

This article was downloaded by: [University of Nicosia]

On: 23 January 2014, At: 00:58

Publisher: Routledge

Informa Ltd Registered in England and Wales Registered Number: 1072954

Registered office: Mortimer House, 37-41 Mortimer Street, London W1T 3JH, UK



West European Politics

Publication details, including instructions for authors and subscription information:

<http://www.tandfonline.com/loi/fwep20>

How EU Capacity Bargains Strengthen States: Migration and Border Security in South-East Europe

Andrew Geddes & Andrew Taylor

Published online: 31 Jan 2013.

To cite this article: Andrew Geddes & Andrew Taylor (2013) How EU Capacity Bargains Strengthen States: Migration and Border Security in South-East Europe, *West European Politics*, 36:1, 51-70, DOI: [10.1080/01402382.2013.742736](https://doi.org/10.1080/01402382.2013.742736)

To link to this article: <http://dx.doi.org/10.1080/01402382.2013.742736>

PLEASE SCROLL DOWN FOR ARTICLE

Taylor & Francis makes every effort to ensure the accuracy of all the information (the "Content") contained in the publications on our platform. However, Taylor & Francis, our agents, and our licensors make no representations or warranties whatsoever as to the accuracy, completeness, or suitability for any purpose of the Content. Any opinions and views expressed in this publication are the opinions and views of the authors, and are not the views of or endorsed by Taylor & Francis. The accuracy of the Content should not be relied upon and should be independently verified with primary sources of information. Taylor and Francis shall not be liable for any losses, actions, claims, proceedings, demands, costs, expenses, damages, and other liabilities whatsoever or howsoever caused arising directly or indirectly in connection with, in relation to or arising out of the use of the Content.

This article may be used for research, teaching, and private study purposes. Any substantial or systematic reproduction, redistribution, reselling, loan, sub-licensing, systematic supply, or distribution in any form to anyone is expressly

forbidden. Terms & Conditions of access and use can be found at <http://www.tandfonline.com/page/terms-and-conditions>

How EU Capacity Bargains Strengthen States: Migration and Border Security in South-East Europe

ANDREW GEDDES and ANDREW TAYLOR

How and with what effects have three South-East European countries (Greece, Slovenia and Croatia) responded to the EU's migration and border security acquis? The paper shows that European integration can strengthen central state actors, but can also change the constellation of actors and resources in trans-boundary policy sectors such as international migration and border security. To demonstrate these effects the paper specifies functional, political and administrative dimensions of the EU's migration and border security 'capacity bargain'. It also specifies the limits of an EU approach to migration and border security – and associated capacity-building – that has a strong regulatory focus on the EU's external frontiers with less attention paid to more complex regulatory and distributive dynamics that arise once migrants are 'in'.

By joining the European Union, states voluntarily accept limitations on their sovereignty and, in return, they hope for enhanced capacity. Building on work exploring how EU competencies develop for trans-boundary issues, this paper develops the notion of the 'capacity bargain' to analyse sector-specific effects of decisions to pool sovereignty in the area of migration and border security in South-East Europe (SEE). We contend that the notion of the capacity bargain and its functional, administrative and political dimensions can help develop insights into the EU's influence on 'stateness'. The article shows how the sharing of powers (and collective benefits) requires the development of capacity to deal with new or troubling trans-boundary issues – in this case, international migration. We show too that the migration and border security capacity bargain in SEE has a strong regulatory focus on external frontier control with less attention paid to more complex regulatory and distributive dynamics that arise when migrants are 'in'. We develop this argument by specifying and analysing the EU migration and border security capacity bargain in two member states (Greece and Slovenia) and – at the time the research was conducted – one accession state (Croatia) in SEE. These states have differing exposure to inter-

Correspondence Address: a.geddes@shef.ac.uk

national migration and to the standard operating procedures, actors and norms associated with EU membership. Migration and border security is a critical case because international migration is trans-boundary, exposed to strong EU effects, and also an issue for which the ‘touch of stateness’ is profound (Shaw and Weiner 2000). Territoriality and its management is an essential feature constituting the state (Wendt 1999: 211–13). While political and economic integration have reduced the significance of borders *between* EU states, rendering them semi-permeable, the corollary has been the strengthening of *external* borders. EU membership requires a high degree of territorial infrastructural power, but engagement with the EU renders territorial politics more complex (multi-level, overlapping and dynamic) ensuring governments play a pivotal mediating role. While states can be ‘strengthened’ in terms of their functional, political and administrative capacities to make and implement policy, it is also the case that Europeanisation means that states change in terms of the constellation of actors and resources that constitute particular policy networks. For example, additional EU resources can become available, as does the scope for integration in trans-governmental networks.

We begin by identifying the conceptual underpinnings of the capacity bargain and specifying its three key dimensions: functional, administrative and political. The subsequent three sections then specify the shape, form and limits of the capacity bargain in each of our three case countries. Our understanding of the shape and dynamics of the capacity bargain is based on 31 extended semi-structured interviews (11 in Greece, 8 in Slovenia and 12 in Croatia) with NGOs and INGOs, the EC Delegation and central government ministries dealing directly with border management. Interviewees were asked about policy as well the frequency, intensity and longevity of the organisations with which they interacted.¹ Our approach to interviewing was essentially reputational (Polsby 1980: 144–45), exploring actor perceptions of the roles and influences that constituted the capacity bargain. This raised interesting questions about the perceived role of European institutions as a direct (or indirect) influence on the capacity bargain. Our evidence showed European institutions may not be a highly visible *participant* in the policy network but nonetheless condition the *operation* of the capacity bargain as an agenda setter.

Striking Capacity Bargains

The capacity bargain derives in part from Mattli’s (1999, 2000) concept of the sovereignty bargain allied to ideas drawn from Weiss (1998) and Mann (1984, 1993). States will voluntarily accept limitations on their sovereignty for gains but the content of these bargains will vary along three dimensions: *autonomy* (the degree of independence in policy-making), *control* (the ability to produce an effect) and *legitimacy* (recognition of a right to make and implement rules). In the case of the EU, a state cedes autonomy to improve policy control at the (possible) cost of weakening its domestic legitimacy.

While the sovereignty bargain is the basic building block of the state–EU relationship; securing its benefits depends on the state’s capacity and ability to translate potential into actual gains. ‘State capacity’ implies a general capacity but states are not uniformly effective in what they undertake so capacity must be discussed sectorally (Weiss 1998:4). However, engagement with the EU does have implications for a state’s *general* capacity because of the obligation to implement the *acquis communautaire*.

In her analysis of the ‘catalytic state’, Weiss uses ‘political crystallization’ to describe constellations of actors and resources coalescing into policy networks. Our cases, and this is where we depart from Weiss, are embedded in a general capacity framework interacting with national political and administrative traditions. These crystallisations, or networks, promote infrastructural power: a state’s capacity to penetrate civil society (Mann 1984: 185–213) and enforce policies. Infrastructural power co-exists with bureaucratic power; the distinction is between having power *over* (bureaucratic) a society and having power *through* society (infrastructural). Infrastructural power is territorially bounded and relates to sovereignty, but engagement with the EU constitutes an admission that infrastructural power depends on supra-national, trans-boundary cooperation and resource mobilisation: a capacity bargain producing *governed interdependence* (Weiss 1998: 38). The capacity bargain implies an increase in the state’s institutional *depth* (the degree to which state actions define a distinct public sphere) and *breadth* (the diversity of the links between the state and other actors) and is a component of infrastructural power, producing ‘the catalytic state’ (Lind 1992: 3–14; Weiss 1998: 19).

The capacity bargain has an affinity with an influential strand in the integration literature: namely, that the EU ‘rescues’ and ‘strengthens’ member states (Milward 1992; Moravcsik 1994). We show that engagement with the EU has created resources for all three states via a capacity bargain to achieve objectives that may not be achievable with current resources and capabilities. Capacity bargains also change the constellation of actors and resources in particular policy sectors. For example, in the process of creating an Area of Freedom, Security and Justice (AFSJ), the EU is faced with

constant and growing expectations from citizens, who wish to see concrete results in matters such as cross-border crime and terrorism as well as migration ... more and more concerns are raised that responding to these expectations is difficult within the framework of existing decision-making procedures (CEC 2006b: para. 18; emphasis added)

The capacity bargains meshes neatly with the EU *modus operandi* of seeking the adaptation, not replacement, of national administrations when dealing with trans-boundary issues coupled with the expectation that hitherto un- or poorly-represented interests could enter the policy-making process, promoting openness, accountability and representation (Menon and Weatherill 2006: 408). In migration and border security we show in the case analyses below that this

has had two consequences: first, a strengthening of the core executive by its incorporation into trans-governmental networks; and, second, a limited role for domestic NGO input in contrast to a more extensive role for international migration organisations such as the International Organization for Migration (IOM) providing ‘migration management’ services.

Three dimensions can be specified along which capacity can develop (Menon and Weatherill 2006). First, in functional terms, capacity bargains are significant for the EU and member states as they balance (to some extent) the perceived weakness of the ‘input’ side of integration (Scharpf 1997). Second, in administrative terms, a capacity bargain can be justified by the prospect of ‘better’ policy. What constitutes ‘better policy’ is contentious, but in the context of EU migration and border security there is a strong focus on ‘the fight against illegal immigration’, with the result, as the JHA Council put it, that: ‘it is necessary *to prevent, control and combat illegal immigration* as the EU faces an increasing pressure from illegal migration flows and particularly the Member States at its external borders, including its Southern borders’ (CEU 2009: para. 31; emphasis added). Third, the capacity bargain could offer significant *political* benefits by addressing (or *seeming* to address) the ‘misfit’ between (sovereign) national capabilities and the commitments undertaken as a member of the EU (Poiarés Maduro 2003: 86). A capacity bargain *could* deliver gains (for example, better border management and integration in trans-governmental networks while reducing domestic political pressure on government to ‘do something’) that outweigh costs.

Migration and Border Security in SEE

The collapse of Yugoslavia and the EU enlargements of 2004 and 2007 created a ‘territorial hole’ (excepting Slovenia) in SEE. This was geographically *within* the EU and posed ‘a starkly different policy problem for Integrated Border Management (IBM) in the Balkans, as the new states lack political stability and much of the transnational, irregular movement of people and goods follows the so-called Balkan route which runs right through the territorial hole’ (Marenin 2010: 13). However, tough border controls could have perverse or unintended effects. For example, Schengen visa standards meant that people who could once cross freely from non-EU states would require visas and face being

driven back into an inner ghetto space. This applies of course only to law-abiding citizens, since criminals can walk or bribe their way across these frontiers with little difficulty. The introduction of visa requirements is a stimulus for corruption and criminality, since the borders are unenforceable, and the attempts to install them create incentives for illegal activity, including the trafficking of goods and people. (Marenin 2010: 37)²

The ‘territorial hole’ can also be related to issues of functional, political and administrative capacity:

It is difficult for other [EU] states to comprehend the weight of the migration problem for the southern states and by this I don't only mean the financial burden, but also the problem of how to prevent these people from moving further into Europe. But this creates a problem for the states that lie on the south east border of Europe ... other EU states should share this problem and the burden that stems from it. And the cost. (Interview, Greek Interior Ministry Official, February 2008)

This kind of language goes to the heart of our understanding of the capacity bargain. There is little sense that this is an issue that can be dealt with alone: border management requires a pan-European response and sharing of responsibility.

The main EU legal document dealing with border security issues is Regulation 562/2006 establishing a Community code on the rules governing the movement of persons across borders (the Schengen Borders Code). This brings into the EU framework the Schengen Convention (1990), which implemented the Schengen Agreement (1985). The Convention sought abolition of checks at 'internal' borders and created a single external border where entry checks to the Schengen area are carried out. Checks are based on a common set of rules, such as the common visa policy, police and judicial cooperation and the Schengen Information System (SIS) to pool and share data. Greece and Slovenia are Schengen members and apply the Schengen *acquis*. Greece began partial implementation in December 1997 with full implementation from 1 January 2000. Slovenia signed the Schengen Convention on accession on 1 May 2004 with full implementation from 21 December 2007. Croatia was required to adapt to the requirements of the Schengen border code as part of the enlargement process.

The purpose of building capacity is achieving IBM, which covers coordination and cooperation among all the relevant authorities and agencies involved in border security and trade facilitation to establish effective, efficient and integrated border management systems, in order to reach the common goal of open, but controlled and secure borders. (CEC 2007a: 2)

It has three pillars: intra-service cooperation and coordination of the different levels of hierarchy within an agency or ministry; inter-agency cooperation and coordination between different ministries and agencies; international cooperation and coordination between agencies and ministries of other states or international organisations.

In 2007, Council regulation (2007/204) created the European Agency for the Management of Operational Co-operation at the External Borders (FRONTEX). While not possessing executive powers and having a weak resource base, FRONTEX was created to play a key role in promoting interoperability. This requires cooperation on technology, doctrine, organisational cultures and trust-building with an emphasis on cooperation and standards-setting. FRONTEX led the development of the Western Balkans Risk

Analysis Network, providing technical training on data exchange to ‘risk analysis units’. It also established Rapid Border Intervention Teams (RABIT), which, for example, conducted an exercise at the Slovenian–Croatian border in early 2008. The scenario was stopping a sudden massive influx of illegal immigrants along the ‘Balkan route’. Border guards from 20 member states participated in an exercise to test the possibility of reinforcing a member state’s response capacity in exceptional circumstances (Euractiv 2010; FRONTEX 2009; House of Lords 2008; Neal 2009; Vaughan-Williams 2008). Similarly, RABIT teams cooperated with the Greek authorities to police the Greece–Turkey border between November 2010 and March 2011. There is also EU legislation related to the expulsion of irregular migrants through the ‘return’ directive (2008/115) that establishes standardised procedures for ‘voluntary return’ or expulsion of irregular migrants.

Intra-service, inter-agency and international cooperation in pursuit of inter-operability is central to the framing of migration and border security in SEE and to the functional, political and administrative dimensions of capacity bargains. Resources tend to be directed towards central state actors, particularly interior ministries and associated security agencies. The emphasis is on external frontier control.

Slovenia

After accession in 2004 immigration legislation in Slovenia developed in accordance with the EU *acquis*; adaptation coincided with a more distinct ‘European’ orientation of migration policy. Slovenia managed a swift and relatively trouble-free adaptation to the *acquis* (Adam and Devillard 2008: 425). We found that the *direct* influence since accession on Slovenian policy has been limited, as a Ministry of Labour official put it, ‘There hasn’t been much EU influence since 2004’ (Interview, June 2008). The peak period for EU influence was 1998 to 2004 but we would, however, distinguish between *direct* influence and a profound impact on the functional and administrative dimensions of the capacity bargain.

Slovenian migration policy cannot be understood without taking account of its place in the former Yugoslav Republic. From the 1950s, there was emigration by ‘guestworkers’, particularly to Austria and Germany and movement within the Yugoslav federation. From the mid-1970s onwards, increasing numbers of Bosnians, Croats and Serbs moved to Slovenia leading to a ‘turbulent period in the history of migration to Slovenia, above all because of the break-up of the former Yugoslavia’ (Thomson 2006: 2). When Slovenia gained independence in 1991 the effect was to deprive tens of thousands of migrants from other Yugoslav Republics of their legal status in Slovenia. In addition there were flows of refugees fleeing civil war.

Migration flows to Slovenia can be divided into three periods (Adam and Devillard 2008: 418). Between 1992 and 1998, there were large numbers of refugees from Bosnia and Herzegovina. The Employment and Work of Aliens

Act (1992) sought to respond to the labour market consequences of independence in 1991 and the presence of large numbers of (now) ex-Yugoslavs and allowed long-term (at least 10 years) resident foreign nationals to acquire a work permit. In 2000 legislation was amended in line with EU legislation to create three types of work permit: for long-term residents; for employers to bring in workers; and for temporary migrant workers. Between 1999 and 2004, there were relatively high levels of irregular migration. The third period, since May 2004, policy is framed by the EU and reflects core EU priorities, particularly the focus on border security and the ‘external’ dimension of the ‘fight against illegal immigration’.

The legislative framework during our fieldwork was the *Aliens Act* (2006) and two resolutions on immigration policy passed by the National Assembly, Resolution 40/1999 and 106/2002, which constitute the national legislation regulating the entry of foreigners and the return of emigrants. The EU focus has been on the border with Croatia as a point for non-EU migrants to enter Italy *via* Slovenia. Slovenia negotiated readmission agreements with Croatia and Bosnia-Herzegovina.

The Ministry of the Interior, unsurprisingly, was the key actor within the network. At the time of our research, the Ministry of the Interior had three counsellors based in Brussels and was a participant in the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) and its seven working groups. As migration increased in scale domestic policy attention turned to the management of labour migration, an area where the EU has no direct involvement. This gave roles to other ministries, particularly the Ministry of Labour. In 2004, a quota system for labour migrants was introduced with the (apparent) intention of protecting the domestic labour market in an enlarged EU, but ‘expectations were too high’ and the lesson drawn was that ‘Slovenia is not as attractive for economic migrants [from other EU member states]’ (Interview, Ministry of Labour, June 2008). The Ministry of the Interior is focused on security. There is a more rights-based approach in the work of the Ministry of Labour, Family and Social Affairs (MLFSA). EU Equal and Progress funds facilitated the MLFSA playing more of a role in employment- and integration-related aspects of migration, but the Interior Ministry remained the key player and interlocutor with the EU.

Slovenia slotted quickly and relatively un-problematically into the prevailing EU framework for migration management and attendant development of state capacity. This did attract criticisms of the content of policy. For example, ‘EU policy is welcomed by the Ministry of the Interior, but is less welcomed by civil society ... Common EU policy has measures regarding integration and other beneficial matters, but in practice more effort is put into restrictive provisions such as border controls’ (Interview, Slovenian NGO, June 2008). A second interviewee argued ‘EU policy is used as an excuse not to think about migration – for copying EU directives into Slovene legislation without thinking about what adopted legislation would really bring’ (Interview, Slovenian NGO, June 2008). EU influence can also be seen in the FRONTEX presence in SEE

and its involvement in projects with the Slovenian government such as joint operations at the Italy–Slovenia border.

There has been little contestation of EU policy at elite level, nor were any claims for special treatment made, citing Slovenia's historic geo-political role as a regional crossroads, as happened in Greece. As we see below, Greece is very different because of its location and the scale of migration, which led to considerable contestation and resistance with a significant domestic dimension, and also to the involvement of a wide range of interests affected by migration. A comparable level of contestation was absent in Slovenia. Instead, we found some evidence that the country was becoming a 'normal' European country of immigration with a strong domestic political focus on control and evidence of hostility to migrants, particularly those from outside SEE (Thomson 2006). NGOs were critical of Slovenian asylum and refugee policy under the influence of the EU. A stronger focus on denying territorial access to asylum-seekers as a result of tougher border control can negate commitments made by Member States to respect international standards. NGOs were concerned that asylum policy was actually regressing with a lowering of standards and uncritical adoption of EU legislation weakening of domestic protection standards (Toplak 2006). This was evident in the hostility to Iranian migrants who entered Slovenia *via* Bosnia in 2000 who were vilified and sometimes physically attacked (Thomson 2006: 11). Questions were also raised about whether EU standards conform to international law as outlined in the Geneva Convention (Pajnik *et al.* 2006).

To conclude, we found relatively swift adaptation to the EU *acquis* in Slovenia. This is indicative of relatively high political and administrative capacity and a readiness to accept the EU framework. The Ministry of the Interior was the key player, linking the Slovenian government to Brussels. As national authorities have become more aware of Slovenia's status as a country of immigration, a debate developed about an admissions policy linked to labour market requirements. Here we found a role for the MLFSA, but this awareness of immigration is also framed by the EU setting, which since 1998 has given meaning to the debate about migration as being concerned with border security and suspicions about the motives for migration. FRONTEX enables Slovenia to participate in a regional political setting, engage with non-EU neighbours and work with international organisations. This sub-regional dimension to the governance of border security and migration is also important in Greece and Croatia. The sub-regional context is framed by EU influences, national concerns, and the interests of international organisations in developing policy and capacity.

Croatia

In Croatia, there was a strong focus on rapid adaptation to the *acquis*. Negotiations were opened on Chapter 24 on 24 October 2009 (CEC 2006c). An accession treaty was signed on 9 December 2011 with membership expected on 1 July 2013. Membership is on the basis of the capacity to

implement Chapter 24 of the *acquis* dealing with Justice, Freedom and Security. Important components of the Accession Partnership Agreement (February 2008) were measures to tackle corruption and also the need to enter into readmission agreements for the return of migrants to neighbouring countries. The standard question is, of course, how can we know that domestic legislative changes would not have occurred anyway? An answer to this question was provided by a senior Ministry of the Interior official who said that the EU: 'has brought in changes that Croatia would have to bring in anyway [but] has quickened the adoption and enforcement of legislation' (Interview, December 2007). A second senior civil servant reiterated this, noting that: 'The question is whether Croatia could regulate its society by itself. Of course it could, however this process is quickened and time frames as well as goals are set that oblige us to act' (Interview, Ministry of Foreign Affairs and European Integration, December 2007).

The migration and border security capacity bargain has been dominated by the EU framework, which includes development of IBM and the 'fight against illegal immigration', including measures to tackle human trafficking. The US State Department's Trafficking in Persons report identified Croatia as a source, transit and increasingly a destination country for women and girls trafficked for the purpose of sexual exploitation (State Department 2008: 101). Legislative development in Croatia has been strongly focused on adaptation to Chapter 24 requirements. The Act on the Amendments to the State Border Protection Act (December 2008) and the Act on the Amendments to the Aliens Act (March 2009) aligned Croatia with both the EU *acquis* and Schengen Borders Code.

The political lead on accession was taken by the Ministry of Foreign Affairs and European Integration, which was responsible for legislative adaptation. There was a high-level coordination of the accession process with weekly meetings to facilitate a rapid response to issues. Actors in day-to-day roles reported encountering a strongly hierarchical administrative culture within key ministries that produced delay as issues filtered up to the senior level at which decisions could be made and then back down again. The Ministry of the Interior is the key domestic player, with a strong relationship with the EU delegation.

In terms of administrative capacity and the role of trans-governmental networks, we found scope for interventions by international organisations (such as the United Nations High Commissioner for Refugees, IOM and the International Centre for Migration Policy Development) offering technical knowledge and expertise. Their roles have changed from refugees and war-related issues to 'European' migration issues of border security and the regulation of migration. The United Nations High Commission for Refugees (UNHCR) and IOM organised seminars on the role of border guards; developmental work includes the Geneva Centre for the Democratic Control of Armed Forces' (DCAF's) work on the demilitarisation of borders and civilian control from 2002. The International Centre for Migration Policy Development

(ICMPD) drew from funding from the EU's AENEAS programme to develop a Memorandum of Understanding between countries in the region on establishing a system of statistical information exchange on illegal migration and participation in a regional early warning system, signed in November 2008.

The Commission delegation lacked the staff and expertise to undertake detailed, technical policy work and training and so focused on management and monitoring, encouraging cooperation between Croatian and international organisations. An official from the Commission delegation described their role thus,

If there is some kind of resistance at the Ministry, or things are working slowly, then we come in We nail them down. You are never going to be able to credibly argue that this chapter can be closed unless you have done this and these changes in, let's say, border law. (Interview, European Commission Delegation, February 2008)

It also organises input from EU member states through twinning. Twinning has been provided under CARDS (Community Assistance for Reconstruction, Development and Stabilisation), PHARE (Poland and Hungary: Assistance for Reconstructing their Economies), and TAIEX (Technical Assistance and Information Exchange) and involved the Netherlands, Austria, Slovenia, Germany and Hungary. For example, the Austrian government was the IBM twinning partner. There has been active cooperation with FRONTEX. A Working Agreement for the Establishment of Operational Cooperation between FRONTEX and the Ministry of the Interior was signed on 15 April 2008. This provides for exchange of information, education, joint operations, technical cooperation and risk analysis. Croatia has also participated in a range of FRONTEX operations. In 2008 and 2009, these included the Europol/FRONTEX 'Task Force' for improvement of border management and the combating of organised crime; joint operations such as 'DRIVE IN', 'KRAS' (2008) and 'NEPTUNE' (2009); and participation in 'FRAN Unit' (Risk analyses).

International and domestic organisations deliver expertise but do not participate actively in policy-making. One reason for this was that laws needed to be developed rapidly because of the pressure of accession. An IOM official reported that the 2008 legislation was developed very hurriedly and that the parliamentary committee dealing with the legislation called on the IOM for its views at only one days' notice (Interview, February 2008). The Centre for Peace Studies (CPS) secured funding from the Croatian government, CARDS and PHARE to develop a focus on minority rights, which includes migrants. After 2002 the Croatian Legal Centre (CLC) provided free legal aid to asylum seekers with support from UNHCR. The CLC secured funding from the EU's AENEAS project to influence the law-making process; provide legal aid; create a coordination body on asylum to meet on a regular basis and provide input to the legal and policy process. The CLC also worked with the Peace Institute

and Legal Information Centre in Slovenia to run training seminars on border security.

A Commission official noted that, from the Croatian government's point of view, 'Equipment for the police is rather welcomed, while policies are not' (Interview, Commission Delegation, April 2008). The reluctance to draw on expert knowledge can be attributed in part to the view that this could lead to more critical viewpoints entering debate and that this could slow adaptation to the EU. A Ministry of the Interior official argued that experts 'have been included in the drafting of migration policy in the working group, but their input has not been as we expected. Very often they appear as criticisers, but not as those who recommend solutions' (Interview, April 2008). Specialists believed their exclusion was due to the emphasis on rapid adaptation: 'policy-makers do not gain knowledge from domestic sources ... but they learn what they are forced to' (Interview, migration researcher, April 2008).

The tendency was to view the core executive in Croatia as secretive, strongly hierarchical and centralised, but there was a positive take on development of IBM from the Commission, which noted that 'they have developed a pretty good IBM strategy and action plan on the basis of western Balkans guidelines' (Interview, Commission Delegation, February 2008). Within the core executive we found little contestation of policy. In formal terms, adaptation was swift, but not reflective, which creates scope for tensions that may become more pronounced in the future as domestic limits of the capacity bargain are exposed. For example, the EU focus on irregular migration has implications for sectors such as tourism where a 'pull' factor draws migrants to Croatia with employers willing to use migrant workers whether their status is regular or irregular. This led to some tension between the Interior and other ministries about the 2008 law. The Interior Ministry prevailed, but a Foreign Affairs Ministry official observed that Interior has been 'the leading institution, which I personally consider a big mistake because migration policy as they perceive it is a policy of repression'. He argued for a stronger role for the Economics Ministry to reflect labour market concerns (Interview, Foreign Ministry, December 2008). This tension associated with the domestic reach of the capacity bargain becomes even clearer in the Greek case.

Greece

The Greek case further reinforces the point that international migration poses regulatory challenges that are both external (at territorial borders) and internal (governing access to social institutions such as the labour market and the welfare state). To be effective, the functional, administrative and political dimensions of the capacity bargain need to address both of these dimensions. As in Slovenia and Croatia, EU action has been strongly focused on the control of external borders. This was exemplified when, in January 2011, the Greek government announced plans to build a 12km fence along part of its 206km-long land border with Turkey.

It is within the informal sector of Greece's economy that many migrants – with both regular and irregular status – are located (Baldwin-Edwards 2009). The informal sector was estimated to constitute 28.2 per cent of Greek GDP (Scheider 2004) and has been a major 'pull' factor drawing migrants into the Greek economy, particularly those sectors that rely on seasonal, short-term or temporary work or where migrants deliver important welfare services in the home. Most irregular migrants enter via regular channels and overstay.

Another important factor is Greece's proximity to major sending countries, particularly Albania, and as a transit route from Afghanistan, Iraq and beyond. Greek governments have undertaken five regularisations (1997, 1998, 2001, 2005 and 2007) (Baldwin-Edwards 2009). Until Bulgarian accession, Greece did not have a border with another EU member state, but Greece faces major challenges to securing its external frontiers and much EU discussion centres on the challenges of policing Greece's frontiers. There are more than 3,000 islands that present significant logistical challenges and lead to specific aspects of the Greek case that domestic policy-makers are keen to emphasise. The practical challenges can be seen in this example:

A small boat arrives at Greek islands where there are no police officers. In the same boat you might have asylum cases, trafficking cases and legal cases. So, if the receivers are not trained, they put everybody in the same room and they have the same treatment and reception. (Interview, International Organisation of Migration, February 2008)

Until 2001, the policy focus was on policing and security. The lack of an immigration policy meant that most immigrants were pushed into the informal economy. Two presidential decrees in 1997 sought to deal with some of the regulatory problems, but were riddled with administrative difficulties that, as an interviewee put it, led to 'altogether a terribly confusing administrative mechanism [but] in the end quite beneficial because it brought the administration into contact with the whole mass of migrants in Greece' (Interview, Greek Ombudsman's Office, February 2008). Baldwin-Edwards (2009: 298) argues that the 1997 and 1998 regularisations were 'not the result of popular movement or planned policy, but represented an emergency measure or admission of policy failure'. In the context of the capacity bargain, *ex post* rationalisations of 'policy failure' can be understood as exemplifying a weak basis for the functional and administrative dimensions of the capacity bargain.

New laws in 2001 and 2005 sought to modernise the Greek legal framework (Skordas 2002). At the time of our fieldwork the primary legislative instrument governing immigration was Act 3386 (August 2005), *Entry, residence and social integration of third country nationals into the Greek territory*, and the Ministry of the Interior was responsible for the implementation of the legislation. This was amended by Act 3536 (February 2007), *On Determining matters in migration policy and other issues falling*

into the competence of the Ministry of the Interiors, Public Administration and Decentralisation, which relates to our later discussion of the role of local government. The 2005 law sought to plan migration flows in relation to social and economic life; ensure greater administrative consistency; protect the employment rights of migrant workers; introduce an immigrant integration policy; avoid the uncontrolled entry and exit of foreigners; incentivise foreign investment; and allow Third Country Nationals (TCNs) to exercise rights. The 2005 law also incorporated Council Directives 2003/86/EC (family reunification), 2003/109/EC (rights of long-term residents); and 2004/38/EC (freedom of movement of TNCs who are relatives of an EU citizen). There was also a clear EU influence on immigrant integration policy through the incorporation of the EU's *Common Basic Principles on Integration*, promulgated at the Groningen meeting of JHA ministers in 2004 and subsequently specified in the EU's *Common Agenda for Integration* (CEC 2005). Adam and Devillard (2008: 272) note that

Even though the current legislative regime does represent a marked improvement compared to the previous regime, one still feels that 15 years after Greece became a (proportionally speaking) major host country, it continues to experiment with a workable regulatory framework.

We found the key actor in migration policy to be the Ministry of the Interior and its Directorate for Foreigners with a direct relationship to the EU's SCIFA (Strategic Committee on Immigration, Frontiers and Asylum) committee and the Committee of Permanent Representatives (COREPER). In 2007 the General Directorate for Migration Policy and Social Integration was created within the Ministry of the Interior, incorporating units of the Ministry of Public Order that previously dealt with migration. At the time of our research two different bodies were responsible for the implementation of asylum and aliens legislation: the Hellenic Police within the Ministry of Public Order was responsible for the implementation of legislation related to the protection of refugees while the Directory General of Migration Policy and Social Integration of the Ministry of the Interior was responsible for managed migration policy (CECL 2009). Within the Ministry of Employment a unit existed to monitor Greeks working abroad through gathering of statistical data. Its remit was extended to deal with immigrant workers in Greece. The government's view was:

The framework and principles are set out by the EU and from that point onwards we adapt them to the particularities of each state ... Greece prides itself on being a source of inspiration for the common policy on migration and border control ... Our European friends are quite confident about the degree of security of our borders ... On the other hand, they are under constant pressure because of our geographical position. (Interview, Ministry of the Interior, February 2008)

The EU's role in policy development was 'very important and several areas related to migration are monitored on the European level. At the same time, the existence of programmes co-funded by the EU gives us the opportunity to participate in the effective handling of the migration phenomenon in the wider EU region' (Interview, Ministry of the Interior, February 2008). EU funding programmes such as the AENEAS scheme for border security have also facilitated partnership work, including with IOM and with the Albanian government on a return programme.

The development of administrative capacity is demonstrated by the Interior Ministry's incorporation into trans-governmental networks, including working with Europol, Interpol, IOM, UNHCR, Red Cross and Amnesty International. The relationship has been particularly strong with Europol and Interpol. Even here, we see limits to the domestic penetration of the capacity bargain in Greece. Caution was expressed about the role of international organisations (IOs). For example, 'I consider the role of IOs constructive, but sometimes too judgemental and criticising' (Interview, Ministry of the Interior, February 2008). An interviewee from the Ombudsman's office noted that 'the political culture was very defensive against others knowing what was wrong in domestic policy' (Interview, February 2008). An IOM official noted that 'it takes time for the Greeks to understand that international organisations serve them and not some other interest' (Interview, February 2008). Others drew attention to the domestic tensions that mediated the effects of European integration. For example, 'The EU funds a number of programmes but these do not correspond to the Greek reality. Domestic actors view the EU as a source of funding, a cow to be milked, but also as a source of sticks and carrots' (Interview, Greek Ombudsman's Office, February 2008). The scope for contestation of the 'meaning' of Europe in the Greek domestic setting was evident in discussions on the framing of Greek policy. For example, a senior Ministry of the Interior official noted:

This new migration policy is consistent with the Lisbon Strategy and aspires to social cohesion. It is based on the conviction that migration is not a problem but a benefit, which enables the destination state to derive benefits from the people who reside in them and enrich their culture. (Interview, Interior Ministry, February 2008)

This view was contested by an interviewee from the Ombudsman's office, 'Migration is viewed as a natural disaster, as a historical accident and as something temporary ... nowhere is there a sense of these people being here to stay' (Interview, February 2008). The same interviewee noted scope for effects of the functional and political dimensions of the capacity bargain, such as the incorporation of EU Directives gradually embedding a legal and regulatory framework that helped to change perceptions of migrants from temporary factors of production to members of society. For example, the employment programme 'EQUAL' (managed by DG Employment and Social

Affairs) supported asylum-seekers and refugees, working with the three key ministries (Interior, Employment and Justice). It also created a point of engagement with NGOs. An EQUAL official identified work with NGOs and liaison with international organisations as a way in which EU resources might strengthen civil society engagement in a country where such engagement is traditionally weak. 'Transnational networking and mainstreaming is responsible for creating a mechanism to evaluate which actions are best implemented and to help incorporate them into national policies.' Adjustment would impact on learning and adaptation:

it's not like before when you felt like a student and the Commission was the teacher who came to scold and correct you. Nowadays there is the principle of partnership between the member states and the Commission and the member states demand that this partnership – which is engrained in the directives – be respected. (Interview, EQUAL, February 2008)

The basic picture is of a hierarchical structure and over-burdened municipalities in those places where the migrant population is concentrated, such as Athens. This induces significant capacity problems because 'The immigration department personnel in local administration authorities admit that there is a lack of the necessary human resources for the provision of services envisaged in the current legislative framework on migration' (Adam and Devillard 2008: 272). Decisions about residence permits, for example, are made at local level but in each:

there is a small core of regular staff with an overload of work. And the rest of the staff is seasonal with contracts ranging from six to eight months. There is no permanence and durability and that creates many disruptions ... There are many clashes because some institutions represent a sense of rationality while other represent the not necessarily rational demands of local centres of power or financial power, like, for example, the big agricultural lobbies that primarily use migrants as a workforce and play a crucial role in exercising pressure on policy-makers. (Interview, Ombudsman's Office, February 2008)

An interviewee from the Hellenic Agency for Regional Development and Local Government (EETAA) noted that:

There is always some kind of clash ... between the ministries and local government: the latter claim to have more concrete goals, to be closer to the people and in a better position to implement policies and they demand more power, more competencies, but also more funding in order to implement policies.

Not only was there conflict over turf and resources, immigration

is a very sensitive issue for the local authorities in terms of political pressure and political cost. It is much easier for the central government to legalise migrants without receiving such intense criticism and reactions as in municipalities or communities where the mentality is hostile towards immigrants. (Interview, EETAA, February 2008)

The political dynamic of the central–local relationship provides an important insight into policy change and the mediating role of EU laws and practices. Migrants are in a structurally weak position. The EU can provide some resources and new ideas, but their impact is limited.

In order to satisfy competing demands, policies often reflect an intentional jumble, or ‘fudging’, of different goals and priorities (Hall 1986). Policy may be designed to keep different interests happy, appearing to be quite inconsistent or contradictory (Boswell and Geddes 2010). The issues were identified by an IOM interview:

Two years ago on the island of Lesbos there was a fight between some locals and some Albanians who were working in their village, so the municipal council decided that all Albanians would be *persona non grata* in their village and sent them away. And then the season came when they needed to collect the olives. So, this is the confusion in public opinion. And in the policy-makers this is reflected as a conflict between recognising that they need migrants, but having to face a public that doesn’t want them. (Interview, February 2008)

Then result is that the same people can support an increase in the number of migrants during harvest time and then, a few months later, advocate stricter migration controls. It is not easy to see how a ‘national’ capacity bargain can resolve the tensions; their resolution depends on the domestic political process.

Conclusion

Engagement with the EU revolves around sectoral capacity bargains based on expectations of state actors about an increased ability to manage policy more effectively. The policy networks studied in this paper are an important element in a state’s infrastructural power and constitute a highly significant crystallisation of institutions, interests and power in domestic politics. Whilst the overarching sovereignty bargain circumscribes autonomy (governments cannot make policy as they like) and raises questions about legitimacy (pooling sovereignty could entail domestic political costs), the capacity bargain offers

increased control (the ability to produce a desired effect), which can boost legitimacy.

This paper has shown that national conditions vary and that there are specific aspects of each capacity bargain. Slovenia is not a major destination country, but there is migration into sectors such as agriculture and tourism and some domestic disquiet over immigration. Croatia is seen by the EU as a transit country and the accession process gave the Commission a determining say in IBM. Greece has a large informal sector; is a transit, sending and settlement country; is geographically complex; and is seen as the EU's 'front-line'.

In terms of governance, our evidence points to one major conclusion: the IBM policy network is (and will remain) highly centralised. The dominant actor tends to be the interior ministry, which is the key interlocutor upwards to the EU, the bearer of instrumental power into society, and horizontal coordinator of relevant domestic ministries and international partners. Centralisation is reinforced by border management being both a core state function and definer of state-ness and its high political sensitivity, none of which inevitably excludes the involvement of domestic and international non-state actors. International organisations can be important to the capacity bargain as providers of knowledge and services while domestic NGOs and civil society bodies provide advice and often run services, such as migrant advice and integration at the local level, in addition to advocacy. In all our cases, advocacy was perceived as actual, or potential, opposition and obstruction but such groups were included in the network in deference to EU expectations and preferences. Important though advice and service provision are to the capacity bargain, these actors have little substantive impact on the core policy network dominated by interior ministries. The capacity bargains analysed in this paper are also trans-boundary in two respects. First, inter-operability and multilateral cooperation increases the resources available; and, second, government can direct the attention of citizens to these cooperative efforts as proof of their determination and, for domestic consumption, can also plead the constraints of EU policy. Both contribute to improving output legitimacy and reducing misfit and conflict management.

There is, however, a significant limit to the capacity bargain. Once migrants are through the borders and access the labour market (informal or formal) and society they become a domestic political issue. This issue combines regulatory (who is, or is not, entitled to remain) and distributive (the perceived pressure on, or competition for, resources – jobs, health care, education, housing, for example) issues of high sensitivity. Policy becomes enmeshed in a complex political matrix that the IBM capacity bargain only partially addresses. The resulting regulatory–distributive conflict is highly politicised and extremely contested, most visibly in Greece. The most likely response is another capacity bargain, but one that is far more difficult to establish because of the wider participation in the policy network (e.g. employers, local authorities) and attendant scope for the fudging of objectives.

Acknowledgements

The field work was conducted between December 2007 and April 2009 under the Economic and Social Research Council grant, RES-062-23-0183, *Multi-Level Governance in South East Europe, Institutional Innovation and Adaptation in Croatia, Greece, FYR Macedonia and Slovenia*. We are very grateful to ESRC for its support for this work. We would also like to acknowledge the important contribution of the researchers who worked with us on this project: Elena Lazarou, Danijel Tomsic and Simona Zavrtnik. Earlier versions of this paper were presented at the Free University of Berlin and at the Conference of Europeanists. We are grateful to participants in those meetings and to two anonymous reviewers for this journal for their helpful comments and suggestions.

Notes

1. In the full study, interviewees also completed a detailed questionnaire which was then used as the basis for social network analysis to explore in detail these interactions. The capacity bargain is articulated via these social networks but as this paper is concerned with the concept of the capacity bargain, the network maps are not included here, but can be found in Taylor, Geddes and Lees, 2012, 127–162.
2. Albania, Bosnia-Herzegovina, Macedonia and Serbia have since all been placed on the EU's visa 'white list'.

References

- Adam, C., and A. Devillard (2008). *Comparative Study of the Laws in the 27 EU Member States for Legal Migration*. Brussels: European Parliament Directorate General Internal Policies of the Union, Policy Department C: Citizens' Rights and Constitutional Affairs.
- Baldwin-Edwards, M. (2009). 'Greece', in M. Baldwin-Edwards and A. Kraler (eds.), *REGINE. Regularisations in Europe*. Amsterdam: Amsterdam University Press, 297–330.
- Boswell, C., and A. Geddes (2010). *Migration and Mobility in the European Union*. London: Palgrave Macmillan.
- CECL (Centre for European and Constitutional Law) (2009) *European Migration Network. The Practice in Greece Concerning the Granting of Non- EU Harmonised Protection Statuses. Report on Greece*. Study submitted to the Ministry of Internal Affairs, Directorate General of Migration Policy and Social Integration, CECL: Athens.
- CEC (2005). *A Common Agenda for Integration: Framework for the Integration of Third Country Nationals in the EU*. Brussels: Commission of the European Communities COM (2005) 389 final.
- CEC (2006a). *Policy Priorities in the Fight Against Illegal Immigration*. COM(2006) 402 final. Brussels: CEC.
- CEC (2006b). *The Global Approach to Migration One Year On: Towards a Comprehensive European Migration Policy*. Brussels, COM (2006) 735 final.
- CEC (2006c). *Screening Report, Croatia, Chapter 24 – Justice, Freedom and Security*. Brussels, DG Enlargement, available at http://ec.europa.eu/enlargement/pdf/croatia/screening_reports/screening_report_24_hr_internet_en.pdf (accessed 15 April 2012).
- CEC (2007a). *Guidelines for Integrated Border Management in the Western Balkans*. Brussels: CEC, updated version, January.

- CEC (2007b). *Applying the Global Approach to Migration to the Eastern and South-Eastern Regions Neighbouring the European Union*. Brussels, COM (2007) 247 final.
- Euractiv (2010). 'A Step in the Right Direction: Frontex, Greece and the Fight against Irregular Migration', *Euractiv*, available at <http://www.euractiv.com/en/east-mediterranean/step-right-direction-frontex-greece-fight-against-irregular-migration-analysis-49> (accessed 22 July 2010).
- FRONTEX (2009). *General Report*. Warsaw: FRONTEX.
- Hall, P. (1986). *Governing the Economy: The Politics of State Intervention in Britain and France*. Oxford: Oxford University Press.
- House of Lords (2008). *FRONTEX: The EU External Borders Agency*. London: European Union Committee, 9th report of Session 2007–8, HL Paper 60.
- Lind, M. (1992). 'The Catalytic State', *The National Interest*, 27: Spring, 3–14.
- Mann, M. (1984). 'The Autonomous Power of the State', *European Journal of Sociology*, 25:2, 185–213.
- Mann, M. (1993). 'Nation-States in Europe and Other Continents: Diversifying, Developing, Not Dying', *Daedalus*, 122:3, 115–40.
- Marenin, O. (2010). *Challenges for Integrated Border Management in the European Union*. Geneva: Geneva Centre for the Democratic Control of Armed Forces (DCAF).
- Mattli, W. (1999). *The Logic of Regional Integration*. Cambridge: Cambridge University Press.
- Mattli, W. (2000). 'Sovereignty Bargains in Regional Integration', *International Studies Review*, 2:2, 149–80.
- Menon, A., and S. Weatherill (2008). 'Transnational Legitimacy in a Globalising World: How the European Union Rescues its States', *West European Politics*, 31:3, 397–416.
- Milward, A. (1992). *The European Rescue of the Nation State*. London: Routledge.
- Moravcsik, A. (1994). 'Why the European Community Strengthens the State: Domestic Politics and International Cooperation', paper presented at the Annual Meeting of the American Political Science Association, New York, 1–4 September.
- Neal, A. (2009). 'Securitization and Risk at the EU Border: The Origins of FRONTEX', *Journal of Common Market Studies*, 47:2, 333–56.
- Pajnik, M., N. Kogovšek et al. (2006). *Mapping of Policies Affecting Female Migrants and Policy Analysis: The Slovenian Case*. Ljubljana Peace Institute, Institute for Contemporary Social and Political Studies Working Paper No. 8 – WP1.
- Maduro Miguel, P. (2003). 'Europe and the Constitution: What if this is as Good as it Gets?', in J. Weiler and M. Wind (eds.), *European Constitutionalism Beyond the State*. Cambridge: Cambridge University Press, 74–110.
- Polsby, N.W. (1980). *Community Power and Political Theory: A Further Look at Problems of Evidence and Inference* (2nd enlarged edition). New Haven: Yale University Press.
- Scharpf, Fritz W. (1997). 'Economic Integration, Democracy and the Welfare State', *Journal of European Public Policy*, 4:1, 18–36.
- Scheider, F. (2004). *The Size of the Shadow Economies of 145 Countries all over the World: First Results over the Period 1999 to 2003*. IZA DP No. 1431, December. Bonn: Institute for the Study of Labour.
- Shaw, J., and A. Weiner (2000). 'The Paradox of the European Polity', in M.G. Cowles and M. Smith (eds.) *The State of the European Union. Volume 5: Risks, Reform, Resistance and Revival*. Oxford: Oxford University Press.
- Skordas, A. (2002). 'The New Immigration Law in Greece. Modernization on the Wrong Track', *European Journal of Migration and Law*, 4:1, 23–48.
- State Department (2008). *Trafficking in Persons Report*. Washington, DC: State Department.
- Taylor, A., A. Geddes, and C. Lees (2012). *The European Union and South East Europe: The Dynamics of Multi-Level Governance and Europeanisation*. London: Routledge.
- Thomson, M. (2006). *Migrants on the Edge of Europe: Perspectives from Malta, Cyprus and Slovenia*. Brighton: Sussex Centre for Migration Research Working Paper 35.
- Toplak, J. (2006). 'The Parliamentary Election in Slovenia, October 2004', *Electoral Studies*, 25:4, 825–31.

Vaughan-Williams, N. (2008). 'Borderwork Beyond Inside/Outside: FRONTEX, the Citizen-Detective and the War on Terror', *Space and Polity*, 12:1, 63–79.

Weiss, L. (1998). *The Myth of the Powerless State*. Ithaca, NY: Cornell University Press.

Wendt, A. (1999). *Social Theory of International Politics*. Cambridge: Cambridge University Press.