



Mutual recognition as the best policy principle for European immigration policy

Tereza Blahoutová

Abstract:

The article deals with the assertion of the key policy principles related to the European integration process in the area of immigration policy. It follows the latest developments of European legislation regarding immigration and asylum, especially focusing on the Stockholm Programme which sets up guidelines for European immigration policy for the period 2009-2014. It argues for mutual recognition as the best policy principle for European immigration policy at present.

Introduction

Immigration policy does not belong to traditional, meaning historically anchored, public policy areas within the EU public policy process. However, the European Member States have recently started to view immigration issues as an important security issue, immigration policy is being securitised (Kerkänen 2010). Member States are hardly willing to give up their power and competences guaranteeing their domestic security, thus *mutual recognition of national immigration policies and mutual trust and understanding between different legal systems are in the meantime the best principles in the immigration policy area.*

To prove this hypothesis, the article is structured in the following way. The first section begins with the conceptualisation of the policy principles of harmonisation, convergence and mutual recognition. In the following section the EU immigration policy is shortly described, including its historical development and institutional structure. As the next step, the application of these principles in the area of EU immigration policy is illustrated, using the newly accepted Stockholm Programme¹ which tackles all issues in the area of freedom, security and justice as a primary resource. In the conclusion the article comes back to the hypothesis and sheds some light on future development of the EU immigration policy.

¹ The Stockholm Programme was adopted on May 4, 2010.

The principles of convergence, harmonisation and mutual recognition: definition

There are three main principles of legislation within the EU pertaining to immigration policy: convergence, harmonisation and mutual recognition. The principle of convergence is usually defined as “no regulation, yet increasingly similar policies adopted, leading to more similar outcomes” (Threlfall 2003: 125). However, it is necessary to differentiate between convergence as a desired policy principle consciously used by policy-makers in a particular policy process and natural convergence as a spontaneous process of national economies growing together under the simultaneous influence of many factors such as “knowledge spillovers, commodity trade, capital movements and labour migration” (Sinn, Ochel 2003: 871). In the latter case, we cannot speak about a policy principle in the sense of a policy instrument which can be used by policy-makers in the EU public policy areas.

A harmonized field illustrates a higher degree of unification in the public policy area. Harmonisation can be defined as unified legal rules within a public policy area which the Member States are obliged to implement in given public policy areas. In this case European legislation is superior to national legal systems which many euro-critics emphasize as a negative side of the European integration because of the loss of states’ sovereignty.

The principle of mutual recognition is the newest of the three mentioned policy principles and is closely linked to the open method of co-ordination which was formally introduced at the Lisbon European Council in March 2000 (Caviedes 2004: 295). The open method of co-ordination (OMC) is difficult to define since it is rather a vague term which specifies no concrete steps to be taken. In contrast, Borrás and Jacobsson (2004: 186) define the OMC as “a practically oriented policy instrument that provides very concrete mechanisms in order to address [this] balance between the need to respect diversity among member states, and the unity – and meaning – of common EU action”.

There are a number of principles upon which the OMC is based according to different authors. It might be accountability downwards from the public towards national governments; good governance; responsiveness to local, regional and national policy-makers; mutual learning and benchmarking (Room 2007). The OMC is also based on the principles of “voluntarism, subsidiarity, flexibility, participation, policy integration, and multi-level integration” (Borrás, Jacobsson 2004: 189).

The core idea and purpose of the OMC is to strengthen integration by co-ordination rather than integration by law. Despite the fact that legal coercion is necessary in some policy areas, in other areas it is not desirable since ideas have to be accepted by broad public and this process of acceptance cannot be sped up by their legal enforcement. As Sinn and Ochel (2003: 894) declare, “ideals will not materialize when they are enforced by binding legal provisions”.

The EU immigration policy

The European immigration policy has never really existed (Caviedes 2004) and it is therefore extremely difficult to assess which policy principles should be the best for its development. The reasons why immigration policy had never been formulated as a common comprehensive European policy can be found in the discussion linked to the Lisbon process. This debate evolves around the primary question of the European integration: Should the economic growth or provisions of the welfare state be prioritised? As the economic growth and competitiveness play a major role, immigration policy regarded as a non-economic policy has been neglected for decades. In the Treaty on European Union from 1993, the immigration policy as non-economic issue was located in the third pillar of Justice and Home Affairs (Caviedes 2004). In 1997 a significant change in the immigration policy was introduced by the Treaty of Amsterdam which moved Title IV “Visas, Asylum, Immigration and other policies related to free movement of persons” to the first pillar. Immigration began to be perceived as an economic issue, especially because of its security dimension. Member States of the EU and in particular those involved in the Schengen area have increasingly become sensitive to the flows of persons across their national borders. Since December 2009, when the Treaty of Lisbon entered into force, the pillar structure has been no more valid and immigration policy is contained in the Title V of the Treaty on the Functioning of the European Union² as the “Area of Freedom, Security and Justice”.

The policy principles applied in the Stockholm Programme

The Stockholm Programme is a strategic long-term document defining the primary agenda in the area of freedom, security and justice. The Stockholm Programme has followed the Tampere and Hague Programmes which covered the five-year periods before (1999-2004, 2004-2009). The Stockholm Programme laid out the strategic guidelines for legislative and operational planning within the area of freedom, security and justice (Art. 68 TFEU) for the period 2009-2014. Following the development of EU strategic documents on asylum and immigration policies, the shift in policy principles can be identified which is described in the following section.

The Stockholm Programme as well as its predecessors contains various issues related to movement of persons, ranging from rights of individuals in criminal and civil proceedings to cyber crime, drugs and terrorism. The immigration and asylum policy issues are included only in one out of the seven chapters of the document; however, the principles of mutual recognition and of mutual trust are highlighted throughout the entire agenda of the Stockholm Programme. In the Stockholm Programme, the preference is given to the soft law in the form of guidelines and stand-alone EU agencies rather than to hard law (Collett 2010). The topic of harmonising immigration and asylum policies of the Member States contained in the Hague Programme was left out in the Stockholm Programme. The Member States are highly aware of the controversial nature of immigration policy issues and have therefore agreed, so far,

² Abbreviation TFEU.

only on the Common European Asylum System which is currently being implemented as a fully harmonised policy area. In the case of asylum and refugee law, a common consensus can be found easily, since it is determined by international conventions to a large degree. In contrast to asylum policy, the issue of labour migration has always been a highly contested case where Member States take different stands according to their economic interests. Consequently, the Stockholm Programme makes no reference to further developing a common labour migration strategy (Collett 2010).

In reaction to the non-existing European labour migration strategy, the Czech Ministry of the Interior has come up with a proposal of the new system of economic migration to the Czech Republic. The proposal sets up completely new rules for labour migration to the Czech Republic independently of the practice of other Member States. In this particular case, the Czech Government fully takes advantage of the fact that the immigration policy is not harmonised at the European level.

The preference of mutual recognition principle and usage of the OMC can be illustrated also by the shift to practical cooperation and support between the Member States, which now find a common ground for various questions via inter-governmental agreements, rather than harmonised EU laws. An example of such an inter-governmental agreement is the European Pact on Immigration and Asylum adopted in 2008. Inter-governmental agreements tend to strengthen the transnational policy-making of the EU in contrast to the supranational one. The transnational policy-making might be understood as “an extensive process of mutual functional influence across national policies, in a horizontal dimension” (Borrás, Jacobsson 2004: 201) and is one of the consequences of the OMC.

Conclusion

As this text has demonstrated immigration policy at the European level is very heterogeneous and there is nothing like a common EU immigration policy. Immigration policy issues fall into the policy area of freedom, security and justice which represents one of the shared competences between the EU and the Member States (Art. 4 TFEU). It means that both the EU and the Member States may legislate and adopt legally binding acts in this area. In spite of adoption of legally binding acts of the EU, there is no implication that the area of freedom, security and justice will bring harmonisation of Member States’ laws or regulations (Art. 2 TFEU).

The struggle for a higher degree of harmonisation presented in the Hague Programme (2004-2009) has been given up and the present-day Stockholm Programme lays emphasis on the principle of mutual recognition. In compliance with the open method of co-ordination, it stresses the transnationalization of the European policy-making in the immigration policy area which enables Member States to develop their own approaches to the immigration issues with the ideal that “diversity [of policies] is no longer antagonistic to the European integration project” (Borrás, Jacobsson 2004: 202). By presenting several examples of current

development in the area of European immigration policy, we have verified the hypothesis that *mutual recognition of national immigration policies and mutual trust and understanding between different legal systems are in the meantime the best principles in the immigration policy area.*

Stressing the importance of the principle of mutual recognition and mutual trust for the EU immigration policy, another influential policy principle mustn't be left out: the principle of spillover and its effect. As stated in the Stockholm Programme, "the coherence between migration policies and other policy areas such as foreign and development policy and trade, employment, health and education at the European level" is to be increased (Stockholm 2010: 28). Therefore the future development of the EU immigration policy is to a large extent dependent on the development of other EU policy areas and the process of European integration in general.

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About the author:

Tereza Blahoutová studied sociology at the Faculty of Social Studies of Masaryk University in Brno. Her master thesis has focused on the resettlement programme of Chin refugees from Burma to the Czech Republic. Currently, she studies public economy at the Faculty of Economics and Administration of Masaryk University in Brno. She has been working in Multicultural Centre Prague since August 2010 as editor of the migrationonline.cz.