

European Diversity and Autonomy Papers
EDAP 2/2004

Towards an EU Immigration Policy: Between Emerging Supranational Principles and National Concerns

Maria Teresa Bia



Managing editors:

Emma Lantschner / Francesco Palermo / Gabriel N. Toggenburg

Editorial Board:

In alphabetical order:

Craufurd Smith Rachel (University of Edinburgh, UK)
Dani Marco (Università di Trento, I)
De Witte Bruno (European University Institute, I)
Gamper Anna (Universität Innsbruck, A)
Henrard Kristin (University of Groningen, NL)
Kujovich Gil (Vermont Law School, US)
Kymlicka Will (Queens University, CAN)
Marko Joseph (Universität Graz, A)
Nic Shuibhne Niamh (University of Edinburgh, UK)
Ortino Sergio (Università di Firenze, I)
Packer John (Tufts University, US)
Poggeschi Giovanni (Università di Lecce, I)
Sasse Gwendolyn (London School of Economics, UK)
Tarr William (Rutgers University, US)
Teachout Peter (Vermont Law School, US)
Toniatti Roberto (Università di Trento, I)
Woelk Jens (Università di Trento, I)

Europäische Akademie Bozen
Drususallee, 1
39100 Bozen - Italien
Tel. +39 0471 055200
Fax +39 0471 055299
edap@eurac.edu
www.eurac.edu/edap

Accademia Europea Bolzano
Viale Druso, 1
39100 Bolzano - Italia
Tel. +39 0471 055200
Fax +39 0471 055299
edap@eurac.edu
www.eurac.edu/edap

Copyright Information:

Any sort of reproduction - including excerpts - is permitted only when indicating the exact EDAP source. Please quote EDAP as indicated in the following example: Gabriel N. Toggenburg, "The Debate on European Values and the Case of Cultural Diversity", 1 *European Diversity and Autonomy Papers - EDAP* (2004), 10, at www.eurac.edu/edap.

Abstract

Given that borders control and the managing of migration flows are traditionally seen as the more-or-less exclusive preserve of the nation-state, the founding Treaties of the European Communities did not provide for any rule aimed at promoting supranational co-operation in these areas. As soon as the European Economic Community (EEC) evolved into the more cohesive European Union (EU), however, a gradual European-level involvement in establishing a common legal framework on the conditions of admission and stay of third country nationals and on the convergence of policies originally not covered by the Treaties occurred. Steps towards building a common EU approach to immigration do not, however, automatically meet the expectations and interests of national policies, which, in light of recent increases in immigration towards and across the EU countries, are often more concerned with limiting immigration and to putting limitations on who may enter and why than with adopting common solutions to common challenges. Against this backdrop, this paper presents empirical evidence from the cases of Italy and Germany of how national concerns and different views over integration of foreigners may cause opposition to the development of an effective EU immigration policy.

Author

Maria Teresa Bia is Ph.D. researcher at the Dept. of Law of the European University Institute of Florence since 2000, and Adjunct Professor of European Integration at the Boston University (Padova, Language and Liberal Arts Program). Her academic interests focus on EU Constitutional law, and especially on the development of the European Area of Freedom, Security and Justice. Publications include various articles on the building of the European internal security field.

The author can be reached at: maria.bia@iue.it.

Key words

European Union - Asylum - Immigration - National Policies - Italy - Germany.

Table of contents

1. Introduction.....	5
2. Towards an EU Immigration Policy	6
3. Immigration and Asylum Policy in two EU systems: The Cases of Germany and Italy	9
3.1. Work-Related Immigration. Premise.	10
3.1.1. Germany	11
3.1.2. Italy.....	12
3.2. Family Reunification.....	13
3.3. Asylum Seekers. Premise.	14
3.3.1. Germany	14
3.3.2. Italy.....	15
4. Conclusion.....	16

Towards an EU Immigration Policy: Between Emerging Supranational Principles and National Concerns¹

Maria Teresa Bia

1. Introduction

While for the past two centuries the countries of western Europe have tended to be countries of emigration rather than immigration, since the mid 1960s there has instead been a considerable increase in immigration towards the EU.²

This shift occurred for a number of political, historical and economic reasons, such as the increase in labour shortages, which, begun in the wake of post-war reconstruction, induced some European countries to open up their frontiers to foreign workers, or the political changes in Eastern and Central Europe that created an unprecedented *influx* of immigrants from the former communist countries to the geographically closest EU countries.

Faced with this new situation, national policies and strategies to manage immigration flows had to change. However, these policies and strategies differ greatly from country to country depending on the specific kind of immigration each country attracts and the way in which the political-constitutional values underpinning the social consensus conceive of the idea of integration of foreigners. These values are influenced by both historical and economic factors and by the geographical collocation of every state. These considerations notwithstanding, the recent history of the European Union signals the inception of a path towards a common migration and asylum policy, sustained by the gradual evolution of the European Economic Community into the more cohesive European Union, which is beginning to be perceived as a 'host country' in its own right by non EU- nationals.

¹ An earlier version of this paper has been published in Francesco Palermo and Gabriel N. Toggenburg (eds.), *European Constitutional Values and Cultural Diversity* (EURAC Research, Bolzano/Bozen, 2003, out of print).

² For an overview of recent developments in migration flows to Europe, see Kaya Bulent, *Europe en évolution; les fluxes migratoires au 20ème siècle* (Council of Europe Pub., Strasbourg, 2002) and Jaques Barrou, *L'Europe terre d'immigration: fluxes migratoires et intégration* (Presse Universitaire de Grenoble, Grenoble, 2001). Demographic aspects of the newly born emigration flows to Western Europe are discussed in *Political and Demographic Aspects of Emigration Flows to Europe* (Council of Europe, Strasbourg, 1993).

Essential, however, for the effective adoption of a supranational immigration and asylum policy is the achievement of a balance, at the EU level, between the motivations driving the European action in these areas and the interests of the member states, i.e. that the latter's particular cultural as well as political views with regard to these matters be represented in the European regulations. The intention of this paper is to look into this question. In doing so, we will first review the steps the Union is making towards the Europeanisation of migration and asylum policies, and the way this process is supported or even opposed by member states. We will then make a comparative analysis of the state of play of migration regulations and policies in two EU countries, namely Italy and Germany. This comparative analysis - which takes Italy and Germany as an example of the dynamics of constitutional cultural diversity within the Union - is aimed at showing how immigration policy is differently perceived in two EU states and to what extent these two national systems fit into the European approach to immigration.

Italy and Germany have been chosen for the following reasons. Germany has, in the last decade of the 20th century, emerged as the "principal magnet society in the Western hemisphere".³ In order to deal with this position as *Einwanderungsland*, Germany has recently experienced a difficult political debate about the reform of the existing immigration laws.⁴ For its part Italy has just approved a controversial bill amending the immigration system.⁵

2. Towards an EU Immigration Policy

Given that immigration and asylum are matters where fundamental aspects of the sovereignty of states are in question, the founding Treaties of the European Communities did not provide for any rule aimed at promoting supranational authority in these areas.

By 1993, however, the achievement of the free movement of persons within the European Single Market, together with a real increase in migratory pressures upon the Community, raised the need for a common EU policy to complement national policies, which were proving inadequate to deal efficiently with immigration in an area without borders.

³ Thomas Straubhaar, "New Immigration Needs a NEMP (A New European Migration Policy)", 95 *HWWA Discussion Paper* (2000).

⁴ After having charged an Independent Commission with the task of drafting a report on immigration (Zuwanderung gestalten, Integration fördern), on 7 November 2001 Germany approved the first draft of a legislative proposal amending existing laws on immigration and asylum. Detailed information on the new bill are available at <http://www.eng.bmi.bund.de>.

⁵ Law of 30 July 2002, drawn up by Reforms Minister Umberto Bossi and Deputy Prime Minister Gianfranco Fini. In G.U. n. 199/2002.

Hence, first considered as matters of 'common interest' by the Treaty of Maastricht, with the Amsterdam Treaty, and now, under the Constitutional Convention Draft Treaty, immigration and asylum have become a full Community responsibility. More particularly, with the Treaty of Amsterdam asylum and immigration have been moved from the 'third pillar', where unanimity of member states is required in decisions and the decision-making process is inter-governmental - to the "first pillar" where the EU institutions play a leading role in the adoption of supranational legislation and under which the measures to be adopted to develop a common approach to immigration and asylum are spelt out⁶. It should be stressed, however, that even against the background of a more institutionalised and focused supranational action in immigration-related matters, Council Regulation (EC) 343/2003 establishing the criteria and mechanisms for determining the member state responsible for examining an application procedure in one of the member states by a third-country national;⁷ Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers;⁸ Council Decision 2002/463/EC adopting an action programme for administrative co-operation in the fields of external borders, visas, asylum and immigration;⁹ Council Directive 2001/55/EC on temporary protection of displaced persons,¹⁰ and Decision 2000/596/EC,¹¹ establishing the ERF, are the only measures to have been adopted so far to give substance to the formal communitarisation of immigration and asylum policies. And, clearly enough from the viewpoint of scholars of European integration, behind the adoption of these measures, which are more concerned with developing a common asylum system and with the narrow security question of keeping out undesirables than looking at the plight of immigrants, lies the perception that *vis-à-vis* "cases of mass influx of displaced persons, become more and more substantial in Europe in recent years",¹² individual responses by member states are not sufficient, as the national responses to the conflict in former Yugoslavia clearly showed. For its part, the European legislative framework for immigration via family reunification and for work purposes is highly fragmented.

The modest legislative progress in shaping a supranational immigration system does not depend, however, on an *inertia* of the European institutions. As the table that follows shows, a number of proposals have, in fact, already

⁶ On the fundamental change of approach to immigration and asylum after Amsterdam see, in particular Michel Petit "The Treaty of Amsterdam", 2 *Harvard Jean Monnet Chair Working Paper* (1998) and Clotilde Marinho (ed.), *Asylum, Immigration and Schengen Post - Amsterdam: A First Assessment* (EIPA, Maastricht, 2000).

⁷ In OJ 2003, L 050

⁸ In OJ 2003, L 031

⁹ In OJ 2002, L 161

¹⁰ In OJ 2001, L 121/12

¹¹ In OJ 2000, L 252

¹² See point 2 of the Preamble of Council Directive 2001/55/EC.

been submitted by the Commission to harmonise national provisions on immigration.

Proposed legislation on immigration and asylum reported on the basis of the known distinction between the three main channels of legal immigration, namely immigration via family reunification, economic-driven immigration and admission for humanitarian reasons:

Family Reunification	Economic-driven immigration	Humanitarian Reasons
Ref. Draft Directive 2003/86/EC	Ref. COM/2001/386 final on the conditions of entry and residence of third country nationals for paid employment and self-employed economic activities	A number of secondary legislation measures and proposals touching on all aspects of immigration for humanitarian reasons have been approved or tabled by the Commission
By and large this proposal is both in harmony with international Conventions on the right to family reunification and respectful of different national views concerning the definition of the 'family group'	The objective of the Proposal is to lay down common principles and rules concerning the entry and residence of foreigners for economic purposes	The EU approach to this matter is informed by the need to accommodate the rights of those claiming protection <i>vis-à-vis</i> the legitimate national concern to prevent crime and illegal immigration
In spite of this, the adoption of this draft directive met with strong opposition by some EU member states.	Although disclosing a clear commitment to take in due (and equal) consideration the rights of workers and the economic conditions of the host country, the proposal has not yet been approved	Ref., Council Regulation 343/2003/EC; Council Directive 2003/9/EC; Council Decision 2002/463/EC; Council Directive 2001/55/EC; Decision 2000/596/EC

The Community's difficulty in adopting the measures necessary for adopting a common action in immigration and asylum has to do with the tensions between the member states over dealing with these policies. As has clearly been pointed out by the European Commission, "the thrust of discussions in

the Council on a number of individual legislative proposals concerning immigration reveals a continuing determination by member states to ensure that any common policies should involve the least possible adjustment to each one's existing approaches."¹³ This leads to the paradoxical result that although discussions are being undertaken at the supranational level to sustain the emerging EU authority in immigration and asylum, as long as the EU lacks binding legal instruments in this area, member states will keep on constructing their own policies "with mainly national considerations in mind and without reference to the European context".¹⁴

3. Immigration and Asylum Policy in two EU systems: The Cases of Germany and Italy

While for the past fifty years the official discourse in Germany was that the country had not immigrants, now, that 9 per cent of the population are non-nationals, it has been recognised that "the guiding principle and standard that applied for many decades, namely that Germany is not a country of immigration has become untenable".¹⁵ In particular, a rapid increase in the number of individuals seeking asylum as well as the initiative launched by the Schröder Government in early 2000 to address a labor shortage in the information technology industry, have moved the topic of immigration to the centre of public debate and have generated problematic political discussions about the adoption of the 'first' comprehensive German bill on immigration. Presented by the Federal Minister of Interior Mr. Otto Schily on 2001, the so-called German Act to Control and Restrict Immigration and Regulate the Residence and Foreigners, otherwise known as Immigration Act, is aimed at improving Germany's economic competitiveness while controlling immigration and regulating the stay of foreigners as well as their integration. It also places a new and controversial emphasis on work-related immigration, which, given the need by the German economy to fill skill shortage areas, is highly supported.

However, because of the sensitive political issues it is concerned with, Germany's new Immigration Act, originally due to come into force on January 2003, is now set to go into effect on January 1, 2005, after its legality had been successfully challenged before the German Constitutional Court by the country's conservative opposition.

¹³ COM/2001/628, Communication from the Commission to the Council and European Parliament. Biannual update of the scoreboard to review progress on the creation of an Area of Freedom, Security and Justice in the European Union (Second half of 2001).

¹⁴ *Ibid.*

¹⁵ See the document "Structuring Immigration - Fostering Integration" - Report by the Independent Commission on Migration to Germany established in 2001 by the German Federal Ministry of the Interior, at <http://www.eng.bmi.bund.de>.

Until very recently Italy was a country of emigration. Only in the last 20 years has Italy, as a result of the *exodus* of large numbers of displaced persons from nearby zones of conflict (e.g. former Yugoslavia), found itself attracting unprecedented and unexpected flows of foreigners asking to enter the country.¹⁶ This has led to the proliferation of laws and legislative proposals on the management of immigration, the latest of which is Law 189/2002, which since its adoption and earliest implementation has evoked strong criticism because of the way in which it addresses politically sensitive questions.

In the following, after briefly presenting the way in which the new German and Italian bills regulate the three categories of legal immigration, namely the cases of immigration for humanitarian reasons, via family reunion and work-related immigration, we will then see whether or not they comply with the European principles.

3.1. Work-Related Immigration. Premise.

Immigration for economic purposes is a very sensitive issue, largely because of its impact on crucial aspects of the host-country's social structures, particularly the domestic labor situation. Consequently, it has always been subjected to changing policy considerations according to the needs of national markets.

Notwithstanding the above considerations, the recent liberalisation of the free movement of workers within the framework of the European Union has made it necessary to define common basic rules on the admission of economic migrants. Deciding, however, on a common approach to this matter is particularly controversial, and the Commission's proposal on economic immigration, namely COM/2001/386 final,¹⁷ has not yet been adopted.

In it, with a view to offering the member states a reasonable common ground for negotiating the basic rules for a supranational approach to immigration for economic purposes, the principle that a post can only be filled with a third-country worker after a thorough assessment of the domestic labour market situation is asserted.¹⁸ On the basis of this guideline, common criteria and procedures regarding the conditions of entry and residence of third-country nationals for the purpose of paid-employment and self-employed economic activities are laid down. They include the introduction of a single national application procedure leading to the issuing of one combining title,

¹⁶ For an in depth analysis of the Italian experience of immigration, see Alberto Cammarata and Mario Todino, "The Italian Experience of Immigration Policy: Making Up for the Emergency", in Gina D. Korella and Patrick M. Twomey, *Towards a European Immigration Policy: Current Situation - Perspectives* (European Interuniversitary Press, Bruxelles, 1993), 203-216.

¹⁷ In OJ 2001, 121/12.

¹⁸ *Ibid.*

encompassing both residence and work permit within one administrative act, in order to simplify and harmonise the diverging rules currently applicable in the member states.¹⁹ The rights conferred on a 'residence-permit worker' are then listed under the proposal.²⁰ By and large, the *rationale* behind the Community principles on the treatment of foreigner workers is to encourage their integration into the host country. In this vein, a detailed set of provisions is provided for to govern the right to carry out an economic activity and to remain in a EU state after having been employed there and the right to equality of conditions of employment on the same basis as workers of the host state.

It should be emphasised that most of the directive's provisions which dictate minimum standards on the treatment of workers' immigration are accompanied by clauses which allow the member states to derogate the common standards where national exigencies call for different rules to be applied. Nonetheless, the directive has not yet been approved by the Council.

3.1.1. Germany

Based on the co-ordination of information on labour migration between the foreign authorities, employment authorities and national representations abroad, the German draft law basically extends the possibility for highly skilled foreign workers to enter the country. The opening of the German labour market to foreigners is promoted as being necessary not only for reasons of pluralistic integration, but also, and more pragmatically, to respond the needs of the internal economy. A system based on selection criteria, such as age, sex and professional skills is proposed to deal with the recruitment of temporary labour migrants as well as permanent migrants and new possibilities for highly qualified workers and a rational regulation of the immigration of self-employed people are introduced.²¹ Moreover, according to its supporters the new German immigration bill would impact on the cultural as well as political way of conceiving work-related immigration. In the first place it would replace decades of *ad hoc* practices with a legislation which considers foreign workers as 'immigrants' rather than 'guests'. Secondly, it would launch a comprehensive policy of integration of immigrants which is intended to be based on the development of foreigners' language skills as well as on the promotion of their participation in the national cultural and social life.²² At this aim, the establishment of a new structure, namely the FOMR, is

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ Independent Commission on Migration to Germany, "Structuring Immigration...", at 81-101.

²² *Ibid.*, at 52 and 109-112.

foreseen in view to provide the necessary institutional support to immigrants.²³

Thus, as far as foreign workers' immigration is concerned, the new German bill is in line with the EU guidelines, which, on the one hand, promote the opening of the European frontiers to non-EU workers, and, on the other, require that while respecting the exigencies of their national labour market, the member states should ensure that the workers admitted enjoy the same rights and responsibilities as EU nationals.

3.1.2. Italy

Unlike the German draft law, the new Italian Act on Immigration discloses a general commitment to restrict the legal preconditions for admission of non-EU workers. In the first place, provided that in Italy admission for economic reasons is based on the issuing of a work permit by the national authorities, Article 5 of the new bill amends this system by making the residence permit dependent on a combined employment and residence contract, with the consequence that the work permit cannot last longer than the contract itself and, as a general rule, no more than nine months for seasonal workers; no more than one year for temporary workers and no more than two years for non-temporary workers.²⁴

The norms prescribed by Article 5 of Law 189/02 do not comply with the European framework for work permit procedures, according to which not only work permits in all member states should be valid for three years, but also the need for more flexible measures on the administrative procedures leading to the issuing of those permits is called for.

In addition, if we consider that new conditions and limitations concerning the entry for work purposes are provided for under Law 189/02,²⁵ which states that immigrants who lose their job can sign up with the employment office for a maximum of six months, after which their residence permit is to be withdrawn if they have not found other employment, Italy is clearly orientated towards closing its doors to foreign workers.

²³ *Ibid.*, at 52.

²⁴ Article 5 of Law 189/2002.

²⁵ The general principles informing the Italian approach to work-related immigration are spelled out in Article 3 of Law 189/2002. In turn, detailed provisions regulating the right to entry and stay in Italy for work purposes are laid down under Articles 5, 6, 8, 9, 12, 13 of the above mentioned law.

3.2. Family Reunification

Since the establishment of the *ad hoc* Group on Immigration in 1991²⁶, the harmonisation of legal provisions concerning the right to family reunification has been discussed intensively by the European ministers responsible for immigration affairs. As a result of these discussions, a number of legislative proposals and draft resolutions laying down the guidelines and principles for a common European policy on the right to family reunion have been proposed. At present, the draft directive on the right of third country nationals legally established in a European Union member state to family reunification, approved by the EU Council of ministers on 22 September 2003 is the latest legislative 'product' of the supranational dialogue on admission of foreigners for family reunion. At the heart of this proposal is the affirmation of the principle of the unity of the family, which should be preserved since separate living, during a long period of time, of parents and children or partners for life may have severe psychological and social consequences for those involved, which can negatively influence the integration and interaction of immigrants in the society of the state where they live. This, especially where the interests of young children are at stake.

That said, based on the internationally accepted concept of family reunification, which is considered a necessary way of making family life possible, the draft directive under consideration states that to ensure protection to the family and the preservation or formation of family life, which, in turn, helps to create the socio-cultural stability facilitating the integration of third country nationals in the member states a right to family reunification should be established and recognised and the practical conditions for the exercise of that right should be determined on the basis of common criteria. Hence the proposal entitles third-country nationals who hold a residence permit valid for at least one year, or refugees to, be reunited with their families through the family reunification procedure. The persons who are eligible under this procedure are: the applicant's spouse; the legitimate, natural and adopted children of the couple. In addition, member states may authorise the reunification of an unmarried partner, or adult dependant children, as well as dependant ascendants. This, in line with the respect, recognised by the EU legislation, for the diversity in national legislation concerning those enjoying the right to family reunification.

Having focused on the main EU principles on the right to family reunion, it should be stressed that these principles are exactly the crucial points

²⁶ The setting-up of the 1991 *ad hoc* Group on Immigration came as a corollary of the broader Euro-policy project to achieve the abolishment of the internal European borders.

differentiating the national and supranational approaches to immigration via family reunion.

While, as we have noted, according to the supranational guidelines, the member states should authorise - among the others - the entry and residence of the minor children of the applicant and of his spouse or unmarried partner, and even adult children, who are objectively unable to care for themselves with the new German bill the age limit of children who are allowed to follow their parents as immigrants has been lowered from 16 to 14. In turn, under the new Italian Immigration Act, the right to family reunion is substantially limited to the spouse and depending minor children.²⁷ In the light of this, it can be argued that while the Community proposal privileges protecting the unity of the family, the German and Italian regulations are instead oriented to privilege national interests by restricting immigration.

3.3. Asylum Seekers. Premise.

Asylum is the area in which the supranational effort to take the steps necessary to remedy the fragmentation of national laws is more significant. But the provisions adopted at the EU level do not suffice on their own to overcome the fragmentation of the European 'asylum system' since most member states keep on adopting individual - and often conflicting - measures on this matter. For obvious reasons of coherency and unity, this resistance on the part of member states to harmonise national legislation has problematic consequences on the way in which migratory flows are managed throughout Europe.

However, in order to gain a sound understanding of the national sensitivities undermining the path towards a common asylum system, we would do well to explore the reasons behind the diversity of national approaches to this matter.

3.3.1. Germany

Admission for humanitarian reasons is the issue where the German approach to immigration has mostly been informed by principles which have grown within, and because of, the very uniqueness of the country's national historical-constitutional developments. In 1949, after the second world war and the collapse of the Nationalist Socialist Regime, asylum was included in the German Constitution as a fundamental right²⁸ and Germany had one of the most open policies towards those asking to enter the national frontiers for

²⁷ Article 23 of Law 189/02.

²⁸ See Article 16 of the Basic Law for the Federal Republic of Germany - Grundgesetz, GG - (Ref. version promulgated on 23 May 1949 and published in the *Federal Law Gazette* (first issue) dated 23 May 1949).

humanitarian protection. However, over the years this way of managing the asylum system has not been without its problems in terms of the country's capacity to control immigration. Confronted with the pressures of an ever increasing number of people asking admission to Germany and at the aim of safeguarding the right to protection of those who suffer political and humanitarian prosecution while discouraging manifestly ungrounded applications for asylum, in 1992 the Government adopted the Act on the Reorganisation of Asylum Procedures²⁹, shortly followed by the Act to Amend the Basic Law on asylum³⁰. With the entry into force of these amendments, the principles of the 'safe third state' and 'safe country of origin' were introduced. In practice, these principles imply that a foreigner may not invoke the basic right to asylum if he has entered Germany from a safe third state. Likewise, entitlement to ask for asylum protection was excluded for those who were not victims of state prosecution.

In addition, a comprehensive set of norms setting out the categories of manifestly undounded applications to be rejected by means of an accelerated asylum procedure were set forth under Section 30, para. 3, n.1 to 6 of the Asylum Procedure Act.

That said, with the new bill, the right to asylum for those who claim persecution by non-state actors, as well as for women claiming persecution on the basis of their gender, is finally recognised. However, as far as procedural guarantees are concerned, the German draft legislation accelerates asylum procedure but does not offer adequate guarantees about the decision-making process, and the rule according to which people coming from a 'third safe-country' are not afforded the right to apply for asylum is carefully maintained. As for this point, it should be noted that given that Germany considers all neighbour countries as safe, this rule has *de facto* allowed Germany to close its doors to many applications for asylum, which have been deviated to other EU countries.

3.3.2. Italy

Over the last decade, the number of refugees and immigrants arriving on the Italian coasts and wishing to exercise their right to asylum has increased dramatically. This, together with a very particular Italian problem, that is, how to deal with the large number of illegal immigrants already in the country, has made the political debate over the humanitarian protection of refugees and asylum-seekers particularly problematic, with the consequence that discussions on asylum risk being confused with other emotional issues,

²⁹ The German Act on the Reorganisation of Asylum Procedures of 26 July 1992, in I *Federal Law Gazette*, at 1126.

³⁰ The German Act to amend the Basic Law of 30 June 1993, in I *Federal Law Gazette*, at 1002.

such as ethnicity or the safeguarding of national identity. The new Italian legislation on immigration and asylum reflects these difficulties underpinning the socio-political debate on the so-called cases of 'forced immigration'. The focal points of the reform can be summarised as follows: 1. asylum seekers awaiting decision on their application will be detected in special sections in 'centres for temporary protection'; 2. asylum-seekers awaiting decision on their case will no longer be given a provisional permit; 3. the right of appeal against decisions on asylum cases is significantly eroded; 4. a quicker procedure for expelling immigrants who are suspected of having proposed a manifestly unfounded application is introduced.³¹

4. Conclusion

On the basis of the above-discussion, the following conclusions can be drawn:

1. only if they are in line with national concerns, (e.g. the German policy on economic-driven immigration) national laws do follow the EU approach to immigration. Otherwise, national provisions do not refer to the supranational context (e.g. the way both the German and the Italian bills deal with immigration via family reunification);

2. common rules have been adopted at the level of the EU only when pragmatic pressures have called for supranational action to cope with situations not otherwise addressable by single states (e.g. Directive 2001/55/EC and Decision 2000/596/EC);

3. the ever increasing pressures of migration flows upon the Community now require a comprehensive supranational approach to immigration in substitution for the up-to-date pragmatic responses to particular pressures. However, if the adoption of common measures is still blocked at the level of the Council of Ministers, this means that discussions need further to be carried out to figure out national concerns thereby reaching consensus on the objectives to be followed.

³¹ Articles 31 and 32 of Law 189/2002.

Bibliography

Barrou Jaques, *L'Europe terre d'immigration: fluxes migratoires et intégration* (Presse Universitaire de Grenoble, Grenoble, 2001).

Bonetti Paolo, "La nuova legge italiana sull'immigrazione. Una prima lettura", in 35 *Studi emigrazione* (1998), 137-149.

Bulent Kaya, *Europe en évolution; les fluxes migratoires au 20ème siècle* (Council of Europe Pub., Strasbourg, 2002).

Cammarata Alberto and Todino Mario, "The Italian Experience of Immigration Policy: Making Up for the Emergency", in Korella Gina D. and Twomey Patrick M. (eds.), *Towards a European Immigration Policy: Current Situation - Perspectives* (European Interuniversity Press, Brussels, 1995), 203-216.

Council of Europe, *Political and Demographic Aspects of Emigration Flows to Europe* (Council of Europe, Strasbourg, 1993).

European Commission, *Freedom, Security and Justice for All: Justice and Home Affairs in the European Union* (Office for Official Publications of the European Communities, Luxembourg, 2004).

Independent Commission on Migration to Germany, "Structuring Immigration-Fostering Integration", (2001), at <http://www.eng.bmi.bund.de>

Marinho Clotilde (ed.), *Asylum, Immigration and Schengen Post - Amsterdam: A First Assessment* (EIPA, Maastricht, 2000).

Nascimbene Bruno, *La condizione giuridica dello straniero*, (Cedam, Padova 1997).

Nascimbene Bruno and Bonetti Paolo, *Diritto degli Stranieri* (Cedam, Padova 2003).

Petit Michel, "The Treaty of Amsterdam", 2 *Harvard Jean Monnet Chair Working Paper* (1998).

Straubhaar Thomas, "New Immigration Needs a NEMP (A New European Migration Policy)", 95 *HWWA Discussion Paper* (2000).

Published in the EDAP series:

1/2004

Toggenburg Gabriel N., "The Debate on European Values and the Case of Cultural Diversity", 1 *European Diversity and Autonomy Papers - EDAP* (2004), at www.eurac.edu/edap.