

IS MIGRATION EUROPE’S DEATH THREAT? MIGRATION POLICIES NEGATIVELY IMPACT EUROPEAN UNION’S LEGITIMACY

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Abstract:

The increasing trend of migration to the European Union (EU) Member States has given rise to asymmetric political and social effects produced by the presence of immigrants in the EU and the resulting wave of populist, extreme right-wing parties and movements. This paper studies the impact of the current migration crisis on the legitimacy of the EU and its institutions. The EU appears engulfed in a migration governance crisis. The paper argues that current approaches for moderating the migration crisis have undermined the legitimacy of the EU and its political institutions. New space is opening for opportunistic division based on ethnicity and/or nationality in the EU. The paper then proposes a new research agenda for interdisciplinary studies of European migration policies.

Keywords: *Legitimacy, Immigration policy, Migration crisis, Institutions, European Union*

JEL Classification code: F55 - International Institutional Arrangements

Introduction

The EU is engulfed in a migration crisis due to the significant and sustained increase of migration flows since 2015. While there are different perspectives on the causality and magnitude of the crisis, the inadequacy of EU’s migration policies has been used as a mobilization strategy for far-right and Eurosceptic parties throughout Europe and beyond. This paper provides an assessment of the EU’s institutional response to the migration crisis based on a comprehensive theoretical framework linking institutional vectors to outcomes in input, throughput and output legitimacy. The first section of this paper presents the assessment framework, applying insights on legitimacy, the demoi-cracy model, and the operationalization of the notions of policy success and failure. The second section applies the assessment framework to the institutional vectors of four EU institutions during the Euro-crisis: the European Council, the Council of the European Union, the European Parliament, and the European Commission. Results on input, throughput, and output legitimacy are summarized and presented in aggregate. The Conclusion outlines specific venues for further investigation and research based on the key findings.

Theoretical background and analytical framework

Legitimacy and legitimation are usually problematized in the discussion about the democratic deficit of the European Union, its institutions and policies (Majone 1998, Follesdal & Hix 2006, Beetham & Lord 2014, Piattoni 2015). Schmidt (2013) and Piattoni (2015) provide a detailed review of recent studies of the problem of legitimacy and legitimation of the European Union. The different perspectives have actually little in common, outside of the division of input and output legitimacy as proposed by Scharpf (1970) and further developed in and Scharpf (2009). In addition to input and output legitimacy, Wimmel (2009) and Schmidt (2013) introduce the notion of throughput legitimacy that should be judged in terms of the efficacy, accountability and transparency of the EU's governance processes along with their inclusiveness and openness to consultation with the people. Significant psychological research supports the claim that those authorities that exercise their authority openly and inclusively are more likely to be viewed as legitimate and to have their decisions accepted (Tyler 2006:380). This perspective is particularly important for the qualitative assessment of the institutional dynamics of the migration crisis presented in this paper.

It can be concluded that legitimacy processes not only help explain institutionalization and stability, but also help explain deinstitutionalization and change in institutions and institutional fields (Stryker 2000:180). Therefore, for the purposes of this paper, legitimacy is construed as immediate and tacit agreement, ensuring doxic submission to the established order (Bourdieu, Wacquant & Farage 1994:14–16).

Cheneval & Schimmelfennig (2013) suggest that any assessment of the EU's democratic order must be based on the balance between, and interaction of, the political rights of individuals and those of the democratically constituted statespeoples. This two-dimensional model is further developed systematically in Cheneval et al. (2015). The two dimensions are differentiated by the instruments used in the integration process – a vertical dimension, which represents the supranational, multi-level regulation, and horizontal dimension, which represents the co-ordination and approximation of national policies and legislative frameworks.

Table 1. Vertical and horizontal dimensions of the democracy model¹

	Vertical dimension	Horizontal dimension
Instruments	<ul style="list-style-type: none"> • Supranational legislation • Harmonized common policies 	
Principles	<ul style="list-style-type: none"> • Equal representation and legislative rights of citizens and statespeoples • Common political values 	<ul style="list-style-type: none"> • Mutual recognition • Non-discrimination
Transfer of powers	<ul style="list-style-type: none"> • From the demoi to the supranational level 	<ul style="list-style-type: none"> • Horizontal, transnational transfers (if required) • Overlapping powers
Interaction	<ul style="list-style-type: none"> • Across national and supranational levels 	<ul style="list-style-type: none"> • Across Member States
Key players	<ul style="list-style-type: none"> • Legislators, representative actors, judiciary 	<ul style="list-style-type: none"> • Regulators, executive actors, local government
Objectives	<ul style="list-style-type: none"> • Output-oriented 	<ul style="list-style-type: none"> • Process-oriented: coordination of national policies

Based on the review of relevant academic literature, the following assumptions are made in order to outline the analytical framework of this paper:

¹ Adapted from Cheneval et al (2015) and Hooghe & Marks (2001).

- The democratic deficit reveals itself as a field of contention of the transfer of more powers from Member States to the European Union. There are no procedural and/or substantive instruments for interest representation and intermediation similar to the parliamentary democracy at national level;

- Legitimacy and legitimation processes not only help explain institutionalization and stability, but also deinstitutionalization and change in institutions and institutional fields;

- Throughput and output legitimacy significantly impact the perception of democratic deficit of the European Union and its institutions;

- A comprehensive assessment of the EU's democratic order and its transformation should be based on the balance between, and interaction of, the political rights of European citizens and of the democratically constituted European demoi.

But how can actual policy interventions in a particular policy domain be assessed within the proposed qualitative analytical framework of demoi-cracy? In order to operationalize input, throughput and output of the institutional vectors of EU institutions during the migration crisis, a framework for assessing policy (and its perceived success or failure) is needed.

McConnell (2010) has developed a comprehensive assessment framework designed to capture the bundles of outcomes or impacts that indicate how successful or unsuccessful a policy has been. In this framework, a qualitative assessment is made across a spectrum of Success, Resilient Success, Conflicted Success, Precarious Success, and Failure, which relate to Strong positive, Positive, Mixed or neutral, Negative and Strong negative impact on legitimacy. McConnell (2010) outlines three cases where there may be particular tensions across the three types of legitimacy. First, throughput legitimacy is no guarantee of output legitimacy. Policymaking without sufficient checks and balances is prone to producing flawed policies because goals and/or instruments have not been refined in order to produce workable policies through incremental bargaining. Second, the strive for input legitimacy sometimes necessitates policy output that leave much to be desired in terms of tackling the actual policy problems. Third, output legitimacy does not always result in political success, i.e. it may not lead to (subsequent) input legitimacy.

The proposed framework is suitable for evaluating policymaking as a resultant vector of the institutional vectors of EU institutions. However, in the next section a more detailed approach will be used, studying separate institutional vectors of the EU institutions in order to capture their specific contribution to input, throughput and output legitimacy of both the European Union and its migration-related policies. This exercise is particularly relevant for the scholars and decision-makers interested in the functioning of the high-level institutional model of EU governance and its relation to the already discussed notions of democratic deficit and legitimacy of the Union and its institutions.

Examining the impact of the migration crisis on the legitimacy of the EU and its institutions

This section implements the proposed qualitative assessment framework developed in the previous section in order to evaluate the potential impact of the institutional vectors of decision-making EU institutions during the current migration crisis on the legitimacy of the European Union.

The analysis has many limitations. The institutional vectors of four institutions are taken into account – the European Council, the Council of the European Union, the European Parliament, and the European Commission. The role of the European Court of Justice is not considered, given the specificity of its functions and the limited impact it has had on the migration crisis so far².

The time frame of the analysis is set between January 2013 and December 2016. Only major policy developments and events that can be defined as crisis response of the four EU institutions during this period are taken into consideration. The analysis is focused on the vertical dimension of democracy, i.e. within the legal framework of the EU Treaties, and excludes classic forms of intergovernmental cooperation and policy coordination. The input of the analysis relies heavily on existing academic research on the institutional responses to the migration crisis and the so-called poly-crisis (typically including the Euro-crisis, the migration crisis and in some versions – the political and security crisis in Ukraine), and is based on publicly available information obtained through desktop research.

The key findings for input, throughput and output legitimacy are presented in aggregate for all institutions due to limitation of space.

Input legitimacy

The following main findings are reached in the relationship of input legitimacy of EU institutions in the context of the migration crisis:

- The central role of the European Council in the EU's governance system is a systematic obstacle to finding European solutions due to the invocation of national interests;
- Throughout the early stages of development of the migration crisis, the European Commission has performed more as a technocratic structure in support of the European Council's deliberations, rather than the institution with the capacity to set the political agenda of the EU;
- The participation of the European Parliament in the decision-making process during the migration crisis has been of particular importance for the perceived overall input legitimacy of the relevant crisis mitigation policies.

Throughput legitimacy

The summarized findings on the throughput legitimacy of EU institutions in the area of migration policy are as follows:

- European Council is emerging as the de facto decision maker on migration;
- A repeating pattern during the last few years of the crisis has been the use of the so-called "mini-summits", typically organized by one or few Member States prior to a European Council meeting and aiming to predefine the outcome of that meeting;
- The Council of the EU has witnessed a surge of informal inter-institutional negotiation practices that seem to decrease the transparency of the decision-making process and the accountability of Member States' representatives;

² However, the ECJ rulings are considered to have generally constrained the executive branch of Member States governments in the area of migration policy.

- Germany (often working together with France) has been able to dominate the decision making process in the Council through potential threats to block certain decisions during the migration crisis;

- The European Commission did not have a well-developed system of consultation and data exchange with stakeholders and was somewhat caught by surprise by the migration crisis;

- Most of the legislative proposals³ were developed by the Commission without a proper impact assessment. Typically, the Commission did not explain this procedural omission;

- The European Parliament has complained about the lack of sufficient transparency and accountability on migration budget spending provided by the Commission;

- The EP delivered its most wide-ranging and comprehensive policy document on the migration crisis in April 2016⁴. In the resolution, the MEPs delivered their assessment of the status of migration policy implementation and impending challenges. The EP provided a number of recommendations and proposals that aimed to improve the EU policy throughput.

- Migration policies affect the development and implementation of other EU policies (economic and social policy, security, human rights, and international relations), and are dependent on the formulation of those policies. Therefore, migration policies often serve multiple policy objectives, which also explains some of the mixed outcomes (Czaika & De Haas 2013).

Output legitimacy

The key findings on the output legitimacy of EU institutions are detailed below:

- The migration crisis is continuing. Italy has been seeing an increase in arrivals since 2015, reaching a peak at the end of March 2017. The figures indicate a 85% increase in arrivals when comparing the first quarters of 2015 (10,165) and 2016 (18,777), and additional 29% rise in numbers of arrivals in the first three months of 2017 with the total of 24,292 migrants registered as of 31st March 2017. Since the implementation of the EU-Turkey Agreement in March 2016, the number of migrants and refugees stranded in Greece increased by 46% and currently stands at 62,215⁵. The persistently uneven distribution of such a multidimensional and growing burden leaves the European multilevel system of asylum and migration governance in a fragile and precarious state;

- Human lives continue to be lost in the Mediterranean in the process of migration to the EU. 1,089 persons were declared dead or missing in 2017, while 5,098 were reported to be dead/missing in 2016⁶.

- The so-called “urgent” measures taken by FRONTEX during the migration crisis appear to have had limited success. The current status of border security in the EU remains precarious. A number of serious challenges remain: the widening of the surveillance areas, the growing need for and the extension of search and rescue operations, the lack of facilities to receive and accommodate thousands of persons over a short time, the lack of expertise to detect non-

³ With the exception of the Proposal for Directive on the conditions of entry and residence of third-country nationals for the purpose of highly skilled employment and the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 as regards the use of the Entry/Exit System (EES).

⁴ See *supra*, n. 41.

⁵ Migration Flows to Europe - 2017 Quarterly Overview – March. IOM, 2017.

⁶ Data from <http://missingmigrants.iom.int> (accessed online on 1st May 2017).

typical travel documents, difficulties in addressing fraudulent declarations of nationality or age, and non-systematic entry of fingerprints to the Eurodac;

- The EU's migration policy-making process in itself has remained fragmented and lacks coherence;

- The European Commission failed to react properly to obvious implementation deficits of some Member States in the fields of border security and asylum protection;

- Member States managed to find new “venues” where they could pursue their preferred control and security-oriented policy without much interference from newly empowered supranational EU institutions;

- Recent efforts to propose comprehensive reform of the Dublin system have stalled. Some Member States have practically boycotted their relocation commitments. Member States have formally pledged 28,713 places for relocation. However, only 5,413 persons from Italy and 12,490 persons from Greece have been relocated (corresponding to 62% of the total pledged). 80,352 places out of the total 160,000 places are still not pledged by the Member States;

- The public opinion in Member States remains sceptical on the increased flow of migrants. In 22 Member States, majorities of respondents have a negative feeling about the immigration of people from outside the EU, with more than eight in ten respondents holding this view in Czech Republic (82%), Estonia (81%), Latvia (83%), and Hungary (81%). However, the majority of respondents (69%) prefer a common EU policy on migration;

- The outcome of the Brexit referendum in the United Kingdom might have been influenced by output legitimacy concerns in the area of EU migration policy (Goodwin and Heath 2016);

- The perception of output legitimacy during the migration crisis contributes to internal divisions among Member States and undermines the citizens' support for the European project.

Conclusions

This paper has demonstrated the usability of the theoretical framework of input, throughput and output legitimacy as applied to EU's migration policies, based on reviewing the institutional vectors of four EU institutions in the period January 2013 – December 2016. The main findings indicate that these institutional vectors in the case of EU migration policies have been problematic. This is particularly the case with throughput and output legitimacy of the EU's institutional response to the migration crisis. The institutional vectors of the European Council and the Council of the EU on migration appear very disquieting, given the trend for the invocation of national interests in a zero-sum game setting. Further research is needed on the implicit and strategic power grab of the European Council on migration and other policies.

The paper also provides a framework for assessing the legitimacy of the EU and its institutions through detailed analysis on institutional vectors for integrated and interdependent EU policies. Additional research is needed on the interactions of the migration crisis with the Euro-crisis (after 2008), and the so-called Brexit (the invocation of Article 50 TEU by the United Kingdom). The negative impact of the EU's institutional response to the migration

crisis on the legitimacy of the Union can and should be investigated in more detail in multi-disciplinary studies, including insights from political science, international relations, sociology, anthropology and other relevant fields.

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