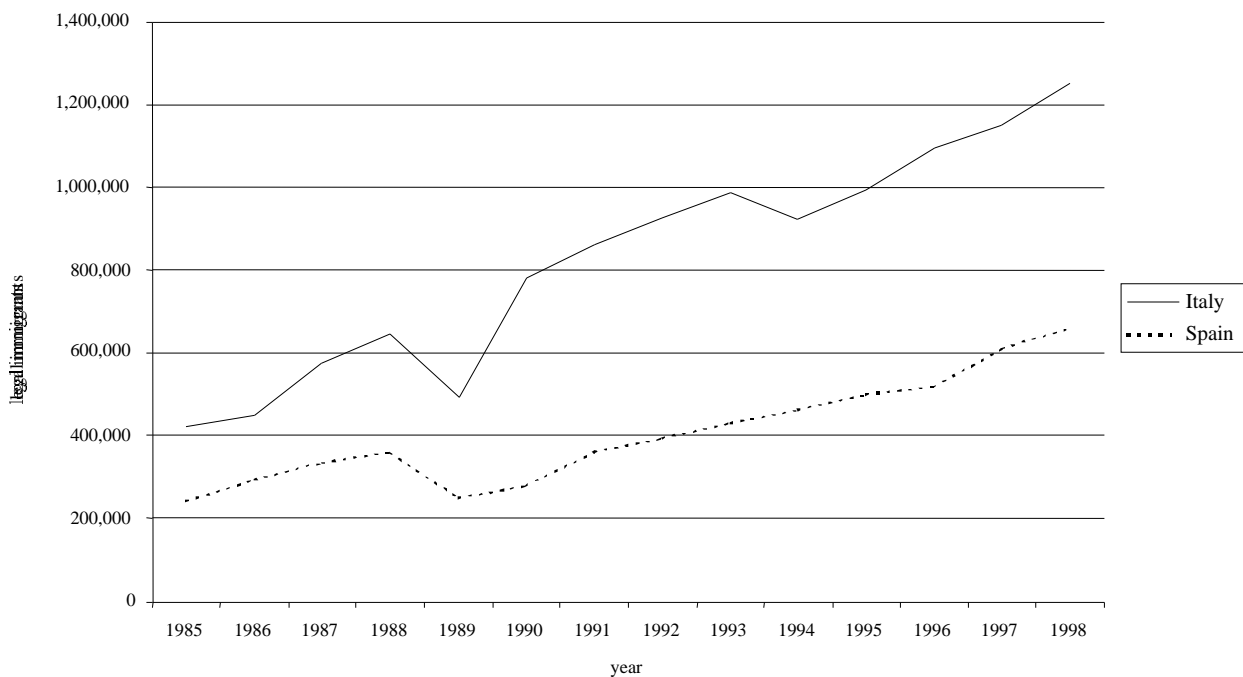
WHY YIELD SOVEREIGN CONTROL OVER IMMIGRATION TO COMMUNITY INSTITUTIONS?

Each of the EU member states has a unique history of immigration and particular economic and political immigration interests. In addition, a common European immigration policy would have significant economic, social and political ramifications on member states' domestic policies in areas such as labor supply, education, welfare and voting rights. For these reasons, member states have preferred

to negotiate directly with each other through intergovernmental institutions, rather than yield sovereign control over immigration policy to Community institutions.

For example, large-scale immigration to Southern Europe began only in the mid-1980s. As a result, Spain and Italy have relatively short histories of immigration and small immigrant populations compared to France and Germany (see Figure 2). In 1980 Spain had a legal immigrant population of 182,045. By 1998, this number had more than tripled to 659,599. Similarly, Italy had 450,227 legal immigrants in 1985. By the end of 1998, this number had nearly tripled to 1,250,214. The immigrant populations in these countries continue to grow as a result of legal and illegal immigration.

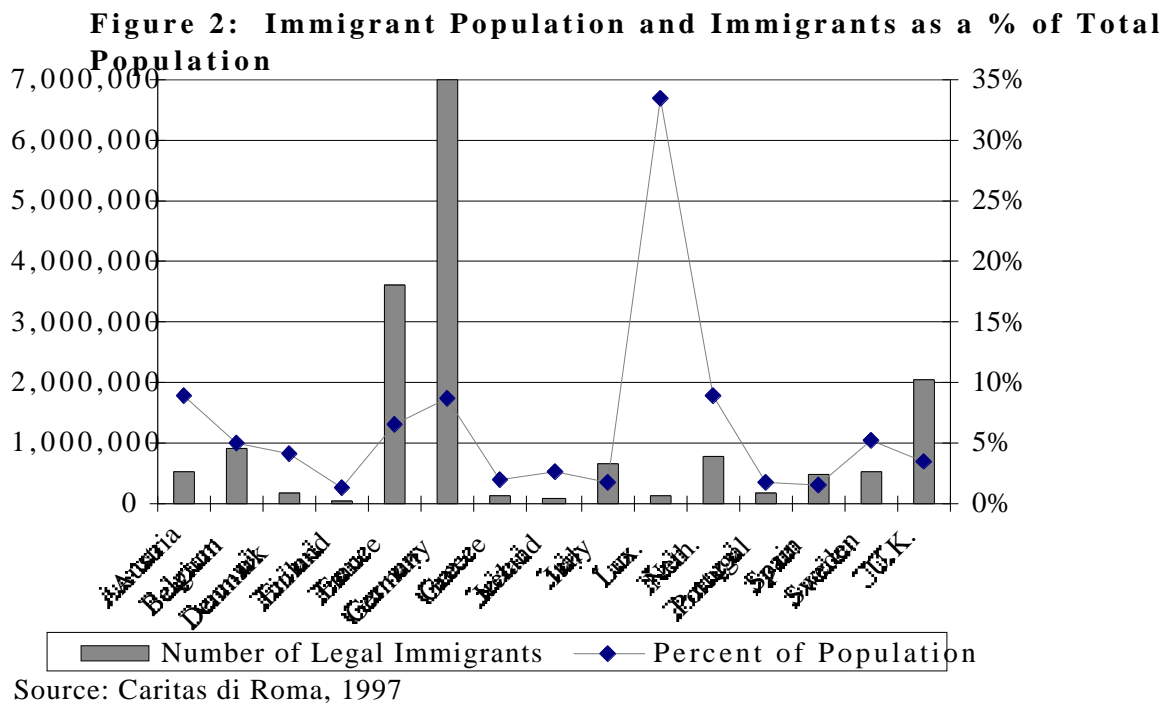
Figure 1: Legal Immigrant Population in Italy and Spain, 1985-1998



Source: Caritas di Roma, 1997; Spanish Ministry of Labor and Social Affairs, 1998

At the same time, in the 1980s and 1990s Spain and Italy have had growing economies and faced labor shortages in specific regions and sectors such as agriculture in Southern Spain and manufacturing in Northern Italy. Consequently, Southern European countries are still developing immigration policies, such as employment-based immigration quotas, which Northern European countries abandoned in the 1970s.

France and Germany, on the other hand, have much longer histories of immigration and larger foreign populations. Immigrants make up 6.5 of the French population and 8.8 percent of the German population. In these countries, policy-makers are struggling to address the incorporation of permanent immigrant communities.



Despite these national differences, in 1997 EU member states agreed to transfer authority for immigration policy from intergovernmental institutions to Community institutions.² However, by incorporating principles of unanimity and flexibility into the First Pillar, the member states also protected their national prerogative to make immigration policy.³ In addition, Community institutions will not gain full authority for immigration policy until 2004.

As a result, the future of immigration policy-making in the EU is open to interpretation. President Prodi argues that “national administrations should put aside any residual nostalgia for the days of pure intergovernmentalism which Amsterdam finally laid to rest.”⁴ At the same time, the British remain intransigent about abolishing internal frontier controls and claim that enhanced visa cooperation would create difficulties for the United Kingdom.⁵

I offer three explanations for why immigration policy is being transferred from intergovernmental to Community institutions. The first follows the functional logic expressed by President Prodi, that free movement of people is the next step in European unification. Member states want to realize the economic benefits of eliminating internal

² According to the 1997 Treaty of Amsterdam, by 2004 responsibility for immigration policy will be moved from the Third Pillar, which is the domain of the member states and intergovernmental institutions, to the First Pillar, which is the domain of Community institutions such as the European Commission and Parliament.

³ For the first five years that immigration is a Community competency voting will be by unanimous rule. After five years, member states must vote unanimously to change to majority rule. Denmark, Ireland and the UK negotiated special flexibility clauses that allow these member states to opt out of decisions taken by other member states.

⁴ Speech by Romano Prodi at a Special Meeting of the European Council, Tampere, Finland, October 1999.

borders, which requires that they cooperate on external border controls. By sharing information and pooling resources in the areas of policing, police training and prosecution, member states can better regulate their external borders. I argue that in practice, the process of finding common ground on immigration has not been smooth as Prodi's functional approach predicts. Therefore, spillover from one issue area to another, in this case from the internal market to common immigration policies, is a necessary but insufficient explanation for the transfer of immigration policy to EU institutions.

The second explanation concerns institutional credibility and capacity. The primary European institution for immigration, the Schengen Group, lacked credibility because decisions were made secretly by representatives of national ministries, without input from interest groups or elected officials. Yet immigration is a major concern of European citizens, as witnessed by the 1999 electoral success of the anti-immigrant extreme right in Austria. Hence, tackling the immigration issue became central to the credibility of the EU and required incorporating Schengen, an extra-EU institution, into a more transparent and participatory EU framework. At a special meeting of the European Council on immigration issues, President Prodi said the Council must send a message to its citizens that "we are genuinely determined to devote our energies to matters which directly affect [EU citizens] in their daily lives."

Schengen also lacked the institutional capacity to function effectively in an expanded Europe of up to 27 members, with insecure eastern and southern borders. Not

⁵ Announcement by the British Home Secretary at a European Council Justice and Home Affairs Meeting, March 1999. Cruz, A. (1999) 'Achievements in the Fields of Immigration and Asylum Since

only would Eastern enlargement seriously challenge the policing, informational and training capacities of Schengen, it also would require additional translators and meeting space. Given these challenges, the Schengen Group needed financial and technical support from the EU to survive.

These functional and institutional explanations provide a backdrop for why competency for immigration is being transferred from intergovernmental to Community institutions. However, since the mid-1980s, efforts to coordinate immigration policies have been characterized by complex negotiations among EU member states. According to Keohane and Hoffman (1991), negotiating and coalition-building within the EU take place between governments, not in the context of supranational institutions. In other words, policy convergence begins with domestic political processes and interstate bargaining, and is most successful when the preferences of governments are similar.⁶ Whether policies in fact converge is determined by negotiations among member states and domestic cost-benefit analyses.

In the case of immigration, member states have realized that eliminating internal borders is essential to achieving the full economic benefits of a common market. But this also would require closer cooperation on external border control to keep out illegal immigrants, drug traffickers and money launderers. Nevertheless, for many years, the 'spill over' effect could not surmount differences among EU member states. As a result, at the 1997 Amsterdam Intergovernmental Conference, the member states negotiated an agreement that addresses institutional weaknesses while protecting their license to make immigration policy.

January 1998.' European Journal of Migration and Law. Vol. 1, p. 243-254.

FROM SCHENGEN TO AMSTERDAM: A CASE STUDY IN INTERGOVERNMENTAL BARGAINING

Although the free movement of people among the EU member states was a founding principle of the 1957 Treaty of Rome, progress toward harmonizing immigration policies has been incremental. In fact, immigration was not identified as a key social policy of the Community until 1974, when the European Council adopted an action plan for migrant workers and their families.

In the mid-1980s, several member states began to appreciate their common economic and security interests concerning third-country immigration. However, within the domain of EU institutions, the necessary unanimous consensus was missing due to opposition from the United Kingdom, Denmark and Ireland. These countries argued that free movement should apply only to nationals of EU member states. They opposed eliminating internal border checks, which would give third-country immigrants de facto free mobility once inside the EU.

As a result, a subset of member states created an extra-EU intergovernmental body, the Schengen Group. The resulting Schengen Agreements are not common immigration policies, but rather common border policies. Nevertheless, Schengen evolved into more than an agreement on border controls and became a ‘laboratory’ for European immigration policy.

The Schengen Agreements sought to abolish internal border controls gradually, while reinforcing external borders. For example, inspections at internal border crossings

⁶ Keohane, R.O. and S. Hoffman (1991) The New European Community. Boulder, CO: Westview Press,

have been eliminated, and customs police may apprehend suspects in another member states' jurisdiction. At the same time, the Schengen Agreements strengthen external controls by clarifying and tightening asylum rules so that refugees cannot apply for asylum in more than one member state. In addition, Schengen members maintain a common visa list, and coordinate police surveillance at external border checks.

The impetus for Schengen came from German commercial truck drivers, who wanted to expedite interstate trade but were deluged by border check inspections. In 1984, the German government took the initiative to unilaterally relax its border controls. Shortly thereafter, Germany signed the Saarbrücken Agreement with France, which eliminating border controls between France and Germany. In 1985, this bilateral arrangement was transformed into the Schengen Agreements, with France, Germany, Belgium, Luxembourg and the Netherlands becoming the original members. Later, the Schengen Club expanded to include Italy, Spain, Portugal, Greece, Austria, Sweden and Finland. Because of differences among the Schengen member states, the Agreements were only partially implemented in June 1990. Full implementation was delayed until March 1995.

Various obstacles complicated negotiations over how to implement Schengen. These challenges included the reunification of East and West Germany, as well as reconciliation of different national policies on the possession of soft drugs, data protection and bank secrecy.⁷ The relevance of these challenges can be seen by the

p.24.
⁷ Philip, A.B. (1994) 'European Union Immigration Policy: Phantom, Fantasy or Fact?' The Politics of Immigration in Western Europe. Baldwin-Edward, M. and M. Schain, eds. New York: Frank Cass, p.179.

fact that Italy, for example, did not gain full membership in Schengen until April 1998. Until that time, other Schengen members, concerned about Italy's porous borders and unwillingness to deport illegal immigrants, blocked Italy's membership. Italy was admitted shortly after its new immigration law, passed in March 1998, addressed these concerns.

As part of the 1997 Amsterdam Treaty, member states agreed to incorporate Schengen into the EU's First Pillar. This means that immigration control will be transferred gradually from intergovernmental institutions, which are characterized by unanimity, secrecy and opaqueness, to more open and democratic Community institutions. From a functional perspective, one could argue that Schengen member states realized the economic benefits of cooperating on border control, and therefore agreed to pool their sovereignty further in Community institutions, where majority rule facilitates decision-making.

However, EU enlargement to the North and East posed problems for Schengen. Institutionally, the Schengen Group had grown too cumbersome to function autonomously. For example, the simple issue of adding new members, which required additional translators and larger meeting space, placed institutional strains on Schengen.⁸ More importantly, the challenge of controlling Schengen's porous southern border would seem insignificant compared to the imminent expansion of the EU into Central Europe. In order to survive, Schengen needed the financial and technical support that EU institutions could provide.

⁸ Author interview, Jan de Ceuster, European Commission, DGV, September 22, 1997.

The Schengen Agreements also lacked legitimacy because they failed to establish a democratic or transparent decision-making process. Because immigration is a highly relevant and politicized issue among European citizens, it was essential for the EU to send a “clear political message to Europe’s citizens” that immigration was a priority.⁹ However, member states and EU officials have not yet fully appreciated the consequences of transferring Schengen into the EU institutional framework. Sensitive decisions regarding border control that were once made in secret will now be published in the Official Journal of the European Commission. As a result, at the October 1999 European Council Summit in Tampere, Finland, member state representatives avoided the issue of mobility for third country nationals because it was considered “too controversial.”¹⁰

Institutional concerns with Schengen’s capacity and credibility helped push the member states to negotiate an agreement at Amsterdam that would move Schengen into the Community framework. However, reaching an agreement that satisfied the demands of all the member states required introducing intergovernmental procedures that eventually may corrupt the First Pillar approach. For example, for the first five years that immigration is a Community competency, decisions must be made unanimously. But Britain, Denmark and Ireland negotiated an opt-out, or flexibility, clause that allows minority member states to ignore majority decisions. The flexibility clause thus effectively requires unanimous voting, and in this sense, immigration will not be a true

⁹ Nicole Fontaine, President of the European Parliament, at a Special Meeting of the European Council, Tampere, Finland, October 1999.

¹⁰ Prime Minister of Finland Paavo Lipponen at the Presidency Press Conference, Tampere, Finland, 10/16/99.

First Pillar concern. Instead, member states will retain some control over immigration policy by combining aspects of the Third and First Pillars.

The Schengen case demonstrates that EU member states share a common economic interest in completing the internal market, as well as a common political interest in regulating third-country immigration. However, creating Schengen and incorporating it into the EU framework was not inevitable. Rather, these processes were characterized by intergovernmental bargaining and institutional concerns. At the same time, member states have preferred to retain control of their borders and immigration policies, at least to date. They therefore have incorporated immigration policy into Community institutions in such a way that their sovereignty cannot easily be jeopardized.

HOW EUROPEAN PRESSURES SHAPE NATIONAL IMMIGRATION POLICY

Despite the flexibility built into the Amsterdam Treaty, there is already evidence that member states are conforming to EU directives in their domestic immigration policies. In fact, even prior to Amsterdam, pressures from other member states and from European intergovernmental institutions often shaped domestic immigration policy decisions. For example, Italian and Spanish policy-makers have encountered pressures from their Northern European neighbors to restrict illegal immigration, since the relaxation of border controls among the Schengen countries makes it relatively easy for third-country immigrants to pass through Spain and Italy on their way to Northern Europe.

However, Spain and Italy also have unique immigration interests because of their locations, economies and histories of emigration. For example, Spain and Italy have become magnets for illegal immigration from North Africa due to demand for cheap, immigrant labor in the underground economy, which makes up about 25 percent of Italian GDP and 20 percent of Spanish GDP. As a result, the Spanish and Italian governments often are lax in their enforcement of sanctions against employers who hire illegal immigrants. Labor unions, on the other hand, have taken an active role in supporting immigrant workers, in part because of union experience with emigration in the 1960s and 1970s. The Spanish and Italian labor unions support policies that promote legal immigration over illegal immigration, such as amnesties, family reunification and employment-based immigration quotas. Therefore, Spanish and Italian policy-makers must balance European pressures to restrict immigration with domestic pressures to moderate immigration policies.¹¹

Brochmann (1996) argues that the mere existence of the EU influences the policies of its individual member states. “The Community has a significant indirect impact because governments must consider other states’ policies due to the international character of current migration flows,” she writes.¹² According to Brochmann, immigration policies will converge toward the policy of the most restrictive state to avoid the ‘magnet effect’ of attracting non-EU immigrants.

¹¹ Watts, J. (1999) ‘Italian and Spanish Labor Leaders’ Unconventional Immigration Policy Preferences.’ South European Society and Politics. Spring 1999, pp. 129-148.

¹² Brochmann, G. (1996) European Integration and Immigration from Third Countries. Oslo: Scandinavian University Press, p. 98.

The three studies that follow demonstrate that the EU exerts an important influence on domestic immigration policy-making. However, immigration policies are not necessarily becoming more restrictive, as Brochmann predicts. Instead, Italy and Spain are balancing their economic needs for immigrant labor and political concerns for integrating immigrants, with external demands to control illegal immigration.

Accession to the EC Forces Spain to Pass Its First Immigration Law

Two external forces stimulated Spanish government officials to pass Spain's first, and highly restrictive, immigration law in 1985: the government needed to respond to the increasing numbers of immigrants arriving in Spain, and Spain needed to adapt its legislation to fit Community guidelines.¹³ The government passed the *Ley Organica sobre Derechos y Libertades de los Extranjeros en España* (Organic Law on the Rights and Freedoms of Aliens in Spain, or LOE) on July 1, 1985, just days after Spain signed the treaty to join the European Community. The 1985 law resulted from negotiations related to Spain's entry into the European Community and pressure from other member states to restrict immigration from outside the Community.¹⁴

According to its preamble, the LOE has the dual purpose of guaranteeing immigrants' rights and controlling illegal immigration. However, because the law is vague and imprecise concerning how Spain should control immigration, much subsequent policy has been made by administrative decree. For example, the LOE makes no mention

¹³ Aragon Bombin, R. (1996) 'Diez Anos de Política de Inmigración.' *Migraciones*, pp. 45-59.

¹⁴ See Calavita, K. (1998) 'Immigration, Law and Marginalization in a Global Economy: Notes from Spain' Unpublished manuscript, p. 17; Casey, J. (1998) 'La Inmigración Extranjera: un ámbito emergente de políticas.' *Políticas Públicas en España*. J. Subirats and R. Goma, eds. Madrid: Ariel, p. 24.

of family reunification. Subsequent administrative decrees on family reunification state that the immigrant residing in Spain must be well-established, with at least three years residency, and have the economic means to support the applicant, since spouses are ineligible for work permits. From 1992 to 1994, a ban was placed on issuing visas for family reunification. As a result, immigration under the auspices of family reunification was virtually impossible for most third world immigrants.

Although measures in the LOE and subsequent administrative decrees were strict enough to meet the requirements of the EC, these measures failed to regulate immigrant flows. Instead, their lack of clarity and restrictiveness have heightened immigrant insecurity and forced many immigrants into clandestine status. From 1986 to 1990, the growing illegal immigrant population exposed the weaknesses of the 1985 law. For example, of the 23,000 immigrants who were granted legal status under the 1985 LOE, two-thirds had fallen back into illegal status by 1988 because of administrative complications in renewing temporary work permits. The negative effects of the restrictive LOE helped demonstrated to policy-makers that a highly restrictive immigration policy was unrealistic for Spain.

In two subsequent reforms of the LOE in 1991 and 1996, policy-makers tried to stay within the bounds of intergovernmental agreements, while pursuing a controlled immigration policy that would reduce illegal immigration and channel immigrant workers into sectors that face labor shortages.¹⁵ For example, in 1991 a quota system was developed to channel immigrant workers into sectors that needed workers, such as

agriculture and construction. And in 1996, the work permit system was reformed to facilitate renewals and allow for permanent residency. Legalization campaigns also were implemented as part of the 1991 and 1996 reforms.

Spanish Immigration Reform Complicated by European Initiatives

After 18 months of negotiation, all political parties in the Spanish *Congreso de Diputados* reached consensus in 1999 on new legislation that will give Spain one of the most generous immigration policies in Europe. The legislation, which was co-authored by Spanish labor unions, calls for:

- a continuous legalization mechanism for undocumented immigrants who can prove residency in Spain for at least two years
- one-time amnesty for illegal immigrants arriving in Spain prior to July 1999
- the right to family reunification for spouses, minor children and dependent parents and grandparents
- renewal of work permits for unemployed immigrants who at one time paid taxes and are eligible for unemployment benefits
- written explanation from the Ministry of the Exterior when denying a visa
- access to health, education and free legal services for legal and illegal immigrants
- the right to join a union or strike for legal and illegal immigrants

Days before Congress unanimously approved this legislation, the Spanish government, which is controlled by the conservative *Partido Popular*, raised concerns about its compatibility with directives issued by the European Council at the Tampere

¹⁵ Author interview, Roman Garcia, sub-Director for Immigration, Ministry of Labor, Madrid, 11/16/96.

Summit in October 1999. At the Tampere Summit, the Council ministers for Justice and Home Affairs discussed creating a common area of freedom, security and justice as spelled out by the Amsterdam Treaty. The Council's message to the member states on immigration policy was broad: facilitate the integration of legal immigrants, improve the management of migration flows and tackle illegal immigration at its source.¹⁶

Because the Council's directives were so broad, the main author of the Spanish legislation, *Convergencia i Unio* (CiU), disagreed with the government that its proposals were contrary to directives issued at Tampere. In fact, *CiU* believes the law passed by Congress will help immigrants integrate into Spanish society by granting them equal social, legal and economic rights.

The Spanish government's opposition to the legislation can be explained in part by its desire to appear tough on immigration in an upcoming election year. According to a recent poll, 56.8 percent of university students think the government should stop new immigration to Spain.¹⁷ According to government officials, the new legislation is a 'call to immigrants' because 'it is so far from other European legislation.' And elected officials further argue that 'Spain should be more prudent because is a country on the frontier of Europe.'¹⁸

¹⁶ Paavo Lipponen, Prime Minister of Finland, Presidency Press Conference, Tampere, Finland, 10/16/99

¹⁷ Aguirre, B. (1999) 'El 47% de los Universitarios Opina que los Inmigrantes Incrementan la Delincuencia.' *El Pais*. December 21, 1999.

¹⁸ Aizpeolea, L. (1999) 'El Gobierno Bloqueará en el Senado la Ley de Extranjería con las Enmiendas de Interior.' *El Pais*. November 20, 1999.

Before the legislation could be voted on in the Senate, the leaders of the majority party, *Partido Popular*, proposed 112 amendments, modifying almost the entire text of the law passed by Congress. For example, the amendments sought to:

- limit the rights to join a union or strike to legal immigrants
- remove the automatic right to family reunification
- limit the legalization mechanism to those undocumented immigrants who had a temporary permit that was renewed one time
- limit the one-time regularization to those arriving in Spain prior to January 1, 1999
- remove the clause requiring the Ministry of the Exterior to provide written explanation for denying a visa

According to the Spanish government, these measures are necessary to make the legislation consistent with the conclusions of the Tampere Summit, which called for ‘controlling illegal immigration at its source.’

Because the *Partido Popular* enjoys an absolute majority in the Senate, the amended legislation passed on December 8. The amended legislation returned to Congress on December 22 for a final vote, in which an absolute majority was required for passage. But due to party infighting, *Partido Popular* lost four key votes from its coalition partner *Coalición Canaria*, thus costing it an absolute majority. As a result, the amended legislation failed, and the original more generous legislation went into effect.

Although Congress approved the more generous legislation on December 22, the leaders of *Partido Popular* promised to modify the law in 2000 if they won the next election.¹⁹

Entry into Schengen Forces Italy to Crack Down on Illegal Immigration

The continuing problem of illegal immigration, combined with a desire to gain full membership in Schengen, stimulated the Italian government to draft new immigration legislation in 1998. Previous legislation provided few opportunities for legal immigration to Italy, yet control mechanisms were notoriously weak. As a result, Italy repeatedly has used amnesties to reduce the size of its illegal immigrant population, and these measures may have further stimulated illegal immigration.

Italy's 1998 law seeks to be comprehensive by balancing external control policies with an internal expansion of social, economic and political rights for legal immigrants. At the same time, the law is a compromise between the left, which favors more open immigration policies, and the right, which wants to restrict immigration and strengthen controls.

In addition, Italy's long-standing policy of issuing deportation orders, but not detaining illegal immigrants, was a stumbling block to full membership in Schengen. Not surprisingly, most illegal immigrants who were 'deported' failed to turn themselves into the Italian authorities, and many proceeded to Northern Europe. Therefore, Italy was under pressure crack down on illegal entries by the April 1998 Schengen deadline.

The new law, passed in March 1998, strengthens police powers to arrest and detain illegal immigrants. Under Article 12, immigrants who enter Italy without proper

¹⁹ Gonzalez, M. (1999) 'Fracaso del Gobierno con la Ley de Extranjería.' El Pais. December 23, 1999.

documentation, but cannot be expelled immediately, are to be placed in detention centers until their expulsion date. Detained immigrants are given the right of defense and cannot be held for more than 20 days without legal action.

According to Francesco Lanata of the Italian Ministry of Foreign Affairs, Italy's pending membership in Schengen gave greater urgency to strengthening Italy's border controls. But Italy, like Spain, faces labor shortages in specific sectors, as well as a large illegal immigrant population. Consequently, policy-makers sought to balance pressures to restrict illegal immigration with the demands of the Italian economy for immigrant labor.²⁰

Italian policy-makers did this through an innovative quota system that ends the old system of immigration based on illegal entry and regularization. The quota policy sets up a four-pronged system:

- A quota for dependent workers determined locally by provincial governments, employers and labor unions based on labor market needs. Immigrants are recruited through bilateral agreements with sending states. Quotas can be changed during the year if labor market needs change.
- A quota for self-employed workers, also determined locally. Workers are recruited through bilateral agreements with sending states.
- A quota for immigrants sponsored by public or private groups that will support the immigrants. A firm, private individual or public agency can sponsor immigrants.
- A small quota for immigrants originating from countries not covered by bilateral agreements with Italy and who do not have a sponsor.

The Italian government was reluctant to hold another amnesty before Italy gained full membership in Schengen in spring 1998, so policy-makers intentionally avoided the amnesty issue in the 1998 law. However, according to the law, immigrants who entered Italy illegally prior to March 1998 cannot be expelled. Since March 1998, the undefined legal status of many immigrants has been remedied by two amnesties. In the fall of 1998, 38,000 work permits were granted to employed immigrants who arrived prior to March 1998. Approximately 280,000 undocumented immigrants applied. The Ministry of the Interior promised those who met the requirements, but were not granted a permit in 1998, that they could stay in Italy and become eligible for the 1999 quota. In February 1999, Italy offered a second amnesty in which 300,000 immigrants applied and 150,000 received legal status.²¹

Because full membership in Schengen was important to Italians, who no longer wanted to be thought of as second-tier members of the club, European pressures were an important impetus for the 1998 Italian immigration law. Still, policy-makers sought to balance the needs of the Italian economy and the integration of immigrants against external demands to restrict illegal immigration.

These cases demonstrate that Europe exerts an important influence over the domestic immigration policy-making process. For Spain and Italy, membership in the ‘club’ often has required the adoption of more stringent border control policies to demonstrate to other member states that controlling illegal immigration is a priority.

²⁰ Author interview, Francesco Lanata, Ministry of Foreign Affairs, Rome, December 9, 1997.

²¹ Migration News Sheet (1999) Southern Europe, Italy, November 1999.

However, Spain and Italy have their own specific economic and political immigration concerns. Contrary to Brochmann's prediction, member states are not converging toward the policy of the most restrictive state. Instead, member states seek to stay within the bounds of European agreements and satisfy the demands of domestic pressure groups, such as employers who want access to immigrant labor.

CONCLUSION

The question of who controls the immigration policy-making process remains unanswered, since authority for immigration policy is shifting from intergovernmental to Community institutions. Nevertheless, this is an important question that has practical and theoretical implications for other issues in which powers are shared between member states and Community institutions, such as the Common Foreign and Security Policy. In many cases, national policy-makers who wish to realize the economic and security benefits of participating in European agreements must consider pressures emanating from the EU and intergovernmental institutions. Nonetheless, member states have been reluctant to yield control over immigration policy to Community institutions. Despite the message of the Amsterdam Treaty -- that immigration will be a First Pillar concern by 2004 -- immigration policy-making will continue to be a contentious issue among member states, as well as between member states and Community institutions.

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