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New Trends in Italian Immigration Policies: 'To change everything in order to keep everything the same'¹

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Theme: This ARI looks at the recent developments in Italian immigration policies carried out in 2008 by the conservative government of Silvio Berlusconi.

Summary: The measures against irregular migration approved in 2008 have given rise to a wave of criticism across the EU. The Italian government of Silvio Berlusconi has been accused of racism while the Italian Minister of the Interior insists that his measures are simply reasonable ways of dealing with irregular immigration and guaranteeing the safety of Italian citizens. This paper argues that the new rules, although more uncertain than they seem at first glance (and sometimes thoroughly unpleasant), do not solve the contradictory logic of Italy's immigration policies, with an increasing demand for foreign labour conflicting with the trend towards more restrictive measures. The main object of this paper is to show that the reform proposed by the Italian government is unlikely to reduce the rate of irregular migrants in Italy.

Analysis:

Immigration Policy in the Name of Law and Order

Since the migration crisis of the 1990s the development of the Italian migration regime is embedded in a deep contradiction. On the one hand Italy is under pressure to adopt restrictive practices from other EU Member States as well as from wide sectors of its own public opinion; on the other, Italian governments have to respond to an increasing structural demand for foreign labour.² In times of restrictive orthodoxy, economic legitimation has thus become the most important factor to distinguish between what are perceived as 'good' immigrants, to be integrated, and 'bad' immigrants, without a regular stay permit and perhaps involved in criminal activities. Both the right- and the left-wing

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¹ From the famous dictum '*Se vogliamo che tutto rimanga come è, bisogna che tutto cambi!*', uttered by the aristocrat-turned-revolutionary Tancredi in Tomasi di Lampedusa's famous novel *Il Gattopardo* (Feltrinelli, Milan).

² For a general introduction on Italian immigration policy see L Einaudi (2007), *Le politiche dell'immigrazione in Italia dall'unità a oggi*, Laterza, Bari, and Istat (2007), *La presenza straniera in Italia: caratteristiche socio-demografiche*, http://www.istat.it/dati/catalogo/20070828_01/.

parties have tried to build their immigration policies on the differentiation between legal immigration, described as useful to the economy, and illegal immigration, seen as a possible source of criminality.

Such a differentiation was also in line with the ambiguous attitude of Italy's citizens towards immigration. On the one hand, Italians are convinced that immigrants are necessary for the economy; on the other, they have developed the perception that illegality and criminality are deeply interrelated.³ The concern about security has been systematically exploited by populist right-wing parties such as the *Lega Nord* (Northern League), but the issue has been more recently recognised and dealt with by both the centre-left and the conservative parties.

In October 2007, for instance, the centre-left government of Romano Prodi (2006-08) enacted a decree that allowed police forces to deport EU citizens and their family members from Italian soil if they were considered to be dangerous to public order. Decree nr 181/2007 was a political reaction to the heinous murder of an Italian woman by a Rumanian citizen, a crime that caused a wave of panic in the population. Left-wing critics of the Prodi government defined the decree as an 'element of discontinuity'⁴ in the Italian Left that a few months earlier had drafted a new, and fairly liberal, law on migration issues (the *Amato-Ferrero* law), which was, however, never approved by the Italian Parliament due to the Prodi government's collapse. Contrary to this, the moderate left defined the measures as reasonable and necessary. The then Vice-president of the Italian government, Francesco Rutelli, argued that it was the state's political and institutional duty to guarantee the peaceful life of Italian citizens through the 'rigor and severity' of the law.

During the national election campaign in 2008, it was especially the *Lega Nord* that consistently advocated the need for harsh measures against irregular migrants and foreign criminals. This time, however, the political importance of public order cut across the entire political spectrum: the candidate of the *Partito Democratico* (Democratic Party) and former Mayor of Rome, Walter Veltroni, declared repeatedly during the campaign that public order was a 'universal right', whose protection was beyond partisan politics (*Corriere della Sera*, 26/III/2008).

Less than two months after winning the elections in April 2008, the conservative coalition⁵ presented a new decree containing 'urgent measures on public security'. Law-decree 92/2008, which was subsequently converted into law 125/2008, changed the Italian Penal Code and made it possible to deport a foreigner or remove an EU-citizen in the event of him/her being found guilty of a crime carrying a sentence of more than two years imprisonment. The new decree also envisaged the possibility of imprisoning Italians or foreigners who had rented a flat to irregular citizens. Finally, it entrusted the Italian Army

³ Such perceptions are not caused only by xenophobic attitudes. Sound research has shown that the criminality rate among immigrants is relatively high. Rates vary, however, according to the type of crime. The lowest rates are for foreigners arrested for bank robbery (3% of the total number of those arrested in 2004-06), followed by foreigners arrested for murder and sexual violence (32% and 39%, respectively). The highest rates mainly concern street thefts or house burglaries where the foreigners' rate is between 50% and 70% of all those arrested. Nevertheless, the criminality rate for irregular foreigners is more than 70% of the total number of arrested foreigners in almost all crimes with the exception of gender-related violence. See Ministero dell'Interno (2007), 'Rapporto sulla criminalità in Italia', Roma.

⁴ See F. Pastore (2007), 'Se un delitto fa tremare l'Italia. Come si affronta una *security crisis*', *Italianieuropei*, 5, p. 19-32.

⁵ The present government coalition ruled by Silvio Berlusconi is formed by *Il Popolo della Libertà* and *Lega Nord*.

with (limited) tasks of territorial control and gave special powers to city authorities in serious emergencies related, among others, to urban insecurity.⁶

The new law was strengthened by a subsequent legislative decree aimed at converting into national law directive 2004/38/CE on the free circulation of EU citizens. According to this second decree, EU citizens can settle in Italy for more than three months only if they register their presence and are able to prove the existence of a legal income. Unregistered EU citizens can be removed for reasons of public security. The insistence on restrictive regulations for EU citizens can be seen as a late reaction to the EU's enlargement to the East. In fact, the measures clearly targeted Rumanian gypsies with the aim of weakening the degree of protection they had gained from the enlargement process.

The decree has revived the dichotomy between what are perceived to be 'good' and 'bad' immigrants, making social marginality identical with troublesome immigration. Among its proponents, there has been a certain willingness to draw the line straight through the Rumanian immigrant flow, distinguishing between Rumanian Roma (the 'bad' side of immigration) and 'good Rumanians' working and living legally in Italy. This distinction has allowed the Italian government to even count on the support of several associations of Rumanian immigrants, desirous to distance themselves clearly from Roma Gypsies.

A subsequent move was a 'governmental ordinance' (nr 3676 of 30/5/2008) that ordered the closure of informal Gypsy camps in three Italian regions (Lombardia, Lazio and Campania), the census of all their inhabitants and the taking of fingerprints of Gypsy minors. The ordinance produced widespread national and international rejection, as it was interpreted as an example of ethnically profiling Gypsies, in particular Rumanian ones. Against this, the Minister of Interior Roberto Maroni (*Lega Nord*) justified the ordinance by asserting the need to protect minors from exploitation and to guarantee their registration for schooling. He also stressed that a significant part of his legislation was based on drafts and documents prepared at the time of previous, centre-left, governments.

The European Commissioner intervened in September 2008 acknowledging that the Italian measures could be considered non-discriminatory as long as the minors' fingerprints were taken under the supervision of a judge and only for identification purposes. At the same time, the EU Commissioner Jacques Barrot said at the end of the same document that the automatic expulsion of EU citizens posed problems of compatibility with EU law and that, in the absence of legislative changes, the Commission would soon launch infringement proceedings. Eventually, in October 2008 the Minister of the Interior announced that some sections of the decree had been blocked because of the EU Commission's negative judgement.

The political activism of the Berlusconi government in the field of immigration does not, however, concern only 'undesirable' European citizens. The same government has also modified in a restrictive sense decrees 5/2007 and 251/2007, originally aimed at converting into national law directives 2004/83/CE and 2003/86/CE on respectively family reunion and common standards for asylum procedures. The new version of the first decree restricts the right of circulation of asylum seekers to specific areas for the entire length of the asylum hearings. The new version of the second law introduces some further restrictions to family-reunification procedures (see Table 1).

⁶ Security Pacts are not a new issue as, in November 2007, 15 Italian cities had already signed 'Security Pacts' between the central administration and the local authorities.

Finally, the government has also drafted a law with 'urgent norms on security matters' that is supposed to introduce the 'crime' of illegal entry. Interestingly, the drafted law introduces measures against illegal migration together with other measures targeting begging and vandalism as well as the requisition of goods belonging to criminal organisations. If approved, irregular immigrants could be arrested and imprisoned for a period of between six months and four years. The law would also extend the length of possible detention in deportation centres (called CPT in Italian bureaucratic jargon) and would require a longer waiting period for foreign spouses of Italian citizens who wish to apply for naturalisation. At the international level, such reforms have been accompanied by a new cooperation agreement between the Italian and Libyan governments aimed, among other things, at increasing the control over clandestine migration.⁷

Table 1. Legislative reforms proposed by the Berlusconi-government

Topic	Old rule	New rule	Legislative reference
Deportation	Deportation of a foreigner guilty of a crime with a sentence not inferior to 10 years	Deportation of a foreigner or EU-citizen in case of a sentence of more than two years	Law 125/2008
Permanence in detention centres	60 days	60 days + 60 days up to a maximum of 18 months	Draft law on security matters
Irregular entry	Devolution or order to leave the country (<i>intimazione</i>) if devolution is impossible	Arrest and imprisonment for between 6 months and 4 years	Draft law on security matters
Naturalisation after marriage with an Italian citizen	After six months of legal residence in Italy	After two years of legal residence in Italy. Can be reduced to one year in the event of having children in common	Draft law on security matters
EU citizens	The law requires registration on the municipal register. The municipal authority can limit the right of entry and residence for reasons of public security (if a foreigner's behaviour threatens fundamental rights and public integrity)	The law requires enrolment in the municipal register. The municipal authority can limit entry and residence for public security reasons and, in any case, if the EU citizen has not enrolled in the municipal register	Legislative modification of decree 30/2007 (blocked in October 2008)
Family reunion	Applicants can be spouses, minors, children with no means of subsistence and parents in the country of origin without adequate family support	Applicants can be spouses over the age of 18, children that for objective reasons have no means of subsistence or are handicapped, dependent parents without children in the country of origin or whose children are not able to provide means of subsistence	Legislative modification of decree 5/2007
Asylum	No territorial limitations for residence	Asylum seekers are assigned a specific place of residence or residential area	Legislative modification of decree 251/2007

The object of the overall legislative reform is obviously to strengthen the repressive dimension of Italy's immigration policies. Any assessment of the consequences of these measures is clearly premature: some of the provisions are likely to change as a result of judicial review, others might run foul of EU law and still others will have to face the

⁷ The Prodi-government had already signed an agreement in December 2007 with the Libyan government for the joint control of the maritime border. The agreement generated grave doubts about the Libyan authorities' respect for human rights.

administrative and budgetary inertia that has already severely curtailed the ambitions of previous repressive measures. Already at this stage, however, it can be argued that many of the measures might turn out to be scarcely effective in the struggle against irregular migration, as they fail to deal with the structural mechanisms sustaining irregular migration systems.

The Importance of a 'Positive' Control Policy

On the whole, the reforms carried out by the third Berlusconi government have so far merely tried to reduce immigration to a security issue. As such, the new measures target one of the symptoms rather than the causes of irregular migration. Irregular migration in Italy is a deep structural phenomenon: the presence of irregular migrants is embedded in a negative combination of the lack of an active recruitment channel for foreign labour, poor or weak internal controls and the existence of an extended informal economy. Given the acknowledged presence of a strong demand for foreign labour, to fight irregular migration requires the reform of the labour market rather than simply stricter border controls.

First of all, Italy needs a reliable and predictable channel for recruiting foreign workers. Contrary to other European countries, Italian governments have always acknowledged the demand for foreign labour. In this respect, Italy has never fully subscribed to the European non-immigration dogma. However, the recruitment policies enacted have always been relatively counterproductive. The system of contingents established between 1986 and 1990 has never become a real planning tool, as the yearly decrees were limited, delayed and nearly always based on unreasonable assumptions on the state of the Italian labour market. The first reform of the recruitment system was tried out by the centre-left government of Romano Prodi (1996-98). However, the entry quotas established by the Italian governments remained far below real demand (as reflected, among other indicators, by the number of applications presented by employers). Furthermore, it has not always been easy to mediate between the different political and social groups involved in the concrete use of quotas. Finally, there are still considerable difficulties due to the bureaucratic processes necessary to recruit foreign workers (Einaudi, 2007). The Berlusconi government has no official plans on this matter, thus disregarding one of the main stumbling blocks of Italian immigration policy.

Even if immigration decreases as a result of the economic crisis, the need for an efficient recruitment system for foreign workers still remains urgent. The recession of 1991-92 in Italy was accompanied by a decrease in immigration flows. However, immigration did not stop, because there was a persistent demand for foreign workers in certain economic sectors. Similarly, it is likely that in the near future some economic sectors, such as construction, will need less immigrants while the need of Italian families to employ care workers for the elderly will probably remain unchanged.

The second important factor regarding irregular migration is the quality of border controls—particularly maritime ones—, which has been a goal to which all Italian governments from 1990 to today have been clearly committed. The effectiveness of border controls has undoubtedly improved in the last two decades: clandestine entries from the sea have steadily decreased, particularly along the Adriatic coasts.⁸ Over the same period, Italy has reformed the procedures for expulsion and deportation, as well as introduced the

⁸ P. Monzini, F. Pastore & G. Sciortino (2006), 'Schengen's Soft Underbelly? Irregular Migration and Human Smuggling across Land and Sea Borders to Italy', *International Migration*, 44, p. 1-25.

possibility of the administrative detention of the foreigner to be expelled. This has contributed to reducing the interval between an expulsion order being issued and the expulsion being carried out. Effectiveness was also improved by a more intensive international cooperation and by the introduction of privileged quotas to be granted to countries that cooperate with Italy in the framework of bilateral agreements. In fact, the percentage of expelled foreigners is much higher for citizens from countries that have signed a readmission agreement with Italy.⁹

The main factor in fostering an irregular migration system is, however, the existence of a sizeable informal economy. Italy's informal economy represents 22.3% of its GDP and provides the main avenue for irregular migrants' income-making activities. The fight against irregular migration would above all require controlling illegal employment, and this in turn would require combating the informal economy. In Italy, however, labour market controls are scarce and ineffective, and very often slow. Italy lacks an efficient administrative organisation to carry them out and the labour inspector's task is made all the more difficult by a variety of bureaucratic loopholes. Furthermore, the informal economy is part of a civic culture which is very tolerant towards irregular employment. For these reasons, struggling effectively against this phenomenon would also mean interfering in the complicated relationship between State and Society.¹⁰ In the absence of effective internal controls, regularisation has been the most important instrument to control the irregular employment of immigrants, allowing the transfer of foreign labour from the informal to the formal economy. Since 1986, Italian governments have regularised almost 1.4 millions foreigners and most of them still have their residence permits. This means that regularisations not only contribute to regaining control over irregular flows but also help to stabilise the foreign population. With the passage of time regularisation has become a typical crisis management tool of Italy's migration regime, marking a certain continuity between right- and left-wing coalitions.¹¹ When the enactment of a new amnesty has been politically unfeasible, it has been carried out under different names: for instance, in 2006, the Prodi government increased the recruitment contingent in order to absorb all the applications filed by employers. The decision was based on the assumption that the applications had actually been filed for workers already irregularly living in the country. Paradoxically, Italian parties are aware that regularisations do not reflect a rational immigration policy but are effective only as an instrument to manage failure. For this reason, they have always been presented as one-off measures.

⁹ As outlined by a report of the Italian Ministry of the Interior in 2007, the improvement in Italy's border controls, however, was followed by a significant decrease in expulsions since the beginning of 2002. The decrease could be related to the entry of Rumania and Bulgaria in the EU together with the diminishing effect of readmission agreements. Furthermore, the cooperation of sending countries might have been affected by the reduction of the privileged quotas in the first years of the second Berlusconi government (2001-06). Finally, due to budgetary problems, Italian governments had increasing difficulties in guaranteeing adequate funding for expulsions. Finally, the presence of irregular migrants does not depend only on the state of Italy's control system. Other EU governments can be equally important. The generous visa policy of the German government between 2000 and 2005 facilitated the entry of Eastern European immigrants to other European countries, mainly Italy and Spain. See C. Finotelli & G. Sciortino (2006), 'Looking for the European Soft Underbelly: Visa Policies and Amnesties for Irregular Migrants in Germany and Italy', in S. Baringhorst, J.F. Hollifield & U. Hunger (Eds.), *Herausforderung Migration – Perspektiven der vergleichenden Politikwissenschaft*, LIT Verlag, Munster, p. 249-280.

¹⁰ G. Sciortino (1999), 'Planning in the Dark: the Evolution of Italian Immigration Control', in G. Brochmann & T. Hammar (Eds.), *Mechanisms of Immigration Controls*, Berg, Oxford, p. 233-260.

¹¹ A. Colombo & G. Sciortino (2003), 'The Bossi-Fini Law: Explicit Fanaticism, Implicit Moderation and Poisoned Fruits', in J. Blondel & P. Segatti, *Italian Politics 2003*, Berg, Oxford, p. 162-180.

Conclusion: In the last decade, Italy has seen increasing, although intermittent, efforts to improve the quality of both the legal recruitment of foreign workers and the control of border crossings. Such efforts, however, have been unable to reduce irregular migration significantly, as Italy's informal economy is still a powerful magnet for irregular migrants. To fight irregular migration in the Italian context requires a drastic improvement in the effectiveness of legal recruitment procedures while at the same time sharply reducing the appeal of irregular employment. Unfortunately, things are not moving in that direction. The current policy trend in Italy is mainly to focus on the repressive side of immigration policy, forgetting –as we have seen– that irregular migration depends on a more complex set of factors. It is consequently likely that repressive measures will fail to halt the constant reproduction of irregularity, leaving things as they are despite the shrill appeal to the need for greater security.

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