

STEFFEN MINTER

Irregular Immigration

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Mohr Siebeck

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Clemens Fuest and Kai A. Konrad

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Steffen Minter

Irregular Immigration

An Economic Analysis of Policies
in the EU

Mohr Siebeck

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Freiburg, October 2014

Steffen Minter

Contents

List of Tables	XI
List of Figures	XII
<i>Chapter 1: Motivation and general introduction</i>	3
1.1 The debate on irregular immigration in the EU: Between burden-sharing and burden-shifting	3
1.2 Intergovernmentalism vs. Supranationalism in the presence of individual mobility: The perspective of Fiscal Federalism	7
1.3 Purpose and limits of the thesis	11
1.4 Outline of the thesis	13
<i>Chapter 2: Basic facts on regular and irregular immigration to the EU</i>	17
2.1 The ambiguity of terminology: Illegal, irregular or undocumented immigration?	18
2.2 The EU as a destination region of regular immigrants	20
2.3 The external EU border and its enforcement	24
2.3.1 Characteristic	24
2.3.2 Current situation concerning irregular entries	26
2.3.3 Enforcement efforts	31
2.4 Evidence and estimates on irregular immigrants in the EU	34
2.4.1 Estimation methods	35
2.4.2 An overview on numbers of irregular immigrants	36
2.5 Immigration Amnesties – facts and figures on the regularization of immigrants	40
2.6 Chapter summary	41
<i>Chapter 3: The legal and institutional development of immigration policy in the EU</i>	45
3.1 The Schengen acquis and internal free mobility	45
3.2 The “Securitization” of immigration policy as a driver for integration	48

3.3	The introduction of the Frontex Agency	51
3.4	The Lisbon Treaty and the road ahead with the Stockholm Programme	55
3.5	The (missing) legal framework concerning Immigration Amnesties	58
3.6	Chapter summary	60
<i>Chapter 4: The welfare effects of regular and irregular immigration in the host country</i>		
4.1	A glimpse on the literature on international migration	63
4.2	Introducing a theoretical framework	66
4.3	A scenario of regular immigration	68
4.3.1	How immigration affects native income – the immigration surplus	68
4.3.2	The impact of immigration on the public transfer system	71
4.3.3	Total effect of immigration on native welfare	72
4.4	A scenario including irregular immigrants	73
4.4.1	The Labor Segmentation Hypothesis concerning irregular immigration	74
4.4.2	How irregular immigration affects the public transfer	76
4.5	Immigration and native welfare from an empirical perspective	76
4.5.1	The labor market effects	77
4.5.1.1	Spatial correlation approach	78
4.5.1.2	Production function approach	80
4.5.2	Immigration and public finances	81
4.6	Chapter summary	83
<i>Chapter 5: Border enforcement and Immigration Amnesties in a federal setting</i>		
5.1	The model	89
5.1.1	The economic environment	89
5.1.2	Timing of events	91
5.2	The decision on amnesty and enforcement spending	92
5.2.1	Migration patterns	93
5.2.2	Production	94
5.2.3	Country A: The decision on amnesty	94
5.2.4	Country A: The decision on enforcement spending	96
5.2.5	Country B: The enforcement subsidy	98
5.2.6	Non-cooperative equilibrium	100
5.3	Social optimum	103

5.4	Extensions	105
5.4.1	Endogenous onward migration	105
5.4.1.1	The migration decision	106
5.4.1.2	Equilibrium	107
5.4.2	The policy choice on onward migration	108
5.5	Chapter summary	109
<i>Chapter 6: Burden sharing in border enforcement –</i>		
<i>An application of the “expected externality mechanism”</i>		
		113
6.1	A three-country model with irregular immigration	114
6.2	Socially optimal border enforcement	118
6.3	The outcomes of decentralized decision-making	119
6.4	Mechanism design and the expected externality mechanism	121
6.5	Numerical example	124
6.5.1	Scenario 1: Small border country	127
6.5.1.1	Welfare optimum	127
6.5.1.2	Decentral choice of enforcement	128
6.5.1.3	Structure of payments	129
6.5.2	Scenario 2: Large border country	130
6.5.2.1	Welfare optimum	130
6.5.2.2	Decentralized choice of enforcement	131
6.5.2.3	Structure of payments	131
6.6	Chapter summary	133
<i>Chapter 7: Current developments and reform proposals:</i>		
<i>The road ahead from a normative perspective</i>		
		135
7.1	The Europeanization of immigration policy: The current state of play	136
7.2	A look on official reform proposals towards a common European immigration policy	140
7.2.1	Prospects for a common EU border force	140
7.2.2	Cooperation with source and transit countries	142
7.2.3	Reintroduction of internal border controls	146
7.3	Chapter summary	150
<i>Chapter 8: Conclusion</i>		
		153
Appendix A		159
Appendix B		167
References		171
Index		187

List of Tables

2.1 Schengen and non-Schengen states in EU.	25
2.2 The Southern maritime borders (Source: House of Lords, 2007: 17).	26
2.3 Equipment of border forces in Italy and Spain (Source: Lutterbeck, 2006).	32
2.4 Selected Frontex sea operations in 2010 (Source: Frontex, 2011b).	34
2.5 Dynamic aggregate estimate of the irregular foreign resident population (Source: Clandestino, 2009: 15).	39
2.6 Regularization programs (Source: Krieger and Minter, 2007)	42
6.1 Probability of type combinations in country B and C.	127
6.2 Welfare maximizing enforcement level e^* in scenario 1 for $\bar{M} = 5$	128
6.3 Payments and Utility differentials in scenario 1 for $\bar{M} = 5$	129
6.4 Welfare maximizing enforcement level e^* in scenario 2 for $\bar{M} = 5$	131
6.5 Payments and Utility differentials in scenario 2 for $\bar{M} = 5$	132
B.1 Welfare maximizing enforcement level in scenario 1 for $\bar{M} = 1$	167
B.2 Payments and Utility differentials in scenario 1 for $\bar{M} = 1$	167
B.3 Welfare maximizing enforcement level in scenario 1 for $\bar{M} = 10$	168
B.4 Payments and Utility differentials in scenario 1 for $\bar{M} = 10$	168
B.5 Welfare maximizing enforcement level in scenario 2 for $\bar{M} = 1$	169
B.6 Payments and Utility differentials in scenario 2 for $\bar{M} = 1$	169
B.7 Welfare maximizing enforcement level in scenario 2 for $\bar{M} = 10$	170
B.8 Payments and Utility differentials in scenario 2 for $\bar{M} = 10$	170

List of Figures

1	Share of Non-EU 27 foreigners in total population in 2010 (Source: Eurostat database).	23
2	Inflow of Foreigners into selected Member Countries (Data source: Eurostat database).	23
3	Refusals of entry at type of border (Data source: Frontex, 2012).	27
4	Detections at type of border (Data source: Frontex, 2012).	28
5	Irregular migration flows by route from 2009 to 2011 (Data source: Frontex, 2012).	29
6	Number of apprehensions in Italy and Spain (Source: de Haas, 2008).	30
7	Frontex Budget in Million Euro (Source: http://www.frontex.europa.eu/).	33
8	Estimates on irregular foreign residents for EU 27 in 2008 (Source: Clandestino, 2009).	38
9	The effect of immigration on private income (Borjas, 1995).	69

The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.

(From: Art. 80 'Treaty on the Functioning of the EU' concerning Chapter 2: 'Policies on Border Checks, Asylum and Immigration')

'[...] on this very specific issue of helping us out, EU states are absolutely not willing to show solidarity.'

(Italian minister Roberto Maroni in April 2011 concerning the inflow of migrants at the Italian coast)

Chapter 1

Motivation and general introduction

1.1 The debate on irregular immigration in the EU: Between burden-sharing and burden-shifting

The subject of irregular immigration is a highly prevalent topic in European media coverage and political debate. Over the past few years numerous controversial events have sparked political tension and public concern, especially those repeatedly taking place along the EU's southern shores (cf. Bommers and Sciortino, 2011). Examples of these events include images of people climbing the fences of the Spanish exclaves Ceuta and Melilla in Morocco to put a foot on EU territory, reports – especially in the summer months of each year – of people leaving the Northern African shores in small and crowded boats that hardly seem able to make the journey across the sea to Europe, or pictures of crowded and inhumane detention camps for refugees and irregular migrants in Greece (cf. Weinzierl and Lisson, 2007; UNHCR, 2008; Amnesty International, 2010). In particular, places like the Canary Islands, Lampedusa or Malta have repeatedly reported large inflows of immigrants and refugees that circumvented border controls to reach the EU in often life-threatening health conditions, often caused by the day long journey across the sea. The most recent events followed the Arab Spring in 2011, which led to a surge of boat goers arriving in Italy (UNHCR, 2012).

The occurrence of irregular immigration is not exclusive to the EU. Countries like India, South Africa and the U.S. are also prominent destination countries for regular as well as irregular immigrants. Particularly the U.S. has a long history of irregular immigration, nowadays documented by a broad based literature.¹ In the EU, on the other hand, public awareness of this phenomenon has emerged mostly over the last 20 years. As Kraler and Reichel (2011) point out, it was the fall of the communist regimes in Eastern Europe, the general hike in immigration to Europe in the 1990s, and the conflict driven migration from the Balkans in the 1990s which increased the relevance of irregular immigration here. However, an important difference between irreg-

¹ For surveys on the situation in the U.S. see e.g. Espenshade (1995), Orrenius (2001), Hanson (2006, 2007, 2009).

ular immigration to the EU and to the U.S. lies in the following: in contrast to the U.S., the EU was not originally designed as a federation from the start but up until today a union of sovereign member states founded on treaties negotiated between them. Nevertheless, one of the cornerstones and main achievements of the European integration process is the creation of the “Internal Market” as laid down in the treaty framework of the EU. For example, the “Treaty on the Functioning of the European Union” (TFEU) provides in Art. 26(2) that “the internal market shall comprise an area without internal frontiers in which the movement of goods, persons, services and capital is ensured” (European Union, 2010). The goal of the creation of the Internal Market without internal frontiers and barriers to mobility led to the incorporation of the Schengen *acquis* into the legal EU framework. One of the most far-reaching provisions is today enshrined in Article 23 of the “Schengen Borders Code” (European Parliament and Council of the European Union, 2006a) which requires that “internal borders may be crossed at any point without any checks on persons being carried out”. As a consequence, the EU today is a union of sovereign nation states without any (relevant) internal borders between them concerning the movement of persons, but which nonetheless share a common external border separating them from the rest of the world.

However, the Schengen *acquis* stands as one of the few exceptions where rules concerning immigration policy have been harmonized between member states. Besides Schengen, the EU largely lacks a common immigration policy, especially concerning (i) unified standards for the immigration of foreigners from outside the EU (in EU jargon “third-country nationals”), (ii) a common asylum procedure among member states and (iii) the operational implementation of a uniform enforcement level of the EU’s external border. For example, at the moment each member state situated along the external EU border is in charge and responsible for enforcing those parts of the external border located on its territory. Not surprisingly, this causes a conflict which is best described as “between burden-shifting and burden-sharing”² thereby emphasizing the mismatch between a legally defined and often proclaimed solidarity in enforcing the external EU border and the reality which often leaves the border states alone with the burden of enforcing their section of the external border. This divergence is especially evident when considering the provisions in Chapter 2 of the TFEU which is concerned with “Policies on border checks, asylum and immigration”. Here, Art. 79 postulates the general guidelines for an EU immigration policy in that “[t]he Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient man-

² Cf. Junker (2006), Times of Malta (2010).

agement of migration flows, fair treatment of third-country nationals residing legally in member states, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.”. The relevance of burden-sharing is enshrined in the subsequent Art. 80, which also considers the element of financial burden sharing: “The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.”

However, the divergence between the proclaimed solidarity in the TFEU and the reality along the external EU border is well-illustrated in numerous statements by European politicians. For instance in 2007 the (then) German Minister of the Interior, Wolfgang Schäuble, stated: “(t)he citizens expect effective enforcement at the external border of the EU. And only collectively and solidary can we effectively fight illegal migration.” However, in reality solidarity seems to be limited and lacking in many respects. For instance in 2006, Fenech Adami, the president of Malta – an EU member state which harbors part of the southern external EU border, and that is repeatedly a point of first arrival for irregular immigrants coming from Africa to Europe – claimed in an address to the European Parliament that “Europe urgently needs an immigration policy that can deliver a response that offers Europe’s trademark solidarity with [...] the countries of first arrival in Europe that are unable to deal with this problem on their own.” In addition to this, a letter from eight political leaders of southern EU member states to the EU presidency in 2006 calls irregular immigration “a problem which concerns the entirety of the Union and not only the countries on its external borders” (Cuschieri, 2007: 9). Furthermore, in the wake of the events following the Arab Spring in 2011 a surge of refugees and immigrants arrived at the Italian shores in Sicily and Lampedusa. Italy afterwards criticized its fellow member states for a lack of solidarity and the Italian Interior Minister even announced that Italy “consider[s] if it is still worth being part of the EU” and further “It’s fine when Italy contributes to euro bail-outs, to wars, but on this very specific issue of helping us out, EU states are absolutely not willing to show solidarity” (EU Observer, 2011). Additionally, Italy issued temporary residence permits to immigrants from Tunisia who arrived before April, 5th 2011. These enabled them to travel on to other EU member states. As a reaction to the behaviour of Italy, France reintroduced checks at the internal border to hinder immigrants coming to France.³ Carrera, et al. (2011: 2) sum up this quarrel as an “affair [which] illustrates a race to the bottom on European solidarity as well as

³ This thesis describes this “Franco-Italian affair” in more detail when analyzing the future of EU immigration policy in Chapter 7.

a challenge to the legitimacy of the Schengen regime and the EU's border policy". Concerning the same event, Boeri (2011) goes even further and argues that "Lampedusa is actually telling us that there is no alternative to a coordinated migration policy at the EU level."

However, not only the border countries complain about a lack of solidarity and cooperation in dealing with irregular immigrants. There are also accusations emanating from the political leaders of the EU's interior states. For example, Germany and the Netherlands criticized Spain during a meeting of EU Ministers of the Interior in 2005 for acting arbitrarily and uncoordinated with its fellow member states, voicing their concerns that irregular immigrants, who received a residence permit through amnesty programs in border countries, could also enter other member states.⁴ Similar comments came from the governments of Austria and Switzerland, both of whom "accused Italy of turning a blind eye to would-be refugees heading north"⁵. A consequence of this discontent is the most recent debate concerning the temporary reintroduction of internal border controls by countries like France, Denmark and the Netherlands.

Summing up, these quotes and examples underline the divergence between the actual situation in enforcing the EU's external border and the officially stated policy aims reiterated by the EU's most recent reform treaty – the Lisbon Treaty – and laid down in the TFEU. More precisely, there are two central conclusions to be drawn from the above quotes and events: first, the actual solidarity and cooperation in EU immigration policy – especially concerning the enforcement of the external border – is lower than proclaimed. Second, there are apparently spillover effects across member states concerning the policy towards irregular immigration. These spillover effects are a consequence of the Schengen agreement, which significantly reduced the barriers to onward migration between member states.

This situation raises some important questions, not only from a humanitarian perspective, but also from a scientific perspective, like how can the lack of solidarity in immigration policy be explained, and what can be done to achieve a greater amount of burden-sharing in this regard? Therefore the basic question of this thesis is:

Provided that the host region of irregular immigration consists of multiple countries that are linked by internal free mobility between them, how do spillover effects across countries affect the policy towards irregular immigration in this region, and furthermore, is it possible to rely on a decentralized approach to immigration policy or is (further) centralization of policy choices necessary?

⁴ Deutsche Welle (2005).

⁵ The Economist (6. September 2001), cited in Facchini et al. (2006).

To approach this question this thesis develops a theoretical framework that draws on the theory of fiscal federalism and the economics of international migration. We demonstrate that some measures in immigration policy – especially the enforcement of the EU’s external border – constitute a public good whose benefits are non-rival and non-excludable among member states. We extend the analysis to the possibility for member states to grant amnesty to irregular immigrants, which further reduces the costs of onward migration inside the EU. Before elaborating on the purpose and structure of this thesis, we give a short survey on the academic literature on inter-regional spillover effects concerning the mobility of individuals.

1.2 Intergovernmentalism vs. Supranationalism in the presence of individual mobility: The perspective of Fiscal Federalism

The history of policy making in the EU is characterized by a conflict that affects a host of policy areas in the EU. This conflict is described in large parts of the academic literature as one between “Intergovernmentalism and Supranationalism”.⁶ The first term describes an institutional setting in which nation states cooperate with each other and coordinate their policy but eventually keep control and reserve the right to last say over policy decisions. The second term constitutes a scenario where nation states give up their sovereignty to extend “inter-state relation beyond cooperation into integration” (Nugent, 2006). Because supranationalism entails the delegation of decision-making to a higher level of government it is also referred to as “centralization”, or in the case of the EU as “europeanization”. The policy area of immigration and border policy is an especially prominent example for this conflict because member states are highly reluctant to give up sovereignty in affairs like the admission of third-country nationals, although significant spillover effects induced by the internal free mobility in the EU appear to exist. (Guild, Carrera and Atger, 2009; Bendel, 2011). These spillover effects lead to the question of whether an optimal policy concerning immigration can efficiently be provided in an intergovernmental setting, or if centralization, and therefore the assignment of policy setting to a higher governmental level, is necessary. This question of task allocation has its own legal jargon in the EU framework. Here, the term “community competence” is used for areas where the level of the EU has exclusive say. The term “shared competence” is used for areas where member states decide hand-in-hand with the bodies of the EU and “national competence” is a form of task assignment where member states de-

⁶ Cf. Rittberger and Schimmelfennig (2006) and the literature cited there.