

International Migration in the Present and Future European Union

International migration and European integration have a complex relationship to European integration. For some it is emblematic of crisis: from this point of view, the impacts of immigration have been damaging for European societies by making them less cohesive. For other, migration is embedded within the history of Europe and of the European Union. From this point of view, migration will necessarily be part of Europe's future, which requires better ways of addressing the issues raised by international migration.

This chapter proposes an alternative way of thinking about this relationship. It shows that migration is closely related to the European state system and its transformation by European integration. In these terms, international migration is not simply some kind of external challenge to European states – something to which they must respond. Instead, international migration is embedded within the state system within the inequalities between states and within the web of economic, political and social connections that link countries across the world. To understand the role of international migration in the current and future EU requires that it be related to the underlying conditions that cause and drive it.

To develop this argument, this chapter first provides an overview of the general EU migration context and provides some points of comparison with other regions. It then identifies three key themes in European migration governance: the link to economic integration; the role played by internal security considerations in policy development; and, the

difficulties moving towards a common approach in this area of 'high politics'. This is followed by a section that explores underlying migration drivers and points to the ways in which we need to see international migration as embedded within underlying conditions of governance, i.e. as a challenge of governance and not simply a challenge to governance. The paper then surveys developments in both the internal (affecting member states) and external (affecting non-member states) dimensions of policy.

The EU governance of migration and mobility

Just over 3 per cent of the world's population are international migrants, or around 214 million people. Around 20.2 million people, or around 4 per cent of the EU's total population are not nationals of an EU member state (so-called third country nationals, TCNs). The EU accounts for just under 10 per cent of the world's total number of international migrants. This contrasts with Canada where 21.3 per cent of its national population are TCNs and the USA where the figure is 13.5 per cent. Just under 45 per cent of the world's international migrants reside in either the EU or North America. The three largest origin countries for migrants in Europe in 2011 were Turkey (around 2.4 million people), Morocco (around 1.8 million) and Albania (circa 1 million), respectively. Using the UN's Human Development Index, 47 per cent of EU migrants come from high HDI countries, 46 per cent from medium HDI countries and around 7

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per cent from low HDI countries (CEC, 2012: 3).

Migration in its various forms has been, is and will continue to be an important characteristic feature of European societies. Mobility in the form of free movement is a key component of the EU treaty framework dating back to the 1950s that seeks to guarantee free movement rights for certain categories of people holding the nationality of a member states (and who, since the Maastricht Treaty came into force in 1993, hold the status of EU citizens). This right was initially extended to workers, but has since become a more generalised right of free movement with only certain provisos and limitations (such as public health and public order). Free movement is thus highly institutionalised at EU level in the sense of the establishment of clear competencies for supranational institutions. It is also constitutionalised in the sense that a body of law has developed at EU level that protects the right to free movement. Free movement is thus closely linked to the origins of the European project and to the centrality of market-making as its core purpose. Free movement as a form of intra-EU mobility was largely uncontroversial until the 'big bang' enlargement of 2004 that saw 12 member states (excepting Ireland, Sweden and the UK) impose restrictions on movement by nationals of the accession state for a transition period of up to 7 years.

In contrast, migration policy as it relates to TCNs has been less institutionalised and constitutionalised. Formal co-operation between member states on an intergovernmental basis began when the Maastricht Treaty came into force in 1993. Prior to this time there was co-operation outside the Treaty framework in the form of the Schengen Agreement (initially applying to only five countries) plus informal intergovernmental co-operation between member states in the form of networks of national ministers and officials working together outside of the Treaty framework mainly on internal security issues that included immigration. These networks were significant in that they provided the

origins for the transgovernmental governance of migration at EU level, which is discussed more fully below. It was only when the Amsterdam Treaty came into force in 1999 that migration and asylum became 'communitarised' policy issues, i.e. they were located within the main body of the Treaty and subject - albeit initially with significant limitations - to supranational decision rules. Since 1999, there has been a steady movement towards a greater role for supranational institutions, as well as agreement on directives and regulations on issues such as asylum, family reunion and rules governing entry by highly qualified migrants. These developments do not amount to a comprehensive EU migration and asylum policy. The EU level governance of migration is fragmented and does not cover all aspects of policy. There is also 'variable geometry' in the migration governance system as Denmark, Ireland the UK are have opted out of the common migration and asylum policy as it has developed after 1999. Furthermore, a highly significant areas of policy - the numbers of migrants to be admitted - remains firmly within the domain of member state competencies, as affirmed by Article 79(5) of the Treaty of Lisbon (that came into force in 2009). The Lisbon Treaty was also significant because it applied what is known as the Ordinary Legislative Procedure (OLP) to migration policy. This means qualified majority voting (QMV, a weighted voting system) in the Council of Ministers representing the member states, the use of co-decision between the Council and the European Parliament thus giving a co-legislative role to the Parliament, and full jurisdiction for the Court of Justice (CJEU) on migration policy.

Key themes in European migration governance

Three key themes are central to EU migration governance. The first of these is the link between market-making within the EU and particular understandings of mobility linked to economic integration. This was applied to national of EU member states/EU citizens, but

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a key argument underpinning arguments for application to TCNs is that similar economic efficiency arguments apply to non-EU nationals and that their greater mobility could also be virtuous in the context of economic liberalisation and other challenges such as demographic change (CEC, 2000, CEC, 2005). The European Commission has played a particularly important role in seeking to stimulate EU policy because of its agenda-setting and policy proposing role within the EU system. The Commission faced objections to calls for a more comprehensive approach as outlined in its Communication in 2000 on a Community Immigration Policy (CEC, 2000). Since then, the Commission has sought to link arguments about economic, welfare and demographic changes to an agenda for the development of EU responsibility in the area of migration policy, but focused on particular types or forms of migration and with an interest in temporary and circular flows. Thus EU intervention in the field of migration policy is linked to the particular construction of the virtues of mobility in the context of economic liberalisation. It is also linked to a more general interest at international level in new approaches to migration that could focus on the stimulation of temporary flows and the pursuit of the so-called 'triple win' whereby new migrations schemes can benefit sending and receiving states and also migrants themselves (GCIM, 2005; Ruhs, 2006; Vertovec, 2007).

Second, the antecedents of the governance of migration can be traced back to early co-operation on internal security that included migration from the 1980s onwards. Particular ways of working developed and led to habits of co-operation developing between national level actors. The effect has been to change the strategic context within which migration governance occurs and also to shape the perceptions of policy problems as being linked to interdependence within the EU. This became particularly apparent after the end of the Cold War when a 'geo-political' widening of migration meant that no longer could migration governance be construed as an issue for a relatively small group of 'older'

immigration countries in north west Europe such as France, Germany, the Netherlands and the UK. Instead, southern, central and eastern European countries became new countries of migration, which significantly changed the dynamics of European migration governance and helped to generate a strong sense of interdependence linked not least to EU widening. This geo-political widening of migration also played a key role in impelling the 'external' governance of migration as EU member states sought to influence migration policy development both in potential member states and in non-member states.

Third, links between migration and mobility and also the emergent governance of migration did not necessarily lead to some form of common migration and asylum policy. Instead, the Commission faced initial setbacks when seeking to develop a more comprehensive, common approach. There has been the emergence of EU level law in the form of directives on asylum, family migration, the rights of TCNs who are long-term residents, return/expulsion and rules governing the entry of highly qualified migrants (the so-called Blue Card directive). There are also proposals from the Commission covering seasonal migrants and intra-corporate transferees (CEC, 2012).

The drivers of migration (and non-migration)

International migration is often represented as some kind of challenge (or threat) to governance systems in the EU. By this reasoning, migration is a challenge to governance. However, this understanding of the relationship between migration and governance may well get things the round way around. It makes more sense to think of international migration as a challenge to (not to) governance. By this is meant that international migration is not something that simply happens to states. In fact, international migration is 'produced' by the state system and by the broader global politics of unequal

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development. The broader point is that any discussion of international migration needs to be located in relationship to the factors that can cause or drive it.

Extensive research evidence demonstrates the centrality of economic inequalities as key drivers of international migration. These inequalities take the form of, for example, wage and income differentials. In addition, it is also well-established that international migration can become embedded within social networks that can lead to 'cumulative causation' (Massey, 1990) whereby earlier migration flows become the basis for further flows. This can help to explain the specificity of migration as people move from particular places in origin countries to specific place sin receiving countries. International migration is thus a highly specific process.

Political factors such as conflict and the breakdown of governance systems can also cause people to migrate, although conflict can also reduce people's ability to migrate by making it less safe. The Arab Spring saw around 25,000 people move to the European Union from countries such as Libya and Tunisia, although far more movement was to neighbouring states in the Middle East and North Africa despite some of the familiar rhetoric in Europe about the potential for 'swamping' or 'invasion' by migrants fleeing civil war and repression (Fargues and Fandrich, 2012).

Demographic factors such as age, fertility, morbidity and mortality can also drive migration, but their effects are likely to be indirect and occur through interaction with other drivers thus counteracting simplistic Malthusian notions of 'population pressure'. Environmental factors such as access to ecosystem services can affect migration decisions, although here too interaction effects with other drivers are very important and make it difficult to distinguish a group of people as 'environmental migrants' given the multi-causal nature of migration (Foresight, 2011).

It is beyond the scope of this chapter to analyse each of these factors in detail, but there are three key points that can be taken forward. First, it is underlying patterns governance linked closely to the structural features and ideological characteristics of the international political economy (IPE) that play a key role in constituting international migration. Second, migration governance in EU member states needs to be located in the context of the broader structures of the IPE that key a key role in its production as a social and political process that becomes visible at the borders and boundaries of governance systems. Third, as we see, the EU and its member states tend to focus on policies to stem migration flows with a more limited EU involvement in policies affecting the admission of migrants.

These five systems of drivers underlie and constitute international migration. It is through their effects and interaction that international migration becomes visible as a social and political issue and is then defined and categorised, primarily at state borders. However, it is very important to note that the presence of a driver does not mean that a person will migrate. Of central importance is that economic inequality, conflict and environmental degradation may actually reduce people's ability to move. Rather than all of these factors leading to 'floods' of migrants at the EU's borders, there may actually be a set of rather different issues associated with poverty, inequality and immobility. It is the relative immobility of large numbers of the world's population in the face of inequality that can get lost in often fevered debate – more usually in receiving countries– about the effects of migration. This does not mean that migration is always and in all circumstances a 'good thing' and must be encouraged, but, it is important to understand the ways in which for those that move migration can form part of a solution for themselves and their families to the effects of inequalities. Restrictions on movement can exacerbate rather than reduce these inequalities. A borderless world seems an unlikely proposition, but it is important to note the constitutive effects of the borders and boundaries of governance systems and the

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inequalities that they represent on international migration

The development of EU migration governance

We now move on to assess the European governance of migration with a focus on developments since 1999. The section is particularly interested in EU policy on labour migration, although there are clear links between labour migration and other important migration flows, such as those by family migrants and by asylum-seekers/refugees. Moreover, the EU has been very active in its self-declared 'fight against illegal immigration'. Migration flows defined as irregular or illegal are closely linked to policies that define other flows as regular. In its Annual Report on Migration and Asylum for 2011, the Commission noted that it is, of course, difficult to give a precise figure for irregular migration and referred to estimates of between 2.5 million and 4 million irregular migrants in EU member states (CEC, 2012: 4). They are, in effect, two sides of the same coin and are closely connected to the underlying economic, social, political, demographic and environmental drivers of migration within sending and destination states. While often mistakenly represented as an issue of desperate people in boats seeking to access the territory of southern member states such as Malta and Italy, the reality of irregular migration is more complex. There is a shocking loss of life at the EU's southern maritime borders that shames the EU and its member states and also serious evidence of the mistreatment of migrants and denial of basic human rights (Stege et al, 2012). However, most irregular migrants do not enter via these dangerous routes, most enter regularly and then over stay. Moreover, they are often able to find work, particularly in the informal economies of member states. EU migration governance thus needs to be related to the key forms of migration: such as for purposes of employment, family reasons or to seek refuge and also to the distinction made by states between regular and irregular flows. This is

particularly relevant because the categories assigned to individuals ('high-skilled migrant', 'illegal immigrant') are not some personal characteristic of individuals, but rather reflect the categorisations that develop at the borders of member states.

Since 1999, there has been significant institutional and policy development encompassing both internal and external aspects of migration governance. Of particular importance in the post-Lisbon EU are the application of the OLP in the area of migration that sees the Council and the European Parliament as co-decision-makers and the extension of full competence in the area of migration to the CJEU, which includes the power to issue preliminary rulings on references from lower courts in member states (previously, rulings could only be issued following reference from the highest court in member states). In terms of policy, the main focus of the EU's role has been on stemming migration flows rather than on soliciting new flows.

'Internal' migration governance

The 2000s saw a steady accretion of institutional competencies albeit within a fragmented policy system within which member states have maintained a grip on admissions policies and within which there has also been 'variable geometry' with Denmark, Ireland the UK outside of most measures. The EU has not developed a comprehensive migration policy, but has developed a sectorally-focused approach. This has given rise to directives on family migration, the rights of long-term residents who are TCNs, students, and researchers. There are also proposals for measures on seasonal workers and intra-corporate transferees. The returns directive of 2008 applied to the expulsion of irregular migrants and was the first directive in the area of migration policy that was agreed using the co-decision procedure involving the Council and EP as co-legislators.

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Of particular significance are the directives on family reunion and long-term residents as both saw tension during the negotiation process between the Commission (as the originator of the policy proposals) and member states. This was particularly evident in the provisions within both directives for states to adopt 'integration measures'. These are important because they make a link between admission and integration policies. The family reunion directive of 2003 determined the conditions, under which legally resident TCNs could exercise the right to family reunification, but also recognises the rights of member states to impose conditions on family migration and gives them margin to do so in relation to factors such as the definition of the family, waiting periods and integration measures. The basis for EU action regarding the rights of long-term legally resident TCNs was closely linked to 'market-making' objectives. However, within this directive the member states also insisted on being able to apply integration measures in their national laws. The directive established rights and freedoms for long-term TCNs to be granted after five years of continual residence. These rights include access to employment and self-employed activity; education and vocational training; social protection and assistance; access to goods and services. The directive also gives the right to move and reside in another member state. As with the directive on Family Reunion, during the Council negotiations a clause was inserted (in Article 5 - conditions for acquisition of secure status) - to include 'compliance with integration conditions provided for by national law. Member states were given wide discretion to use mandatory integration requirements (for example passing an integration test and covering financial costs) before getting access to the benefits and rights conferred by the status of a long-term resident.

While measures on family migration and the rights of long-term residents relate to important aspects of migration law and policy, neither relate to the core of migration policy, namely admissions. In fact, both the family reunion and long term residents' directives make it very clear that admissions remain a matter for member states and also introduce

into EU level law the idea that admissions and integration are linked. This reflects a clear pre-occupation in national law and policy in sending states around the recruitment of economic migrants, preferably the high skilled. The rationale for this was captured ex-French president Sarkozy who argued that France preferred immigration that was *choisie* (chosen) such as by the highly skilled to that which was *subie* (endured) such as by family members.

While numbers of migrants to be admitted remains a member state prerogative, there has been some involvement by the EU in rules related to admission. These take the form of a sectoral approach that focuses on particular kinds of labour migration and tries to connect EU action to arguments about the 'added value' of EU involvement in certain aspects of migration policy for, in particular, economic and demographic reasons. For example, in its 3rd Annual Report on Immigration and Asylum of 2011, the Commission once again sought to make the case for the potential contribution of migration to the EU's growth agenda (CEC, 2012: 4) on the basis that even at a time of crisis 'economic migration ... remains an important component of efforts to address the challenge of labour shortages, notably in the context of the EU's ageing population and an increasingly competitive international market for talent with other countries outside Europe also experiencing skills shortages'. It also announced the intention to open a consultation by the end of 2012 with member states, social partners (such as employers and trade unions) and other stakeholders on 'the opportunities of economic migration (p.5).

It is in this context that we can consider the EU's 'Blue card' directive of 2009. This seeks to approximate rules between member states on application for and rights associated with the status of highly qualified migrant. Denmark, Ireland and the UK are not covered by the directive because of their ability to opt-out. It also seeks to promote mobility of the highly skilled between member states. The directive does not cover the numbers to be admitted or the sectors of employment that

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would be preferred or prioritised for admission, which remain matters for member states to decide. There was some criticism from non-EU member states that this effort by the EU to involve itself in the 'competition' for highly qualified migrants could contribute to the 'brain drain'. The South African government expressed this concern with regards to recruitment of health care professionals. There was also criticism from within of the relative timidity of the measure. The Blue Card system creates a one-track procedure for non-EU citizens to apply for entry as a highly qualified migrant for a period of up to two years, with scope for renewal. Debates soon shifted to ways in which the Blue card scheme could be further developed. For example, Parkes and Angenendt (2010) argued that the EU could involve itself in 'sovereignty-lite' efforts to attract highly qualified migrants and thus create some 'added value' for member state policies. They contended that efforts needed to be made to develop human capital within the EU through training but also opportunities for mobility within the EU. Parkes and Angenendt (2010) also argued that greater efforts needed to be made to exploit the value of higher education with the possibility for student migrants to be encouraged to live and work in the EU after finishing their studies. As with many EU measures, this first initial step does loom rather timid. It introduced weak forms of co-ordination into the area of highly qualified migration, but does not impinge on the ability of member states to implement the directive as they see fit and in relation to their own perceptions of labour market needs.

The Commission has also sought to further develop the sectoral approach with proposals to co-ordinate rules on intra-corporate transferees and on seasonal workers. In both cases, an 'added value' argument is deployed that seeks to link an EU role to economic growth objectives. The seasonal workers directive also proposes measures to protect the rights of migrant workers in sectors such as agriculture and horticulture.

The measures surveyed in this section all relate to the EU's role in 'internal'

migration governance. They show efforts to institutionalise and constitutionalise an EU approach to migration policy that draws from broader arguments about economic integration, but also reflects the trend in member state policies to make connections between admissions policy and integration. The EU thus seeks to position itself in this debate.

'External' migration governance

There is a very different basis in law and policy to the EU's external dimension of migration governance. Here the focus has been on exporting EU measures to non-member states with the perception that this has been motivated by the desire to co-opt non-member states within the control oriented EU approach to migration (Lavenex, 2006). These efforts have also had a strong bilateral focus with, for example, Italy having close links with the Libyan (both during the Gadhafi regime with attempts to maintain agreements with the new government in Libya) and Spain working closely with Morocco. The external dimension of policy has also been central to the GAMM. The GAMM is very clear in its focus on interdependence as the core driver of EU action on migration and the relevance of both the internal and external dimensions of policy. In its Communication on the GAMM published in 2011, the Commission (CEC, 2011a: 2) stated that 'Globalisation, demographic change and societal transformation are affecting the EU, its member states and countries around the world'. The Communication refers to the importance of dialogue at global level, but emphasises the centrality of regional, national and local levels. The EU thus positions itself as the key interlocutor between member states and other countries, as well as with dialogue structures at global level.

There has been a rapid growth in interest in the external dimension of EU migration governance, which the EU seek to 'export' key aspects of its approach to migration governance to non-member states. EU action is predicated on the development of capacity to control borders and manage

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migration. There are also significant differences in the extent of the leverage that the EU can exert when dealing with non-member states. For potential member states there is a far more direct mechanism for transmission of EU priorities into the settings of domestic governance systems. This occurs through the imposition of the requirements of Chapter 24 of the EU *acquis* covering free movement, migration and asylum (see, for example, Taylor et al., 2012). The EU has also sought to consolidate migration within its relations within the 16 countries that constitute its 'neighbourhood'. Without the 'carrot' of membership, the EU seeks issue linkages to connect migration other issues, such as economic development. According to the Commission, the GAMM is contextualised by the overarching framework of external migration policy and within the EU's foreign policy framework. The principle mechanism is dialogues on mobility and migration to 'exchange information, identify shared interests and build trust and commitment as a basis for -operational co-operation for the mutual benefit of the EU and its partners' (CEC, 2011a: 5).

The particular focus of this section is on both the place and 'construction' as political issues of migration and mobility within this external dimension of migration governance. The clearest manifestation of this is the development of Mobility Partnerships (thus far with Moldova, Cape Verde, Georgia and Armenia). These are reflective of the longer-term development of EU external governance in the area of migration and the focus on ways in which the EU can seek to combine its focus on highly selective admissions policies with measures to stem irregular migration. The intentions of Mobility Partnerships are bold in that they seek to develop new forms of international migration relations between the EU and non-member states. However, as already noted, the decision about the number of migrants to be admitted remains a matter for the member states. Thus, a non-EU country can reach agreement on a Mobility Partnership with the EU, but for it to have any meaningful effect on opportunities for its citizens to migrate to an EU member state would require

agreement from that member state on, for example, numbers of migrants who could move and the economic sectors into which they could move. There is little as yet to suggest that Mobility Partnerships have created new opportunities that wouldn't have already existed as a result of national recruitment. These also demonstrate the link between the internal and external dimensions of EU migration governance. The basis for Mobility Partnerships the pursuit of member state policy priorities, i.e. seeking to work with sending countries to manage migration and to reinforce the selective basis of the admissions policies pursued in member states. In return for some access to routes for labour migration to the EU, partner countries are expected to make efforts to ensure that they control irregular flows. Mobility Partnerships are essentially intergovernmental agreements that are not binding on member states. The Commission's role is limited to co-ordination while the European Parliament and CJEU are largely excluded (Carrera et al, 2011).

This external dimension this fits within a broader body of work on the external governance of the EU, which occurs when: 'the institutional/legal boundary is moved beyond the circle of member states' (Lavenex 2004: 683). Lavenex shows that the institutional and legal boundaries do not necessarily move at the same time and argues that: 'The crucial criterion for external governance is the extension of the legal boundary of authority beyond institutional integration. In contrast to co-operation under an international agreement or convention, external governance takes place when parts of the *acquis communautaire* are extended to non-member states'. This occurs largely in the realm of intergovernmental co-operation with a very limited role for supranational institutions. In terms of policy content, Parkes (2009: 328) has observed that, through the development of Mobility Partnerships, the EU is acknowledging that responsibility for the regulation of migration to and from the EU is now shared between the member states and the EU. The EU is thus a new arena for inter-state co-operation on migration and is thus also reflective of a change in the strategic setting for action on

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migration governance. There is also scope for differences to emerge between member states in the implementation of Mobility Partnerships. Parkes (2009) also finds Mobility Partnerships to be 'conceptually ambitious but fragmented in their application', as there is scope for conflict with other EU objectives, such as in the field of development policy.

Conclusion

This chapter has shown how the governance of international migration in the EU cuts across the societal and the international levels. The chapter also argued that it is important to assess the ways in which underlying economic, social, political, demographic and environmental processes can affect international migration (and in turn be affected by it). International migration is thus a challenge of governance and not simply to governance. This is more than a semantic issue because it means that international migration is related to the underlying conditions that 'produce' it and these are tied to the broader scope of the 'European project'. This is because not only will migration continue to play a key role in European societies, but it is also part of a much broader debate about the future of work and welfare in Europe. International migration does not drive these debates, but the relationship between migration and various types of labour market and welfare state is a key issue for the EU as it thinks about its economic future in the face not only of economic crisis, but of other factors, such as demographic change. It was in this context that this chapter sought to identify the key drivers of policy, particularly in the area of labour migration policy. The important distinction between migration and mobility was identified and it was argued that the pursuit of 'virtuous' mobility and of new forms of temporary and circular migration has become a key rationale for the development of EU action. Member states have not been willing to cede responsibility for the numbers of migrants to be admitted, but the EU has developed a sectoral approach that now encompasses highly qualified migrants with proposals for similar common rules at EU level for seasonal

workers and intra-corporate transferees. This does not amount to a common migration policy, but does significantly change the dynamics of migration governance. Not least, it changes the strategic context within which migration policy is understood and made. However, as was shown, the policy dilemma remains fundamentally similar and can be captured by the 'walls' and 'door's analogy used by Zolberg (1989). Moreover, the form that this governance takes – i.e. the development of transgovernmentalism – helps to circumvent the intergovernmental versus supranational dichotomy and to see how co-operation over time creates hybrid structures containing both intergovernmental and supranational elements. In terms of its broader argument and contribution to discussion of the international political economy of governance, this chapter has sought to demonstrate the centrality of locating international migration within the broader context of both European integration and of the EU's relations with non-member states. We can then see how the broader IPE plays a key role in the constitution of European migration governance and of the understanding of the role of migrants within the European project and its uncertain future.

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