



ORIGINAL PAPER

Europe Facing Migration. National Strategies versus Common European Policies

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Abstract

The European Union presents itself, nowadays, as a unique space of freedom, allowing its citizens liberties and granting them rights never met in any other international organization. Moving on from the usual debate on the relationship between national sovereignty and common European approaches on matters regarding state security, the aim of this paper is to analyze the ways in which the member states regard and rule the issues related to international migration, and the ways in which European legislation influences the response to these issues. The European Agenda on Migration issued in May 2015 by the European Commission states, among others, the need for enforcing tools meant to ensure protection to displaced persons that are in need of it, in order to formulate a proper response to the ongoing migration crisis. Therefore, the question this paper aims to answer is to what extent are the institutions of the European Union, and the common policies they formulate, enabled to offer viable solutions in this matter, and what is the position of the national institutions and policies of the member states in this international framework? By creating a comparative analysis of the two levels of legislation, this paper scrutinizes the European Union's current multilevel governance system applied to the particular matter of migration, and the shifts it took from Hooghe and Marks's approach back in the 1990s.

Keywords: *migration; policies; institution; European Union; national; multilevel governance.*

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Introduction

Migration is one of the key issues concerning the European stakeholders for the past couple of years. While the European space defines itself as a frontier-free area where circulation is encouraged, the challenge of numerous third country nationals arriving at European borders, either as migrants, refugees or asylum seekers has set the common institutions, as well as the representatives of Member States in the position to face the need of identifying the proper measures to respond to this situation. The fact that the challenge itself originates outside the European space makes it even more difficult to be addressed, since, in addition to the communitarian legal provisions, there are also international law and humanitarian law regulations to be taken into consideration. However, the social reality that characterizes the phenomenon of mass migration reveals the fact that this issue needs to be tackled in various ways, at local, national, and supranational level. This implies an effective coordination of the tools and initiatives that are to be used, taking into consideration the specific characteristics of European governance. The concept of *governance* has been used until recently in the specialized literature in order to highlight the responsibilities of the government and administration. The reasoning for this type of definition resides, on the one hand, in the privileged position of the states on the international arena, as main actors, and, on the other hand, in the fact that most of the national competences were retained by the national governments. The reforms performed by the European Union in the late 1980's regarding the elaboration and implementation of the Regional Development policy, as well as the transformations brought along by the modifications introduced in the subsequent Treaties regulation the functioning of the European Communities and the European Union, lead to a shift in the understanding of the term *governance*.

A significant issue regarding the balance of power between the national sovereignty of the member states and the increase in decisional power that the European Union is claiming for, tackles the topics related to internal migration and the "migration crisis" the Europeans have had to formulate proper response actions to. Several studies have approached this subject over the past years, and interesting conclusions have been drawn, recalling that "even politicians who have called for strengthening EU "governance" and the "coordination" of member state policies have generally refrained from advocating outright increases of EU powers that would permanently infringe on the "sovereignty" of the member states" (Jabko, Luhman, 2017: 2). To sum up, while there are numerous matters that are better addressed at a common European level, the issue of migration is not regarded as one of them. Since international migration is, by itself, a delicate topic in terms of flows, causes and consequences, dealing with the effects of the arrival of vast numbers of migrants in certain European Member States makes it even more difficult to balance the national sovereignty and the common interests. Different levels of action need to be taken into consideration and engaged in addressing these issues, thus allowing for the use of the European multilevel governance model to its full potential.

Multilevel governance and migration

One of the first definitions issued for the "governance" concept is provided by the World Bank, highlighting the link between a country's power and prosperity. This definition is embraced by most of the institutions in the United Nations' system, but members of the academia have rather endorsed the definition proposed by J. Kooimans,

referring to the relations between the leaders and those who are led: “governance is the form in which public or private actors do not separately, but in conjunction, engage in problem solving together, in combination, that is to say co-arrangements” (Kooiman, 2003: 52). This approach on the concept is very interesting, as it provides the frame of analysis with the opportunity to observe the unequal distribution of power and resources between the center and the periphery, namely those who exert power and society. Furthermore, this asymmetry is expanded to the relations among other sub-national actors, such as the regional authorities and the individuals in a community, or between two communities. These differences are, however, not to be regarded as catalysts of antagonism between the different levels of authority, but rather as a context that calls for cooperation and coordination between the different types of actors involved in addressing common issues.

Another definition of *governance* is the one provided by the *Commission on Global Governance*, as the totality of ways in which institutions and individuals manage their common business. Furthermore, it is usually explained that governance reveals how governments cooperate with other social organizations, but also how they work together with citizens to make decisions on important social matters. The concept of governance can be used in different contexts such as, for example, global, national and institutional, or even that of a community.

When the classical national frame of analysis is expanded, and more actors are involved in the governance process, creating a denser level of hierarchy, new tools of examination are to be taken into consideration. In this context, the concept of multilevel governance can be defined as the different patterns of relationships that can be constructed among actors, be they from the public or private sector, on different territorial and hierarchical levels. It was introduced for the first time in the specialized literature by Gary Marks, and explained as “a system of continuous negotiation among nested governments at several territorial tiers”, in which “supranational, national, regional and local governments are enmeshed in territorially overarching policy networks” (Marks, 1993: 392). However, during the past years, it was used more and more frequent in theorizing the evolution and the decision-making processes within the European Union. In order to differentiate the multilevel governance integration system in Europe from the federalist model designed by Delors as “the Europe of regions”, Liesbet Hooghe and Gary Marks, the promoters of this concept, propose the *multilevel governance*, as a governing model for the European Union, described by Hooghe as a “Europe with regions” (Hooghe, Marks, 2001). Although subtle, the difference in the two concepts can be explained by observing the emphasis on the relationship between the parts – namely regions, and the whole – represented by the European Union. While the federalist angle focuses on the organization, as a fully entitled actor, and describes it as being composed of regions, the latter perspective describes the cooperation system created between the organization and the regions. This is the context in which multilevel governance can be applied and explained.

When applied to the specific matters related to international migration, multilevel governance translates into the goal of creating synergy between the national and communitarian sets of institutions, as well as promoting cooperation between different sectors of public and private activity. That is to say, a multilevel approach of migration should be defined by the mutual benefits supported by a triangulation of efforts: first of all, a correct and efficient normative framework, secondly, the properly directed efforts of official, administrative actors, and thirdly, but of no less importance,

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the support that can be provided by the involvement of the civil society in host countries, represented by non-governmental organizations, private associations, academia etc.

Between the supranational level, on the one hand, and the national and sub-national levels, on the other hand, there is a relationship of institutional and functional interdependence, rather than a hierarchy, because the basis of the relations between the European Union institutions and the Member States is represented by the principles of cooperation and the principle of subsidiarity. Supranational institutions, together with all the actors involved in the decision-making process, form an integrated system characterized by the role of national actors at Community level in terms of negotiation and decision-making, but also for the implementation of these policies together with sub-national actors such as regional authorities, local and private ones. At supranational level, the coordination of national policies is done through the open method of coordination, as promoted by the Lisbon Strategy, enshrining the non-binding and decentralized nature of regulations in line with the principle of subsidiarity, and aims to involve, through various forms of partnership, all actors, regardless of their level (Community institutions, national governments, regional and local authorities, or civil society as a whole). The second feature of the multilevel governance system means that most decision-making processes are conducted on the basis of negotiations between the main actors, based on consensus and non-majoritarian vote. In this context, the hierarchy competes with competence and qualification, that is, both the Commission and the national states are merely mediators aiming to stimulate the best decisions to combine or transform the competing interests of the actors involved, idea that is also supported, among others, by Kohler-Koch (1998) in a paper on the evolution of economic and political integration in the European Union.

Moving to the voting system with a qualified majority in the debates of the Council of Ministers and the European Council, it can be considered a way of speeding up decision-making and, while, at the same time, it is significantly reduced in the areas in which decisions are made by consensus, restraining them only to those of strategic importance for the Council of the European Council.

The third feature of the multilevel governance system is that there is a division of decision-making skills between actors at different territorial levels. From the point of view of dispersing authority, L.Hoghe and G.Marks (2001) assert that two types of multilevel governance can be distinguished by taking into account criteria such as the type of tasks, general or specialized, which the authorities fulfill, the mutual or exclusive nature of the powers exercised by the authority over a territorial entity and the duration of the regulations. Whenever the multilevel governance model is applied to a specific field of action within EU's competencies, it becomes noticeable the existence of a number of authorities with general or specialized tasks, as well as a number of administrative levels defined by exclusive or mutual competences.

The European Agenda on Migration

Several plans for addressing the issue of international migration have been developed by institutional actors as well as political representatives throughout the European Union. Thus, it was considered that, in order to properly handle both legal and illegal migration, “not only a firm policy in addressing irregular flows while ensuring the protection of those in need, but also a proactive policy of sustainable, transparent, and accessible legal pathways” (European Commission, 2016a) were required.

Furthermore, as the European Commission argues, legal migration can bring along significant and highly remarkable contribution to the welfare of the European Union's Member States, both in the years to come and on the longer term, offering viable solutions to the lack of workforce, providing high-skilled professionals for the European developing economies, and ensuring aid in solving the issue of aging population throughout the European continent. As several research shows, the lack of workforce due to the issue of aging population, as well as other problems generated by this phenomenon, are some of the most consistent social challenges that need to be addressed by the European stake holders: "The aging of Europe's population is already certain, and current demographic trends do not show a change in this phenomenon in the near future, taking into account low fertility rates. In total, at the beginning of 2014, 15.6% of the population was made up of people under 14 years of age, the working population accounted for about 65% (15-64 years), and 18.5% of the population consisted of people over 65 years old" (Pogan, 2018: 49). Despite the fact that, as stated above, the challenge is common for the entire European Union, each of the Member States bares an individual responsibility in "deciding how many third country nationals they admit for employment, study and research, while the European Union rules define common admission conditions, procedures and rights for applicants" (European Commission, 2016a).

Following the events in the spring of 2015, the European Agenda on Migration pushed forward several tools to cope with the effects of the migration crisis, tools that were meant to ensure that the existing European legislation and the systems meant to handle these type of migration related events were followed and applied correctly. In this regard, the European Agenda on Migration designed a more "comprehensive approach", in order to address all aspects of international migration "based on the four areas of: (1) irregular migration, (2) border management, (3) asylum policy and (4) legal migration, as key for delivering an effective and sustainable EU migration policy, and laid out a number of key actions for each of these areas" (European Commission, 2017: 3). Furthermore, the key priorities acknowledged by the European Union in the matters related to international migration are considered to be: "cooperating with the countries of origin and countries of transit, strengthening the external borders of the European Union, handling migration flows and fighting immigrant smuggling, reforming the common European asylum system, ensuring legal migration paths and favoring the integration of third country residents" (Porumbescu, 2018: 43).

However, a thorough analysis of the European Agenda on Migration reveals a swift in the approach regarding the arrival of foreign population within the European borders. While some decades ago, immigration was encouraged by several European countries as a way to provide the necessary labor force much needed for the post-war reconstruction, the current common approach on migration regards it more as a threat rather than an opportunity. Furthermore, the internal balance of power between national institutions and the European institutions has changed in several aspects, due to the increase in decisional powers that the common institutions have gained, following the series of Treaties that have shaped the European institutional architecture throughout the years. Thus, the European Union, along with the Member states, aimed at creating a system of functional tools meant to control and handle the migrant's flows in a more effective manner.

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The Dublin system

The events in the spring of 2015 which resulted in the arrival of hundreds of thousands of migrants and asylum seekers to the terrestrial and maritime borders of the European Union, set the roots to a real crisis and seriously challenged the main institutions meant to enforce the common border regime: the Schengen Area and the Dublin Convention.

The Schengen Area was created as a zone in which the internal borders no longer exist, while the Dublin Convention is meant to establish and enforce the process that the asylum seekers need to complete in order to be registered when entering the European territory. The model that set the base for these agreements was that of intergovernmental cooperation, as, at the time they were established, member states faced the need to identify the means to ensure the freedom of mobility of their citizens, while, at the same time, guaranteeing their sovereign prerogatives.

Furthermore, under the Dublin and Schengen systems, “states retained the right to monitor their own borders and to unilaterally re-introduce border controls, and retained the right to return asylum seekers to the first country of entry—to prevent potential influxes of migrants and asylum seekers from external Border States such as Italy and Greece” (Jabko, Luhman, 2017: 24). Therefore, the responsibility and the decision making does not lay predominantly on the communitarian institutional system, but rather on the Member States, who chose to preserve their sovereign right to decide whether accepting migrants or not, depending on their national regulations and national interest.

According to the system designed by the European Union, the Dublin regulation “establishes the criteria and mechanisms for determining which EU Member State is responsible for examining an asylum application” (European Commission, 2016b). Thus, as the system is created, as part of the Migration and Home Affairs programs, its purpose is to guarantee a rapid form of access of the asylum application to the asylum procedure by “a single, clearly determined, Member State”, as a key objective of the plans to better handle migration. However, the fact that the Dublin system “was not designed to ensure a sustainable sharing of responsibilities for asylum applicants across the European Union, was considered to be a shortcoming of these procedural systems” (European Commission, 2016b), shortcoming accentuated in an undoubtable manner by the migration crisis.

All in all, the central theme of the Dublin system is developed around the emphasis of the fact that the first and main responsible actor for examining an asylum claim is “the Member State which played the greatest part in the applicant’s entry to the European Union” (European Commission, 2016b). The most frequent situation is that in which the Member State responsible for examining the asylum claim is also the Member State of first entry. But there are several other types of situations, such as the Member State that has issued a visa or residence permit to a third country national, who then decides to stay and apply for asylum when this authorization expires (European Commission, 2016b). In certain situations, special derogations from these rules can occur, such as those generated by migration issues in the field of family unity and protection of unaccompanied minor, and, consequently, the decision regarding asylum claims can be placed upon a different Member State. However, the large diversity of real life situations, as well as the significant amount of the migration flows bring along serious challenges to the migration-handling systems enforced by the European Union,

challenging more and more the borders between the national and supra-national decision-making levels. The specialized literature in the field of migration in Europe and the constitution of sovereignty within the European Union reveals the fact that the member states proved to have a deep desire to continue on the path of intergovernmental cooperation, essentially aimed at protecting the “essential aspect of sovereignty”, such as the type and amount of control that can be exerted over the national frontiers (Schain, 2009).

But, despite the fact that the intergovernmental - supranational debate in the theoretical field of European integration is vivid and fueled by significant and logical arguments on both sides, the empirical evidence brought along in such divergence reveal the fact that concepts such as coherence, formulating a communitarian response and building common approaches in the field of migration are still depicted more as objectives, rather than realities. In this regard, recent studies confirm that “there is a heterogeneous presence of migration issues among national security and defence strategies of MS due to different security strategic cultures and approaches to migration-security nexus, which block the development of a common and effective strategy to deal with the recent migration crisis” (Estevens, 2018). In the following part of the paper, this issue will be further analyzed from the perspective of national strategies and normative tools in addressing migration.

National vs. supranational in handling migration

Under the motto “*Migration is a process that needs to be handled, not an issue that needs to be solved*”, Romania’s national strategy regarding immigration is grouped in an official document issued in 2015 (H.G. 780/2015). Containing nine chapters, it starts from describing the international context in the field of migration, and states Romania’s obligation to take over a quota of 1705 persons within the internal relocation mechanism and 80 persons within the European Union’s program for extra-EU relocation. Such precise figures are, of course, to suffer some re-definitions over the years, due to the regional and global fluctuations of migration flows.

The document also reinforces the need to ensure an increase in the coherence between the Union’s actions and the actions of the member states, while underlining the importance of the situation in each of the member states as a starting point for the policies in this matter. The European Council has already established a set of legal and operational guidelines regarding freedom, security and justice for the following years, and they will influence the policies for asylum, migration and frontier regulations in each of the European countries. In this context, the Romanian national strategy regarding immigration reinforces the commitment to follow and apply the common European decisions in this matter.

Regarding the national circumstances, the need to harmonize the efforts of all countries in order to diminish and eradicate the factors that contribute to the proliferation of illegal immigration is being stated. Furthermore, Romania’s general strategic goal is to participate in an active manner to the efforts of the international community and the European Union’s member states in identifying long term solutions for the people in need of international protection and social integration of third countries nationals (Romanian Government, 2015).

The European integration process triggered a wide complex of legislative harmonization aiming to ensure the respect of the European legislation in the field, as well as other international legislation that the Romanian state is part of. Furthermore, the

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social landscape of Romania's contemporary society argues for the need of better regulation in the matters related to international migration, as well as tackling the issues those left at home are being confronted with (Porumbescu, Pogan, 2018).

Romania remains a country of transit for the illegal immigrants as asylum solicitants. Field data analyses reveal the fact that Romania is being used as a space of transit for illegal immigration towards more developed western European states. A characteristic of the phenomenon of illegal immigration in the Romanian territory is represented by its bipolarity: on the one hand, illegal immigration of third countries nationals coming, mostly, from the countries that also represent the share in legal migration (Moldavia, Turkey, China). This category is characterized by certain continuity and by "conventional" illegal immigration methods, represented by the exceeding of the sitting period granted by the visa or the resident permit.

On the other hand, there are the temporary illegal immigration flows caused by social and economic events in the countries of origin, representing "new waves" of immigration.

The current normative frame ruling the situation of foreign citizens in Romania, the situation of the citizens from European Union Member States and the European Economic Space, as well as the laws regarding the asylum procedures in Romania is provided by the Emergency Government Ordinance no. 194/2002, republished, regarding foreigners' regime in Romania, Emergency Government Ordinance no. 25/2014 regarding employment and posting of foreign workers on the Romanian territory, and modifying and completing some normative acts regarding foreigners' regime in Romania, Emergency Government Ordinance no. 102/2005 regarding the freedom of circulation on the Romanian territory of the citizens of European Union member states, the states of the European Economic Space and the citizens of the Swiss Confederation, Law no. 122/2006 regarding asylum in Romania, and Government Ordinance no. 44/2004 regarding the social integration of foreigners who acquired a form of protection or the right to settle in Romania, as well as the citizens of the European Union member states and of the European Economic Space, approved after being modified by the Law no. 185/2004.

Romania is also compelled to apply the EU Regulation no. 604/2013 of the European Parliament and the Council from June, 26th, 2013, establishing the criteria and mechanisms of choosing the member state responsible of examining a request for international protection presented in one of the member states by a national of a third country or a stateless person, as well as the EU Regulation no. 603/2013 of the European Parliament and the Council from June, 26th, 2013, regarding the creation of the Eurodac System for comparing fingerprints with the purpose of proper enforcement of the EU Regulation no. 604/2013 for establishing criteria and mechanisms for choosing the member state responsible of examining a request for international protection presented in one of the member states by a national of a third country or a stateless person, and regarding the requests of authorities to apply the law in the member states, and of Europol to compare the Eurodac data in order to ensure the enforcement of law, and of modifying EU Regulation no. 1077/2011 for creating the European Agency for operational handling of large scale information systems, in the space of freedom, security and justice (published in the Official Journal of the European Union L180, June, 29th, 2013). The numerous provisions in the Romanian national strategy regarding immigration that refer to the application of the common European decisions highlight the need for coherence and cooperation between the national and supra-national level of

decision in the matters related to migration, thus enabling the multilevel governance frame of analysis to offer an adequate understanding of the institutional and systemic landscape designed to address the matters related to migrant population.

Conclusions

Despite the fact that the matter of foreign population entering a state's territory is being regarded as a matter of national security, European states aim at finding a viable common approach, in order to formulate an answer to the threat represented by the waves of immigrants crossing its borders. However, it is obvious that throughout the European Union's territory, migration related issues are being addressed and handled differently. Numerous differences appear also in the manner in which civic integration measures that are adopted by the member states. In this regard, it is noted that "The comparison of civic integration policies in the Netherlands, France and Germany revealed significant variation in their respective national interpretations and implementations" (Joppke, 2007: 20).

The need for harmonized European legislation in the field of migration is also imposed by its need to formulate a position as strong actor in the matter of international security, position that can only be achieved if all the member states agree on confiding the common institutions the ability to rule in issues that affect all the countries.

Through the lenses proposed by the multilevel governance theory of European integration, the migration landscape is defined, as explained above, by the interdependencies and cooperation established by institutional and non-institutional actors set on different levels of hierarchy. Despite the fact that migration, understood as the movement of people from one country to another, is an issue that needs to be handled within a normative consensus between the Member States and the common institutions, the involvement of private actors is also required. But, while the contribution of non-governmental organizations and other type of associations concerned with the integration of the immigrants is frequently discussed, the influence of other types of non-institutional actors in migration-related policies is still debatable: "owing to the lack of transparency in the field of border security policy (enhanced by the overall lack of transparency in the Council, and certain restrictions to access in the Commission and European Parliament), it has not been always possible to identify clearly the causative influence of business actors on border security policy" (Baird, 2018: 130).

The specificity of the European system of ruling and deciding in matters related to international migration resides in the balance of power between the supranational institutions and the member states. In this regard, unlike the intergovernmental approach, that highlights the supremacy of the national sovereignty inside and outside the state, the multilevel governance system is defined by the existence of three defining features: the institutional architecture does not have a clear hierarchy, the decision-making process also lacks a clear hierarchy and the authority is usually dispersed, rather than concentrated in a designated institution or set of institutions. This model of explaining integration best suits the empirical characteristics and the normative architecture of the European migration phenomenon, creating a unique model of regulating and integration policies and actions.

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