



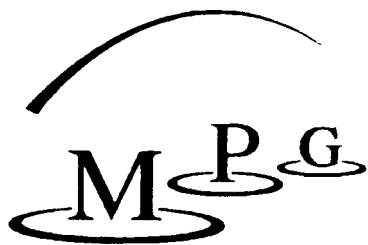
EU and US approaches to the management of immigration

Jan Niessen, Yongmi Schibel and
Raphaële Magoni (eds.)

Italy

Jonathan Chaloff
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With the support of the German Marshall Fund of the United States

The Migration Policy Group (MPG) is an independent organisation committed to policy development on mobility, migration, diversity, equality and anti-discrimination by facilitating the exchange between stakeholders from all sectors of society, with the aim of contributing to innovative and effective responses to the challenges posed by migration and diversity.

This report is part of a series of 18 country reports prepared in the framework of the project *EU and US approaches to the management of immigration*, which was carried out by MPG with the support of the German Marshall Fund of the United States and in co-operation with partners in the European Migration Dialogue. Countries included in the project are Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Poland, Portugal, Spain, Switzerland, and the UK.

Reports on these countries are available from MPG's website individually or jointly, together with EU-US comparative perspectives and European comparative perspectives. See Jan Niessen and Yongmi Schibel, *EU and US approaches to the management of immigration – comparative perspectives*, MPG/Brussels, May 2003.

All papers were presented and discussed at a transatlantic dialogue meeting preceding the official launch of the European Migration Policy Dialogue attended by Commissioner António Vitorino (Brussels May 2003).

Brussels/Rome, May 2003

Preface

The European Union and the United States are areas of immigration, and both are entities of multi-level governance facing the task of managing international migration. However, unlike the United States most European states do not consider immigration as a matter of national interest.

In the US a regulated immigration system aims to enhance the benefits and minimise the drawbacks of immigration. The country's bi-partisan immigration policy receives strong support from a wide variety of stakeholders.

In Europe the emphasis is on immigration restriction and prevention, reflecting the position of most stakeholders that the costs of immigration outweigh its benefits. Immigration is a sensitive and sometimes controversial issue, as is demonstrated in recent elections in a number of European countries.

On both sides of the Atlantic migration ranked high on the agenda throughout the nineties. Changes in the size and direction of migratory movements as a result of global developments, EU enlargement and NAFTA received a great deal of attention. The ways in which migration policies are designed and implemented were reviewed and underwent some important changes.

In 1997, the US Commission on Immigration Reform presented its final report to Congress, proposing important changes in US immigration policies and management.

In Europe the 1997 Amsterdam Treaty empowered the European Union's institutions to act on migration, changing intergovernmental co-operation among member states into the development of joint policies on immigration and immigrant integration. A new debate emerged on the role of immigration to address economic and demographic imbalances.

The events of September 11 did not in themselves have an impact on the foundations of immigration policies' governance structures, or lead to changes in them, other than those already proposed. The events added, however, a range of other issues to the overall policy agenda (issues related to the fight against terrorism became a top priority) and the immigration agenda (where security issues became a priority). This resulted in a stagnation of the further development of immigration policies (the best example probably being the US- Mexico migration agreement) and in a refocusing of attention on countering the victimisation of immigrants and the straining of community relations.

It is against this backdrop that MPG launched the project *EU and US approaches to the management of immigration* in an attempt to identify the main drivers of immigration management in EU and US systems of multi-level governance. Building on an understanding of how migration needs are assessed and translated into policy on the national or state level, the project focused on the way in which national or state governments promote their immigration related interests within the federation (in the case of the United States) and the Union (in the case of the European Union). How successful are the different entities in shaping common policies according to their needs? Do they consider centralisation (which the extension of EU powers suggests), or decentralisation (as the campaigns of some states for a greater say in immigration matters suggest) more useful for realising their immigration-related goals?

The reports on fourteen EU Member States, three candidate countries and one associated state each have four chapters:

- The first chapter reviews the (emerging) debates on migration and pays particular attention to the terms of the debate. It examines whether migration is debated in terms of control, security and restriction, or rather in terms of migration management and the assessment of migration needs. It asks whether the terms of the debate are different for different types of migrants, for instance irregular migrants vs. highly qualified migrants. The chapter analyses whether immigration has been linked with and embedded in larger discussions about social and economic policies for the future. In particular, it looks at the debates around the labour market and demography and considers whether and how immigration has been considered as an option for meeting emerging challenges in these areas.
- The second chapter provides an inventory of stakeholders and an analysis of their activities. It gives a detailed account of who is responsible for which area of migration management in the different government departments. It also covers the activities of the various non-governmental organisations active in this field. The central question is which groups (within government, employers, trade unions, NGOs, academics and other experts) assess national migration needs, which instruments and mechanisms they use to make these assessments, and how they assert influence in the political decision-making process to translate these assessments into policies.
- The third chapter provides an analysis of migration management in the areas covered by three of the most important Directives proposed by the European Commission (on admission for employment, family reunification¹, and long-term residents). Rapporteurs compare the national legal framework with the proposed European measures, and assess the degree of convergence between the two. The chapter addresses each of the substantive points dealt with in the Commission's proposals and sets out the corresponding national provisions, if such provisions exist under the current system. Recent and impending changes of national law are also examined, with a view to assessing whether immigration management rules are moving closer to or further away from the proposed European legislation.
- The fourth chapter offers concluding remarks and evaluations by the rapporteurs. It addresses the Commission proposal for an Open Method of Co-ordination and considers whether such a mechanism would fit well with existing policy-making structures. Where appropriate, the chapter looks more closely at the proposed Guidelines and evaluates the degree to which they are already tackled in national policy. The impact of the European Employment Strategy on immigration management is also assessed. The fourth chapter also gives the rapporteurs an opportunity to make recommendations and to suggest alternative benchmarks for future debates and policy developments.

¹ Reports were drafted before the definition of a common approach to family reunification, which Member States agreed to at the Justice and Home Affairs Council of 27/28 February 2003. Rapporteurs base their comments on the text of draft Directive COM (2002) 225, published on 2 May 2002.

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Chapter 1: The terms of the policy debates

This report covers the debate and policy regarding migration in Italy over the past decade. Large scale labour migration to Italy did not begin until the late 1980's and did not begin to appear in public discourse until the collapse of the East European regimes in the early 1990's. In fact, until 1990 the legislation covering migration dated back mostly to the 1930's. Since 1990 a number of laws have been passed, including a framework law in 1998 to which major changes were made in 2002². At the same time, public and policy debate have become more visible and immigration policy has become a "plank" in the platform of all political parties, organisations and institutions.

1.1. Control vs. assessment and changing terms

The terms of the policy debate over migration in Italy are defined by the institution which frames the discussion. The principal voices in the migration debate are the political parties – especially those of the centre-right coalition elected in 2001, and the DS on the centre-left – and the industrial associations – particularly the regional associations in the Northeast.

Article 3 of the 1998 immigration law (Framework law, or *Testo Unico*, 286/98³) requires the government to issue a triannual planning document (*documento programmatico*). This document, published by Presidential Decree for the 1998-2000 period and for the 2001-2003 period, contains an analysis of the principal areas of intervention and outlines the criteria on which quotas and other management mechanisms will be based.

The 1998 document⁴ was prepared to provide support for the immigration framework law and comprised an outline of Italian immigration policy as a three-pillar system: integration, quotas, and restriction of undocumented immigration. It also planned an information strategy for addressing recognised public hostility to immigration and to better "integrate" immigrants into Italian culture. Finally, it contained a lengthy analysis by a leading Italian demographer, Antonio Golini, illustrating the necessity of sustained and substantial immigration to compensate for a dramatically aging population trend.

The 2001 document⁵ was prepared by a centre-left government that was soon to lose the elections, and contains many of the same general considerations as the first planning document. It reviews the successes and shortcomings of the legislation and considers some emergent issues, especially that of high-skilled immigration and sector-specific labour shortages. The demographic trends so exhaustively mapped in the 1998 document are reduced to a series of alarms based on UN projections of demographic decline.

These documents provide an insight into the main terms in the Italian policy debate. In fact, the very idea of "three pillars" reflects the main questions in the debate: the capacity and mechanisms for integration, the regulation of entry through a quota system and other mechanisms, and the need to combat undocumented migration

² Law 189/2002, passed on 30/7/2002, published in Official Journal 199 on 26/8/2002

³ Published in suppl. 139/L to the Official Journal 191 on 18/8/1998, law no. 286, 25/7/1998.

⁴ Published in suppl. 158 to the Official Journal 215 on 15/9/1998, following the Presidential Decree issued on 5/8/1998

⁵ Published in suppl. 119 to the Official Journal 112 on 16/5/2001, following the Presidential Decree issued on 30/3/2001

through strict repressive measures. While there is debate over the specific measures necessary for each of these pillars, the idea that migration is a structural phenomenon that must be governed, and according to these parameters, is contested only by tiny far-right political parties and organisations. At the same time, the idea of unrestricted and open migration to Italy is supported – faintly – by the Reconstructed Communists, and equally mutely by Catholic charity organisations and some other NGO's.

For the current centre-right coalition the public discourse regarding migration policy is primarily one of restricting undocumented migration and imposing controls. Nonetheless, the privileged channels enjoyed by the small and medium enterprises in Italy's north and northeast, which represent the main motor of growth and employment, mean that these groups' demand for labour is reflected in the policy decisions and internal debates held by the government.

The industrial associations have consistently demanded labour – and specified the requirements and numbers. The demand is especially high for unskilled labour. At the same time, local governments in the same industrial regions have called for labour migration quotas to take into account the capacity of local towns to absorb these migrants, especially in terms of the availability of housing.

1.2. Distinctions between types of migrants

Until recently, little discussion took place regarding the difference between high-skilled and low-skilled migrants or specific professions, with the exception of sport and entertainment. In recent years, there has been a consensus that immigration policy should favour nurses and, around the turn of the millenium, high-tech workers. Italy was unable to fill the special quota for high-tech workers since such qualified personnel prefer other countries with better labour markets. This has led to a dampening of such insistence on distinctions. Formal distinctions are made between countries with which bilateral agreements have been signed and those which have not signed any agreements. A more significant distinction appears to be the occasional push by some centre-right groups and a significant minority of the Italian Church hierarchy for an immigration policy that favours Catholic or Christian immigrants on the grounds that such migrants are more "compatible" with Italy.

The debate over what to do about the large number of undocumented migrants in Italy contains a number of positions. Only the far-left parties and some NGO's favour continuous regularisations without criteria. All other parties declare themselves opposed to regularisations. Nonetheless, regularisations occur like clockwork in Italy (in 1986, 1990, 1995, 1998 and 2002) because there is support in parliaments (both left and right coalitions) for a recognition of the role that migrants play in the underground economy and a wide conviction that such a labour force is more advantageous to the State if it is recognised and tax-paying. The facility with which such regularisations are launched reflects a general Italian tendency towards declaring amnesties of all sorts when the level of law-breaking reaches a certain critical point. Amnesties are declared for different kinds of violations – money laundering, tax evasion, illegal construction, etc. - and immigration is no exception.

The most recent regularisation, appended to the 2002 immigration law, showed the power of certain elements within a centre-right coalition that was, at least formally, committed to a restrictive policy and that had sworn not to hold a regularisation. In fact, the centre-right was firmly opposed to the previous regularisations. The Catholic centre has a strong humanitarian ethos, and the Northern League has a pragmatic side. The debate over the regularisation was framed in terms of family, and the role

that foreign caretakers play in caring for children and the elderly. This component – for so-called *badanti* or caretakers – was presented as a humanitarian regularisation. A regularisation for undocumented workers was tacked on at the last minute by the same Catholic groups with broad but unspoken support from the main party in the coalition.⁶

It is important to note that each regularisation in Italy has been declared the “final regularisation” and as such has been able to pass. Each successive regularisation has been declared a one-time corrective mechanism to compensate for the defects of previous legislation. At the same time as regularisations take place, there is widespread support among political parties for expulsion of undocumented immigrants. In fact, the only pillar of the 3-pillar 1998 law to be fully applied by the centre-left coalition was that regarding repression of illegal immigration, with a sharp rise in expulsions. The current law criminalises undocumented migration and further tightens the conditions of expulsion. This criminalisation was opposed by the centre-left and most NGO’s; they were able to organise a massive national demonstration against the new law, with support from trade unions and social organisations.

1.3. Role in vision of the future

Italian policy making tends to be short-sighted and make little reference to long term needs. The brief and instable nature of government coalitions makes planning difficult and political decisions are more often concerned with immediate returns. The lack of a response to the demographic decline – predicted at least 20 years ago but never addressed by public policy – is an example. Long-term visions of the future do not generally play a role in the public or parliamentary policy debate.

The organisations most concerned are those with economic interests to protect, especially the employers’ associations, the trade unions and the national pension system (INPS). The employers’ associations are generally concerned with short-term employment needs and with the very low birth rates in the regions where their businesses are located. The trade unions are also rapidly greying (half of all union members are retired) and see the need to ensure their own future in an environment where industrial jobs are increasingly taken by immigrants. The pension system has an obvious need to protect itself from the bankruptcy which is predicted if current demographic trends continue. It is, however, above all a bureaucratic institution with little possibility of directly influencing policy debate and with a predilection for such short-term solutions as the fees garnered from the most recent regularisation.

The vision of a “multicultural” future animates the requests of many NGO’s, although in most cases there is cause for some scepticism regarding their enthusiastic adoption of this cause. In fact, many NGO’s which thrived under the Socialist cooperation and development funding in the 1980’s were caught short when the Socialist were toppled and their aid programme disappeared in the kickback scandals of the early 1990’s. Many then converted their mission into one of supporting migrants and immigration in Italy. This “multicultural” question is still debated rather superficially, with centre-left parties declaring Italy to be “multicultural” and right-wing parties rushing to the defence of Italian culture even before the presence of immigrant cultures was significant. It is not a major consideration, although much attention is given to the presence of Muslim immigrants, especially since the terrorist attacks of 11 September 2001.

⁶ This regularisation, art. 33 of L. 189/02, ran from 11/9/02-11/11/02 and saw 700,000 applicants, half of them caretakers and half dependent workers.

1.4. Demographic studies and the use made of them

The demographic question is often explicitly cited when discussing immigration policy in Italy. As stated above, the 1998 planning document contained a lengthy annex considering demographic trends in Italy and the outlook for the future. A demographer is one of the most oft-cited academic figures in the immigration debate in Italy and represents the country at the OECD working group.⁷ The UN population forecasts are widely cited in Italy, as are those promulgated by the OECD. Migration is generally accepted as a means for addressing the demographic decline, although this is not adopted as justification, neither by political parties nor by other organisations, with the exceptions stated above. Public opinion is too broadly opposed to increased immigration for such an argument to be politically acceptable, and Italian policy makers have no vocation for promoting unpopular reforms using such “academic” arguments.

⁷ See for example Antonio Golini "Tendenze, problemi e politiche della popolazione in Italia", in Gruppo di Ancona (ed.), *Trasformazioni dell'Economia e della Società Italiana. Studi in onore di Giorgio Fuà*, Bologna, Il Mulino, 1999, pp. 219-236

Chapter 2: The stakeholders

The model of social parties – employers and unions mediated by the State – remains very strong in Italy. This system, although it has weakened, means that both industrial associations and unions play a strong role in any labour market debate. Other institutions which are very important in Italy are the Catholic Church and the fragmented “3rd Sector” of NGO’s, especially the large centrist and leftist organisations (ARCI, for example). Many of these organisations have co-opted and re-proposed individual immigrants as representatives, in response to a strong demand from institutions for immigrant interlocutors.⁸ At the same time, “immigrant associations” are mostly inchoate or specious, due to the geographic dispersal, ethnic fractiousness, and limited rootedness of immigrants in Italy. Finally, regional elected representatives – particularly from the Northeast – have been pushing for a greater voice in deciding immigration policy, especially the immigration quotas.

The principal stakeholders in discussion of immigration are:

- trade unions (CGIL, CISL, UIL), which generally have an immigration representative;
- employers’ associations (associates of the Confindustria or Confartigianato or CNA);
- main associations working in assistance to foreigners (Caritas, ARCI, Italian Red Cross, and many smaller organisations, as well as refugee assistance organisations which generally address different aspects of migration policy);
- local government representatives (especially those responsible for social services);
- political parties), which generally have an immigration representative;
- immigrant associations (of which the principal associations are linked to unions, as in the case of ANOLF, or are anti-discrimination associations belonging to broader groupings, as in the case of *Nero e non solo* or SOS Razzismo).

2.1. Ministries and NGO actors

The reorganisation of the Italian ministries and sub-ministries in the past 2 years has meant that the governmental institutions which pass and implement policy have changed since the 1998 framework law was passed.

The **Ministry of Welfare** (formally entitled the Ministry of Labour and Social Policy) is responsible for regulating the labour market and funding social initiatives; as such, it is responsible for determining the annual quotas for admission of third country nationals and for the funding of specific projects in their favour. The Ministry of Welfare contains a “General Directorate for Immigration” within the Department for Social and Pension Policy. The Third Country Nationals Service (Servizio extracomunitari) is responsible for:

- monitoring immigration, including permits, entries, conversions, preferential quotas and regularisations;

⁸ La Rappresentanza diffusa: le forme di partecipazione degli immigrati alla vita collettiva, Codres-CNEL, Rome 1999

- planning the annual quotas for foreign workers and seasonal workers in agriculture and tourism;
- informing local labour offices on rules for foreigners and on criteria for accepting requests for foreign labour;
- bilateral agreements on migration; liaison with foreign consulates in Italy; transborder workers;
- relationship with Parliament and assistance in drafting legislation and inquiries.

The provincial employment services supply the Ministry with the estimates used in calculating the quotas for foreign workers. The Ministry provides “integration” funds for local governments, which then distribute them according to their own criteria. It coordinates social integration policy and anti-racism and humanitarian initiatives. It also coordinates the Foreign Minors Commission.⁹

The **Ministry of Interior** is responsible for regulating migration in general; it covers both the Police, who issue residence permits, and the Prefectures, who handle local security issues and run the regularisation and the local Immigration Councils. The numerous other actors influence the policy debate through participation in the various mechanisms established for governance of the immigration phenomenon (see below).

2.2. Mechanisms for exercising influence

There are a number of institutions at the national and local level for monitoring immigration trends and implementing immigration policy. The 1998 law created three national bodies: the large Commission for Integration Policy, at the then-Ministry of Social Affairs¹⁰; the National Coordinating Body at the Labour and Economics Council (CNEL)¹¹; and a special advisory council at the Prime Minister’s office (*Consulta*)¹². It also created local Immigration Councils in each province¹³, later entrusted to the Prefect¹⁴.

The Commission was entrusted with preparing an annual report and to provide advice, and comprised ministerial representatives and experts, and was headed by Prof. Giovanna Zincone. She was able to fund many research projects by different organisations and to publish two Annual Reports on Integration¹⁵. The *Consulta* comprised dozens of representatives of social parties, associations, ministry experts, representatives of local government, and others. This plenary-style organisation met periodically to provide a forum for stakeholders in the immigration debate. The Commission and the *Consulta* were not reinstated after the change in government in 2001, and the 2002 immigration law created a new, more restrictive advisory council.

The CNEL coordinating body unites representatives of local government and associations, trade unions, employers’ associations and other experts. In addition to occasional plenary sessions on specific topics, working groups meet to prepare

⁹ The Foreign Minors Commission handles both unaccompanied minors and other issues such as temporary holidays for health reasons.

¹⁰ L. 286/98, art. 46

¹¹ L. 286/98, art. 42, par. 3

¹² L. 286/98, art. 42, par. 4

¹³ L. 286/98, art. 3 par. 6

¹⁴ See the Applicatory Regulation (art. 57 of Presidential Decree no. 394 - 31/8/99) and Prime Ministerial Decree of 18/12/99 published in OJ 13, 18/1/00.

¹⁵ 1° *Rapporto sull’integrazione degli immigrati in Italia*, 30/11/99; 2° *rapporto sull’integrazione degli immigrati in Italia*, 13/12/00

policy papers and guidelines on different themes, which are then formally presented to the government for action.

The local Immigration Council, or *Consiglio territoriale per l'immigrazione*, was meant as a broad-based provincial forum in which to discuss immigration trends and pilot and coordinate local integration programmes. The decision to entrust it to the Prefect rather than to an elected official such as the Provincial President caused much dissent at first. The success of this structure has been varied, since its success is based on the capacity of the local Prefect to identify and involve local stakeholders and on the effective ability of the council to pilot spending. The Ministry of Interior provided guidelines for the minimum number and typology of representatives for each council; effective participation ranges from 9 up to 50 members. In some regions, the council has become an important forum for associations. A total of 2000 stakeholders across Italy have been nominated to such local Councils¹⁶.

At the same time, each Italian region, and many provinces and towns, have an Immigration Council which draws representatives from institutions, trade unions, employers' and professional associations, associations and NGO's. These councils – where active, since many are suspended¹⁷ – usually provide input to local authorities on identifying priority areas for investing social funds and for putting pressure on national government to make changes in the immigration laws. Because the local government controls most social spending, participation in these councils tends to be more desirable than in other forums. In some cases, regional stakeholders will attempt to change the direction of national policy by legislating in the opposite direction. One example can be found in the 2001-2003 planning document approved by the Veneto Region in which the voices of stakeholders in local immigration policy – regarding housing and labour market services – are defined in contrast to that codified in national law, with an extremely limited role assigned to the local immigration councils. Veneto, like other regions, has also chosen to promote direct migration by Argentinian descendents of emigrants from their own region.

Outside of these institutional forms of intervention it is also common for organisations to promote conferences to promote their particular point of view, or to use large national conferences as an opportunity to put forward proposals. One such example could be seen in 2001's "Estates General", which the centre-left government chose to hold in Vicenza, in the heart of the centre-right industrial northeast, as a sign of aperture towards the centre-right coalition which governed that region, and to increased representation of employers' concerns. More than 1200 participants from all over Italy met to debate different immigration issues.

¹⁶ See: report for the Ministry of Interior, *Monitoraggio dei Consigli territoriali per l'immigrazione*, Censis, Rome 2002, or earlier policy paper by the ONC-CNEL, Rome, 2000.

¹⁷ 1° rapporto sulla rappresentanza degli immigrati, ONC-CNEL, Rome 1999

Chapter 3: European legislative proposals

3.1. Admission for economic purposes

3.1.1. Single national admission procedure and title

Italy has a number of separate application categories for third-country nationals seeking to enter the labour market in Italy. These people are separate from business, sport, entertainment, and maritime visitors, as specified in the directive. Seasonal workers are considered similarly to other third-country nationals seeking to enter the labour market in terms of permits, although variations in the procedure exist. The 2002 immigration law creates a “residence contract” in addition to the “residence permit” for dependent workers. The “residence contract” means that the permit is linked to a specific employer and job contract. All categories of workers are eligible for a permit as long as they have a valid contract with their employer. The 1998 law and the quota system remain in place for the entry of self-employed workers.

The application process requires an Italian employer to make a request for a worker. The application can name a specific third-country national or ask for a third-country national enrolled among the list of applicants in the country of origin. Therefore, while third-country citizens can apply at the Italian consulate in their home country, they cannot receive a visa unless they are invited to come to Italy to meet a specific labour demand. The self-employed receive visas and permits within the annual quotas for self-employment. Permits are issued for up to nine months (seasonal work) one year (for short-term contract work) and two years (for unlimited contract work or self-employment).¹⁸ Renewal is for the same period, up to the 6th year.

Self-employment is allowed when the applicant can demonstrate “sufficient resources”, has the necessary qualification, and can demonstrate that there are no reasons for which he or she should be denied the authorisation or right to conduct such an activity.¹⁹ Adequate housing and income (defined as the level at which persons must make co-payments for health care) must be guaranteed for. In this sense, Italian legislation matches only sub-paragraphs 3.c., g. and h. of the proposed Directive. No distinctions are made between high or low skilled workers, although the quotas for admission may define specific profession qualifications.

3.1.2. Economic needs test

The 2002 law imposes a needs test by requiring all requests for third-country workers to pass through the Prefectural office, which is to be linked to employment office. The employment office publicises the job opening – in terms of job definition and salary conditions – for at least 20 days. If no Italian or EU citizen has replied, the employment office notifies the prefectural office. Interestingly, the law does not make reference to replies from resident third-country nationals (cf. Directive Art. 6 par 1.c-f.), who therefore appear not to have the right to supersede the application made by the aspirant employer. In the absence of a reply, after 20 days the prefectural office can authorise the issuance of a visa.²⁰ The quota system has identified specific professions for admission but this does not exempt these categories from the above procedure. Income thresholds are used only for renewal, and are equivalent to the minimum “social benefit”. When employers apply for foreign labour, they must

¹⁸ Art. 5, par. 3-bis, L. 189/02

¹⁹ Art. 26, par. 2, L. 286/98

²⁰ Art. 18, par. 4., L. 189/02

guarantee housing and to pay for repatriation in the event of unemployment or failure to renew the permit, but they are not subject to any special contributions for foreigners.²¹

Seasonal workers may enter the country – either by nominal request or through application to the lists – without passing through the above system. Past seasonal workers have priority.²² Permits are valid for up to 9 months. The permit can also be converted into a normal work permit if the relevant conditions are met. After 2 seasons in Italy, the seasonal worker may apply for a multi-annual residence permit valid for up to three successive seasons.²³ Consideration in the framework law is given to special categories, including intracorporate transfers (for companies in WTO countries), as well as trainees, au pairs, translators, university professors, language instructors, workers on intracompany assignments, sailors, consultants, performers, entertainment workers, athletes, accredited salaried foreign journalists, youth exchanges and au pairs.²⁴ Bilateral agreements on transfrontier work are in place with neighbouring countries.

No needs basis is used for self-employment applications from third-country nationals, nor are “beneficial effects” considered. Income thresholds are used only for renewal, and are equivalent to the minimum “social benefit”. Nonetheless, registration in a professional order (physicians, lawyers, psychologists, etc.) may be required, and such orders may not recognise foreign-trained professionals. Likewise, proof of a license may be impossible to obtain because of a catch-22 situation (e.g., some business licenses can only be issued to legal residents, who cannot get residence until they have a license).

3.1.3. Limits on permits for social reasons

The Italian quota system is based on an explicit desire to limit the number of incoming third-country nationals, since it is presumed that in the absence of limits, the numbers of incomers would be much higher. The quota system favours specific countries – especially those countries with which bilateral agreements have been reached and enforced. As stated above, precedence is given to neighbouring countries. In part this is due to “cultural affinity”, but is most likely due to the importance of repatriation agreements with countries which send clandestine immigrants to the Italian coastline. Recent quotas have seen Albania, Tunisia, Morocco, Egypt, Nigeria, Moldavia and Sri Lanka all receive preferential quotas²⁵. Argentina is currently seen as a special case of affinity – about one-third of Argentinians claim Italian ancestry – and is favoured by large preferential quotas of 4000.²⁶

In Italy the capacity to “integrate” foreign workers is above all linked to the availability of housing. The Italian regions demanding labour are the same regions with acute housing shortages. The 2002 laws recognises this problem and requires employers to guarantee housing to each third-country national summoned to Italy. In the absence of housing, the request is denied. Because the quotas are distributed to

²¹ Whether these guarantees will be required for permit renewal – or for job changes – is still somewhat unclear.

²² Art. 20, L. 189/02

²³ Art. 5, par. 3-ter, L. 189/02

²⁴ Art. 27, L. 286/02

²⁵ of 500-1000 workers each

²⁶ Prime Ministerial Decree 15.10.2002 – quotas for 2002. Published in OJ 268 on 15.11.2002.

Regions and then to provinces, insufficient housing in specific provinces may lead to a stop in immigration to those areas.

3.1.4. Regularisations

Italy has held 4 large regularisations in the past 15 years, as stated above (1990, 1995, 1998 and 2002). This has been a response to the large number of undocumented foreigners working in the country. The pull factor exerted by Italy is undoubtedly the vast informal labour market.²⁷ All have benefited dependent workers, and the 1998 regularisation was also open to self-employed foreigners, although few applied. The 2002 regularisation was for caretakers and dependent workers. The regularisations, in terms of scale (most foreign workers in Italy have benefited at one point or another from a regularisation), represent a *de facto* immigration policy. From an economic standpoint, some sectors, such as agriculture, are dependent on undocumented foreign labour.²⁸ Yet the increasingly restrictive immigration policy in Italy is a direct response to the widespread irregularity and an ongoing attempt to reduce the presence of undocumented foreigners.

3.2. Family Reunion

3.2.1. Definitions

Family members are defined in Italy²⁹ as:

- spouses;
- unmarried children (included adopted and foster children) under 18, with the consent of the other parent;
- adult children objectively unable to care for themselves (completely disable)
- parents with no other children in the country of origin, or whose other children are unable to take care of them because of serious documented disability.

Unmarried partners are not considered spouses and are not eligible for family reunion.

²⁷ See E. Reyneri, "Immigration and the underground economy in new receiving South European countries: manifold perverse effects, manifold deep-rooted causes", Presented at the *Euresco conference*, April 1999, or E. Reyneri, "The Mass Legalisation of Migrants in Italy: Permanent or temporary emergence from the underground economy?" in *South European Politics and Society*, Winter 1998

²⁸ Censis, "I lavoratori stagionali immigrati in Italia", Censis Note & Commenti, no. 4, 2002

²⁹ Art. 29, par. 1, L. 286/98 ; art. par 1.a., L. 189/02

Required resources are:

- housing that meets minimum regional requirements for public housing [in terms of quality and dimensions], as well as the permission of the landlord in case of children under 14;
- minimum legally earned income of at least the “social benefit” for one family member, double for 2-3, and triple for 4 or more.

No insurance is required. No waiting period is explicitly defined, nor is family reunification subject to quotas. However, demonstration of the above requisites may require some time (if demonstration of income is based on tax returns, for example, as may be required by the implementation legislation yet to be approved). The law does require a visa to be issued if more than 90 days have passed from the submission of documentation and no response has been given. A family permit allows access to social services, school and vocational training, the labour market and employment office, subject to age requirements.³⁰ No employment restrictions are placed on a spouse with a family permit. In the event of widowhood, separation or divorce, or for those turning 18 who cannot receive the long-term residence card, the family permit can be converted into a work or study permit.³¹ Family permits are granted for the duration of the work permit (residence contract) to which they are associated.³²

3.2.2. Standstill and deadline clause

In a political situation in which there is a tendency to impose restrictions on immigration flows, and where Italian law currently does not require, for example, a minimum age for spouses, the standstill clause may bring to mind the adage, “let sleeping dogs lie”. In other words, if there appears to be a restriction accepted at the European level which has not been included in the current law, it may be politically painful for the current coalition to allow this “shortfall” to continue. At the same time, it may turn out to be useful to boast that the Italian law is “less restrictive than the accepted European standard.” Nonetheless, most of the provisions of the draft Directive closely mirror the provisions of Italian legislation.

3.3. Long term residence right

3.3.1. 5-year requirement and resource requirement

The 1998 law created the *carta di soggiorno*, or residence card, for foreigners with a permit “allowing unlimited renewal” who had been in the country for at least 5 years and had a clean criminal record³³. The 2001 law extended the requirement to six years.³⁴ Prior to 1998 there was no such long-term right. The residence card grants a visa exemption for exit and return and allows any kind of work or study. The six years are calculated based on residence permits of any type, so a permit for study which was then converted into a work permit would not represent any penalty. The same would even be true for elected residence or tourism, although it is possible that such

³⁰ Art. 30, par. 2, L. 286/98

³¹ Art. 30, par. 5, L. 286/98; for widowhood, art. 24, L. 189/02. It is worth noting that children with family permits who attend university are often encouraged by the Police to change their permit into a study permit. They can then be expelled if they fail to follow courses or finish university and are unable to meet quota requirements for employment!

³² Art. 30, par. 3, L. 286/98. In practice, many Police officials issue family permits for 4-year periods.

³³ Art. 9, L. 286/98

³⁴ Art. 9, L.189/02

requests would be denied at the administrative level or prohibited in the implementation regulation yet to be issued for the 2002 law. The requisites for the residence card are the same as for renewal of the permit: adequate income³⁵ and appropriate job conditions. No insurance requirement exists.

3.3.2. Expulsion protection

No “withdrawal of status” conditions have been defined in Italy. The law requires third-country nationals to reconstitute their residence permit (of any kind) when they leave the country definitively, but this is left to the initiative and self-declaration of the foreigner. Under the 1998 law, expulsion can only take place for “serious reasons of public order or national security”³⁶ and makes reference to the same laws that apply to Italian citizens who represent a threat to the public. There are no attenuating factors considered in such a case, although recourse can be made to the court system (TAR) as in other cases of contested expulsion. In fact, expulsion can be contested within 60 days. Appeals are made to the local court, or from the home country through the Italian consulate. The 2002 law includes accompaniment to the border in all cases except for overstayers. Therefore appeals do not suspend expulsion, although this will probably face challenges in specific instances. The court has 20 days to decide whether or not to accept the appeal.³⁷ Expulsion is suspended only if there is a risk of persecution in the home country, for unaccompanied minors, for spouses or third-degree relatives of Italians, and for pregnant women and those who have given birth within the past six months.³⁸

3.3.3. Parity of rights

The residence card grants parity of access to services, and lays the groundwork for the right to vote in local elections once the constitutional hurdle is overcome.³⁹ Some professions are limited constitutionally to Italian citizens (and extended to EU citizens, in most cases). Most unlimited contract jobs for the State are reserved for citizens. This is the most noteworthy contradiction of art. 12, par. 1.a. of the draft Directive on long-term residence. The recognition of diplomas, certificates and other qualifications issued in third-countries is subject to the Ministry responsible for such qualifications. All other rights are in parity with Italian citizens. Long-term residence in Italy does not grant any additional equal treatment to resident third-country nationals, compared to the rights enjoyed by other foreigners with shorter-term permits.

3.3.4. Mobility of third-country nationals

This possibility has not yet been broadly discussed in the policy debate in Italy. There are two considerations that would concern stakeholders:

- long-term residents of other EU countries coming to work in Italy;
- long-term residents of Italy leaving to work elsewhere.

As far as the first is concerned, it would create some problems for the existing quota system, inasmuch as it would not be, under the draft Directive, subject to quotas. The quota system may have to include a deduction for such third-country long-term

³⁵ The minimum legally earned income of at least the “social benefit” for one family member, double for 2-3, and triple for 4 or more.

³⁶ Art. 9, par. 5, L. 286/98

³⁷ Art. 12, par 1.e., L. 189/02

³⁸ Art. 19, L. 286/98

³⁹ Art. 9, par. 4, sub. c (access to services) and d (right to vote), L. 286/98

residents from other EU countries, just as it currently includes a deduction for conversions of permits issued to unaccompanied minors.

As far as the second is concerned, if asylum policy is any indicator, there would be a conviction that most long-term residents would be interested in leaving for other countries with better labour markets, social mobility or social benefits. The investment made in settling and receiving a migrant may appear to be wasted if this migrant could then simply move to another EU country with the permit. Further, the history of open regularisations might make Italy an attractive first stop for undocumented immigrants hoping to eventually move to another country.

Chapter 4: Recommendations and open method of co-ordination

4.1. Comprehensive approach to migration management

There is already an attempt in Italy to “take due account of linkages between different categories of migration flows” through the quota system. Tourism, study and unaccompanied minors’ permits transformed into work permits are subject to quotas or result in a reduction of quotas. The relatively slight inflow of asylum seekers compared to other third-country nationals, and their historically brief stay in Italy, has not demanded any special consideration of their role in the labour market. The changes in the asylum system proposed by the 2002 law may change this. Illegal migration, on the other hand, is widely considered to be a side-effect of the informal economy and has not led to demands for changes in quotas, which are based on the regular economy. Large-scale regularisations, in fact, have not affected quotas in the past. Nonetheless, attempts to combat undeclared work (such as “emersion regularisations” for Italian citizens) are seen as part of the attempt to limit illegal migration. In policy, integration is considered as a housing issue.

Foreign and development policies have been increasingly linked to immigration policy. In part this is because of the transformation of activity by development NGO’s from work on projects abroad to work on social integration of immigrants in Italy, so that these organisations’ lobby is particularly sensitive to development issues. The first article of the 2002 immigration law, regarding “cooperation with foreign countries”, makes donations to recognised charities in non-OECD countries tax-deductible.⁴⁰ Perhaps more importantly, foreign policy is increasingly driven by the desire to combat illegal migration, as explicitly stated in the 2002 law.⁴¹ The Action Plan for the collection of monthly statistics, cited in section 3 of the Open Method Communication, represents a real challenge for Italy. At present, reliable and detailed annual statistics on migration are difficult to obtain until 8-10 months later, and quite often are not published until after a delay of more than one year. The slow evolution in the statistical reporting systems at the Interior and Labour Ministries make it unlikely that compliance with a monthly reporting system could be achieved in the near future.

4.2. Information campaigns in 3rd countries on legal admission possibilities

Italian legislation has attempted to promote the creation of lists of applicant workers at consulates in third countries. Special publicity measures have not been promoted, although information is provided on ministerial and most consular websites. Cooperation with other member state consular services is not formalised. Information and awareness campaigns in third countries regarding trafficking have been promoted by Italian organisations, but only within the framework of the JHA Directorate’s STOP and DAPHNE programmes.⁴²

4.3. Fight against illegal migration and trafficking

As stated above, the first 3-year planning document published after passage of the 1998 framework immigration law stated three pillars on which the law rested: regulation of inflows; repression of illegal migration; and integration of legal migrants.

⁴⁰ Art. 1, par. 1, L. 189/02

⁴¹ Art. 1, par. 2, L. 189/02

⁴² The tendency to shift responsibility to the EU level is evident, for example, in the statement of the Women’s Parliamentary Group of the ESP on 8/2/2001, requesting greater funding for this programme and cited by the Italian DS party as their policy on the matter.

The main humanitarian measure it introduced was the special permit for trafficked and exploited persons.⁴³ The 2002 law provides funds for additional police experts to be sent to work at Italian consulates in sending countries in order to fight trafficking. Both the 1998 and the 2002 laws introduce stiff penalties for illegal migration, in both cases for smugglers⁴⁴ and in the second case for the migrants themselves. Italy participates in the Schengen visa system and works in collaboration with other Schengen countries to strengthen cooperation and border controls and standards.

4.4. Admission of economic migrants

Current partnership with sending countries is closely related to the quotas system, which is in turn used to “reward” countries with which bilateral repatriation and anti-trafficking agreements have been reached. Further, rather than recruit high-skilled workers, Italian policy has been moving in the direction of support for training third-country nationals in their own countries and then assigning them priority in admission within the national quotas.⁴⁵ Current labour demand is for trained industrial workers and vocational training courses have been oriented towards these specific needs. Special regional initiatives may exist for recruiting seasonal workers.⁴⁶

As far as implementation of the European employment strategy is concerned, the barriers to contribution from migrants to the Italian labour market are not formal, with the exception of jobs legally reserved for Italian citizens. Recognition of qualifications is the main administrative obstacle. Discrimination remains a major obstacle but is addressed by legislation.⁴⁷ Resources for “reception and integration” are distributed according to priorities determined at the local level by representative bodies which include the stakeholders identified in Guideline 4 of the Open Method Communication, and listed in Chapter 2.2 above. Italian legislation currently in place “provides for clear and transparent procedures” for applications under the provincial allocations of the quota system, according to the parameters of priority, nationality, sector and type of work permit requested. As for notification of the Commission of limits placed on entry criteria and quotas, the system of publishing annual quotas through Ministerial decree means that Art. 26 of the draft Directive could be easily applied. As far as the fight against undeclared work is concerned, Italy has the largest informal economy in the EU, and this makes emersion very difficult, although ongoing incentives and regularisations have helped. The link between undeclared work and irregular migration is recognised in policy decisions; one of the main criticisms of the 2002 law by opposition parties was that its rigid admission system would encourage illegal entry and undeclared work.⁴⁸ No special attention is currently given to women applying for admission for purposes of employment.

⁴³ Art. 18, L. 286/98

⁴⁴ For smugglers, penalties are up to 3 years and a €15,000 fine for each person smuggled, if the smuggling was not done for material gain. If the smuggling was for material gain, the penalties are 4-12 years and up to €15,000 for each person smuggled. Art. 11, par. 1.a-b., L. 189/02. Confiscation of boats and other vehicles used is also foreseen.

⁴⁵ Both national (art. 19, par. 1, L. 189/02) and regional (see for example the 3-year programme for the Veneto Region) allow training measures abroad.

⁴⁶ The Autonomous Provinces of Trento and Bolzano have taken the unusual step of sending their own staff to consulates in the origin countries of seasonal workers to facilitate the recruitment process and the administrative procedures that follow, given the important role of seasonal work in their provincial economies.

⁴⁷ Art. 43, L. 286/98

⁴⁸ Employers who employ undeclared third-country nationals are subject to 3-12 months imprisonment and a €5000 fine for each worker without a residence permit. Art 18, par. 1. L. 189/02

4.5. Integration of migration issues into relations with 3rd countries

Development and cooperation programmes are usually not directly linked to migration flows, especially since funding passes through the Foreign Ministry, which does not work directly on migration.⁴⁹ In planning the European Social Funds for the first half of the current decade, an interministerial working group of experts⁵⁰ did meet to work on “internationalisation” and on linking migration to local development in Italy and in the sending countries. The flow of remittances only recently reversed direction and showed a net loss for Italy. No concerted programmes exist to channel remittances into development or to combat brain drain (for example, by supporting the return of third-country nationals who have studied in Italian universities).⁵¹ Regional programmes and policy papers often support internationalisation through repatriation. Likewise, training initiatives proposed by the adult education system are permitted to support qualification and repatriation of third-country nationals legally present in Italy.

Restrictions on free movement between Italy and the country of origin, for those holding work or family permits, impose a maximum limit of six months absence. Those who leave the country for less than six months must however still prove adequate annual income and a valid contract when they renew their permit. Support for associations or organisations supporting development in third countries may be outlined in regional planning documents for disbursement of integration funds, but is not part of any Italian national policy. Likewise, regional governments may allocate funds for support in resettlement of labour migrants in their countries of origin. As far as discouraging emigration by unauthorised third country nationals, as stated above, the legislation has criminalised unauthorised migration at the same time as it establishes lists at consulates for legal admission, and a transparent priority system. Bilateral agreements have been limited to repatriation issues and to cooperation on repression of unauthorised migration. Finally, the reintegration of victims of trafficking in their own countries has been discarded as unlikely; art. 18 of the 1998 law establishes a system for integrating victims in Italy, but no measures are foreseen for return to the country of origin.⁵²

4.6. Integration policy

The 3-year planning documents identify priorities and resources for integration of migrants into society. The 1998 framework law created a series of national and local bodies – see above – involving a variety of actors at all levels in implementing the national strategy. These organisms, especially the local organisations, are charged with publicising their role and providing information on integration measures. Specific initiatives may be developed at the local level for women and second-generation migrants, based on identified needs. No specific “settlement programme” for new migrants exists at any point during the immigration process. The local strategies promoted by adult education services, and less frequently by municipal and provincial authorities, provide language and/or cultural training, but there is no benchmark and the structure is decided by the promotor. Victims of smuggling are covered by Italian legislation under art. 18 of the 1998 law, and guaranteed access to all social services.

⁴⁹ Cooperation became an integral part of Italian foreign policy with art. 1 of L. 49/87.

⁵⁰ The so-called “17th table” at the Ministry of Foreign Affairs

⁵¹ Italy suffers from a brain drain of its own researchers, and has been experimenting initiatives to encourage scientists to return, with limited success

⁵² The number of beneficiaries of art. 18 has been about 800 annually over the past few years.

The area of civic citizenship for resident third-country nationals is still highly contested. A number of experiments in representation have taken place within the constitutional limit (the Italian constitution limits voting rights to Italian citizens). These experiments have ranged from the “additional city councillor”, elected by resident foreign nationals, to the “foreigners’ parliament” to the consultative bodies listed above. Except for the latter, no national standard exists. In fact, a proposed article granting the right to vote in administrative elections to resident third country nationals threatened to block the passage of the 1998 framework law and was cut. Opposition was strongest to that proposal, rather than any other aspect of the law. Likewise, 1999 was declared “Year of the New Citizens” by the Social Affairs Ministry, as part of a campaign within the ruling coalition to reform the Italian citizenship laws; the campaign failed completely.⁵³

4.7. Benchmarks for future debates and policy developments?

The Annual National Action Plan requested by the open method is not far from the 3-year planning document required by the 1998 Italian immigration law. In fact, the planning document contains statistics and priorities, and requires an annual publication of labour migrant quotas. In the past, quotas were often published late in the year; in fact, the new law states that in the absence of new quotas, the Ministry may proceed using the previous year’s numbers. The transformation into a National Action Plan would not be difficult, although one could expect a similar delay in publishing annual priorities.

Current admission policy in Italy is driven by employers, especially the associations of industrial employers in the northeast and by agricultural and tourism trade associations (the latter more interested in seasonal work). Therefore any perceived European support for an admission policy based on quotas is likely to shape the debate in such a way as to reinforce the power of these interests and to weaken the forces working to free admission from considerations of the labour market (i.e., immigrant associations and centre-left or Catholic social service organisations and parties).

At the same time, the creation of parameters for the evaluation of immigration policy, especially parameters that include social participation, encourage a rethinking of some aspects of Italian immigration policy, especially as regards integration and settlement. The 3-year planning documents have been necessarily vague regarding these points, and the funds allocated fairly small; any European stimulus in this direction could help the policy debate evolve into specific initiatives.

The same can be said for cooperation between Member State consulates abroad and information campaigns to discourage illegal migration. These guidelines would encourage greater involvement from the Ministry of Foreign Affairs, which has been relatively absent from the institutional debate. They would provide a benchmark for transparency and consistency, which has hardly been a strong point of Italian admission policy for foreign nationals. The same would be true for the cooperation and development programmes run by the Ministry of Foreign Affairs.

Nonetheless, the overall strategy for implementing integration policy has been to pass responsibility to the regions, to the provinces and to municipalities, which receive funds earmarked for integration but which decide on their own priorities and the means in which the funds will be disbursed. This means that national integration

⁵³ See, for example, the Conference “1999: anno dei nuovi cittadini: riformare la legge sulla cittadinanza”, 22/2/1999, Rome

policy is difficult to decree, and that some points on which the open method aims to work cannot be easily addressed because of contradictory directions in regional policy.

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