(Never)mind the Evidence: Evidence-Based Law-Making in Croatian Regulation on Migration

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The aim of the paper is to analyse the extent to which the recent Croatian regulation on migration (legislation and

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policy documents) is grounded on evidence and builds on empirical data drawn from the processes and draft legislation, public consultations, impact assessment, parliamentary discussions, parliamentary questions of members of parliament, and evaluation reports. In this way, the paper also provides a deeper insight into the development of migration regulation, from agenda-setting to the adoption of regulation. Research has enabled us to discuss the possibilities to improve migration law-making by means of evidence-based law-making techniques and other better regulation instruments. It is argued that the use of better regulation instruments in developing migration regulation might contribute to more transparency and accountability, as well as to the reduction of arbitrary use of power by public authorities, and thus foster the standards and principles of the rule of law.

Keywords: Croatia, evidence-based law-making, evidence-based policy-making, migration regulation

1. Introduction

The development of migration regulation has become more important given the intensified securitization of migration policies after the 2015 mass migrations, when the policies in many countries were often ill-informed and based on misperception, fear, and intolerance. Although the EU migration and asylum *acquis* drastically limits member states' policies governing migration, the "national turn" in migration governance is visible throughout the EU, including in Central and Eastern European (CEE) countries (Lalić Novak & Giljević, 2019). At the same time, there are calls to base migration regulation on data and knowledge rather than on political decisions.

Evidence-based policy-making is a relatively new concept which has its origin in the healthcare sector where the notion of using evidence in decision-making has been seen to produce positive results (Van Dooren, 2006, pp. 78-79). Consequently, the evidence-based movement has expanded to other policy areas, with the main idea to use objective and reliable evidence in decision-making. Contemporary developments include management based on concrete evidence (evidence-based management)

and evidence-based law-making. The latter is especially promoted by the European Commission within the Better Regulation policy.

Evidence-based policy-making in migration is advocated in many countries that require rational and depoliticized migration policies that are based on evidence. This has resulted in the launching of different initiatives, such as the establishment of expert committees or the use of scientific reports and other evidence by policymakers with varying impacts and effects (see examples in Ruhs, Tamas & Palme, 2019). According to Collet (2019), policymakers may find three categories of evidence valuable: data on migration flows, stocks and migrant groups; research that investigates the efficacy of policy; research on the impacts of migration on society.

The aim of this paper is to analyse the extent to which the Croatian regulation of migration (legislation and policy documents on immigration, asylum and integration) is grounded on evidence. The paper draws on the assumption that migration policies and regulations in CEE countries, such as Croatia, are mainly developed under pressures stemming from accession to the EU, its policies and *acquis*, but are also influenced by internal factors, such as populist political parties, key state administration organizations in charge of migration issues, tradition, etc. There is scarce research on the evidence-based law-making process in Croatia[1] and no such research in migration regulation area. In this regard, this paper presents an attempt to open an academic scholarly discussion about the empirical analysis of migration legislation.

For the purposes of this paper, we consider that there are different categories of evidence that stem from a systematic process, in both qualitative and quantitative form (such as scientific reports and research, statistical data, official evidence and reports, etc.). All phases of law-making are included in this research to determine whether the actors included in the process (public administration, government, parliament) use evidence for migration regulation. The paper also provides a deeper insight into the development of migration regulation. As a result of this study, the opportunities to improve migration law-making by using evidence and other instruments of better regulation will be discussed, taking into account different EU and national competences related to migration, asylum and integration. It is argued that the use of better regulation instruments in developing migration regulation might contribute to transparency and ac-

[1] For legislative process in Croatia, s. Koprić, 2020.

countability, as well as to reducing the arbitrary use of power by public authorities, which will therefore foster the standards and principles of the rule of law.

The paper is organized in four sections. Introduction is followed by a theoretical overview of the key concepts used in the paper. The third part presents the results of a research on the use of evidence-based law-making in the development of Croatian migration regulation following accession to the EU in 2013. In the final part, the authors discuss the findings and conclude by identifying the areas for future research.

2. Key Concepts: Better Regulation, Evidence-Based Law-Making, Migration Legislation Based on Evidence

The European Commission announced its better regulation policy in the EU in the White Paper European Governance[2] adopted in 2001, which aims to "constantly improve the quality, efficiency and simplicity of legal acts". Following this, the Commission developed a number of measures aimed at better regulation in the EU, such as regulatory impact assessment; reduction of administrative burdens and the simplification of legislative texts; codification and recasting of existing legal acts; consultations with stakeholders; evaluations and fitness checks before any revision; use of knowledge throughout expert groups or external consultants; better legal drafting; higher accessibility of legal acts; better implementation of the EU regulation at the level of member states; independent quality control, etc.[3] The Commission[4] recently reiterated its strong commitment to the future use of better regulation instruments, stating that "the need for evidence-based policy-making supporting EU political priorities is only

[2] European Commission (2001), European Governance. A White Paper, COM (2001) 428 final.

[3] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions (2015). Better regulation for better results: An EU agenda, COM/2015/0215 final.

[4] Based on the 2016 Interinstitutional Agreement on Better Law-Making (OJ L 123, 12.5.2016), to deliver high-quality EU legislation is a joint responsibility of the European Parliament, the Council and the European Commission.

growing stronger".[5] Influenced by the EU, numerous better regulation instruments are being introduced in policy and law-making processes in the member states.

According to Garben and Govaere (2018), there are several democratic and constitutional legitimacy questions with regard to the EU Better Regulation Agenda, due to the fact that the development of legislation is becoming increasingly independent of political authority in the EU. Some constitutional arguments against certain aspects of the Better Regulation Agenda relate to its discouragement of the use of higher national regulatory standards in the areas of EU regulation, as well as the fear that it might lead to economic bias in EU law-making and policy-making. The questions of its "impacts on the 'competence principles' of conferral, subsidiarity, proportionality and national identity, the principle of legal certainty, democracy and the Rule of Law" are becoming increasingly important (Garben, 2018, p. 217).

A central part of the EU Better Regulation Agenda is evidence-based legislation. It is "a problem-solving approach to policy and legislation guided by the need to find the best available evidence for a problem" (Ranchordas, 2017, p. 68). Although evidence-based law-making is attracting increasing attention from academics and lawmakers, there is also some scepticism over the broader use of evidence: it is argued that the law-making process is becoming more technical and fact orientated, that policymakers and politicians are not always willing to take data or scientific and professional/expert insights into account, that the law-making process is controlled by different, often competing, rationalities, and, finally, that there is not only the question of the validity of research findings, but also on many occasions the question of contradictory research results and evidence (van Gestel & de Poorter, 2016; Voermans & Schuurmans, 2011; Rachlinski, 2011).

With regard to migration regulation, the use of evidence in the policy and law-making process is advocated by EU institutions. For example, the EU Council Presidency in its recent discussion paper calls for "basing strategic migratory discussions on scientific research and evidence … and helping to design evidence-based policies".[6] Taking into account that migra-

[5] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Better regulation: taking stock and sustaining our commitment, COM/2019/178 final.

[6] Council of the EU, Evidence-based and forward-looking migration policies. Presidency discussion paper, 12608/19.

tion is among the most challenging issues in the EU, it is considered that grounding regulation on evidence should contribute to well-informed decision-making. According to Boswell (2009), the use of research as a type of evidence in migration policymaking might have multiple functions: to substantiate policy preferences in disputed areas of policy; as a source of legitimation between different organizations in charge of certain aspects of policy (for example, for asylum and for irregular migrations); and/or to develop better policies equipped to achieve the desired social impacts. However, it is acknowledged that in complex issues such as migration governance, there are limits to evidence-based law-making because evidence can be highly disputed by policymakers. The political imperative today is to control and limit migration which has overruled the use of evidence in shaping policy responses and regulation (Baldwin-Edwards, Blitz & Crawley, 2019).

3. The Croatian Experience: Use of Evidence in Migration Regulation

2.1. Migration Regulation at a Glance

After gaining independence in 1991, Croatia adopted important laws concerning migration that regulated issues of acquiring Croatian citizenship, aliens and protection of the borders. Due to the war at the beginning of the 1990s and the gradual development of democratic institutions in the second part of the 1990s, migration regulation did not develop comprehensively until the beginning of the 2000s when accession to the EU became the most important strategic objective. Consequently, immigration, asylum, and integration policies started to develop alongside the EU accession process.

In 2007, the Government adopted the first official policy document in the field of migration for the period 2007 – 2008, with the key objective of establishing a systematic and comprehensive approach to migration issues. The second strategic document, the Migration Policy of the Republic of Croatia for the Period 2013 – 2015 (Official Gazette No. 27/2013) was adopted by the Croatian Parliament in February 2013, only a few months before Croatia joined the EU. It established measures to be implemented in the following areas: visa policy, the status of foreign nationals, the ac-

quisition of Croatian citizenship, asylum, the integration policy, irregular migration, and the Croatian diaspora.

In 2003, the Aliens Act was adopted and came into force at the beginning of 2004 (Official Gazette No. 109/2003). It regulated the conditions and manner of entering the country, movements and sojourn, and the employment of aliens in Croatia. The new Aliens Act, adopted in 2011, revised the provisions on the residence and work of aliens, by following the EU *acquis*. The Act was further amended in 2013, 2017, 2018, and 2020 (Official Gazette, OG No. 130/11, 74/13, 69/17, 46/18, 53/20)

The asylum legislation has been developing since 2003, when the first Asylum Act (OG No. 103/03, 79/07, 88/10, 143/13, 70/15) was adopted. That Act prescribed the principles, conditions, and procedure for granting asylum and temporary protection, the status, rights, and obligations of asylum seekers, asylees and aliens who have been granted temporary protection, as well as the conditions and procedure for revoking asylum status and for terminating the temporary protection of aliens. The second Asylum Act was adopted in 2007 and remained in force until 2015, when the Act on International and Temporary Protection came into force. It was further amended in 2017 (OG No. 70/15, 127/17).

Concerning the integration of migrants and refugees into Croatian society, the current strategic document is the Action Plan for the Integration of Persons Who Have Been Granted International Protection for the Period from 2017 to 2019[7] which was adopted by the Government in November 2017 as a (second) national framework for integration. It covers the following areas of integration: social care and healthcare, accommodation and housing, language skills and education, employment, international cooperation, inter-agency cooperation, raising awareness of the issues faced by persons who have been granted international protection.

3.2. Overview of the Law-Making Process

As of 2012, the Government has adopted the Integrated Annual Legislative Activities Plan with proposals of legislation for the following calendar year, based on the plan of legislative activities of all state administration bodies.

[7] Government Office for Human Rights and the Rights of National Minorities, Action Plan for the Integration of Persons who have been granted International Protection for the period from 2017 to 2019. Retrieved from https://pravamanjina.gov.hr/UserDocsImages/dokumenti/AKCIJSKI%20PLAN%20ZA%20INTEGRACIJU%202017-2019.pdf

For draft legislation, the responsible state administration body establishes a working group, whose members are primarily civil servants of that body, but might also include civil servants from other bodies and external experts. The draft legislation is always shared with the Ministry of Finance and the Government Legislation Office, and legislation involving harmonization with the *acquis* is also shared with the Ministry of Foreign and European Affairs. The draft legislation is then referred to the permanent working bodies of the Government for additional checking, and finally the Government adopts a draft and submits it to the Croatian Parliament.

In the last decade, several better regulation instruments have been introduced to the law-making process. Formal consultations with citizens and other interested parties were introduced in 2009 and were further strengthened in 2013, when obligatory public consultations on new regulations for all public bodies were introduced. In 2015, the central consultation portal e-Consultations was established. State administration bodies are obliged to publish a draft report on each consultation, with an explanation of the acceptance or refusal of each comment submitted, and to attach the report to the draft law. The number of conducted consultations is continuously growing – 642 e-Consultations were conducted in 2016, 706 in 2017, and 1,033 in 2018.

Regulatory impact assessment (RIA) was introduced in 2011 and further changed in 2017, but it is mainly seen as a formal administrative measure introduced in the process of EU accession (Musa, 2015, p. 23). Civil servants and other officials consider the RIA procedure as complicated, over-regulated, and hard to implement in a system overburdened with *ad hoc* laws, given that the prerequisite for an RIA is planning (Giljević, 2017, p. 259). The number of legislative proposals prepared in the RIA process is small (24 in 2018, 31 in 2017, eight in 2016, 22 in 2015, nine in 2014 and three in 2013), especially taking into consideration that in 2018, for example, the total legislative activity amounted to 213 laws and regulations.[8]

The strategic planning process was introduced to the Croatian central state administration in 2009 by the State Budget Act (OG No. 87/08, 136/12, 15/15). The Ministry of Finance took the leading role by preparing annual guidelines for the other bodies required to prepare three-year strategic plans and submit reports on their execution. In addition to strategic plans prepared by central state bodies, in 2020 there were more

[8] Government Legislation Office, Report on the implementation of the plan of legislative activities for 2018. Retrieved from https://zakonodavstvo.gov.hr/UserDocsImages//dokumenti//190509%20UZ%20Izvjesce%20PZA%20VRH%202018%20final%20za%20web.pdf

than 140 acts of strategic planning at the central level in Croatia.[9] The quality of most of these documents is not adequate, which does not allow for the development of real evidence-based policymaking.[10] However, it is expected that full implementation of the new Act on Strategic Planning and Development Management System of the Republic of Croatia could improve this situation (OG No. 123/17).

The focus of the law-making process is placed primarily on the regulation content (the normative component), while drafting seems to be understood as something anyone can do. Consequently, there is a large number of inadequately drafted laws and other regulations, which complicates their implementation and creates a sense of legal uncertainty (Đerđa & Antić, 2017, p. 97).

Since accession to the EU, the Croatian Parliament has tended to adopt legislation harmonized with the EU *acquis* in urgent procedure if required by the proposer, which presents a major problem as this *ad hoc* approach, without proper planning, limits the time for good-quality coordination of the drafting process.

Although in Croatia certain evaluation reports are prepared by both state bodies and organizations outside the system of central state administration, and even though the EU is pushing the evaluation approach through different projects, in reality there is a low level of acceptance of evaluation as an important legislative stage (Koprić, 2016, p. 30). This is also confirmed by the Strategy on Public Administration Development for 2015 – 2020 (OG No. 70/15) that states: "The appropriate praxis of evaluating results and outcomes of public policies at the level of the system as a whole still does not exist" (p. 7.). There are different arguments for such a situation, including that the Government and central state administration lack the capacity to properly set the objectives and conduct their evaluation (Koprić, 2016, pp. 30-31). However, the new Act on the State Administration System (OG No. 66 /19) of 2020 explicitly prescribes the obligation of state administration bodies to monitor the effectiveness of implementation of laws and other regulations.

[9] https://www.hrvatska2030.hr/wp-content/uploads/2019/12/POPIS-VA%C5%BDE%C4%86IH-AKATA-STRATE%C5%A0KOG-PLANIRANJA-NA-NACIONALNOJ-RAZINI.pdf

[10] Government of the Republic of Croatia, Draft Proposal of the Act on the Strategic Planning and Development Management System of the Republic of Croatia. Retrieved from https://vlada.gov.hr/UserDocsImages//2016/Sjednice/2017/11%20studeni/69%20sjednica%20Vlade%20Republike%20Hrvatske//69%20-%205.pdf

3.3. Research Results: The Law-Making Process in Migration Regulations and the Use of Evidence

The research aims to analyse the use of evidence in the law-making process of migration regulations currently in force (the 2013 Migration Policy, the 2011 Aliens Act with amendments, the 2015 Act on International and Temporary Protection with amendments, and the 2017 Action Plan for Integration). The research is based on legal analyses of empirical data drawn from the preparatory processes and draft legislation, public consultations, impact assessments, parliamentary discussions, parliamentary questions of the members of parliament, and evaluation reports.

A) Preparatory phase – strategic planning process. The 2013 Migration Policy contains goals for the period ahead. However, there were no concrete indicators to allow for an assessment of the level of attainment of these goals nor was there any specific evidence. Besides, no evaluation of the effects of this document was carried out and, after its expiration, a new Migration Policy has never been adopted. The explanation for this was provided by the Ministry of the Interior: "… considering the fact that Croatian legislation in the migration area is in line with EU legislation and that it follows international and European standards, our opinion is that there is no need for the enactment of a new migration policy" (answer to a parliamentary question, 7 February 2017). Thus, EU jurisdiction was used as an excuse for abandoning a national migration policy.

As for strategic plans prepared by the Ministry of the Interior, in the latest ones (2020 – 2022), migration issues are specified mostly as parts of two generic strategic goals. However, there are no publicly available reports on the execution of these strategic plans.[11] The ministry prepares annual work plans and annual work reports containing certain statistical and work data. However, in the second half of 2020, the work plan for 2020 was still not available, and the annual reports were available only for 2014, 2015 and 2018.[12] Thus, the possibilities for using current data were limited.

[11] Ministry of the Interior (n.d.a), Strategic plans of the Ministry of Interior. Retrieved from https://mup.gov.hr/pristup-informacijama-16/strategije-smjernice-i-izvjesca/planovi-i-izvjesca/strateski-planovi-mup-a/313

[12] Ministry of Interior (n.d.b), Annual work plans and annual work reports. Retrieved from https://mup.gov.hr/pristup-informacijama-16/strategije-smjernice-i-izvjesca/planovi-i-izvjesca/godisnji-plan-rada-i-izvjesca-o-obavljanju-poslova/173453

B) Formulation phase – state administration. Both the Aliens Act and the Act on International and Temporary Protection, as well as the 2013 Migration Policy were prepared by the Ministry of the Interior, while the 2017 Action Plan was prepared by the Government Office for Human Rights and the Rights of National Minorities.

Everything except the amendments to both the Aliens Act and the Act on International and Temporary Protection adopted in 2017 was planned in annual legislation plans. Information about the composition of working groups who prepared the draft legislation is not publicly available, but it can be assumed that both acts were prepared mainly by civil servants of the Ministry of the Interior, without the participation of external experts and stakeholders.

Regarding the RIA procedure, the Ministry of the Interior did not plan one for the Act on International and Temporary protection or for the Aliens Act, based on Art. 15/1-3 of the Act on Regulatory Impact Assessment (OG No. 44/17), which prescribes that the RIA is not carried out when the adoption of a law is proposed for implementation of EU-binding legal acts that apply automatically in Croatia. However, although both acts have been aligned with several EU regulations, the question arises whether provisions harmonized with EU directives should be considered for an RIA procedure.

When it comes to public consultations as an instrument for receiving input from different actors and stakeholders, prior to launching of the e-Consultation website, public authorities were obliged to publish reports on conducted public consultation on their website. However, due to malfunctions on the Ministry of the Interior's website, reports for the 2011 Aliens Act and the 2015 Act on International and Temporary Protection are not available. For amendments to both acts, public consultations were conducted via e-Consultations, with the total of 15 comments submitted. An analysis of the public consultations process shows less interest from the public to participate in consultations – the vast majority of comments were provided by three NGOs dealing mostly with the protection of human rights, and from the Ombudswoman. The Ministry of the Interior rejected most of the comments justifying it with a need to align the legislation with the EU *acquis*, and only a few comments were partially accepted. Public consultations were not conducted for the 2013 Migration Policy or for the 2017 Action Plan.

After consultations, the Ministry of the Interior prepared final drafts of the 2011 Aliens Act and the 2015 Act on International and Temporary

Protection and their amendments, which were then adopted by the Government and submitted to Parliament. An analysis of the content of draft the legislation shows that the Ministry did not refer to any evidence when explaining the drafts.

C) Enactment phase – Croatian Parliament. Both the Aliens Act and the Act on International and Temporary Protection, with all their amendments, were adopted by Parliament in an urgent procedure due to alignment with the *acquis*.

To analyse whether members of Parliament (MPs) ask for evidence during the debate on draft legislation at Parliament sessions or during the sessions of its working bodies, 12 hours of video recording of debates about the Migration Policy, the Aliens Act and the Act on International and Temporary Protection with their amendments have been examined and qualitatively analysed.[13]

Only three MPs participated in discussion regarding the draft of the 2015 Act on International and Temporary Protection, and one mentioned lack of evidence: "… although the Act will prescribe additional financial obligations, we do not have data or any analysis that funds have been provided for these obligations". Four MPs participated in the discussion and two demanded some evidence (data on the number of migrants in the next 10 years in Croatia; funds for the integration of migrants, and the source of funding) for the 2017 amendments to that Act, the state secretary of the Ministry of the Interior did not provide the requested evidence.

The parliamentary debate on the Aliens Act in 2011 was very mild and MPs were not highly interested in discussion. There were no questions from MPs requesting evidence. In contrast, the debate on the 2017 Amendments was rather heated and quite politicized. Only one MP asked for evidence (the number of temporary workers in 2017 and an estimate for the following years; a prediction concerning the labour market and quotas). The state secretary provided only a partial answer, stating that the actual need for workers changes from month to month so that estimations are neither possible nor expedient, but that needs are defined in consultation with social partners. In the 2018 amendments debate, only one MP asked for evidence (data on migrants attending religious schools in neighbouring countries because of a potential link to terrorism). The parliamentary debate on the 2020 amendments was affected by COV-

[13] The videos are available at www.sabor.hr. The authors covered the period until July 2020.

ID-19. Two MPs asked for evidence (the number of aliens who need to renew work permits in Croatia because of COVID-19, data about illegal border-crossings, the number of irregular migrants who are tested for COVID-19, the migrant crisis). Again, only partial answers were provided. During the debate on the 2013 Migration Policy, two MPs asked for evidence (the use of scientific studies in policy preparation, the analytical bases for strategy development, demographic trends, projections on economic development, demographic data), but only partial answers to the questions were provided.

Parliamentary questions that MPs pose to the Government (or to the responsible minister – the Minister of the Interior) are an important factor in the enactment phase. It is expected that the answers to these questions can be used for further parliamentary decision-making. To ascertain whether the MPs require some pieces of evidence in their questions and whether these pieces of evidence have been provided, 153 parliamentary questions posed in the period from 1 January 2015 to 1 July 2020 were examined.[14] Only 51 questions were considered, since the others dealt with topics unrelated to migration policies. Out of those 51 questions, MPs requested some evidence in 34 questions (66%) and the Government provided the evidence in 30 cases (58%).[15] Although evidence was sought in most questions, in reality this sort of questions was posed by a limited number of MPs; only 10 MPs posed questions requesting some evidence and half of the questions were posed by only two MPs. This information points to the fact that evidence is usually not sought by a large majority of MPs and that "evidence-based control of the Government" has not yet been established.

A qualitative look at the questions shows that, if and when MPs request information, they ask for different reports on police work, statistical data or official evidence. From time to time, MPs refer to an analysis of international or domestic organizations dealing with migration and require further explanations from the Government. The Government and the Ministry reply using only data from their official records and statistics (i.e., the number of registered migrants, the number of complaints) or give reports on their work with no additional evidence. Thus, the government does not

[14] The questions selected were only those in which one of the keywords "migration", "migrant", "asylum" and "refuges" could be found. The questions were examined through the official database of the Croatian Parliament, http://edoc.sabor.hr/ZastupnickaPitanja.aspx.

[15] It should be noted that two questions are very recent (posed from April to July 2020) so the government has not yet provided the answers.

use additional evidence, probably due to the fact that it considers that migration policy is under the EU competence. However, even when an area that falls under national competence is examined, i.e., citizenship, the same analysis holds, but with a considerably smaller number of questions. From 2015 to 2020, there were only 29 MP questions containing the keyword "citizenship" but only nine of these questions were relevant and only in four of them evidence was requested.[16]

D) Evaluation phase – external and internal evaluators. The only evaluation of migration regulation was carried out concerning the Action Plan for the Integration of Persons Who Have Been Granted International Protection for the Period from 2017 to 2019 within a project funded by the EU in 2018.[17] A major shortcoming of this evaluation is its timing, since the evaluators gathered information from April to October 2017, and the Action Plan was released in May 2017. Therefore, it is not an evaluation of implementation of the Action Plan, but a general evaluation of the national framework for the integration of migrants. The evaluation includes the following main findings: the integration framework lacks national strategic documents; the Action Plan has been drafted without formal participation of representatives of local and county governments and without sufficient time for public debate; it lacks a proper system of monitoring and measuring the results of migrant integration and does not use the experience gained in the integration of other social groups, primarily the Roma. These findings and recommendations have been used as evidence in developing the goals and measures of the upcoming Action Plan for the Period from 2020 to 2022, which is not yet publicly available.

4. Conclusion

The analysis of migration regulation in Croatia has shown a lack of use of evidence in all phases of the law-making process. Regarding the preparatory phase, a new migration policy, the most important strategic document, is lacking. The country's migration policy should be an umbrella document that facilitates the linking of legislative measures in order to at-

[16] Three of the questions were posed by the same MP, the former Minister of the Interior.

[17] Integration in Croatia, Framework for the Integration of Persons who Have Been Granted International Protection at the Local Level. Retrieved from www.irh.hr/dokumenti/50-okvir-za-integraciju-osoba-kojima-je-odobrena-medunarodna-zastita/file.

tain strategic goals in the field of migration. In preparing regulations, the state administration uses some of the better regulation instruments (public consultations), but evidence is, as a rule, not fed into the law-making process, especially in the field of migration policy that falls under the EU competence. A similar conclusion is drawn after analysing the enactment phase, since MPs request evidence on migration flows, stocks and migrant groups, and very rarely refer to research on the impact of migration policy. The Government provides only evidence from the official records. The most important category of evidence, i.e., different pieces of research on the efficiency of and the impact on migration regulations, is neglected. When it comes to evaluation, it can be concluded that evaluation reports are taken into account in soft-law documents (such as action plans), and in issues in which the EU has only supportive competences (such as the integration of migrants). Although some scientific analyses of particular aspects and issues of migration regulations have been published, they are not used as evidence in the law-making process.

Based on the results of the analysis presented in this paper, some general conclusions regarding evidence-based law-making in migration regulation can be drawn.

First, although there are pitfalls of the use of better regulation instruments in the law-making process, as explained in the theoretical part of this paper, the authors consider that evidence-based law-making plays a rather useful role in complex social issues such as migration, which is very often labelled with the conflicting positions of different actors and proponents. This is especially the case in the aftermath of the refugee-migration crisis and the growing politicization of migration policies, where evidence can be used as argument against populist tendencies.

Second, the use of evidence in the law-making process for the regulation falling under the EU competence (such as asylum, conditions of entry and residence, irregular immigration and unauthorized residence, the rights of third-country nationals residing legally), seems to show that better regulation instruments are more useful in the law-making process at the EU level than at the national level. Namely, the member states might use the EU as a justification for not using and/nor further developing the instruments of evidence-based law-making. Therefore, the focus should be placed on the legislative processes at the EU level, where the rule of law, as a demand for a "clear, enforceable regulatory framework in which individuals can ascertain what rights and obligations they have as well as dispose of means of enforcement thereof" (Garben & Govaere, 2018), can also be protected by better regulation instruments.

Third, the use of evidence is more important in the law-making process for the regulation of issues where the EU supports, coordinates, or complements the action of member states (such as integration) or issues where member states have sovereignty (such as deciding on the number of foreign workers, the safeguarding of internal security, the social security of migrants, the maintenance of law and order). In developing migration policy and regulation, evidence would enable national legislators to avoid difficulties and identify which proposed solutions are most likely to succeed in practice.

Fourth, although the benefits of the use of evidence in fostering the rule of law are clear, there are various problems in practical implementation. As the research results show, there is the possibility of relying on a limited amount of evidence (such as statistical data) and not using the most complex evidence, such as research results. Thus, the future of evidence-based law-making depends on developing capacities to produce high-quality evidence by both external and internal actors and stakeholders. In addition, evidence is most beneficial in the early, preparatory phases of law-making, when there is enough time for proper planning processes and developing the principles and goals of national migration policies and regulation.

Fifth, it is necessary to connect the assessment of the relevance and adequacy of empirical data used for the effectiveness of migration legislation. Further research on evidence-based law-making in the migration field in Croatia (and beyond) should, therefore, emphasize the appropriateness of empirical data and desired empirical result.

We can conclude that the initial assumption has been confirmed. Migration regulation in Croatia as a post-socialist transition country is developed under pressures stemming from the EU policies and *acquis*. However, it is influenced by internal factors as well, especially with regard to the policies under national competence. All that calls for more rigorous use of better regulation instruments in migration issues.

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(NEVER)MIND THE EVIDENCE: EVIDENCE-BASED LAW-MAKING IN CROATIAN REGULATION ON MIGRATION

Summary

The aim of the paper is to analyse the extent to which the recent Croatian regulation on migration (legislation and policy documents) is grounded on evidence and builds on empirical data drawn from the processes and draft legislation, public consultations, impact assessment, parliamentary discussions, parliamentary questions of members of Parliament, and evaluation reports. In this way, the paper also provides a deeper insight into the development of migration regulation, from agenda-setting to the adoption of regulation. Research has enabled the authors to discuss the possibilities to improve migration law-making by means of evidence-based law-making techniques and other better regulation instruments. Several conclusions have been made: that evidence-based law-making is useful

in complex issues such as migration; that evidence should be primarily used in the legislative process at the EU level in the areas that fall under the EU competences; that evidence is most beneficial in the early, preparatory phases of law-making; that it is necessary to connect the assessment of the relevance and adequacy of empirical data used and their linkage to the effectiveness of migration legislation. The use of better regulation instruments in developing migration regulation might contribute to more transparency and accountability, as well as to the reduction of arbitrary use of power by public authorities, and thus foster the standards and principles of the rule of law.

Keywords: *Croatia, evidence-based law-making, evidence-based policy-making, migration regulation*

MARIMO LI ZA DOKAZE: REGULACIJA ZASNOVANA NA DOKAZIMA U HRVATSKIM PROPISIMA O MIGRACIJAMA

Sažetak

Cilj je ovog rada analizirati u kojoj je mjeri hrvatska regulativa (zakoni i policy *dokumenti) zasnovana na dokazima. Istraživanje uzima u obzir empirijske podatke prikupljene iz tijeka zakonodavnih postupaka, nacrta prijedloga propisa, javnih savjetovanja, procjene učinaka, saborskih rasprava, zastupničkih pitanja i evaluacijskih izvještaja, čime se osigurava dublji uvid u način razvoja migracijske regulative, od stavljanja na dnevni red do prihvaćanja. Autori formuliraju prijedloge za unapređenje migracijske regulative upotrebom zakonodavne tehnike zasnovane na dokazima i drugih instrumenata usavršavanja regulacije. Rad završava s nekoliko ključnih zaključaka: zakonodavstvo zasnovano na dokazima iznimno je korisno u kompleksnim pitanjima poput migracija, u područjima u kojima Europska unija ima isključive kompetencije; u pripremi zakonodavstva EU-a trebale bi se koristiti utvrđene činjenice; upotreba činjenica najsvrhovitija je u pripremim fazama donošenja propisa te je potrebno povezati kvalitetu empirijskih dokaza sa svrhom i efektivnošću migracijskih propisa. Korištenje instrumentima usavršavanja regulacije u procesu donošenja migracijskih propisa može doprinijeti transparentnosti i otvorenosti te smanjenju diskrecijskih ovlasti javne vlasti, a time i jačanju vladavine prava.*

Ključne riječi: *Hrvatska, regulacija zasnovana na dokazima, politika zasnovana na dokazima, migracijski propisi*