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## THE IMMIGRATION REGULATION AND CONTROL PROBLEM OF THE EUROPEAN UNION

*Avrupa Birliği'nin Göçü Düzenlenme ve Kontrol Sorunu*

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### Abstract

After World War Two, Western Europe states started to receive migrants to fill labour shortages. With the end of the Cold War, the flow of immigrants to Europe accelerated, and the issue of immigration became one of the most important topics on the European Union's agenda by the 2000s. In this context, this study seeks to answer whether European states have lost their immigration control. This study aims to clarify the internal and external reasons that adversely affect the capacity of European states to control immigration, focusing primarily on the developments since 1945. The immigration policies of the European Union (EU) are also discussed in this context. This study employed the qualitative research methodology. In the study, academic books and articles were used besides online newspapers and the official documents prepared by the EU. The study's findings demonstrate that although European states have not entirely lost their control over immigration, their current immigration policies are insufficient to stop the flow of immigration to Europe.

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## Öz

İkinci Dünya Savaşı'ndan sonra Batı Avrupa ülkeleri iş gücü açığını kapatmak için göçmen almaya başlamıştır. Soğuk Savaş'ın sona ermesiyle birlikte Avrupa'ya göçmen akışı hız kazanmış ve göç konusu 2000'li yıllara gelindiğinde Avrupa Birliği'nin en önemli gündem konularından biri haline gelmiştir. Bu bağlamda, bu çalışma Avrupa ülkelerinin göç kontrolünü kaybedip kaybetmediği sorusuna cevap aramaktadır. Çalışma, özellikle Avrupa devletlerinin göçü kontrol etme kapasitelerini olumsuz etkileyen iç ve dış nedenleri 1945 yılından günümüze kadar yaşanan gelişmeler ışığında açıklığa kavuşturmayı amaçlamaktadır. Avrupa Birliği'nin (AB) göç politikaları da bu kapsamda ele alınmaktadır. Bu çalışmada nitel araştırma yöntemine başvurulmuştur. Araştırmada AB tarafından hazırlanan resmi belgelerin yanı sıra gazete ve İnternet haberlerinden, akademik kitaplar ve makalelerden yararlanılmıştır. Çalışmanın bulguları göstermektedir ki Avrupa ülkeleri göç üzerindeki kontrolünü tamamen kaybetmemiş olsa da mevcut göç politikaları Avrupa'ya göç akışını durdurmada yetersiz kalmaktadır.

**Anahtar Kelimeler:** Avrupa Birliği, AB, göç, göç politikaları, kriz, sınır kontrolü

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## 1. Introduction

In today's Europe, the immigration issue has recently become a highly controversial topic. European states face an unprecedented challenge regarding the flow of immigration. According to Eurobarometer polls in 2018, 38% of Europeans believe that immigration is a more critical issue encountering the European Union (EU) than terrorism (29%) and the economy (18%), respectively (European Commission, 2018). According to the International Organization for Migration (IOM), around 87 million migrants were living in Europe in 2021 (IOM, 2022). Almost all European states are now net immigration states, which means that the number of immigrants moving to them exceeds the number of their nationals leaving (Nguyen, 2017). After the migration crisis in the

Mediterranean, the EU put immigration more noticeably on its European agenda to prevent immigration in 2015 (European Commission, 2015).

Although European states may want to prevent immigrants from entering Europe, their control over immigration has been significantly limited and reduced by internal and external factors. These factors are liberal norms in both national and supranational laws and international conventions, family reunification as a result of guest-worker and postcolonial regimes, unanticipated influxes of asylum seekers during the 1990s after the collapse of Communism and rising levels of illegal entry owing to the Arab Spring and the wars in Afghanistan and Iraq. According to Freeman's classification (1995), while Western European states (France, Britain, Germany, Switzerland, Sweden, Belgium, and the Netherlands) experienced mass migration only after World War II, Southern European states (Spain, Portugal, Italy, and Greece) on the borders of the EU have faced immigration pressures in recent times.

This study seeks to answer whether European states have lost their immigration control. The study aims to clarify the internal and external reasons that have a negative effect on the capacity of European states to control immigration, focusing on the developments that have occurred from 1945 until today. In this context, the immigration policies of the EU are discussed.

## **2. Internal and External Factors Limiting European Immigration**

European states had little experience with non-white immigration until 1945. However, European states have become states of immigration since then; both push factors, such as poverty, unemployment, natural disasters and wars, and pull factors, such as job opportunities and the availability of public services and social welfare benefits, led people to migrate to Europe (Adolino and Blake, 2011: 101; Hansen, 2007: 329).

The first significant wave of immigration to Western Europe happened after the Second World War. West European states (e.g., Germany, France, Belgium, and Switzerland) needed a labour force for their economic recovery after the post-war period, and they started

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guest-worker programs, in which foreign workers were given temporary work and residence permits to fill labour shortages with migrants. On the other hand, the other West European states, colonialist states such as Britain, did not actively solicit migrants from their colonial territories. However, immigration was passively tolerated for the maintenance of the empire as a part of the decolonisation process (Joppke, 1998: 271).

Both guest-worker and post-colonial immigration regimes caused many people to immigrate to Western Europe. Though it was expected that these workers would return to their country of origin when their contracts ended, many of them continued to stay in the states to which they emigrated (Adolino and Blake, 2011: 100). The rising oil prices in 1973 led to an economic recession, which resulted in mass unemployment. Thus, governments stopped guest-worker and post-colonial immigration. Furthermore, their immigration policy became a zero-immigration policy instead of a temporary immigration policy (Sales, 2007: 26).

However, many people continued immigrating to Western Europe because liberal norms regarding legal and moral obligations limited these states' ability to control immigration. In other words, while governments wanted to implement a zero immigration policy, national and supranational laws and international conventions prevented governments from implementing this policy in Western Europe. For instance, when Germany, which recruited too many guest workers, attempted to get rid of them, the German government encountered a series of decisions made by the German constitutional court. For example, in 1978 regarding an Indian worker, the court allowed the Indian worker to turn into a settler with a permanent-resident right (Joppke, 1998: 283-284).

Once the residence rights of guest workers were ensured, the court paid attention to the issue of family reunification. The court decided on family reunification by depending on both national and international law. According to international conventions, "Article 8 of the European Convention on Human Rights, to which 47 European states are party, provides a right to respect for a person's private and

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family life" (Hampshire, 2013: 47–49). Moreover, in terms of the level of national law, constitutional provisions rest on the right to family life (Hampshire, 2013: 49). According to the European Commission, family reunification has played a vital role in immigration to the EU for the last 30 years. For instance, in 2017, the EU allowed 472994 to enter the EU-25 based on family reunification (European Commission, 2019). As can be seen, family immigration limits European states' capacity because of the legal and moral constraints in both national and supranational laws and international conventions.

Another prominent reason, which has a negative impact on European states' ability to control immigration, is humanitarian immigration, which includes asylum seekers or refugees. According to the 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol, which removed geographical and temporal restrictions from the Convention, refugees are granted asylum in the signatory states (Adolino and Blake, 2011: 100–102). Moreover, the Convention is based on the principle of "non-refoulement". As a result, during the Cold War period, many Western European states received many asylum applications. Because of three main factors, Western states accepted these applications. The first main factor was that taking in a refugee from Communist states was considered a small victory against Communist propaganda. Second, given the number of asylum applications, the number of asylum seekers was relatively small and, thus, controllable. The last main factor resulted from the desire for liberal norms to protect human rights in terms of both national and international law (Hampshire, 2013: 71).

However, the number of applicants for asylum was increasing more and more in Western European states throughout the 1980s. As well as asylum seekers from Communist states, many came to Europe from non-Communist states in Africa and Asia (Boswell and Geddes, 2011: 35). Furthermore, the collapse of Communism in 1991 triggered an "asylum crisis" in Europe during the 1990s. In the early 1990s, the EU states, which numbered fifteen at that time, received a vast number of applicants. While there were 175000 applications for asylum in Europe in 1985, this peaked in 1992, with 670000 applications in the EU-15, and in 2001 it reached 424200 applications in the EU-27. Within the EU-15,

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Germany received far and away the vast majority of applicants in 1992, with nearly 440000 applications (EUROSTAT, 2007: 2). As can be seen, immigration control in the European states remained hard to control during the 1990s.

To prevent the increase in asylum applications, European states tried to take drastic measures, including visa regimes, carrier sanctions, and pre-inspection regimes. Some states changed their national law. For instance, Germany changed its law in 1993. Moreover, some states made bilateral agreements with other states, which would be safe for asylum seekers when they are required to turn back to evade asylum claims (Hansen, 2007: 333). Despite these measures taken, the number of asylum applications rose again in the 2000s. The wars in Afghanistan, Iraq, and Syria in 2001, 2003, and 2011, respectively, and especially the Arab Spring in 2010, caused a rise again in the number of asylum applicants. For example, while the number of first-time asylum applicants in the EU was 12100 in 2008, asylum seekers increased almost ten times to 1216000 in 2015. After 2015, the number of asylum seekers fell to 417000 in 2020. Nevertheless, compared with 2020, the number of asylum applications rose by 28% (118000) in 2021. Most asylum applications were from Syrians, Afghans, and Iraqis, constituting nearly 40% of first-time asylum seekers in the EU in 2021 (EUROSTAT, 2022).

European states, particularly Spain, Greece, Italy, and Bulgaria, have been dealing with a vast majority of asylum seekers fleeing from the wars in Afghanistan, Iraq, Libya, and Syria, as these states cannot control their borders very well (Euractiv, 2013). So, it can be understood that the ability of European states is incapable of controlling immigration because liberal norms and human rights groups impede restrictive reforms, and some states (Spain, Greece, Italy, and Bulgaria) cannot control the borders. Therefore, European states continue to receive many asylum applicants.

The last significant factor that challenges the control of immigration is the rising levels of illegal entry in Europe. According to the Pew Research Center, it is estimated that there were between 3.9 and 4.8 million unauthorised immigrants in 32 European states in 2017, with a

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population of nearly 500 million (Connor and Passel, 2019). Illegal immigration has a negative effect on European states by undermining the rule of law, fostering labour exploitation, and increasing poverty (Morehouse and Blomfield, 2011: 2). Thus, governments in Europe are struggling to impede illegal immigration. However, preventing and combating illegal immigration is more challenging than controlling legal and humanitarian immigration in Europe owing to visa overstays and unauthorised entry at land and sea borders. Furthermore, the deportation of illegal migrants is much too costly. European states which form the external boundaries of the EU (in particular Spain, Greece, Italy, and Bulgaria) have been facing growing pressure from the numbers of illegal immigrants due to their lack of capacity to control their borders. Certain states, like Greece, Spain, and Italy, which have been harshly affected by Europe's financial crisis, have had difficulty in combating illegal immigrants because removing them is costly (Croft and Pawlak, 2013).

Rejecting asylum applications due to tightening asylum policies forces immigrants to find other means of entry (Adolino and Blake, 2011: 101). As a result, most illegal migrants have entered Europe by crossing the EU's external sea and land borders with the help of criminal organisations. It is well-known that migrant smuggling has become a highly lucrative market for criminal organisations. As the border controls have become tougher, in response to this, migrant smugglers are constantly developing new strategies to evade them, which risks the lives of migrants (Hampshire, 2013: 67). So, some European states are finding it hard to cope with human trafficking, especially those which form the land and sea borders in the south and south-eastern Europe (Greek-Turkish sea and land borders and the Italian coast) (Boswell and Geddes, 2011: 122).

The conflicts and abuses in Afghanistan, Iraq, and Syria and the poverty in Africa and the Middle East have had a vital role in increasing the number of illegal immigrants. It is estimated by FRONTEX, the EU border agency, that at least 200000 unauthorised immigrants entered the EU via land and sea routes in 2021, which is the highest figure since 2017. Most illegal immigrants entered the EU by crossing through Eastern and Central Mediterranean routes, mainly

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from Turkey to Greece by land and sea and from Tunisia and Libya to Italy and Malta, respectively, between 2019 and 2021 (FRONTEX, 2022).

Another problem in the fight against illegal immigration arises from visa overstays. Most illegal migrants enter with a valid travel visa. Although their visa expires, they remain in the EU by violating the terms of their visa (Hampshire, 2013: 65). Furthermore, the Schengen area, which permits the free movement of EU citizens as well as many non-EU nationals by eliminating border controls, enables illegal immigrants to move freely within the EU once they enter. As such, this makes it difficult to identify these illegal immigrants.

### **3. Policies of the European Union to Control Immigration**

As individual member states in the EU have been ineffective in stopping illegal immigrants, the EU further started to focus on the immigration issue. One of the EU-level policies regarding immigration was the Management of Operational Cooperation at the External Borders of the Member States of the EU, known as FRONTEX, established in 2004. "Frontex's principal activity is to strengthen border security by ensuring the coordination of the Member States' activities in the implementation of community measures relating to the management of the external borders" (Boswell and Geddes, 2011: 146). A new European Border Surveillance system (EUROSUR) came into effect in December 2013, which the Commission had proposed in 2008. This system's main task is to reduce the flow of illegal immigrants and save their lives if necessary (BBC, 2013).

The EU accepted a European agenda on migration in May 2015. The Agenda aims to take immediate action in the following four areas: reducing the incentives for irregular migration, saving lives and securing external borders, a strong asylum policy, and a new policy on legal migration (European Commission, 2015). In parallel with these developments, the EU has signed readmission agreements with third states to send irregular migrants to their states of origin. On 18 March 2016, the EU and Turkey agreed on the Joint Action Plan, which seeks to prevent irregular migrants, mostly Syrians, from entering the EU. According to the agreement, irregular migrants crossing from Turkey

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to Greece would be returned to Turkey. Turkey would increase security measures on land and sea routes to limit the inflow of irregular immigrants to Greece. Moreover, the EU would send irregular migrants back to Turkey. For each Syrian sent back to Turkey, the EU would resettle a Syrian refugee in Turkey. Turkey would receive 6 billion Euros to support refugees. Finally, Turkey's EU accession negotiation, which is slowing down, would re-energise (European Council, 2016).

In order to overcome the difficulties created by illegal immigration, the EU wanted to strengthen its cooperation with African states, which are the origin and transit states of irregular immigration flows. After the Mediterranean boat disaster in which around 800 migrants lost their lives in Libya in April, the EU and African states decided to hold a meeting on migration (BBC, 2015). On 11–12 November 2015, the EU and African Heads of State and Government held a migration summit in Valletta. The leaders agreed on the following issues at the Valletta Summit on migration: “address the root causes of irregular migration and forced displacement, enhance cooperation on legal migration and mobility, reinforce the protection of migrants and asylum seekers, prevent and fight irregular migration, migrant smuggling and trafficking in human beings and work more closely to improve cooperation on return, readmission and reintegration” (European Council, 2015).

Besides these agreements, the EU established EUNAVFOR (European Union Naval Force) to combat smuggling and trafficking in the Mediterranean on 18 May 2015 (European Council, 2015). After the establishment of EUNAVFOR, the EU started the naval operation to fight against migrant smugglers on 22 June 2015, called EUNAVFOR Med Operation Sofia (European Council, 2015). Operation Sofia ended in March 2020. Between 2015 and 2020, the operation arrested 143 suspected smugglers, destroyed 545 boats, and trained 477 Libyan coastguards. After Operation Sofia finished, Operation Irimi replaced it (European Council, 2022).

It cannot be said that the decisions taken by the EU on immigration have progressed smoothly. This is because the immigration agreement

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between the EU and Turkey has been negatively affected by the tensions between the EU and Turkey (BBC, 2017). Moreover, the increase in funds provided to African countries has increased the pressure on the EU's budget (Rankin, 2017b). While the EU asked for more financial support from EU member states to control irregular immigration, they did not provide sufficient support to the EU. Jean-Claude Juncker, the president of the European Commission between the years 2014–2019, therefore criticised the member states for “shedding crocodile tears” (Rankin, 2017a). Thus, these problems harm the success of the EU's immigration policy.

#### **4. Conclusion**

The issue of immigration has remained more noticeably on the agenda of both the EU and individual member states recently as the attitudes of citizens of European states are becoming more hostile towards immigrants. It cannot be said that European states have entirely lost the ability to control immigration. However, the European states are significantly incapable of dealing with immigration and controlling their borders because of various internal and external factors, such as liberal norms, family reunification as a result of guest-worker and postcolonial regimes, unanticipated influxes of asylum seekers during the 1990s after the collapse of Communism and rising levels of illegal entry owing to the Arab spring and the wars in Afghanistan and Iraq. As can be seen, when the liberal states in Europe wanted to implement more restrictive policies against family and humanitarian immigration, they encountered liberal norms in both national and supranational law and international conventions, which limited their ability to control immigration. Moreover, the intense flow of both asylum seekers and illegal immigrants because of external factors (Communism, the Arab Spring) led to states being prevented from effectively controlling immigration. Southern European states, such as Greece and Italy, have been more vulnerable in stopping illegal immigrants. While the EU wants to play a vital role in this area, it can be argued that the measures taken by the EU to stop migration flow to Europe have been insufficient.

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