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# The Emerging European Immigration Regime: Some Reflections on Implications for Southern Europe

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## Abstract

Immigration is one of the more controversial areas in the history of European integration. Whilst northern European countries have been constructing elaborate compromises in the European Union (EU) Treaties and in the Schengen group, southern European countries have been trying to construct their own immigration policies. Little attention has been paid in the literature to the relationship between these two phenomena: it is suggested here that southern countries have found it expedient to fit in with EU and Schengen arrangements, even though these appear impossible to implement. This contradiction is seen as intrinsic to the overall relations of Portugal, Spain, Italy and Greece to the EU.

## I. Introduction

Immigration is one of the major and perplexing issues of the late twentieth century: it goes to the heart of matters such as national identity and sovereignty, as well as affecting economic, social and demographic objectives. Immigration policy is simultaneously too sensitive for most governments to include in democratic dialogue, yet too important for them to neglect. Throughout the 1990s, European governments have been constructing a partial international

regime of immigration controls, albeit one located in different fora and with fundamental problems of consistency and enforcement. *In tandem*, southern European states have been obliged to respond to increased immigration by developing their own immigration policies. With little experience of immigration control and regulation of resident aliens, southern policy initiatives inevitably have been influenced by northern European norms. This article makes a preliminary attempt to address the nature of these relationships.

## II. The European Jigsaw Puzzle

International collaboration has emerged in many different fora in the post-war period; initially the two most important were the OECD (for its continuous reporting system – SOPEMI) and the Council of Europe (for its international conventions safeguarding immigrants' rights and promotion of international norms).[1] The process of European integration inevitably has led to pressure for the development of European Community policy in the areas of immigration, immigrant policy and citizenship. These pressures were resisted by national governments, even as recently as 1985 when five Member States challenged in the Court of Justice a Commission decision requiring co-ordination of immigration policies in the EC (Etienne, 1993, p. 150; Niessen, 1996, p. 23). The Single European Act (1987) had appended to it a General Declaration (allegedly at the insistence of the UK) which purported to deny any implicit transfer of sovereignty in this area (Baldwin-Edwards, 1991b, p. 207).

### *The European Union*

Immigration as an explicit policy area in the EU Treaties emerged only in the Maastricht revision – the Treaty on European Union (TEU). However, its precursor lies clearly in the intergovernmental Ad Hoc Group on Immigration, formed in 1986. This forum operated outside the scrutiny of the Parliament, Commission and Court of Justice; its activities were predicated on the 'threat' posed by asylum-seekers, illegal immigrants and international crime; its secrecy modelled on the TREVI group formed a decade earlier to deal with terrorism and other cross-border criminal activities (den Boer, 1996, p. 394).

The first initiatives at a European level are correspondingly one-sided: they emphasize control of immigrants and asylum-seekers whilst offering little in the way of immigrants' rights or measures to combat racism or xenophobia (Geddes, 1995). Two conventions were drawn up – the Dublin Convention of June 1990, and the External Frontiers Convention, as yet unsigned. As of early 1997, the

[1] For an analysis of the international conventions guaranteeing immigrants' rights and their application across the European Community, see Baldwin-Edwards (1991a).

Dublin Convention – which aims to prevent multiple asylum applications – had only just been ratified by all 12 states; the External Frontiers Convention – an elaborate set of rules for co-ordinating European visa and border policies for aliens – was still deadlocked by dispute over Gibraltar between Spain and the UK.

The TEU negotiations resulted in a structure of 'pillars', in order to preserve the intergovernmental nature of sensitive policy areas whilst incorporating these areas into the Union framework (Hix, 1995). The third pillar – Justice and Home Affairs (JHA) – covers asylum policy, crossing of external borders, and immigration policy *inter alia* (Article K1(1) to (3)). Immigration policy is further categorized into conditions of entry and movement, conditions of residence and employment, and the combatting of illegal entry, residence and work. The Commission has the right of shared initiative here; Article K9, allowing the transfer of competence to the first pillar, also applies to these areas. Visa policy, on the other hand, is located within the first pillar (i.e. the EC Treaty as amended).

Two regulations have been passed based on Article 100C (first pillar): Reg. 1683/95 establishing a model visa, and Reg. 2317/95 on countries requiring visas. The latter, curiously reached at a JHA meeting, names 101 countries requiring visas for entry to the EU; this compares with 129 for the Schengen Group, and another 28 (required by neither Schengen nor the EU) which may need visas to enter certain EU countries. Thus these arrangements are far from harmonized; in fact, Article 3 of the regulation envisages possible harmonization measures not before five years after its implementation. Although the concepts of co-ordination or approximation may seem to be more appropriate in this general area, frequently in the actual texts the term harmonization is used. This is quite remarkable, given the difficulty even of the least onerous – co-ordination.

Appendix A details the various visa requirements of the EU and Schengen. These two regulations are, in fact, fairly meaningless as they can have no effect without the operation of the External Frontiers Convention. In any case, 2317/95 was annulled by the Court of Justice in a decision of 10 June 1997, after a legal challenge by the Parliament for lack of a second consultation (MNS 7/97).

Article K3 of the TEU (third pillar) enables the Council to adopt 'joint positions', 'joint actions' and 'conventions'. Joint positions adopted by the Council do not produce any legal effects (O'Keeffe, 1995), apart from an obligation to defend common positions under Article K5. Joint actions may have legal effect, but this is unclear. Conventions are enacted under international law, unless specifically authorizing justiciability by the Court of Justice: this means that variable effects can occur, depending on the particular legal system of the Member State (Baldwin-Edwards, 1991a).

So far, five joint actions concerning immigration have been taken under the third pillar: decision 94-795 on group travel by school children from third

countries resident in a Member State; a decision on Airport Transit Arrangements, 1996, listing ten countries whose nationals require airport transit visas (ATVs) when travelling through the international zones of airports without holding entry or transit visas; and a decision on burden-sharing with regard to displaced persons, 1996. Another two have been agreed politically, one on a uniform format for residence permits (November 1996) and one to combat trafficking in human beings and sexual exploitation of children (May 1997). The first two of these Council decisions arguably should have been located within the visa provisions of the first pillar; the second is currently being challenged by the European Commission in the Court of Justice (MNS, 6/96).

One joint position has been adopted recently (1996) – on a harmonized definition of the term 'refugee' in Article 1A of the Geneva Convention.

The JHA meetings have led to a plethora of resolutions, recommendations and conclusions, whose form and legal basis are challenged by the Parliament (MNS, 9/95). These instruments are an attempt at approximation of national policies, and cover the whole spectrum of immigration and residence controls. They are unpublished and non-binding on Member States (Peers, 1996); their status is unclear – in some cases they entail obligations, in others they only express intentions (Niessen, 1996, p. 36). What is very clear, though, is that the European Court of Justice has no jurisdiction in this area, except insofar as ruling on compatibility with Community law.

Table 1 shows the major 'legislation' passed, by category. Clearly, the great bulk of activity has been in the areas of asylum-seekers and illegal immigration. The effect of the measures for dealing with asylum-seekers, when taken in combination with the visa requirements, has been either to prevent applicants ever from reaching Europe, or disqualifying them on the grounds of abuse if they should do so by means of false documents. The implication is that non-EU countries bordering the EU will bear the brunt of the burden; indeed, the re-admission agreements, both bilateral and Schengen-based, reinforce that effect. Appendix B details the main re-admission agreements in force in Europe.

In terms of illegal immigration, there is a presumption that this phenomenon is necessarily harmful and that the actors are not deserving of rights. This goes against the long-debated UN Convention of 1990 on the Protection of the Rights of all Migrant Workers and Members of their Families. This, along with the Council of Europe 1977 Convention on the Legal Status of Migrant Workers, has the provision of attributing substantial rights to long-term illegal workers. The UN Convention has not yet entered into force, owing to insufficient signatories; the Council of Europe Convention was effective from 1983, and has six EU signatories. The European Commission recommends that Member States should sign the UN Convention as a means of guaranteeing protection of third-country nationals – both legal and illegal (CEC, 1994, p. 29).

Table 1: Resolutions, Recommendations and Conclusions of JHA in the Area of Immigration

| |
|---|
| Asylum |
| Resolution on manifestly unfounded applications for asylum 1992 |
| Resolution on harmonized approach to questions concerning host third countries 1992 |
| Conclusions on countries in which there is generally no serious risk of persecution 1992 |
| Conclusions on the transfer of asylum applicants under the Dublin Convention 1992 |
| Resolution on people displaced by conflict in the former Yugoslavia 1993 |
| Resolution on minimum guarantees for asylum procedures 1995 |
| Resolution on burden sharing with regard to displaced persons 1995 |
| Expulsion and illegality |
| Recommendation regarding practices followed by Member States on expulsion 1992 |
| Recommendation regarding transit for the purposes of expulsion 1992 |
| Recommendation concerning checks on and expulsion of third-country nationals residing or working without authorization 1993 |
| Recommendation concerning the adoption of a standard travel document for the removal/expulsion of third-country foreign nationals 1994 |
| Recommendation concerning a specimen bilateral readmission agreement between a Member State of the European Union and a third country 1994 |
| Resolution on concerted action on expulsion 1995 |
| Recommendation on combating illegal employment of third-country nationals 1996 |
| Resolution on unaccompanied third-country minors 1997 |
| Immigration |
| Resolution on family reunification 1993 |
| Resolution on admission for employment 1994 |
| Resolution on admission for self-employment 1994 |
| Resolution on admission for study 1994 |
| Immigrant integration |
| Resolution on third-country nationals with long-term residence 1996 |
| Miscellaneous |
| Resolution on provisions for co-operation in JHA July 1996–June 1998 [1996] |

*Sources:* Guild (1996); JHA Press Releases (various dates); ILPA (1996b, 1997).
*Note:* My own categorization is used here.

The resolutions governing immigration seem particularly incoherent. The rules on family reunification are so flexible – to allow for substantial national variation – that one can question their utility. Furthermore, much of this area is governed by existing international law – again restricting the options open. The resolution on limitations on employment recalls the 'temporary' guestworker era of the 1960s: one wonders if European states are aware of their recent histories. The considerations for the self-employed are virtually meaningless (Guild, 1996, p. 375); the provisions for students require the student to leave after completing the course, leaving it, or changing the course of study. This is very restrictive, not open to appeal, and fails to recognize those aliens with substantial rights derived from other legal instruments.

Finally, the only instrument dealing with immigrant integration proves to be seriously flawed in its form and level of protection. Although having something in common with the 1957 Council of Europe Convention on Establishment, it is nowhere near as comprehensive or indeed supportive of resident aliens. All of these resolutions fail to achieve any real degree of harmonization of national practices, although the self-employment resolution has both an implementation date and a 'standstill clause' ; nevertheless, there is no enforcement mechanism for the achievement of these aims. More positively, a decision has been taken recently to establish a European Monitoring Centre for Racism and Xenophobia (ILPA, 1997); this has a wide ambit and should be able to make a real contribution to combating racism across Europe.

*The EU 'Mixed' Agreements*

These are agreements signed between the Community and a third country. There are several sorts of agreement: Association Agreements, Co-operation Agreements and the so-called Europe Agreements (with Poland and Hungary). There is a growing legal literature on this topic now (Guild, n.d.; Peers, 1996; Ramsey, 1995; ILPA, 1994). Most of these agreements give certain rights of residence, working conditions, social security and access to the labour market; so far, the strongest rights identified have been in the Turkey Association Agreement and associated decisions, and in the Agreements with the Maghreb countries. Even so, there have been problems of enforcement. Recently, Austria suspended application of the EU–Turkey Agreement, simply on the grounds of cost (MNS, 8/96). Also Spain and Portugal have yet to implement a crucial protocol to that agreement.

At its meeting of 23 November 1995, JHA resolved to insert re-admission clauses in future agreements, whereby illegal aliens can be deported to those countries (JHA, 1995).

*The Schengen Group*

Outside of the European Community *sensu stricto*, France, Germany and the Benelux countries signed the Treaty of Schengen in 1985 and the Implementing Convention in 1990. (These countries have since been joined by Italy (1990), Spain (1991), Portugal (1991), Greece (1992) and Austria (1995) as signatories, and by Denmark, Sweden and Finland as observers (1996).) The 1985 Treaty was originally inspired by largely economic concerns about the free movement of goods, services and EC nationals across European borders; this economic aspect has all but disappeared as the European Commission's Single Market initiative has supplanted it (O'Keeffe, 1991). What remains is a complex set of procedures concerning border controls of EU nationals, asylum-seekers and aliens.

The Schengen arrangement has the following as its main components relating to migration (Brochmann, 1996, p. 80):

- common rules for control at external borders of the Schengen area;
- adjustment of conditions for border crossing and visa policy;
- sanctions against air companies which carry people without proper documents;
- criteria for which country should handle asylum applications;
- exchange of information on asylum-seekers.

Since all of these areas impinge on European Community competence (and actually have the same aspirations of removal of internal frontiers, but with the major difference that Schengen does not include all EU Member States and is enacted under international law), provision has been made for the EU Treaties to prevail where laws conflict. In fact, in every area cited the EU has at least drafted legislation, and in most there has been considerable activity. The effectiveness of this activity is debatable, as has been detailed above. On the other hand, the effectiveness of Schengen is also debatable: originally scheduled to come into operation in 1990, this was partially achieved in March 1995. By mid-1996, France was still refusing to remove border checks with all of Benelux, and two later signatories – Greece and Italy – have yet to participate at all.

*The 1996 Intergovernmental Conference (IGC)*

A radical shift emerged in the run-up to the 1996 IGC. There was much criticism of the secrecy, unaccountability and general lack of effectiveness of the policy process in the third pillar. The Reflection Group established at the 1994 EU summit considered that matters of immigration and asylum policy need to be put fully under Community competence (ILPA, 1996a) and that there are three main reasons for failure of the third pillar: first, a lack of objectives and timetabling;

second, the lack of a normative legislative framework for citizens' rights; third, overcomplex working structures which impede decision-making.

At the JHA meeting on 23 November 1995, it was agreed that there should be publication of Acts relating to immigration, asylum and third-country nationals; additionally, that a monitoring procedure should be set up to examine the effectiveness of previous JHA instruments (JHA, 1995). The Commission, however, was pushing much harder for reform. Two proposals indicate the extent of this: a proposal for a directive on the right of third-country nationals to travel in the Community (CEC, 1995a) and a communication on the possible application of Article K9 to areas of immigration and asylum policy (CEC, 1995b). The former, while logically necessary since non-resident aliens will have the right to travel freely with an EU visa, and it would be absurd if residents were not to have that right, has the problem of setting a powerful legal precedent for Commission activity in this area (CMLR, 1996). The discussion of K9, the 'passerelle' Article, is interesting in that it argues that the procedure for application of K9 is too difficult – the 'double lock' requires unanimity at Council level followed by adoption by all Member States in accordance with their respective constitutional requirements (O'Keeffe, 1995). Thus the Commission was pushing for wholesale reform – transfer of K1(1) to (6) to the first pillar.

Analysis of the position papers of Member States in the IGC (e.g. Hix and Niessen, 1996) shows that the southern European countries occupied intermediate positions in relation to third pillar issues, that is, less integrationist than Benelux and Austria but more so than Finland, France, Sweden, Denmark and the UK. Generally, there seemed to be enough agreement in certain areas (for example, moving immigration and asylum matters to the first pillar) to enable unanimity with a flexibility clause allowing the UK and Denmark to opt out (Hix and Niessen, 1996, p. 59). Support for integrating Schengen into the EU Treaty was limited to seven countries – including Italy and Spain – so it may be surprising that this is part of the proposal (see below).

### *The Draft Amsterdam Treaty*

The Conclusions of the Presidency (European Council 1997a) anticipated signature in October 1997, the subsequent incorporation of the Schengen Treaty into the EU Treaty (via the Schengen Protocol) and the incorporation of the Schengen Secretariat into the General Secretariat of the Council. Also they anticipate the ratification of the Europol Convention by the end of 1997 and the implementation of the Dublin Convention on 1 September 1997.

The Treaty embodies a new Article, 6A, which is a general anti-discrimination provision. It is sufficient to serve as a treaty base for secondary legislation to outlaw discrimination on the grounds of sex (*sic*), racial and ethnic origin,

religion and religious belief, age, and sexual orientation. However, it is unclear that this provision can be applied to non-citizens of the Union.

A new title – free movement of persons, asylum and immigration – is to be inserted into the Treaty. Within five years of the Treaty's entry into force, measures must be adopted which achieve free movement of persons (Article A), measures on the crossing of external borders including rules on visas, a common visa list, procedures for a uniform visa, and free movement for up to three months of third-country nationals (Article B). Also within five years measures must be taken on various aspects of asylum, temporary protection, illegal immigration and residence including repatriation of illegal residents (Article C); excluded from this five-year requirement are the relative burdens of refugees admitted across Member States, conditions of entry into and residence in Member States, and the residence rights in other Member States of third-country long-term residents (Article C 2(b), 3(a) and 4).

Over this five-year period, unanimity is required for voting in the Council, with the exception of a common visa list and visa format (these are already passed as regulations in the first pillar) which will be determined by qualified majority. After five years, the rules on issuing visas and on the uniform visa will be decided by the Article 189b procedure; by unanimity, the Council can then make any other parts of the title subject to the same procedure.

The Court is given jurisdiction in the title *only* where in a pending national case there is no judicial remedy under national law; in any case, it is excluded from jurisdiction on the free movement of persons.

Protocol Y allows the UK and Ireland to opt out of the title and also out of the free movement obligations of Article 7a; a declaration by Ireland states that it wishes to participate in the Title to the extent that this is compatible with its Common Travel Area with the UK. Protocol Z, on the position of Denmark, allows it to opt in or out of the Schengen incorporation within a period of six months and to opt out of the title. It also exempts Denmark from defence implications taken under J3(1) and J7 (second pillar).

Title VI of the TEU (third pillar) is now left with a much more police-oriented role – focusing on trafficking in persons and drugs, judicial and criminal co-operation, data exchange, extradition, and in particular the role of Europol. The Schengen Protocol is appended to Title VI. Its incorporation is deemed to be decided by the current Schengen signatories (Article A), whereby the legal basis for its incorporation will be decided by unanimous voting, although the decisions constituting the Schengen *acquis* will be regarded as acts based on Title VI. The role of the Court is left ambiguous. Ireland and the UK are permitted to opt in or out of all or part of the Schengen arrangements (Article C) whereas Iceland and Norway wish to opt in (Article E).

Thus the new Treaty is very much a multi-speed solution, with complexities which defy easy analysis. Some of the absurdities of Maastricht are corrected (e.g. the overlapping of visa and border controls between the first and third pillars), but the role of the Court is made conditional upon national provisions. Similarly, there is no change in the granting of citizenship of the Union – this is still predicated on nationality of a Member State.

## III. Southern Europe

Little research has been undertaken generally on policy-making in southern Europe: immigration policy is no exception, and probably even less understood than most other areas. There is a tendency for analysts to assert either that alignment with the EU or Schengen group has been an imperative (e.g. Garcia and Cano, 1994; Actis, 1993; Veugelers, 1994) or that it is almost irrelevant (Escribano, 1993). An alternative approach is evident in the Greek and Portuguese literature, which largely ignores exogenous aspects of policy-making. In all of these cases, views and hypotheses are unsupported by empirical evidence.

We might expect that the relationship between national policy-making and the EU policy process is neither one-way nor straightforward. Several factors need to be taken into account in this regard. First, national interests will be represented at the EU level, and in the case of the third pillar with a clear right of veto. Second, although within the first pillar majority decisions could (theoretically, at least) pressure dissenting governments into involuntary policy directions, compliance with the third pillar is necessarily voluntary, and could represent a desire to keep issues off the domestic political agenda. Indeed, the EU may well be a convenient scapegoat. Third, we should not ignore the possibility of policy packaging: the southern European countries are expected to bear the brunt of adjustment in restricting immigration into Europe, and are also the principal beneficiaries of EU Structural and other funds. This linkage exists at least implicitly, and perhaps more strongly. It is not inconceivable for the future that structural funding would be available for immigration infrastructure, although this would be dependent upon a decoupling of the Structural Funds from economic development *per se*. Finally, it seems not unreasonable to suggest that other idiosyncratic linkages exist. Greece, for example, has a strong interest in allowing supranational involvement with border controls (and possibly, therefore, for maintenance of those borders) because of its continuing disputes with Turkey and to a lesser extent with other neighbouring Balkan states.

What, then, is the available empirical evidence? In terms of framework immigration laws, their evolution is shown in Table 2. Prior to these pieces of legislation, all southern European countries had immigration procedures predating World War II; this contrasts with the multiplicity of laws and immigration

controls enacted in northern Europe since 1945. A Mediterranean immigration policy regime has been identified, which consists of

> developing economies with histories of emigration and poor immigration infrastructure; they have little provision for immigrants and frequently exhibit outright discrimination against non-nationals … . A saving grace is that bureaucratic procedures are generally ineffective, if not corrupt, and theoretical provisions may not exist in practice. (Baldwin-Edwards, 1991b, p. 203)

Given that all but Portugal have received broadly similar immigration pressures, along with the fact that no southern European country had adequate immigration infrastructure or even legislative powers, the pattern shown in Table 2 is not self-explanatory. The Spanish legislation of 1984–86 looks unambiguously like a domestic modernization programme, particularly as there was no perceived crisis of immigration in Spain, no electoral platform on this issue, and the EC Ad Hoc Group on Immigration was formed only in 1986. The initial Italian response, too, looks domestically inspired (Zincone, 1994). Far from trying to restrict immigration, the early legislation focused – like the Spanish – on modernization and regularization of the large number of illegal residents. Greece showed no awareness of its increasing immigrant population in the 1980s; no legislation was passed, no public debate existed, and no significant attempts at modernization or regularization were made. Portugal arguably still does not have an immigration 'problem', since its immigration is largely confined to nationals of former Portuguese colonies, and no legislation was passed in the 1980s.

The 1990s ushered in a new phase of policy for the whole region – but, in particular, for Italy and Greece. Collapsing east European polities, most notably that of Albania, led to mass migrations into Italy and Greece. Whereas the Martelli Law in Italy had already been passed by this time – and the privileged position of refugees from eastern Europe removed to the detriment of the Albanians (Woods, 1992, p. 191) – Greece had yet to address the issue of immigration control. The public outcry concerning the influx and alleged

Table 2: Evolution of Framework Immigration Laws in Southern Europe

| | *1984* | *1985* | *1986* | *1987* | *1988* | *1990* | *1991* | *1992* | *1993* | *1994* | *1995* | *1996* |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Spain | A | I | R | | | | R | | | A | | |
| Italy | | | I/R | | | I/R/A | | | | | R | |
| Greece | | | | | | | I | | A | | | |
| Portugal | | | | | | | | R | I/A | | | R |

*Key:*
A = Asylum law
I = Immigration law
R = Regularization law

criminality of Albanians led to the rapid adoption of the 1991 Law in Greece. Subsequently it was denounced by the Minister for the Interior in 1992 for 'serious shortcomings' caused by its being adopted in a 'panic situation caused by the Albanian crisis' (Baldwin-Edwards, 1997). Across southern Europe, immigration has been kept off the political agenda in all but Italy (Perlmutter, 1997) – an unusual circumstance, which Perlmutter attributes to party system fragmentation in that country.

The other extraneous factor which appeared in the 1990s was the development of European immigration strategies within the Schengen and Maastricht frameworks. Since these are discrete – and seemingly disconnected – initiatives, examination of their possible effects on national policies must necessarily be done in detailed fashion. This I propose to do in the following areas: illegal immigration and controls; asylum policy; visa and re-admission agreements; citizenship acquisition.

### *Illegal Immigration and Controls*

The 'black' or underground economy is a major structural feature of all southern European countries. In two, Italy and more recently Greece, even the official GDP figures are boosted by 15–30 per cent to take account of this activity. Thus the employment opportunities for undocumented migrants are substantial; indeed, so important is this illegal sector that the economic ramifications of any clampdown are almost too serious to contemplate. In what are largely segmented labour markets, with access to the formal economy unavailable to undocumented migrants, regularization programmes constitute an unsatisfactory partial solution. The legalization of migrants commands little support from the employers of cheap labour, gives no guarantee of continued legal status to the beneficiaries of the programmes (MNS 11/95), and allegedly encourages further illegal immigration (Zincone, 1994, p. 135). Of the 110,000 regularized aliens in Spain in 1991, only 82,000 remained legally in 1994; in Italy, an OECD study suggests that the regularized aliens from 1986 and 1990 had dropped into clandestinity whilst the black economy was accelerating (Garson and Thoreau, 1997). Furthermore, regularized immigrants can change the character of immigration into family migration, as well as putting extra strain on the weak welfare structures (Fakiolas, 1994, p. 590).

Table 3 gives some indicative estimates of the numbers of legal and illegal residents, along with actual results of the various regularization programmes.

What these crude, and unreliable, data suggest is that there has been an inexorable rise in the numbers of illegal residents, despite regularization initiatives. This is probably because of the low regularization rate (typically fewer than 50 per cent of estimated illegal aliens), the tendency to award only temporary status (e.g. one-year residence permits) and the continuation, if not

Table 3: Legally Resident Third-Country Nationals, Estimated Illegal Aliens and Regularizations ('000s)

| | *1986* | *1987* | *1988* | *1989* | *1990* | *1991* | *1992* | *1993* | *1994* |
|---|---|---|---|---|---|---|---|---|---|
| Spain | | | | | | | | | |
| Legal | 84 | | | | 138 | | | 234 | |
| Est.illegal | 75 | | | | | 300 | | | |
| Regularized | 23 | | | | | 112 | | | |
| Italy | | | | | | | | | |
| Legal | 204 | | | | 508 | | 586 | | 834 |
| Est.illegal | | | | | | 600 | | | 400 |
| Regularized | 105 | | | | 216 | | | | |
| Greece | | | | | | | | | |
| Legal | | 63 | | 85 | | | | 140 | |
| Est.illegal | | | 105 | | | 180 | 400 | 500 | |
| Portugal | | | | | | | | | |
| Legal | | | | 76 | | | 87 | | |
| Est.illegal | | | 60 | | | | | | |
| Regularized | | | | | | | 39 | | |

*Source:* Author's compilation.

*Note:* There is little or no comparability of these estimated data – they are given as rough indicators. The regularization figures are, of course, exact national statistics.

encouragement, of further illegal immigration. At the same time, it must be conceded that the experience of the only country not to have regularized – Greece – seems to be the maintenance of a disproportionately high ratio of illegal to legal residents.

Administrative deportations, or expulsions, are built into all the new immigration laws of southern Europe. Data relating to these are confidential and rarely published in official sources. A variable pattern of enforcement seems to exist, ranging from bureaucratic absurdity in Italy to a surprisingly severe regime in Greece. Italian law does not permit the arrest of illegal aliens, but requires them to leave the country within 15 days (MNS, 5/95); nevertheless, the number of expulsions from Italy is given as 54,100 for 1993 (MNS, 9/95). Portugal has made available the figure of 166 deportations for 1993 (MNS, 7/94); the Greek unpublished figure for 1994 is 158,000 of which 152,000 were Albanian (Baldwin-Edwards, 1998). No data appear to be available for Spain, but

increasingly the new government is taking a harsh line – even to the extent of unlawful doping of deportees and other serious abuses (MNS, 8/96).

Given the very significant extent of illegal immigration in southern Europe, it comes as something of a surprise that three countries – Greece, Spain and Italy – supported a French initiative under the JHA framework in June 1995 for a joint action to combat clandestine immigration and illegal employment (MNS, 6/95). This has now been watered down to a resolution, with no binding effect, whereas the joint action would have been a harmonization of policies across the EU. In general, southern Europe seems to have been supportive of all measures passed under the third pillar dealing with detection and expulsion of illegal immigrants and the employment of such. The Europe-wide measures sit uneasily alongside the various southern European regularization initiatives, the institutionalized nature of illegal employment, and a generally poor record on enforcement of any legislation.

*Asylum Policy*

Southern Europe has never been a haven for political refugees, although the Spanish asylum policy laid down in the 1984 law is generally regarded as liberal. The changes in the 1990s have put in place measures which are broadly in conformity with northern European practices, including the Dublin and Schengen Treaties: these measures include fast-track procedures for 'manifestly unfounded' applications and acceptance of the list of countries laid down by the third pillar whose nationals have 'generally no serious risk of persecution'. These exclusionary measures were documented by JHA in 1992, as well as in the Dublin and Schengen Treaties.

Two countries – Italy and Greece – were historically transit zones, from which refugees were relocated to more prosperous areas of the world. To some extent, then, their asylum laws can be seen as modernization: previous policies were simply indifferent to both illegal immigrants and refugees alike, whereas the distinction is now crucial. Table 4 shows the trends in asylum applications across southern Europe.

With the partial exception of Albanians in Italy in 1991, these figures are low. The Spanish figures have been increasing in the 1990s, hence the more strict law passed in 1994. The results of the new Spanish law are significant: out of 3,500 applications examined in the first semester of 1995, 2,000 were rejected as manifestly unfounded and 324 accepted (MNS, 1/96). The Portuguese 1993 law has also been very restrictive: so much so that a revision is being considered to conform to the 1995 JHA Resolution on Minimum Guarantees for Asylum Procedures (MNS, 7/95). In both the Spanish (IJRL, 1994) and Portuguese cases, there are problems with the accelerated procedures – in particular with the right of appeal and suspensory effect. All southern Europe has problems with

Table 4: Trends in Asylum Applications ('000s)

| | *1985* | *1986* | *1987* | *1988* | *1989* | *1990* | *1991* | *1992* | *1993* | *1994* |
|---|---|---|---|---|---|---|---|---|---|---|
| Greece | 1.4 | 4.3 | 7.0 | 8.4 | 4.0 | 10.6 | 5.9 | 3.8 | 0.9 | |
| Spain | 2.3 | 2.3 | 2.5 | 4.5 | 4.1 | 8.6 | 8.1 | 11.7 | 12.6 | 10.2 |
| Italy | 5.4 | 6.5 | 11.0 | 1.3 | 2.2 | 3.6 | 24.5 | 2.6 | 1.3 | 1.8 |
| Portugal | 0.0 | 0.1 | 0.2 | 0.3 | 0.1 | 0.0 | 0.2 | 0.7 | 2.1 | 0.6 |

*Source:* Eurostat (1996).

bureaucratic procedures, and asylum policy is no exception: the protection afforded to applicants appears to be minimal. In the case of Greece, there is a serious problem with 'tolerated' refugees who are now classed as illegal immigrants and deprived of any possibility to apply under the new procedures owing to their long residence in Greece (Baldwin-Edwards, 1998).

*Visa and Re-admission Agreements*

Information on these is difficult to obtain and to verify. Appendix A shows the visa regimes put in place by the EU and Schengen. Spain added to its visa list Morocco, Tunisia and Algeria in 1991; Peru later in 1991; and the Dominican Republic in 1993 (Pedrero and Bombin, 1994, p. 58). Greece has added only Peru to its visa list (MFA, 1996). Other countries' changes are not known at the time of writing. An examination of the countries which *may* need visas, i.e. the area of disagreement within the EU and Schengen, indicates that certain countries stand out as obvious problems. These include Cyprus, because of links with Greece; Brazil, because of links with Portugal; and several south American countries which have had strong links with Spain. So far, no compromise has been made in this area: the visa changes have been domestically inspired. Furthermore, the *requirement* of visas is not the same as the restrictive practice in issuing them; there is some evidence to suggest that southern European countries, by virtue of their tourist economies, are disinclined to refuse visa applications from many countries. Bureaucratic limitations may also account for such disinclination.

Looking at Appendix B, it can be seen that in southern Europe only Greece has signed re-admission agreements with other European states – reflecting a significant source of migrants to Greece. Spain is known to have an agreement with Morocco (Pedrero and Bombin, 1994). The EU's new policy of inserting re-admission clauses into Association and other agreements is likely to be a major benefit to southern Europe: effectively it provides a new policy instrument in the construction of rational and orderly immigration regimes.

*Citizenship Acquisition*

Citizenship, notwithstanding Citizenship of the Union as adumbrated in the Treaty on European Union, is still solely a matter of national prerogative. Naturalization of foreigners is an important, if marginal, matter since it provides the only secure means of full incorporation into the society and polity. Three southern European countries are heavily dependent upon *ius sanguinis*; Portugal, on the other hand, has a tradition more nearly resembling the British *ius soli* (Rule, 1996, p. 12). This reliance on nationality by descent (*ius sanguinis*) has serious implications for the descendants of immigrant families, effectively denying them straightforward access to citizenship.

Naturalization is difficult in southern Europe for a variety of reasons. First of all, because the conditions set are demanding in terms of linguistic ability, length of residence, proof of civic incorporation, etc.; second, because lawful residence has always been difficult to acquire whereas illegal residence has always been tolerated. Table 5 shows the numbers of naturalizations across southern Europe.

Using the official data for legally resident aliens, the naturalization rates (expressed as ratio to 100 resident aliens in the same year) range from about 0.1 in Portugal, around 0.5 in both Italy and Greece, to 1.8 in Spain. These are aggregate data for all aliens; disaggregated data show that citizenship acquisition is largely by family members of nationals. When this is taken into account, along with exclusion of EU nationals from the data, the rates approach zero in all southern European countries except Spain.

The rates for most European countries range from 0.9 to 5.6, although Germany has a rate of 0.6 (Bauböck and Cinar, 1994). Clearly the rates for all except Spain are remarkably low; that for Portugal is exceptionally low, but ameliorated by easier access for second generation immigrants. To some extent, this can be explained by the phase of migration in southern Europe (Zincone, 1994, p. 186). On the other hand, many aliens have been resident illegally almost unnoticed for decades across the region.

Table 5: Naturalizations in southern Europe ('000s)

| | *1982* | *1983* | *1984* | *1985* | *1986* | *1987* | *1988* | *1989* | *1990* | *1991* | *1992* |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Greece | 5.3 | 3.2 | 1.8 | 1.6 | 1.2 | 2.2 | 1.6 | 1.2 | 1.1 | 0.9 | 1.2 |
| Italy | | | | | | | 1.2 | 4.2 | 5.3 | 4.5 | |
| Portugal | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.2 | 0.0 | 0.0 | 0.1 |
| Spain | 5.8 | 5.3 | 4.5 | 3.7 | 5.1 | 9.1 | 8.1 | 5.9 | 7.0 | 3.8 | 5.2 |

*Sources:* Eurostat (1994), Table D-2; Cinar (1994), Table 5.

What is perhaps more surprising than the actual naturalization rates is that three southern European countries have made access to citizenship more difficult in the 1990s. In 1993, Greece increased its residence requirement for spouses of Greek nationals from effectively zero to five years; for other aliens the residence period was increased from eight to ten years, with the application examined five years after declaration of intent. Italy too reformulated its nationality provision in 1992, raising the residence period from five to ten years for non-EU nationals, and reducing it to three for those of Italian descent (Zincone, 1994, p.136). Portugal's 1994 revision increased the period of residence from six to ten years for children born in Portugal of foreign parents, at the same time as stipulating that their parents must have been lawfully resident for that period (Rule, 1996).

These trends are astonishing in three respects. First of all, they contradict the northern European trend towards easier access to citizenship, both in increasing acceptance of dual nationality and gradual relaxation of naturalization requirements. Second, they have been enacted in the complete absence of public debate, so the motivation is unclear. Third, they appear to deny the reality of permanent immigration into these countries by refusing to facilitate incorporation of immigrants into society. Clearly the northern European experience of immigration has not informed this aspect of policy.

## IV. Conclusions

The tentative conclusion that arises from these changes in southern European practices is that, with the partial exception of Spain, there has been a tendency to absorb the control elements of immigration from European collaborative fora. This is not to say that conformist policies have been forced on southern European countries: rather, it may be a matter of what has been dubbed 'international learning' (Baldwin-Edwards and Schain, 1994, p. 14). Unfortunately, the policies of the EU and Schengen have been completely one-sided, concentrating on crisis management of migrant flows. These new policies have been in the context of long-standing protection of migrants' rights under both domestic and international law: thus northern European national practices have, to some extent, been tempered by judicial control. Southern Europe does not have this history of immigration and immigrant protection. The effect of asymmetrical policy creation – that is, control of immigrants without a corresponding development of immigrants' rights – has been to modernize immigration policy at the cost of dehumanizing it. The burning issue of immigrants' rights has yet to take off significantly in Portugal, Italy or Greece. Even Spain, with its new tough stance, may yet experience a backlash of immigrant anger at exploitation and humiliation.

Relations with the EU in this area look duplicitous. It is inconceivable that control policies being created in JHA can be implemented in southern Europe, since they are fundamentally inconsistent with the geography, economy and bureaucracy in the region. Although Greece and Italy have now ratified Schengen, their ability to participate adequately is doubted, in particular by Germany. Implementation difficulties have been encountered in many areas of policy, where Greece and Italy emerge as having the most serious problems of bureaucracy and Greece and Spain as having state funding difficulties (Pridham, 1996, p. 70).

It could be argued that southern European states are simply carrying out policy at the domestic level and negotiating differently at the EU and intergovernmental areas. This two-level game analysis scarcely suffices, however, since the southern countries have had to create policies owing to the novelty of immigration flows. There has been little political debate on immigration, although racial tensions have been emerging. Therefore it seems reasonable to suggest that expediency has been important in accepting European 'norms' of immigration control, since policies had to be devised anyway. It may be that there is simply a coincidence of restrictive immigration practices between the southern countries and the rest of Europe, although even in that case it is likely that other countries' experiences are utilized. Without doubt, though, southern Europe has had little or no impact on Schengen or the EU in this policy area. First of all, the Schengen policies predated most southern attempts at policy creation; secondly, there is no evidence even to suggest that any of the southern countries has initiated discussion seriously at odds with northern 'norms' – for example, the role of the 'black' economy as a means of economic growth. Thirdly, it seems clear that debate has been focused in EU–south discussions on inclusion in monetary union: both this and the considerable structural funding may have been sufficient for an implicit package of policies to be acceptable. Finally, it may even be that – aside from any idiosyncratic national interests – the acceptance of the undesirability of the informal economy and modernization of immigration controls are seen as essential Europeanization. After all, these four countries have been strongly pro-European for some time.

If the EU is really serious about creating some sort of 'fortress' in the south, then massive funding not only to police immigration but also to compensate for the serious economic consequences of restricting legal and illegal immigration will be necessary. A major reform of the Structural Funds would be able to achieve this, but it seems doubtful that northern Europe can or will pay such a heavy price. It is more likely that 'difficult' countries will have to be partially excluded from an integrated Europe: this would be a sad irony given southern Europe's determination to satisfy – at all costs – the Maastricht criteria for monetary union. 'Structural convergence' may yet prove more important, and more difficult, than economic.

## APPENDIX A
## Visa Requirements across the EU

*EU Common Visa List (as agreed 25 September 1995)*

Afganistan
Albania
Algeria
Angola
Armenia
Azerbaijan
Bahrain
Bangladesh
Belarus
Benin
Bhutan
Bulgaria
Burkina Faso
Burundi
Cambodia
Cameroon
Cape Verde
Central African Republic
Chad
China
Comoros
Congo
Côte d'Ivoire
Cuba
Djibouti
Dominican Republic
Egypt
Equatorial Guinea
Eritrea
Ethiopia
Fiji
Gabon
The Gambia
Georgia
Ghana
Guinea
Guinea Bissau
Guyana
Haiti
India
Indonesia
Iran
Iraq
Jordan
Kazakhstan
Kyrgyzstan
Kuwait
Laos
Lebanon
Liberia
Libya
Madagascar
Maldives
Mali
Mauritania
Mauritius
Moldavia
Mongolia
Morocco
Mozambique
Myanmar
Nepal
Niger
Nigeria
North Korea
Oman
Pakistan
Papua New Guinea
Peru
Philippines
Qatar
Romania
Russia
Rwanda
São Tomé and Principe
Saudi Arabia
Senegal
Sierra Leone
Somalia
Sri Lanka
Sudan
Suriname
Syria
Tajikistan
Tanzania
Thailand
Togo
Tunisia
Turkey
Turkmenistan
Uganda
Ukraine
United Arab Emirates
Uzbekistan
Vietnam
Yemen
Zaire
Zambia
also:
Taiwan
FYROM
Fed. Rep. Yugoslavia (Serbia & Montenegro)

*Countries on the Schengen list but not in the EU list:*

Antigua & Barbuda
Bahamas
Barbados
Beliuze
Botswana
Dominica
Grenada
Kiribati
Lesotho
Marshall Islands
Micronesia
Namibia
Nauru
Northern Mariana Islands
St Christopher & Nevis
St Vincent & Grenadines
Santa Lucia
Samoa (Western)
Seychelles
Solomon Islands
South Africa
Swaziland
Tonga
Trinidad & Tobago
Palau
Tuvalu
Vanuatu
Zimbabwe

*Countries whose nationals are exempted from having to obtain visas for EU or Schengen*

| | | |
|---|---|---|
| Andorra | Liechenstein | Slovakia |
| Canada | Malta | South Korea |
| Czech Republic | Monaco | Switzerland |
| Hungary | New Zealand | USA |
| Iceland | Norway | Vatican |
| Japan | San Marino | |

*Countries whose nationals may need a visa to enter some EU states*

| | | |
|---|---|---|
| Argentina | Croatia | Malawi |
| Australia | Ecuador | Mexico |
| Bolivia | El Salvador | Nicaragua |
| Bosnia | Guatemala | Panama |
| Brazil | Honduras | Poland |
| Brunei | Israel | Singapore |
| Cyprus | Jamaica | Slovenia |
| Colombia | Kenya | Uruguay |
| Costa Rica | Malaysia | Venezuela |

***Source:*** ILPA (1995).

## APPENDIX B
## Re-admission Agreements in Europe, as at June 1995

| | *Bulg* | *Cz* | *Est* | *Hrv* | *Lith* | *Latv* | *Hung* | *Pol* | *Rom* | *Slvk* | *Slov* |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Aus | | A | | | | | A | X | A | A | A |
| Bel | | X | | | | | | S | N | | A |
| Dk | | X | A | | A | A | | | | | |
| Fin | | | | | | | | | | | |
| Fra | | | | | | | | S | A | | |
| Ger | A | X | | A | | | | S | A | | |
| Gr | | X | | | | | | A | A | | A |
| It | | | | | | | | S | | | |
| Lux | | X | | | | | | S | N | | A |
| Neth | | X | | | | | | S | N | | A |
| No | | X | | | | A | | | | | |
| Sp | | | | | | | | | N | | |
| Swe | | X | | | | | | A | A | | |
| UK | | | | | | | | | | | |

*Source:* MNS, 7/95.

*Key:* A = Agreement in force; S = Agreement with Schengen states; X = Visa-free agreement; N = Under negotiation

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