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Science**

*Governmental Preferences on Liberalising Economic
Migration Policies at the EU level: Germany's Domestic
Politics, Foreign Policy, and Labour Market*

Matthias M. Mayer

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Declaration

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Abstract

The academic debate about European cooperation on immigration has focused on big treaty negotiations, presented an undifferentiated picture of the subfields of immigration, and has only recently begun to make use of the abundant literature on national immigration policies. As a macrostructure, this study uses a bureaucratic politics framework to understand the preference formation of national governments on liberalising economic migration policies. This allows unpacking the process of preference formation and linking it to a number of causal factors, which, by influencing the cost and benefits distribution of the relevant actors – intra-ministerial actors, employer associations, trade unions, and other sub-state actors – shape the position of the government. The influence of the causal factors is underpinned by different theories derived from the literatures on Europeanisation, immigration policy-making, and foreign policy. Germany is used as a longitudinal case study with four cases within it, as it has undergone a U-turn in a way no other relevant Member State has, from a keen supporter of EU involvement to being highly sceptical with regard to economic migration policies at the EU level. The empirical data is based on 43 open-ended interviews, archival research and newspaper analysis.

The bureaucratic politics framework supplanted with the theoretical strands of domestic politics and foreign policy concerns provides a number of themes that can explain why and under what conditions a Member State supports liberalising economic migration policies at the EU level from 1957 until the Treaty of Lisbon. The thesis argues that if the European policy measure applies to a particular group of sending countries and the domestic salience of immigration is low, sending countries can lobby Member State governments to support EU-level liberalisation of immigration policies. The misfit between the existing national regulations for economic migration and European-level policies cannot be

significant as otherwise the economic and political adaptation costs for actors involved are too high. A heated national debate on immigration is negatively related to governmental support for such measures as the political costs of support skyrocket. Conversely, if the decision-making process happens bureaucratically, this helps to attain governmental support as the political costs of doing so are kept minimal.

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"That he kept his sanity he must have owed to his capacity for friendship..."

Mary Renault in "the Nature of Alexander"

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Glossary of Abbreviations

BDA	Federation of German Employer Associations (<i>Bundesvereinigung der Deutschen Arbeitgeberverbände</i> or BDA)
BDI	Federation of German Industries (<i>Bundesverband der Deutschen Industrie</i>)
BITKOM	Federal Association for Information Technology, Telecommunications and New Media (<i>Bundesverband Informationswirtschaft, Telekommunikation und neue Medien</i>)
BMAS	Federal Ministry of Employment and Social Affairs (<i>Bundesministerium für Arbeit und Soziales</i>)
BR	Legislative body that represents the sixteen <i>Länder</i> (federal states) of Germany at the federal level (<i>Bundesrat</i>)
CDU	Christian Democratic Union (<i>Christlich Demokratische Union Deutschlands</i>)
CEEC	Central and Eastern European Country
CEO	Chief Executive Officer
CSU	Christian Social Union of Bavaria (<i>Christlich-Soziale Union in Bayern</i>)
DG	Directorate General
DGB	<i>Deutscher Gewerkschaftsbund</i>
DIHK	The Association of the Chambers of Industry and Commerce (<i>Deutsche Industrie- und Handelskammertag</i>)
EA	Europe Agreement
EC	European Community
ECJ	European Court of Justice
EEC	European Economic Community
EP	European Parliament
ETUC	Interview European Trade Union Confederation
EU	European Union
FDP	Free Democratic Party (<i>Freie Demokratische Partei</i>)
GDP	Gross Domestic Product
GGO	Joint rules of internal procedure of the German federal ministries (<i>Gemeinsame Geschäftsordnung der Bundesministerien</i>)
GOBReg	Rules of internal procedure of the federal government of Germany (<i>Geschäftsordnung der Bundesregierung</i>)
GO	Rules of internal procedure (<i>Geschäftsordnung</i>)
ICT	Information and Communication Technology
IG Metall	Industrial Union of Metalworkers (<i>Industriegewerkschaft Metall</i>)
IT	Information Technology
IZA	Institute for the Study of Labour (<i>Institut zur Zukunft der Arbeit</i>)
NATO	North Atlantic Treaty Organization
NGO	non-governmental organization
OECD	Organisation for Economic Co-operation and Development
SPD	Social Democratic Party of Germany (<i>Sozialdemokratische Partei Deutschlands</i>)
SEA	Single European Act
SIS	Schengen Information System
TCN	third country national
US	United States of America
USSR	Union of Soviet Socialist Republics
Ver.di	United Service Union (<i>Vereinte Dienstleistungsgewerkschaft</i>)

VDMA

German Engineering Federation (*Verband Deutscher Maschinen- und Anlagenbau*)

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Chapter One: Introduction

The European immigration policy debate gained momentum in the mid-1990s, through developments aimed at establishing the free movement of persons within the EU; these were sparked by the signing of the Single European Act (SEA) in February 1986, the objective of which was to create a Single Market by 31 December 1992. The inclusion of immigration in the three-pillar structure created by the Maastricht Treaty, which entered into force on 1 November 1993, was an important development towards a common EU immigration policy. The debate further intensified when the Amsterdam Treaty came into force on 1 May 1999; this communitarised immigration policy and moved it from the intergovernmental third to the supranational community pillar.

To understand these developments, we must go back a few steps and look at the role of the free movement of workers and persons in the EU. The Treaty of Rome enshrined the commitment to establishing the free movement of workers in the European project from the very beginning, made a reality in 1968 by the adoption of the Regulation 1612/68¹ and Directive 68/360² (Jacobs, 1999: 4). At the beginning of the 1980s, developments were under way to create the Single European Market and remove restrictions on the movement of persons. However, disputes between Member States with regard to the scope of the internal market concept had led to a deadlock of policy developments that aimed at abolishing internal border controls (Hailbronner, 2000: 126). France and Germany initiated a pressure group of some Member States to create an area without internal frontiers in an intergovernmental effort. The initiative led to a bilateral Franco-German agreement on the “gradual reduction of controls along the German-French border” in July 1984. Shortly after,

¹ Official Journal L257/13, 1968

² Official Journal L257/13, 1968

the already existing passport union among the Benelux countries joined the group resulting in the Schengen Agreement, signed in June 1985 (Menz, 2009: 40).

The Schengen Convention implementing the agreement was not signed until June 1990; the abolishment of international frontier controls between the Schengen States took another six years (Geddes, 2000: 81). The Schengen Convention comprised a detailed set of provisions on visas and border controls, connected measures on asylum requests, other forms of cooperation, and the creation of the Schengen Information System (SIS) (Peers, 2000: 66). The Commission intended to establish an external borders regime within the framework of the Maastricht's third pillar that would have succeeded the intergovernmental Schengen regime. This effort did not reach consensus in the Council. It was not until the Amsterdam Treaty that the Schengen regime was finally integrated in the EU structure and consequently supranationalised. Although an internal EU matter, the free movement of persons cannot be entirely separated from an EU immigration policy for third country nationals (TCNs), because the free movement of EU nationals within the common market had implications for issues of entry, movement and residence of TCNs. This necessitated further supranational legal and political competencies to make sure that the free movement of persons had the full effect (Geddes, 2000: 43-44). Thus, internal free movement generated a spillover effect that gave impetus to initiatives to develop a common EU immigration policy for TCNs (Geddes, 2000: 65).

What followed from the debate of the 1990s was that the European Council gave the Commission the mandate to propose immigration and asylum legislation at the Tampere European Council in October 1999, which is known as the Tampere Programme. Academic contributions, mostly in political science, mushroomed over the developing EU

asylum and immigration policy (see, for instance, Geddes, 2000; 2003: 8; Guiraudon, 2000, 2005; Lavenex, 2001a; Lavenex & Uçarer, 2002; Lavenex & Wallace, 2005; Stetter, 2000). In addition, legal scholars have given the subject considerable attention (see, for instance, Groenendijk, Guild, & Minderhoud, 2003; Guild, 2001, 2007; Guild & Staples, 2003; Niessen, 1996; Peers, 2000; Peers & Rogers, 2006; Ryan, 2007). However, economic migration policy as a distinct subgroup of migration policy did not receive a great deal of attention. Both strands of work treated immigration policy as a whole, without differentiating between the sub-policy areas, such as economic migration, asylum and refugees, irregular migration, and integration. If they did single out economic migration policies, they did not feature a rigorous analysis of the political processes, but remained mostly descriptive (Mitsilegas, 2006; Ryan, 2007). Apart from an analytically sophisticated treatment, the approach did not consider debates about liberalising immigration policy measures at the EU level before immigration policy moved into the first pillar of the EU. Both the Association Agreement with Turkey (Ankara Agreement), and the Association Agreements with the Central and Eastern European countries (CEECs) contained provisions that liberalised immigration policy at the EU level.

This dissertation fills this temporal gap by analysing EU involvement in immigration policy since the Treaty of Rome established the European Economic Community in 1957. It shows what can be learned from extending the timeframe backwards, thereby looking at developments beyond the Tampere Programme of 1999. The period under investigation stops with the entry into force of the Lisbon Treaty. While the main findings of this study will also be applicable to developments after the Lisbon Treaty, changes in the institutional set-up, in particular the adoption of qualified majority voting, and their effect on preference formation are outside the scope of this study. The shift from unanimity voting to qualified

majority voting is likely to make it easier to pass legislation in the policy domain of economic migration. However, the structure of the process of national preference formation as analysed in this study is expected to remain stable. The process is dependent on the *misfit* between national and EU-level regulation, the *political salience* of migration, the *foreign policy value*, and the pressure of a sending country.

Research Question

The dependent variable is the preference of an EU Member State's government, as expressed through its position on EU-level liberalisation of economic migration. The question this dissertation addresses is: *Why, and under what conditions, does a Member State support EU-level liberalisation of economic migration policies for third country nationals?* The study explains the process of how a Member State government arrives at its respective preferences, by considering the positions of all relevant actors within the Member State according to their respective distribution of costs and benefits and their political weighting. In explaining this, the dissertation makes use of three principal independent variables: the *misfit* between the relevant national legislation and the policy measure proposed at the EU level; the *political salience* of immigration; and the *foreign policy value* of a relevant sending country.

Puzzle

The question is based on a multi-layered puzzle. Since the European Economic Community was founded in 1957, there have been a number of occasions that can be classified as liberalising measures when Member States agreed to delegate competencies on regulating economic migration to the EU level. These measures include the provisions

on freedom of movement and the right of establishment in the Association Agreements that the EEC concluded with Greece in 1961 and Turkey in 1963. In addition, the EEC agreed to include provisions on freedom of movement and the right of establishment in the Association Agreements with the Central and Eastern European countries that eventually became members of the EU in 2004 and 2007. Since those instruments were put in place, Member States have found it difficult to agree to liberalise immigration measures at the EU level. Correspondingly, developments from the mid-1990s onwards have had a restrictive logic and focused on restricting access for immigrants wishing to enter the European labour market. In public debate, cooperation on immigration policies was framed in such a way that it was only reasonable to cooperate at the EU level if it contributed to sealing off the EU's labour market from third-country workers. Analysts recognised that the notion of a 'Fortress Europe' was the credo of the day that applied to the bulk of migrants, the most highly qualified constituting an exception (see, for instance, Bigo, 1998; Geddes, 2000). Thus, efforts intended to create EU competencies in regulating a controlled intake of immigration failed to attain enough Member State support to have been adopted (such as the Directive on the conditions of entry and residence of third country nationals for the purpose of paid employment and self-employed economic activities (COM(2001) 386 final)).

Seemingly obvious explanations that come to mind, including most notably, differences in economic climate, do not provide a sufficient explanation for the variation in EU policy outcomes. For instance, at the beginning of the 1990s, when the Association Agreements with the CEECs were concluded, economic developments in the Member States were far from satisfactory. Taking into account earlier developments on common liberalising measures on economic migration together with recent developments, including the

adopted Blue Card Directive, shows that cooperation in this domain is possible. Consequently, under certain conditions cooperation is achievable; however these conditions have not been identified and analysed in an adequate way by the relevant literature.

Case Selection

The dissertation focuses on the Federal Republic of Germany and four particular policy measure case studies (see *Table 1*). The case selection is discussed in detail in Chapter Three.

Table 1: Sub-case studies

	Sub-Case Study	Time Period
1	Association Agreement between the EEC and Turkey (Ankara Agreement)	July 1959 – September 1963
2	Association Agreement between the EC and Poland (Europe Agreement)	November 1990 – December 1991
3	Economic Migration Directive	July 2001 – November 2003
4	Blue Card Directive	October 2007 – May 2009

Definitions

Geddes provides a useful general definition of *international immigration* as “permanent or semi-permanent movement of people across state borders” (Geddes, 2003: 18). The author also notes that “the growth of short-term, rotation or contract migration shows how the distinction between permanent and temporary becomes blurred” (Geddes, 2003: 18). At the time of migration, the migrant may not have decided between migrating permanently

or temporarily (Black, Hashimzade, & Myles, 2009). In addition, even though the literature tends to treat economic migration and asylum as distinct categories, the concepts do not allow for that. In practice, people may apply for asylum but their motivation to migrate is largely economic. Thus, the distinction between economic migration (presumed voluntary) and asylum (presumed involuntary) becomes blurred (Geddes, 2003: 18). *Economic migration* is a form of legal migration and refers to migration through legal channels for the purpose of work, including employed and self-employed economic activities. It is also important to clarify the meaning of *migrant*. It can either refer to “foreign born”, i.e., a person born outside the host country regardless of his/her citizenship, or to “foreign national”, i.e., a person without the citizenship of the host country. “Foreign national” can denote either persons that have settled and hold a permanent residence status or persons that do not have long-term residence rights. The latter group is not automatically free to move within the labour market (Ruhs & Anderson, 2010: 13). For the purpose of the thesis, *migration* denotes the movement of persons that are not citizens of the host country and have no permanent residence rights in the host country.

The Concise Oxford English Dictionary defines *liberalise* as “to remove or loosen restrictions on (something, typically an economic or political system)” (*The Concise Oxford English Dictionary*, 2011). In this context this means to remove or loosen restrictions to economic migration. *Liberalisation* of immigration policy is understood here in the economic sense, i.e., policies that facilitate the intake of new immigrants compared to the *status quo* –not predominantly liberalisation in terms of bestowing further rights to immigrants, although this can be a side effect of economic liberalisation. Consequently, the term *liberalisation* used in this dissertation refers to legislation intended to increase the number of economic migrants by removing or loosening restrictions on their movement.

Competency delegation to the EU level refers to delegating powers with regard to regulating economic migration to the European Union, or one of its predecessor organisations, such as the European Community (EC) and the European Economic Community (EEC). This can happen in a number of ways through secondary legislation that is binding in nature. Hence, *competency delegation to the EU level* includes Association Agreements as well as directives. *Member State* refers to a member of the respective organisation (EEC, EC, or EU).

Third country nationals comprise all nationals that are not citizens of the EU (or EC and EEC).

In terms of *preferences*, Moravcsik's definition is used: "Preferences reflect the objectives of those domestic groups which influence the state apparatus; they are assumed to be stable within each position advanced on each issue by each country in each negotiation, but not necessarily across negotiations, issues, or countries" (Moravcsik, 1998: 24). The preferences are understood here as relating to a certain policy measure.

Themes

All necessary factors to explain when liberalisation at the EU level happens can be clustered in three themes. The theoretical model of *bureaucratic politics* is used as a macrostructure for analysing how costs and benefits are distributed across actors and how the final governmental preferences emerge from the preferences of the different actors involved (Allison, 1969; Allison & Halperin, 1972; Allison & Zelikow, 1999; Brummer, 2009; Halperin, Clapp, & Kanter, 2006). The first theme relates to domestic politics and

recognises the domestic dimension of governmental preference formation on immigration matters. Determining who may access the labour market is an important privilege and is seen as fundamental to national sovereignty. Any regulation that differs fundamentally from the national policies or legal framework would constitute significant costs. Hence, there needs to be a good *fit* between the relevant national regulations or preferences, and the measures that are proposed for the EU level (see, for instance, Börzel, 1999; Börzel & Risse, 2000; Cowles, Caporaso, & Risse, 2001; Duina, 1999; Héritier, Knill, & Mingers, 1996; Meyers, 2000; Mitchell, 1992; Rosenblum, 2004a, 2004b; Rudolph, 2003, 2006). In addition, there is a negative relationship between the *political salience* of immigration and the propensity of a government to agree to liberalise economic migration at the EU level (cf. Caviedes, 2010; Héritier, 1996).

The second theme relates to foreign policy factors (see, for instance, Meyers, 2000; Mitchell, 1992; Rosenblum, 2004a, 2004b; Rudolph, 2003; Rudolph, 2006). If a sending country (or a group of sending countries) can be identified to which the EU-level policy initiative relates, this has the potential to significantly influence the stance of the respective government. If the *foreign policy value* of the sending country is high (for instance, by constituting an important ally in the fight against a real or perceived threat or by offering incentives such as a new market) and the *political salience* is low, foreign political considerations can play an important role. In particular, in that constellation, a sending country has the opportunity to directly contact the Member State government in an attempt to lobby the government to support a more open immigration policy at the EU level. This further increases the likelihood that a Member State will support EU-level liberalisation of economic migration.

The third theme concerns labour shortages. The discussion in Chapter Two will show that labour shortages cannot be taken as a direct causal factor for EU-level liberalisation of economic migration policies – and indeed not for liberalisation of economic migration policies on the national level either. What matters for determining the EU-level liberalisation of economic migration policies is what kind of national legislation exists in the Member State. However, it is important to note that there are different ways of having or introducing liberal immigration policies that are not necessarily compatible with each other. For instance, a supply side measure, such as a points-based system of admission, might not go well together with a demand-based system that requires an existing job offer and restricts the work permit to a particular profession or region.

Existing literature

The relevant existing literature can be divided into several fields: European integration, EU policy-making, immigration policy-making and domestic politics, and German immigration policies. Each cluster has its own merits and deficiencies for explaining a Member State's support for liberalising immigration policies at the EU level.

Theories of European integration are concerned with the process of first-instance competency delegation and treaty revisions, whereas this study is concerned with the processes of creating concrete secondary legislation. Hence, theories of European Integration have only limited applicability to this study. This applies in particular to neofunctionalism, which offers little value in explaining reluctance to European Integration (Haas, 1958, 1961, 1964; Lindberg, 1963; Lindberg & Scheingold, 1970). However, in the late 1980s and 1990s, a few authors tried to revise the neofunctionalist logic that was

inspired by the entry into force of the Single European Act in July 1987 (Burley & Mattli, 1993; Sandholtz & Zysman, 1989; Stone Sweet & Sandholtz, 1997). The Single European Act was seen as holding an immense spillover potential (Rosamond, 2000: 99; Tranholm-Mikkelsen, 1991: 12). Accordingly, the most important proposition of neofunctionalism for this research is that the abolition of internal borders creates a functional need for a common EU policy on legal economic migration (see, for instance, Callovi, 1993: 358; Geddes, 1995: 205; Koslowski, 1998: 160-165; Moraes, 2003: 117; Niessen, 1996: 21-22).

The concept of multilevel governance focuses on the supra- and sub-national levels (Hix, 2005; Marks, 1993; Marks & Hooghe, 2001, 2004; Marks, Nielsen, Ray, & Salk, 1996). In a policy domain in which concerns about sovereignty are high (and that has been ruled by unanimity vote in the Council of the EU), however, this approach is only useful to a limited extent. The high political sensitivity of migration and concerns about losing control over the admission of migrants make state-centric dynamics very prominent in this domain. Hence, the two-level approach is more useful than the complex web of overarching policy networks to explain EU-level liberalisation of economic migration policies.

Liberal intergovernmentalism (Moravcsik, 1993, 1997, 1998, 1999; Moravcsik & Nicolaidis, 1999) offers a well-developed theory of national preference formation. It focuses on negotiations of the big treaties rather than day-to-day EU decision-making. This is useful as a macrostructure for this study, but fails to provide a methodical structure for the intra-ministerial coordination and the interplay between the government and relevant interest groups. In addition, liberal intergovernmentalism overestimates the significance of employers and political economy explanations.

Institutionalist approaches regard the respective institutional configuration as the chief determinant of political outcomes and have been regularly used to explain EU policy outcomes (see, for instance, Jeffrey Lewis, 2003; Peterson, 1995; Pierson, 1996; Pollack, 1996; Pollack, 1997). Generally, the institutionalist literature is subdivided into historical, rational choice, and sociological variants (Hall & Taylor, 1996). The study takes on board the claim that institutions structure the behaviour of actors. This is conceptualised as the *rules of the game*. However, the institutionalist literature on EU policy-making tends to focus on high-profile bargaining scenarios and neglects how governments form their preferences and adjust these over time.

The literature on the development of a common EU policy on migration has mushroomed since the conclusion of the Single European Act in 1986 and, most notably, since the launch of the Tampere Programme in 1999. A number of authors analyse directly why EU cooperation on immigration policies happens. However, they concentrate on the big treaties rather than secondary legislation (Niemann, 2006, 2008; Stetter, 2000) and do not differentiate between different kinds of migration policies, such as asylum and refugees, irregular migration, integration, and economic migration (Lu, 1998; Messina, 2007; Moraes, 2003; Trendell, 1996). Another study assesses the utilisation of expert knowledge by the European Commission to advance a common migration policy (Boswell, 2008b). Consequently, the works are too broad in their analyses or ask different questions. Studies that also focus on developments beyond the big treaties remain of a descriptive nature (Papademetriou, 1996). A few authors have studied intra-EU migration (Bigo, 1998; Huntoon, 1998), or looked at public opinion towards EU policy harmonisation of migration policies (Lahav, 2004b). Some works provide a general account of the nature of the emerging EU migration policy (Butt Philip, 1994; Degen, 1994). Givens and Luedtke

analyse the political dynamics of common EU policies on migration with the lens of liberal intergovernmentalism, and by drawing on the concept of *political salience* and its impetus toward restrictive immigration policies (Givens & Luedtke, 2004). These general works on EU immigration policy were pioneering insofar that they applied concepts of the EU policy-making literature to migration policy, established a number of factors explaining EU-level cooperation on migration policy, and sketched out the empirical developments of the nascent common EU policies on migration. However, they remain conceptually too broad or too descriptive and are thus of limited use to provide a detailed explanation of Member State preferences on liberalising economic migration at the EU level. One work focuses on analysing Member State preferences on EU migration and asylum policies, and the role public opinion plays in influencing them (Fouse, 2005). While the focus on Member State preferences is useful, the study attributes the reluctance of Member States to cooperate on immigration matters to a restrictive public opinion. As this dissertation will show, this link is exaggerated and not as strong as suggested by Fouse. It does matter but only in the context of domestic *political salience* and as part of a bigger complex of causal factors.

In addition, work on the policy outputs of the developing EU migration policies has also started to differentiate between the different kinds of immigration policy. A part of the literature deals with EU cooperation on asylum policy (Guiraudon, 2000; Lavenex, 2001a, 2001b; Thielemann, 2003a, 2003b, 2005; Thielemann & Dewan, 2006; Uçarer, 2001), refugee policies (Lavenex, 2001a, 2001b), irregular migration – however mostly from a legal perspective (Cholewinski, 2001; Mitsilegas, 2002; Samers, 2004) – or analyses the legally non-binding Open Method of Coordination for co-ordination of immigration policy (Caviedes, 2004). Most of the work makes use of concepts that are less useful for the liberalisation of economic migration, such as *venue shopping* (Guiraudon, 2000) or *burden*

sharing (Thielemann, 2003a, 2005). Guiraudon's (2000) *venue shopping* approach is very useful for the analysis of asylum policy. However, regarding economic migration policy, immigration policy experts have less incentive to meet at the EU level to bypass national institutions, such as Courts, that might give further rights to asylum seekers as desired by policy makers. In the domain of economic migration, national immigration policies tend to be more restrictive than EU-level proposals – this is particularly the case for Germany. The notion of *policy frames* as applied by Lavenex (2001b) is useful for understanding how immigration can become politicised domestically. Guiraudon and Geddes (Geddes & Guiraudon, 2004) show how linking an issue to a broader consensual agenda and framing it in a way that is acceptable to both EU insiders and key Member States can lead to the successful adoption of EU policy measures. This is helpful to demonstrate the significance of framing in garnering support for certain EU policy measures – in the case of this article, anti-discrimination. However, the applicability of the argument to issues of labour market access is unsure. Given the high importance of access to the labour market it is likely to be more difficult to link EU initiatives to a broader consensual agenda.

A few authors explore the nature of the emerging migration policy, for instance, in light of regime theory (Koslowski, 1998), analyse its restrictive traits as well as potential future development (Koslowski, 2001-02), or examine the nature of the EU immigration regime and its restrictive elements from a political geography perspective (Leitner, 1997). While these studies are helpful in establishing the empirical context of common EU developments on migration policy, they are less useful in directly answering the research question of this study.

Many of the works either do not differentiate between the different kinds of migration policies, or focus on asylum, refugees and irregular migration; few works deal directly with economic migration. However, a few recent political economy studies explore the new paradigms in labour migration, and the role of the EU therein since 1990, with a focus on interests groups (Menz, 2009). The emerging paradigm mixes the controlled intake of desired labour migrants with ever more restrictive policies with regard to asylum seekers. Related works focus on the roles of employers in a critique of the varieties of capitalism framework to explain different labour migration policies (Caviedes, 2010) – however, with a focus on explaining national economic migration policies, not EU-level initiatives. Caviedes (Caviedes, 2010) highlights that the national varieties of capitalism do not function to the exclusion of sectoral differences, which are often more influential in stimulating employer action. These works focussing on interest groups offer highly valuable insights into interest group dynamics. However, they do not include an in-depth analysis of the processes within the government bureaucracy that lead to Member States' preferences on liberalising economic migration policies at the EU level. This dissertation attempts to complement these works by analysing the intra-government dynamics that lead to the formation of governmental preferences on liberalising economic migration policies at the EU level.

A further strand of literature assesses to what extent the EU is now regulating migration policies together with national governments, and the policy outcomes of this new *mélange* (Geddes, 2000); how EU immigration policy realises domestic migration policy goals (Boswell, 2003), or propagates the notion of selected entry (van Houtum & Pijpers, 2007) as well as the consolidation of restrictive national asylum policies (Lindstrøm, 2005). A number of authors also address what European cooperation on immigration policy means for the migrants in terms of rights and inclusion (Favell & Geddes, 1999). In addition to the

domestic effects of common EU policies on migration, there is also a literature that analyses the external effects of an EU policy on migration (Lavenex, 1999, 2001c; Lavenex & Uçarer, 2002). These analyses provide useful background information but address different questions, which renders them relevant only to a limited extent.

A discipline that has focused on the EU's efforts to establish a common migration policy is law (see, for instance, Elson, 1997-1998; Groenendijk, et al., 2003; Guild, 1996, 1999, 2001, 2007; Guild & Staples, 2003; Hailbronner, 2000; Halliday-Roberts, 2002; Niessen, 1996, 2001, 2002; Niessen & Schibel, 2003; Peers, 1995, 1996; Peers, 2000, 2001a, 2001b, 2002a, 2002b, 2003, 2004a, 2004b; Peers, Barzilay, Groenendijk, & Guild, 2000; Peers & Rogers, 2006). Numerous authors have analysed relevant secondary EU legislation and its implications on migrant rights. These studies provide important background information about the legislative developments of common EU measures on economic migration, with regard to both the content of the policy measures and the political processes that led to their adoption.

An additional field of literature has investigated the sources of European immigration policies. While distinct from common developments on migration, this literature looks at similar issues from a different perspective and can inform work on common EU migration policies. Several studies have looked into the *securitisation* of immigration policies (see, for instance, Gebrewold, 2007; Gündüz, 2007; Huysmans, 2000; O'Neill, 2006) or its absence (Boswell, 2003, 2007, 2009). Other authors explore the challenges migration posed to the nation-state in terms of sovereignty over entry and expulsion as well as membership (Guiraudon & Joppke, 2001; Joppke, 1998b). In addition, a number of studies analyse European migration policies from a comparative perspective (Geddes, 2003;

Hammar, 1985; Thränhardt, 1996a) – notably, a big body of work describing and analysing immigration policy in Germany (see, for instance, Bade, 2005; Esser & Korte, 1985; S. Green, 2004, 2007; Katzenstein, 1987; Kesler, 2006; Klusmeyer & Papademetriou, 2009; Korte, 1985; Kruse, Orren, & Angenendt, 2003; Menz, 2001; Rotte, 1998, 2000; Schönwälder, 2001; Takle, 2007; Thränhardt, 1996b, 1999; Trumann, 2004; Zimmermann, Bonin, Fahr, & Holger, 2007). These studies provide useful concepts that have been used to explain the formation of national immigration policies, some of which are also relevant to EU policy developments, such as *securitisation*. In particular the studies on Germany give important empirical insights into German immigration politics that constitute the context of preference formation on EU-level migration policies.

Work on national immigration policies is abundant and includes a plethora of different approaches, theories and concepts useful for the study of EU immigration policies. However, so far these bodies of work have not spoken to each other. Some authors concentrate on the role interest groups play in immigration policy (Freeman, 1986, 1995, 2006, 2007; Freeman & Kessler, 2008). Other works are concerned with explaining the continuing immigration to liberal democracies (Hollifield, 1992). Other works explain immigration policies (Cornelius, Martin, & Hollifield, 1994; Hollifield, 1997, 2000, 2004a, 2004b; Katzenstein, 1987; Lahav, 1997, 2004a, 2004b, 2006; Lahav & Guiraudon, 2006, 2007; Messina & Lahav, 2006). However, this literature does not address the supranational dimension, i.e., when and why a national government agrees to delegate competencies on liberalising economic migration to the EU level. Nonetheless, this literature still provides a number of interesting insights with regard to the political processes of immigration policy-making and the tension between economic and political

goals, most notably the distribution of costs and benefits across actors and their potential link to particular modes of political contestation.

There is no work that specifically tackles why Member States support the liberalising of economic migration policy at the EU level covering the entire period of the EU (and its predecessor organisations). Moreover, no single framework is capable of addressing this question and delivering a satisfactory answer. Including the entire period of the history of modern European Integration allows the comparing of policy dynamics across time. However, it also poses questions of comparability as the *rules of the game* that determine policy-making on economic migration policies have changed over time or vary between different kinds of EU policy proposals, most notably, between Association Agreements and EU directives. The study will show that despite changes over time or between policies, the themes of this thesis, i.e., domestic politics, international politics, and labour market concerns as well as the *bureaucratic politics* framework are relevant to all periods of the European project and define the political space for liberalising policies at the EU level.

Alternative Explanations

This section discusses three alternative explanations to answer why and under what conditions a Member State supports EU-level liberalisation of economic migration policies. The discussion shows why the approach taken by this study is superior. First, the explanation linking support of a national government for a liberalisation of economic migration policies at the EU-level to the party (or parties) that is (are) in power is not satisfactory. Generally, it is expected that parties located on the left of the political spectrum are more supportive of liberal immigration policies and of delegating

competencies to the EU level, whereas parties of the political right are more anti-immigration and nationalistic and therefore more reluctant to delegate competencies to the EU (see, for instance, Ireland, 2004). Some arguments used to support this proposition assert that the left expects immigrants to vote for them (Breunig & Luedtke, 2008) whereas the right tries to gain political ground by catering to anti-immigration sentiments parts of the population might hold. Another argument concerns social equality and posits that the left generally attempts to increase social equality and improve immigrant rights (Lahav, 2004a). Furthermore, with regard to European Integration, leftist parties are more likely to embody a progressive stance, whereas the right will hold national sovereignty dear. At the same time, there is evidence which suggests that immigration does not follow party lines, but rather, is orthogonal to the Left-Right continuum (Breunig & Luedtke, 2008: 141). This is also the case for economic migration in particular (Interview CDU/CSU Fraction). A look at the parties in power in Germany during the relevant time periods confirms this picture (Interview Migration Expert). Indeed, when Germany supported the freedom of movement provisions in the Ankara Agreement and in the Europe Agreement with Poland, a centre-right coalition was in power. However, when Germany opposed the Economic Migration Directive proposed in 2001, it was ruled by a centre-left coalition government. In particular, the social democratic Minister of the Interior, Otto Schily, adopted a rather conservative view on immigration issues after 2003 (Klusmeyer & Papademetriou, 2009: 283). Consequently, this casts doubts on the validity of the party in power as a main independent factor for explaining EU-level developments on liberalising economic migration.

Secondly, the influence and power of supranational institutions might play a significant role (see, for instance, Hix, 2005; Marks, 1993; Marks & Hooghe, 2001, 2004; Marks, et al.,

1996; Peterson, 1995). Supranational institutions, such as the Commission, can exert influence on the decision-making process on a certain EU measure, by, for instance, evaluating national preferences and identifying possible red lines ahead of finalising the proposal, exploiting differences in Member State preferences to avoid the Council rejecting a proposal, or in order to push through a proposal closest to its own preferences (Pollack, 1997: 129). Other supranational actors, such as the Presidency of the European Council can exert pressure on Member State delegations to reach a compromise on a contested proposal. Even though the presidency consists of a national government, it is obliged to represent the interests of the Union and possesses diplomatic room for manoeuvre and agenda-setting powers, and should thus be classified as a supranational actor. Most decisions are taken on decision levels that are below the Council of Ministers (see, for instance, Hix, 2005: 83). Some authors even suggest that around 70 percent of decisions are made at working group level (Hayes-Renshaw & Wallace, 1995: 562). A Council Presidency can make use of this by manipulating the negotiations at this level. Accordingly, it can positively influence the conclusion of a proposal by, for instance, fixing an ambitious agenda of meetings with groups at different levels. Influence of supranational actors is greatest in the negotiation process when Member States articulate their preferences and where supranational actors can try to influence the bargaining process (see, for instance, Schmidt, 2000). However, their influence on the actual domestic preference formation is very limited. Indeed, there is no evidence that the red line which denotes the point beyond which a government is not willing to make any compromises can be influenced by supranational actors. Instead, it is determined by other factors such as the existing national legislation and foreign policy factors mediated by domestic political dynamics. As Pollack states:

[W]hile supranational institutions cannot act without regard to the preferences of the member governments, they can operate creatively within the constraints of those preferences to act autonomously, avoiding sanctions from – and setting the agenda for – the member governments in the Council.

Hence, an intergovernmentalist take, i.e., Member State preferences are formed by and large without the influence of supranational institutions, is most appropriate for analysing the economic migration policies (see, for instance, Moravcsik, 1993; Moravcsik, 1998, 1999).

A third possible explanation relates to differences in the EU decision-making process over the years and the procedural differences between adopting directives and association agreements. However, the setup of the research project excludes this explanation as the dependent variable is national preferences, which under the two-level game assumption are formed at the domestic level (cf. Moravcsik, 1998; Putnam, 1988). Governments form those preferences by considering the costs and benefits of the measure being debated. Preferences are formed through the domestic political process. Even though international factors, such as foreign policy, also play a role in the process, the limit of concessions a Member State is willing to make is not determined by the influence of other Member States or supranational institutions on the preference formation process. Hence, how the rules of the negotiation process take place – if Member States can exercise their veto or be overruled by the majority of others, for instance – is secondary.

Aims, Goals, and Objectives

The aim of this project is to theoretically develop, empirically test, and discuss a number of hypotheses that taken together can explain why a Member State government agrees to support the liberalisation of economic migration policies at the EU level. The idea is that these hypotheses are able to provide a comprehensive explanation of the position of a Member State government on policy measures that seek to liberalise economic migration at the EU level. The study will uncover how causal processes affect the positions of the actors involved and how they are finally aggregated to form the preference of a national government.

Contribution

The thesis makes several conceptual and empirical contributions to the literature on EU policy-making, preference formation, migration policies, German politics, and *bureaucratic politics*. Conceptually, the theoretical unpacking of a Member State's preference on liberalising economic migration policies at the EU level is a notable contribution of the dissertation. The study uses the framework of *bureaucratic politics* (Allison, 1969, 1971; Allison & Halperin, 1972; Allison & Zelikow, 1999) and tests its applicability to the domain of economic migration and cooperation at the EU level. This framework has been acknowledged as one of the best approaches to explain governmental decision-making (see, for instance, Michaud, 2002), but has never been applied to preference formation on EU economic migration policies. It is used as a guiding structure, supplemented by an array of different themes that are all conceptually well-founded. For the conceptual underpinnings, different strands of literature are brought into play: the Europeanisation literature on compliance with EU regulations with regard to the *misfit* concept (see, for

instance, Börzel, 2002; Börzel & Risse, 2000; Çelenk, 2009; Duina, 1999; Grotz, 2005; Héritier, 1996; Knill & Lehmkuhl, 1999; Sbragia, 2000; Schüttpelz, 2006), international relations scholarship on foreign policy (see, for instance, Meyers, 2000; Mitchell, 1992; Rosenblum, 2004a; Rosenblum, 2004b; Rudolph, 2003, 2006), and the literature on national immigration policies (see, for instance, Cornelius, et al., 1994; Geddes, 2003; Guiraudon & Lahav, 2006, 2007; Hammar, 1985; Hollifield, 1997, 2000, 2004a, 2004b; Lahav, 1997, 2004a, 2004b; Messina & Lahav, 2006; Thränhardt, 1996a). Thus, the strengths and weaknesses of the respective concepts are applied to the case of liberalising economic migration policies at the EU level and thereafter discussed. In building its hypotheses, the study links concepts from these different literatures, bringing together works that have so far lived distinct lives.

The systematic mapping of national preferences according to the relevant actors' costs and benefits distribution, which is guided by the *bureaucratic politics* framework, allows the unpacking of what is often simplistically labelled *national sovereignty concerns*, a label that lacks a clear definition, and tends not to be questioned (see, for instance, Leitner, 1997; Niemann, 2008; O'Neill, 2006; Stetter, 2000). By tracing for each case the causal processes the independent variables have on the cost and benefits distribution of actors involved in the decision-making process, the dissertation reveals the analytical limitations of the concept of *national sovereignty concerns* (and with it the assumption that economic migration is always a *national sovereignty concern* and beyond the reach of the EU). The thesis further paints a detailed picture of how the causal processes have worked in the four case studies. This can then be used to shed light on decision-making processes in other countries and even policy areas. By providing a valuable approach to explain the formation of governmental preferences, the study shows the importance of evaluating

national preferences for investigations of EU policy-making on immigration, which has to date been neglected by the relevant literature.

Specifically, the most important conceptual contributions of the dissertation are the following five. First, the dissertation highlights the so far neglected importance of foreign policy factors for the liberalisation of economic migration policies at the EU level. By so doing, it discusses the relevance of the literature on foreign policy factors and migration to EU immigration policy (see, for instance, Meyers, 2000; Mitchell, 1992; Rosenblum, 2004a, 2004b; Rudolph, 2003; Rudolph, 2006). The dissertation highlights the importance of the foreign policy value of third countries and their ability to influence a Member State government's preference formation of economic migration policies at the EU level. In addition, the dissertation shows why the concept of *political salience* is important for understanding when a Member State supports the EU-level liberalisation of economic migration policies.

Second, the dissertation assesses the value of the *bureaucratic politics* framework for the study of EU economic migration policies. It shows in relation to the *modes of politics* framework (Freeman, 2006) that there is less variation in the modes of politics than the framework suggests, even though the distribution of actors' costs and benefits vary. Thus, the *rules of the game* concept determines the mode of politics for the cases under review. According to the *bureaucratic politics* framework, the *rules of the game* preselect the major players, determine their points of entrance, and distribute power resources, i.e., they provide the structure within which the political contestation on a certain issue takes place (the concept will be discussed in detail in Chapter Two). Related to that point, the

dissertation shows that the pattern of preference formation was more cooperative and less a hard-nosed bargain, as the *bureaucratic politics* framework suggests.

Third, with regard to the *misfit* concept of the Europeanisation literature, the dissertation shows that the concept is useful for the analysis of governmental preferences. It further specifies that for the cases under investigation, the *misfit* between national legislation and the relevant EU policy measures needs to be zero in order for a government to agree to the liberalisation of economic migration policies at the EU level.

Fourth, it shows that the government's perception that labour shortages need to be filled contributes indirectly to EU-level liberalisation of economic migration policies. One might think that a Member State would support a common EU policy on economic migration because it offers a more effective regulation than on the national level (an argument that the Commission has made repeatedly, for instance, in the Economic Migration Directive³ and the Blue Card Directive⁴). However, this is not the case. The study shows that the perceived need of a government to fill labour shortages only affects preferences on EU-level regulations indirectly. This means perceived labour shortages can lead to the implementation of national-level economic migration regulations that reduce the *misfit* in relation to the policy measures proposed at the EU level, thus indirectly contributing to Member State support for the EU-level regulation of economic migration.

Finally, the dissertation creates a framework that can be used to explain governmental preferences on liberalising economic migration policies since the Treaty of Rome. No other explanatory framework has embarked to explain these preferences for the entire period of

³ COM(2001) 386 final

⁴ Council Directive 2009/50/EC

the European Integration project. The study's framework involves linking the dependent variable (governmental preferences on liberalising economic migration policies at the EU level) to certain independent variables, and tracing the causal processes that lead from the independent variables to the particular outcome of the dependent ones.

Empirically, the study demonstrates that the liberalisation of economic migration policies at the EU level has indeed already happened – and long before the recent, i.e., post-Tampere, era characterised by restrictiveness rather than liberalisation. In addition, the dissertation provides a detailed account of the historical development of Germany's preferences on EU measures on legal economic migration since the Community was founded in 1957. A comprehensive study on the development of Germany's preferences concerning EU measures on legal economic migration does not yet exist. Such an account is an important part of scholarship on European Integration as well as German migration policy. The dissertation hopes to serve as a cornerstone for further work in these areas. Furthermore, the dissertation demonstrates the relevance of the Ankara and Europe Agreements for the study of a common EU economic migration policy, an assessment that has hitherto been disregarded by the literature. In fact, the study shows what can be learned from the liberalisation of economic migration policies at the EU level by means of the Association Agreements to explain developments since the Tampere European Council in 1999. Most notably, this is the importance of foreign political factors and the Foreign Office for making a Member State government more inclined to support the EU-level liberalisation of economic migration policies.

Outline of the Dissertation

Chapter Two discusses the relevant literature and assembles three hypotheses, deploying a number of different literatures, namely those on Europeanisation, migration policy-making, international relations, and political economy. Chapter Two is divided into three themes: domestic politics, international politics, and labour market concerns. The empirical part of the dissertation consists of four chapters.

Chapter Three presents the methodological approach of the dissertation, i.e., case study selection, gathering and analysis of the primary data, the Federal Republic of Germany's domestic immigration history to contextualise the sub-case studies, comparability of the sub-case studies, and the operationalisation of the independent variables.

Chapter Four analyses the Ankara Agreement and shows that the freedom of movement provisions of the Agreement were contested and not, as wrongly asserted by the relevant literature, only taken from the Treaty of Rome without causing any disagreement. The chapter shows the primary importance in the *foreign policy value* of Turkey and the efforts of the Turkish government to lobby for the inclusion of the provisions in the Agreement. However, the *fit* between national regulations also played a direct role (which nonetheless was slightly secondary to the foreign policy factors) as the national regulations were more specific than the ones proposed in the Ankara Agreement. This meant that German decision-makers did not have to compromise Germany's national immigration policy because of supporting the Agreement. With its more specific and liberal provisions than the Ankara Agreement's, the bilateral agreement continued to regulate migration from Germany to Turkey and reduced the *misfit* to quasi zero.

Chapter Five shows why Germany supported the Association Agreement the EC concluded with Poland. While foreign political dynamics also played a role, this chapter shows that the *fit* with the national legislation needed to be guaranteed and was the most important factor as decision-makers were not willing to compromise German national regulations. In addition, the *political salience* of immigration was relatively high. However, the Europe Agreement was not linked in public debate to opening up a new route for immigration from CEEC to Germany. This contributed to the German government agreeing to include the provisions on freedom of movement and establishment in the Agreement, thereby affecting the distribution of costs and benefits and the nature of the decision-making process. The bureaucratic and largely intra-ministerial decision-making facilitated support for including the provisions in the Agreement. The chapter demonstrates that the Agreement had real implications for German national law and thus should be regarded as a liberalising measure at the EU level. The existing literature misses this point.

Chapter Six analyses why the German government did not support the Economic Migration Directive. The Directive was a policy proposal that would have liberalised immigration policy at the EU level. In that case, foreign political factors did not play a role as the proposed initiative could not be considered relevant to a particular country (or a set of countries). In addition, the *political salience* of immigration was high and preference formation on the Directive coincided with a heated domestic debate about immigration, fuelled for instance by discussions about reforming domestic immigration law, the link between immigration and security, and what EU enlargement could mean for immigration to Germany. Hence, the high *political salience* of immigration made bureaucratic and objective decision-making on the Directive very difficult. Moreover, the *misfit* between the Directive and the German national legislation was significant and was further multiplied by

the high *political salience* of migration. Thus, the high *political salience* was the most important factor in this case, closely followed by the *misfit*.

Chapter Seven discusses how the German government arrived at the conclusion to support the proposed EU Directive on the admission of highly qualified workers (Blue Card Directive). As in the preceding chapter, foreign policy considerations did not play a role and were thus missing as a factor that could influence German decision-makers to support the proposal. The most important factor was that the Directive did not thwart any of the new national immigration measures the German federal government had adopted. Had the Directive overruled those regulations, the political costs would have been high. However, as the regulations were not infringed upon by the Directive, the *misfit* was low. Another point that secondarily contributed to the position of the German government was that even though migration was a topic present in public debate, the *political salience* was less than with regard to the Economic Migration Directive. In addition, ongoing domestic debates about the need for highly qualified migrants also played a role in making the German government support the Blue Card Directive.

The concluding chapter of the dissertation finds that foreign policy factors are the most important to push for Member State support of liberalising economic migration at the EU level. However, for them to play a role, the policy measure needs to relate to a particular country (or countries) that has (have) a high *foreign policy value* (shaped significantly by the wider international political context – e.g., post-war/Cold War, post-1989); the government (governments) of the respective sending country (countries) needs (need) to actively lobby the Member State government; and the domestic *political salience* needs to be low. There is no direct link between labour shortages and Member State support for

EU-level regulation of economic migration. In the cases analysed by this dissertation, the existence of labour shortages did not induce a government to support EU-level liberalisation of economic migration. The most important factor in inhibiting support is the *misfit* between the national regulation and the proposed EU-level policy measure. If the *misfit* is too high, support is impossible. The study also finds that the *mode of politics* was less useful to analyse if a government is likely to agree to a certain policy measure or not. This is because the *mode of politics* stayed rather constant across the cases. The important point is whether the decision-making happens bureaucratically or is more politically loaded. However, this is not determined by the *mode of politics* but by the externally induced *political salience*, i.e., by domestic political developments such as immigration law reform or problems of integrating migrants. High domestic *political salience* is another important factor that makes Member State agreement to liberalise economic migration at the EU level less likely. However, the causal importance of domestic *political salience* is less than that of the *misfit* concept.

Chapter Two – Theoretical Framework: Bureaucratic Politics, Foreign Policy and Labour Markets

Introduction

This chapter discusses the theoretical themes and analytical concepts relevant for determining why and under what conditions an EU Member State agrees to delegate competencies on economic migration to the EU level. It is built around three themes that relate to three hypotheses. The first theme, covering labour market factors, provides the context for the other two; the second theme is domestic politics and comprises two hypotheses. Hypothesis One refers to the *misfit* between the national legislation and the policy proposed at the EU level. Hypothesis Two covers the importance of a bureaucratic debate and low *political salience*, or the fact that the proposed policy measure is not linked to *political salience*. The third theme concerns international politics and foreign political factors. Accordingly, Hypothesis Three incorporates the importance of *foreign policy value*, *political salience* of immigration, and the lobbying effort of a relevant sending country.

The dependent variable the study explains is the preference of an EU Member State's government. The dissertation addresses the question: Why and under what conditions does a Member State support EU-level liberalisation of economic migration policies for third country nationals? The study explains the process of how a Member State government arrives at its respective preferences by considering the positions of the relevant actors according to their respective distribution of costs and benefits.

Bureaucratic Politics

The theoretical model of *bureaucratic politics* provides an analytical lens to examine how costs and benefits are distributed across actors, and how the final governmental preferences emerge from those of the different actors involved. The model was developed to explain foreign policy decisions made by the US political system (Allison, 1969; Allison & Halperin, 1972; Allison & Zelikow, 1999; Brummer, 2009; Halperin, et al., 2006). It was first spelled out in full detail by Allison (1971), who presented a revised version in 1999 responding to some of the criticism the model had attracted over the years (Allison & Zelikow, 1999). Allison and Zelikow based the 1999 version of the *bureaucratic politics* framework on the works of Neustadt, Darman and George (Darman, 1996; George, 1980; Neustadt, 1990).

The model was either applied to or analysed by a plethora of studies (see, for instance, Fuhrmann & Early, 2008; M. A. Smith, 2008; S. Smith, 1985; Wagner, 1974), but also attracted a great deal of criticism (see, for instance, Art, 1973; Bendor & Hammond, 1992; Bernstein, 1999, 2000; Brower & Abolafia, 1997; Caldwell, 1977; Christensen & Redd, 2004; Hollis & Smith, 1986; Krasner, 1972; Michaud, 2002; Rhodes, 1994; S. Smith, 1980; Welch, 1992). Although the model has been developed using the presidential system of the US, and for decision-making on foreign policy only, there is nothing that contradicts its applicability to other countries. Consequently, several authors have tested the model's applicability elsewhere, for example, Canada (Blanc, 1989; Desrosiers & Lagassé, 2009). The bulk of literature that makes use of the framework relates to issues of foreign policy. This does not mean that the model cannot aptly be applied to domestic political processes. A number of authors have used the model to analyse other policy areas, for instance, security institution reform in Germany (Brummer, 2009), pension reform in Korea (Yang,

2004), welfare state reform in Sweden (Dahlström, 2009), and the EU's capacity to manage homeland security in the case of a crisis (Mark & Boin, 2009).

The model as presented by Allison is extremely rich and consists of many detailed provisions. Accordingly, it has been criticised for being too complex (Bendor & Hammond, 1992) and for being difficult to operationalise (Michaud, 2002). In order to use it in a systematic way, it is useful to reduce the model to three main propositions. First, the actors' position in a bureaucracy influences their preferences, as the mission of the bureaucratic players is generally to foster the interest of their organisation (Allison & Zelikow, 1999: 307; Brummer, 2009: 504). Thus, different departments or units are likely to perceive costs and benefits varyingly, and consequently differ in their conclusions about certain policy issues. Moreover, actors prefer policies that they believe will improve the position of their respective organisation (Halperin, et al., 2006: 38). Second, actors differ in terms of power, i.e., their ability to effectively influence government decisions and actions. Power can be structural, stemming from the particular organisation of the bureaucracy, or based on certain skilled individuals, i.e., individual power capabilities (Allison & Zelikow, 1999: 300; Brummer, 2009: 504-505). As the following chapters show, in this study, power relates to being in charge of the file, or the power of individual arguments, rather than to differences in structural power. Third, the contestation is structured by the *rules of the game*; they determine the action-channels. Allison (1999: 300) defines *action channels* as "a regularized means of taking governmental action on a specific kind of issue." They preselect the major players, determine their usual points of entrance into the game, and distribute particular advantages and disadvantages. The game is seen as a process of political contestation. As Allison and Zelikow (1999: 294-295) put it:

The decisions and actions of governments are intranational political resultants: resultants in the sense that what happens is not chosen as a solution to a problem but rather results from compromise, conflict, and confusion of officials with diverse interests and unequal influence; political in the sense that activity from which decisions and actions emerge is best characterised as bargaining along regularised channels among individual members of the government.

In this dissertation, the framework is used to arrive at the respective actor preferences by looking at three themes – labour market needs, international factors, and domestic political factors. The *rules of the game* for government preference formation on liberalising economic migration at the EU level can include actors that are not part of the executive for which the *bureaucratic politics* model was coined. Allison and Zelikow acknowledge that beyond what they call the “central arena”, relevant non-executive actors, such as legislators, lobbyists for interest groups, foreign officials, the press, NGOs, and the public can join in the decision-making process (Allison & Zelikow, 1999: 255, 258). The analysis does not discuss in detail the role of non-executive actors, but if the *rules of the game* include non-executive actors, they are part of the decision-making process. Most importantly however, the framework fails to consider how non-executive actors, in particular, foreign government officials that are not included in the *rules of the game*, enter the process of decision-making.

1. Immigration and labour market needs

This section discusses the causal link between labour shortages and governmental support for the EU-level liberalisation of economic migration. It shows that the literature

suggests there is no direct causal link between labour shortages and neither the dependent variable of this dissertation nor more liberal economic migration policies at the national level.

Economic benefits of immigration

Economic considerations play an important role in the formulation of immigration policies – especially liberal ones aimed at bringing immigrant workers into the country. In order to analyse the effects of migration, Straubhaar (1992: 465) suggests separating them according to allocational consequences that refer, first, to the most efficient use of the scarce production factors, and, second, to the distributional effects of a country's economic output.

Most economists agree that migration tends to improve the cumulative income of a country (Brücker, Frick, & Wagner, 2006: 141). Generally speaking, it is suggested that economic prosperity instigates states to accept more immigrants. Conversely, during recessions, states are more reluctant to admit migrants, which can damage bilateral ties between sending and receiving countries (Miller, 2000: 36). Meyers (2004: 12) suggests that the economic situation impacts immigration policy through the interest group channel and, mostly in times of economic crisis, also through the partisan channel. During periods of strong economic growth, employers are eager to hire additional workers and they employ their resources to lobby for liberal immigration policies. Domestic workers do not mind immigration inflows as long as immigrants take low-paid jobs, or do not compete for scarce ones; this allows domestic workers to improve their social position, and does not depress overall wages too heavily (Meyers, 2004: 12).

These rationales are based on a liberal economic model developed by Lewis (1954). The model is disaggregated, i.e., it has more than one sector and more than one factor of production (Kindleberger, 1967: 6). Continued supply of labour keeps firms' wage bills low and profits up, ensuring a favourable climate for investment, improved productivity, low inflation, and increased consumption. This model predicts – optimistically – strong economic growth and increasing wages (facilitated by larger profits and boosted employment) as long as labour supplies are unlimited and demand is increasing (Hollifield, 1992: 104; Kindleberger, 1967; W. A. Lewis, 1954). Income per capita increases for capital owners, land owners, entrepreneurs, non-competing workers, but also for competing labour (Kindleberger, 1967: 14). In addition, immigration is seen as having a positive effect on innovations (Perry, 1978: 171). Both Lewis and Kindleberger's writings hail from a particular time, the post World War II economic boom. Immigration was largely viewed then as beneficial for both receiving and sending countries, because scant labour resources were more efficiently deployed, or yielded higher wages (Papademetriou & Martin, 1991: 30).

Nonetheless, the economic benefits of economic migration are not unambiguous. Williamson (Williamson, 2005: 9-11) points out that using a simplified model that presupposes one type of output and one type of labour, the total gain for society as a whole is small and the distributive effects are unequivocal: wage earners lose while employers profit. Hence, according to this model, employers tend to favour open immigration policies, while employees are induced to prefer restrictive policies. The more sophisticated the model, the more complicated the implications. For instance, if markets fail to clear by means of wage adjustment, then, in the short run at least, immigrants add

more to the labour force than to employment. This can result in crowding out, i.e., immigrants pushing natives out of employment or vice versa (see, for instance, Hatton & Williamson, 1998: 28). By and large, actors who offer production factors that become relatively rare gain, while actors providing production factors whose supply has increased due to immigration encounter disadvantages (Zimmermann, et al., 2007: 55). This means that workers, especially those (and the organisations presenting them) who have the same skills as a certain group of immigrants, face fiercer competition for jobs and lower wages. Consequently, they tend to oppose policies that make it easier for such immigrants to enter the country. These groups are often catered to by right-wing politicians who try to stir up fears and reap electoral gains.

This leads us to the fiscal implications of migration. If more immigrants are out of employment, they are supported by the native population – given that there is a functioning welfare state in place. If the employment among immigrants is higher than for natives, the immigrants tend to support the residents. A study conducted by Borjas (1994: 28) suggests the former scenario is the case for the US. By 1990, immigrant households made up 10.1 percent of all households that obtained public assistance and drew upon 13.1 percent of the total cash assistance, although only 8.4 percent of the households in the US were foreign born at that time. Borjas suggests that the annual net gain of immigration is small: less than 0.1 percent of the Gross Domestic Product (GDP) in the US. In the late 1990s this added up to a net benefit of \$10 billion annually for the native population as a whole, or less than \$30 per person (Borjas, 1999: 90-93).

Moreover, with regard to the wage reducing effect of immigration due to increases in the labour supply that the Kindleberger model presupposed, Hatton and Williamson (1998:

171) point out that this effect can be reduced if the native population is mobile enough to seek jobs in other regions of the economy. Thus, there is the need for macroeconomic analysis rather than local labour market analysis when assessing the impact of immigration on wages (Hatton & Williamson, 1998: 174).

The analysis suggests that immigration is not beneficial per se. It is beneficial when it closes gaps on the labour market that the host country is unable to close with its existing labour resources. The more immigrants compete with natives for jobs, the more losers of immigration emerge, and the wealth creation effect of immigration is reduced while the redistributive effect increases. This puts labour shortages in the limelight. However, the task of identifying labour shortages is methodologically challenging. This is discussed in detail below.

General vs. sectoral labour shortages

It is important to distinguish between general labour shortages, i.e., labour shortages in all areas of the economy by (near) full employment and partial labour shortages, i.e., a shortage of labour that only affects certain qualifications, companies, sectors, and regions but is a structural phenomenon (Bundesanstalt für Arbeit, 2002: 30). Partial labour shortages are also referred to as labour market mismatches. Labour market mismatches can also occur because of a lack of information between supply and demand (Boswell, Stiller, & Straubhaar, 2004: 5), but that is likely to be only a short-term occurrence.

Structural labour shortages can crop up because of a combination of social, demographic, economic, and political factors. For instance, low birth rates, restructuring of the labour

market into primary and secondary sectors, relative high growth of the secondary labour market, manpower needs by natural resource-rich and exporting economies, and the emergence of new industries requiring specialised skills (Papademetriou & Martin, 1991: 13-14). Labour shortages can appear both for high- and low-skilled jobs. For instance, on the one hand, the rise of the IT industry affected the relative increase of demand for high-skilled labour in OECD countries, and thus the widening of “skill differentials”, i.e., the ratio of high- to low-skilled wages (Chiswick, 2005: 2). On the other hand, developments such as demographic aging and the increased incidence of working couples have given rise to demand for domestic care takers and nursery teachers.

The existence of labour shortages is independent from overall economic growth. Even if a country is in economic difficulties, unemployment is rising, and state budgets are heavily strained, there tend to be labour shortages, mostly for specialised jobs (see, for instance, Boswell, et al., 2004: 5). These vary by labour market but in European countries are reported in the engineering, information technology, pharmaceuticals, healthcare, and education sectors (European Commission, 2007a: 10).

With a lack of labour, wages and prices go up, profits decline, investment is hampered, and the balance of payments becomes adverse (Kindleberger, 1967: 16). Targeted immigration can limit economic losses that might occur due to excess demand, and immigrant workers do not steal jobs from natives as they lack the required skills (Zimmermann, et al., 2007). However, we need to keep in mind the problems associated with this. Most notably, immigration should not be used as a substitute for structural adjustment measures aimed at decreasing gaps in the labour market in the long run, as otherwise labour shortages might persist, necessitating continuous immigration. In

addition, crucial investment might not be made, impeding economic advancement. However, structural adjustment measures need more time to show any results. Thus, immigration lends itself to lessening these shortages with immediate effect.

These political economic models provide great value in explaining why certain actors might support open policies. However, they run into difficulties in accounting for the political processes that aggregate different actors' preferences and translate them into those of the governmental decision-makers responsible for final migration policies (Freeman & Kessler, 2008: 665; Hollifield, 1992: 117). The main disadvantage of using economic models to explain immigration policies is "their extreme parsimony" (Freeman, 1998: 17). They make use of generalisations and abstractions which are analytically useful; however, they may be too broad for an adequate analysis of immigration politics in a particular context (Hollifield, 2000: 146-147).

Link between labour shortages and liberalisation of economic migration policies.

The above section has suggested there are incentives for governments to implement liberal immigration policies if labour shortages are reported (Hollifield, 1992; Kindleberger, 1967; W. A. Lewis, 1954). However, the links between labour shortages and liberal economic migration policies are not as direct as one might assume. This is for three main reasons. First, labour shortages are very difficult to identify in a methodologically rigorous way that does not rely only on employer data. The problem with employer data is that employers may have an incentive to exaggerate the numbers of vacancies they cannot fill. Second, immigration is only one amongst a large arsenal of other possible measures to reduce labour shortages. Thus, theoretically, labour shortages can be reduced by policy

measures other than immigration. Third and finally, factors other than labour shortages may play a role in governmental preference formation on national immigration policies and the implementation of certain immigration policies to regulate economic migration. Assuming that national preferences on immigration policies are only driven by labour shortages would be oversimplifying the issue, and would disregard many other possible causal factors. For instance, as the preceding section's discussion has shown, foreign political factors can play a significant role in national immigration policy-making (Mitchell, 1992; Rosenblum, 2004a, 2004b; Rudolph, 2003, 2006). Other factors identified by the literature as potentially influencing economic migration policies include: the lobbying of trade unions and, in particular, employer associations (Menz, 2009); sectoral demands articulated by firms (Caviedes, 2010); the distribution of costs and benefits across actors in society (Freeman, 2002, 2006); public opinion (Castles, 2004); the entrenchment of certain institutional arrangements (R. Hansen, 2000); and the party system and the extreme right (Schain, 2006).

This dissertation is concerned with whether there are existing national-level economic migration policies that are liberal in the sense of opening routes for economic migrants to enter the country. Why they have been adopted is not relevant for the explanation put forward here, and beyond the scope of this dissertation. Accordingly, the above discussion of labour shortages and their relationship to national economic migration policies also supports *Hypothesis One*, i.e., a Member State will support EU-level liberalisation of economic migration if the proposed measures are similar to its national policies, or at least do not thwart them.

II. Domestic Politics

The role of national legislation

Fit/Misfit

In order to analyse the role of national legislation, two concepts are introduced – the *fit* between national legislation and the *uploading* of national preferences to the EU level. These are borrowed from the Europeanisation literature, without however entering the definitional debate on what Europeanisation constitutes (see, for instance, Börzel & Risse, 2000; Featherstone, 2003; Grotz, 2005; Radaelli, 2000, 2003). This approach perceives EU policy-making as a two-level game, in which national decision makers attempt to reconcile national with international obligations (Putnam, 1988). Menz (Menz, 2009) provides a useful discussion of Europeanisation in relation to migration policies, and points out that Europeanisation, in relation to Putnam's two-level game, is best conceived as a two-way process comprising both top-down and bottom-up processes. This gives rise to dynamic games played out in numerous arenas (Menz, 2009: 80).

The concept of a legislative *misfit* or *mismatch* gained prominence in the Europeanisation literature on compliance and implementation of EU legislation by Member States (see, for instance, Börzel, 1999; Börzel & Risse, 2000; Çelenk, 2009; Duina, 1999; Grotz, 2005; Héritier, et al., 1996; Knill & Lehmkuhl, 1999; Sbragia, 2000; Schüttpelz, 2006). In order to analyse the domestic impact of the EU, the concept of a *misfit* or *mismatch* between the national legislation and the proposed EU policies is used for both gauging the degree of change induced by the EU policies, and the different compliance or implementation trajectories of Member States (Börzel & Risse, 2000). Cowles et al. (2001: 6-9) identify the

degree of adaptation pressure a country experiences by the degree of *fit* between the Europeanisation process and the national institutional settings. In their framework, they refer to the *goodness of fit* to conceptualise this.

All these concepts refer to the difference between the national and EU level with regards to hard legislation, rules, or regulatory practices. Two simplified antipolar scenarios are identified. First, the adaptation pressure to adjust national and EU-level legislation or regulation is low and only little adaptation is required. As adaptation costs are low, domestic actors easily implement the changes induced at the EU level. Second, if the adaptation pressure is substantial, European institutions induce a collision with national regulatory principles, practices and laws. In this scenario, adaptation costs can be very high; consequently they might lead to national resistance to the proposed changes and a poor implementation record (Cowles, et al., 2001: 8; Duina, 1999: 117). While the literature is chiefly concerned with explaining domestic change, these concepts are applicable more widely. In light of this study's analysis, another dimension needs to be presented, namely the domestic attempts to influence and actively shape what is concluded at the European level.

In the context of environmental policy, a number of authors (Andersen & Liefferink, 1997; Börzel, 2002; Héritier, 1995, 1996; Héritier, et al., 1996; Richardson, 1994) refer to differences between the regulatory style of a Member State and the adjustment costs it must bear in case the proposed EU policies correspond to another regulatory style. However, the authors do not use the concept of *misfit* or *fit* to conceptualise these differences. Importantly, they establish the link between the national regulation and the EU-level policy by pointing out that highly regulated Member States seek to influence

European legislation by imposing their regulatory style and philosophy on the other Member States in order to reduce their own adaptation costs. The authors assume that high-regulating countries are likely to take on a leadership role in shaping EU legislation according to their ideas and interests (Héritier, 1995: 301). This includes soft styles and philosophies of regulation, as well as hard legislation on institutions for environmental legislation.

However, findings are elaborated in the field of environmental policy, and do not automatically pertain to other kinds of EU policy or policy process (Menz, 2009: 14). Differences exist between policy-making on environmental issues and immigration. Regulating the access to the national labour market tends to be extremely sensitive, and the need for EU involvement in this area was seen as less important. In addition, until the Treaty of Lisbon entered into force, Member States had the right to veto policy measures in the Council of Ministers, while qualified majority voting had been the established mode of decision-making for environmental policy since the Maastricht Treaty (Andersen & Liefferink, 1997: 1). Thus, taking a leadership role in pushing for a certain kind of immigration policy was less pronounced as Member States could veto policy proposals they did not like. Nevertheless, the ambition to avoid adaptation costs is useful for examining immigration policy. Börzel (2002: 196) conceptualises this dynamic by using the concept of *uploading*: Member States attempt to *upload* their national policies to the EU level (see also, Blavoukos & Pagoulatos, 2008; Orbie et al., 2009). They intend to maximise their own benefits and minimise the costs of European policies. The better the *fit* between European and domestic policy, the lower the costs in the implementation process (Börzel, 2002: 196). Radaelli suggests an important addition to this conceptualisation. He argues for “differentiating between the process leading to a certain policy” and the

“reverberation of that policy in national arenas” (Radaelli, 2003: 34). Otherwise, there would be no difference between the concept of *uploading* and the EU policy process. Radaelli cautions that using two concepts, i.e., *Europeanisation* and *EU policy process*, for the same phenomenon is contrary to what parsimony suggests (Radaelli, 2003: 34). Hence, this study uses the concept of *uploading* only in the particular context of trying to minimise adaptation pressures resulting from a *misfit* between national and EU-level legislation.

We would expect the analysis of economic migration policy to depart from the dynamics portrayed as dominant in the field of environmental policy. In addition to avoiding adaptation costs, a potential benefit of uploading a policy is the creation of favourable conditions for domestic industries. For instance, if a highly regulated country’s standards are made to be upheld EU-wide, this can create a competitive advantage for industries of that country; firms from other countries might need some time to adapt to the new norms. A second benefit is the advantages of a more effective European regulation regime for complex issues that transcend national boundaries. The first of these two incentives to *upload* policies does not apply to economic migration as industrial advantages can be entirely neglected. Regarding the second incentive, the story is more complex. Proponents of a common EU policy on economic migration tend to propagate that there is a significant European value added for EU-level regulation; for instance, the need for comprehensive EU-level regulation of external migration because of the borderless Schengen area (see, for instance, Koslowski, 1998: 160-165; Moraes, 2003: 118; Niessen, 1996: 21-22). Yet, this benefit is generally not accepted by national policy makers, as they want to retain the national prerogative of deciding who can legally enter the labour market. Thus, the second

benefit of more effective regulation also does not generally play a role in the national decision-making process.

Because of the lack of incentives, it is less likely for a Member State to *upload* a particular kind of policy for the sake of reaping certain benefits, like environmental policy, for instance (however, this is not to say that it cannot happen). Rather, the focus is on avoiding adaptation costs, which makes the *misfit* concept more useful for this study than *uploading*. Given that keeping control over who enters the national labour market is a priority matter for national governments, any EU legislation that infringes upon this capacity would constitute extremely high costs for national governments. Hence, national governments are likely to be unwilling to accept any EU-level regulation of economic migration if the *misfit* is too high. The Europeanisation literature on *misfit/uploading* focuses too heavily on the final result of the governmental preferences, and does not take into adequate consideration the process of how these preferences are formed, the actors involved in the process, and that the context within which they are formed can change over time. This study unpacks the black box of governmental preferences in tracing the causal processes that crystallise them. Thus, we can formulate *Hypothesis One* as follows:

A Member State will support EU-level liberalisation of economic migration if the proposed measures are similar to its national policies, or at least do not thwart them.

Bureaucratic Debate and *Political salience*

Policy Frames

In order to map out the costs and benefits that lead an actor to favour a certain preference, we need to distinguish between perceived and actual costs (and benefits). For example, if workers oppose immigration because they worry about immigrants taking their jobs, consequently catapulting them into a prolonged period of unemployment, then these can be perceived costs based on stipulations of right-wing politicians and conservative newspapers intending to gain popularity on an anti-immigration platform. It does not necessarily follow that these costs will actually accrue. Immigrant programmes might only admit migrants with skills different to native workers', and thus do not stand in direct competition with the domestic work force. Cases where migrants indeed crowd out the native population or depress wages are also possible. Whether this happens or not is less important for the preferences of relevant actors. What matters is that actors perceive they will incur certain costs (or benefits). To capture this, the concept of *policy frames* proves useful.

Lavenex (2000: 4) provides a brief definition, regarding *policy frames* as "the ideational core of a particular field which contains the dominant interpretation of the underlying social problem and expresses guideposts for action." This is based on the work of Rein and Schön (1991: 264) who state in a more detailed fashion how *policy frames* guide actors' behaviour:

Mental structures, appreciations, world making, and framing are terms that capture different features of the processes by which people construct interpretations of

problematic situations, making them coherent from our various perspectives and providing ourselves with evaluative frameworks with which we can judge how to act. No one is exempt from the need for framing. Personal, scholarly, and political practice all depend upon it.

This conception is strongly related to what Hall (1993: 279) calls *policy paradigms*. He points out that the importance of the framework is very high because so much is taken for granted and unamenable to probing. The *policy frames* become institutionalised in public policies and thus gain the status of ideational institutions. Because of this, they have the potential to influence the distribution and perception of benefits and the imposition of costs, even after the social power relations that gave rise to this pattern of distribution have been altered (Coleman, 1998: 634).

What these considerations neglect, however, is the political side of the concept and how a particular *policy frame* becomes dominant. To attain this, we need to differentiate between individual framing, i.e., the tendency for individuals to frame issues differently, and collective framing, i.e., the “process of competition and mutual monitoring within communities of professions [that] keeps policy communities in a collective equilibrium most of the time” (Baumgartner & Mahoney, 2008). Here we enter the terrain of the classical power struggle for political influence. McAdam et al. (1996: 6) capture the political dynamics of the concept in referring to *policy frames* as “conscious strategic efforts by groups of people to fashion shared understandings of the world and of themselves that legitimate and motivate collective action.” Hence, political actors attempt to frame a certain issue to serve their respective interest. Whoever has the most resources – more people, better strategies, or better access to the media – is more likely to establish his or her

favoured *policy frame* as the dominant one. This is linked to an increase in political leeway and control (see, for instance, Stone, 1989: 283). However, glancing back on the distinction between individual and collective framing, it is clear that different frames can continue to exist in parallel across different individuals and collectives. These differences might never be resolved.

Frames as used by this study relate to particular issues and are thus more specific than a paradigm or *Weltanschauung*, which refer to sets or systems of values, beliefs and assumptions. *Policy frames* are important in order to grasp how perceptions can structure behaviour and how they can be manipulated by political actors. Hence, a *policy frame* gives perceptions a political dimension. Actors act according to how they interpret reality. Hence, whether a certain policy indeed benefits a certain group or not is less important for the formation of certain actors' preferences on the issue; they form their position according to what they believe the policy result will be. In the long run, this perception might change, of course, if a different *policy frame* becomes relevant. However, this is a long process; new policy frames are not established overnight. The emergence of a new *policy frame* can be correlated to the actual cost or benefit starting to manifest itself in a clear way, which then changes the current *policy frame* that was based solely on perceptions. The point here is that actors' motives are filtered by perceptions of reality. Policies have substantive content, but various actors perceive the effects of these policies differently (Lowi, 1964: 686-691).

Modes of politics

To capture the various processes at work on forming governmental preferences, a liberal institutionalist perspective that combines institutions with interest groups is useful. Institutionalism concentrates on actors such as state bureaucracies, political parties, the set up of political institutions and the relationships between them (J. Hansen & Lofstrom, 2003; R. Hansen, 2002; Money, 1999; Soysal, 1994). Interest group approaches examine the interplay of groups during the making of immigration policy (Freeman, 2006; Joppke, 1998b; Richardson, 1993). Interest groups influence governmental preferences in a number of ways. However, empirically establishing their actual impact is not straightforward. Some authors even argue that the likelihood of a political organisation to directly affect policy outcomes is only around 50 percent, and impact significantly decreases if public opinion is taken into account (Burstein & Linton, 2002). If the public is very concerned with an issue, for the elected public official it is more likely that his or her actions will have an impact on voters' party choice. Hence public opinion is the main trigger for political action (Burstein & Linton, 2002: 384). But this postulation is problematic, as public opinion is a very porous concept and there is usually not a single fixed public opinion to which office holders try to cater. Rather, there are different groups of voters, whose interests might be represented by certain interest groups, such as the two classic pairings: workers by trade unions and employers by business associations. Even though interest groups do not capture the entire electorate, they play an important role in the process of governmental preference formation.

Dür (2008: 1221-1223) puts forward four different pathways for interest group influence: access, selection, voice, and structural coercion. As interest groups make use of several or all of these pathways, all of them need to be considered in order to map the overall

influence of a certain interest group (Dür, 2008: 1223). Access denotes the possibility of direct expression of demands to decision makers, most effectively if they have a “seat at the table”. However, there are other interest groups likely to have the same opportunity as they also have a “seat at the table”. Therefore, access does not automatically translate into influence. Rather, influence is a political process that also depends on factors such as resources and effective communication. Yielding influence over the selection of decision makers – for example, in the form of election campaigns or the selection of certain bureaucrats and judges – interest groups can try to select officials that are sympathetic to their own preferences. The voice pathway refers to “making noise”, for instance, through manifestations, rallies, petitions, public debates, media statements, and influencing referenda or citizen initiatives through campaigning. Finally, the term *structural coercion* refers to the power to decide about making investments. This capacity is only at the disposal of business groups. They might decide to invest where they feel policy makers share or at least take into account their preferences (Dür, 2008: 1221-1223). While this list might not be exhaustive, it represents a useful conceptual frame to analyse the influence of certain actors on a national government’s preferences.

Table 2: Freeman’s Four Types of Policy and Mode of Politics.

Policy type	Mode of politics
Concentrated distributive (concentrated benefits and diffuse costs)	Client
Diffuse distributive (diffuse benefits and diffuse costs)	Majoritarian
Redistributive (concentrated benefits and concentrated costs)	Interest group
Regulatory (diffuse benefits and concentrated costs)	Entrepreneurial

Source: Freeman (2006: 230)

Freeman offers a well developed framework, clustering immigration politics in four different modes of politics, according to their distribution of costs and benefits (Freeman, 1995, 2006). The model is summarised in *Table 2*. If benefits are concentrated and costs are diffuse, *client politics* will emerge, consisting of small, rather homogenous constituencies that try to make their interests heard. Freeman labels these kinds of policies *concentrated distributive policies* (Lowi, 1964). *Client politics* tend to be producer-dominant and involve small and easily organised groups. They usually take place largely out of public view and with little external intervention (see, also, Joppke, 1998a: 16-18). This dynamic can be counteracted by the emergence of “watchdog” associations whose actions are focused on a certain lobby and are independent from the mobilisation of people adversely affected by a certain policy (Wilson, 1980: 369). *Diffuse distributive policies* comprise goods with unlimited supply, generating diffuse benefits and costs. The result is *majoritarian politics*. Interest groups have little incentive to mobilise around such policies as the majority of society anticipates to gain or to bear the costs. No particular group, such as an industry, an occupation, or a locality, is affected in a particular way that would merit taking action (Wilson, 1980: 367). Societal support or opposition to such policies would require the mobilisation of large majorities, made up of diverse groups and individuals that only care half-heartedly about the issue at stake. Such mobilisation is not very likely; more likely is a scenario in which no interest groups form. Bureaucratically-supplied policies that cause little public interest or disagreement are the result (Freeman, 2006: 230). *Redistributive policies* bring about concentrated costs and benefits. Actors have clear motivations to organise and the general public believes it is not affected to a degree that would merit getting organised; *interest group politics* are the result. Finally, regulatory policies involve diffuse benefits and concentrated costs; the consequence is *entrepreneurial politics* (Freeman, 2006: 229-230). Wilson (1980: 370) argues that *entrepreneurial politics* will

occur if a policy confers general (though perhaps small) benefits at a cost to be borne chiefly by a small segment of society. Due to a pronounced incentive for the opposition to organise, and with little incentive for proponents to fight for such a policy, this kind of legislation is unlikely to be passed. Consequently, the policy measure needs a policy entrepreneur that mobilises dormant public sentiment in support of the initiative. This can happen by revealing a scandal or scandalising a crisis which, for instance, forces the opposition to justify their resistance. Examples of such initiatives are anti-pollution and auto-safety bills that are intended to make the air cleaner or cars safer, and hence serve the public good while imposing (even though only temporarily) costs on certain industry segments (Wilson, 1980: 370).

Freeman's work is not without criticism. With regard to his earlier work (Freeman, 1995, 1998, 2002), Statham and Geddes (2006) have lamented that in the case of the UK, the direction of immigration policies is not an outcome of organised interest group lobbying, but is shaped in a rather autonomous way by political elites. The outcome of the immigration policies reflects the political elites' stance and will. Civil society engagement is weak. Hence, they argue that Freeman overestimates the power of the organised public compared to political elites. While this is a solid point, the framework might still have value by making predictions about the political dynamics certain policies induce. However, there are further problems with the framework, most notably, dividing immigration policies into certain policy types (*concentrated distributive, diffuse distributive, redistributive, and regulatory*) and then linking them to specific modes of politics. This holds especially for economic migration as it first involves both economic and political costs and benefits; for instance, the economic benefits of filling vacancies that cannot be filled domestically, or the political benefits of reinforcing such popular fears by radical politicians in order to win

votes on the right fringe. Second, we need to distinguish between the perceived and actual costs of interest groups involved. Although Freeman (2006: 229) acknowledges with reference to Lowi (1964: 390-391) that the key issue is how actors perceive a certain issue, this relativity is not incorporated into his framework. Freeman (2006: 229) contrasts Lowi's "constructivist stance" with Wilson's (1980) work, who according to Freeman (2006: 229), "assumes that policies have objective distributional consequences. Benefits can be concentrated or diffuse, resulting in four modes of politics." However, in his work Wilson (1980: 384) states:

[b]y far the largest number of regulatory issues discussed in this book arose not because of a fundamental shift in technology or prices, but because perceptions about what constituted a problem changed. As we have already seen, OSHA [Occupational Safety and Health Administration] was created because the rate of industrial accidents became an issue even though that rate had been generally declining.

The quote suggests that Freeman underestimates Wilson's aptitude to acknowledge that perceptions of issues can change and that policies may not have objective distributional consequences. In the empirical discussion, Freeman does take into account the relativity of actors' perceptions, as the following citation shows (Freeman, 2006: 236):

The role of policy entrepreneurs in non-immigrant visa policies can best be understood in the context of transitions, in the perceptions of key actors, from one type of policy to another. Non-immigrant visa policy is, in its normal state, a diffuse distributive policy that operates largely below the radar of contentious politics.

When the policy becomes more politically salient, due to complaints about backlogs in processing applications, for example, the normally quiescent clients of the visa process may be energised, moving visa politics into the concentrated distributive category.

However, he does not discuss the implications of this conceptual difference for the analytical significance of the *political salience* concept. This study uses the definition put forward by Rosenblum (2004b: 40-41): “the level of popular attention to immigration issues.” How popular attention exactly arises is a complex phenomenon in which immigration flows and socio-economic conditions interact with events and media coverage of the issue (Rosenblum, 2004b: 40-41). As discussed above, with help from the concept of *policy frames*, the actual or objective benefits of a particular policy do not shape actors preferences, but perceptions thereof. Consequently, migrants might perceive more liberal immigration policies aimed at certain migrants to involve costs for them in terms of increased competition for jobs – thoughts that are easily nourished by populist politicians. But then again, these apprehensions might indeed not be fulfilled because the migrants brought in are highly specialised and only fill labour shortages that cannot be filled with the domestic labour supply. Third, the stakeholders of economic migration literally span the entire society, and if the topic becomes politically salient, it can mobilise a great part of society, as, for instance, the November 2009 referendum about minarets in Switzerland demonstrated. Stakeholders range from employers, workers, migrants, politicians, the media, and human rights organisations to ordinary citizens who feel the consequences of a tough economic climate, or observe the effects of immigration in the increasing number of foreign-born football players in the national team or the number of foreign-owned shops in certain areas of town. Hence, new actors can appear, potentially altering the political

dynamics and the mode of politics. In addition, the allocation of costs and benefits is subject to regular changes, such as the business cycle, or exogenous shocks, such as 9/11 or the 2008 financial and economic crisis.

These factors create a web of accruing costs and benefits, and are constantly in flux and too complex (even with regard to a specific policy proposal) to be captured by just four policy types. This poses another problem: the link between the types of policies and the modes of politics. If immigration policies cannot be captured by these policy types (concentrated distributive, diffuse distributive, and redistributive regulatory) it does not make sense to link them to particular modes of politics in the way Freeman's model does. However, the link between the dispersal of costs and benefits and certain modes of immigration politics is analytically useful. Hence, looking at the distribution of costs and benefits and linking it to certain political dynamics promises to help identify how governmental preferences are formed, and even to make predictions about the likelihood of a policy proposal finding governmental support. However, there is a conceptual tension within the *rules of the game* proposition that is put forward by the *bureaucratic politics* framework and Freeman's propositions. According to Freeman's logic, the *mode of politics* is flexible and can change according to the cost and benefit distribution the relevant actors experience. Conversely, the *bureaucratic politics* framework suggests that the decision-making process happens according to fixed *rules of the game* that are intrinsic to the respective political system and do not change for the same policy proposal. This confrontation exposes the weakness of Freeman's approach: it does not travel to executive politics that tend to be regulated more heavily than interest group politics. In addition, it has difficulties being applied to political systems that regulate interest group involvement more strongly than the US system does. The coordinated market economy of

Germany is a good example. The *modes of politics* framework contains a number of interesting propositions, in particular, the linking of actor preferences to the distribution of costs and benefits. However, it is not the right framework to be applied to a policy domain that relies heavily on executive decision-making. Hence, its role for explaining the liberalisation of economic migration at the EU level is only a secondary one.

Relationship between political salience and public opinion

Public opinion is a prominent concept, however, there is no generally accepted definition of public opinion, and its meaning has been subject to lengthy discussions in the literature (see, for instance, Kepplinger, 2008: 192-193; Price, 1992: 1-2; Shamir & Shamir, 2000: 2; Splichal, 1999: 4). A general and workable definition is provided by Brooker and Schaefer, who define *public opinion* as “the expressed attitudes and views of ordinary people on issues of public concern” (Brooker & Schaefer, 2006: 5).

Kepplinger divides the various approaches into three groups, referring to *public opinion* either as a *quantitative*, *qualitative* or *functional concept*. The *quantitative concept* regards *public opinion* as the distribution of individual opinions within a population which can be measured with opinion polls. *Public opinion as a qualitative concept* is understood to constitute the opinion of interested and well-informed citizens on political issues. *Public opinion as a functional concept* is seen as a mechanism that reduces the unlimited number of possible topics to a limited number of issues that can be discussed in public (Kepplinger, 2008: 192-193).

The relationship between *public opinion* and the media, and *public opinion* and policy-makers, is also not a clear one. Both depend on the adopted definition of *public opinion*. For instance Kepplinger claims that with regard to the *qualitative concept*, “the coverage of the (leading) news media and public opinion are more or less identical” (Kepplinger 2008: 193). He concludes that public opinion must be derived from media coverage and personal contacts with reporters and editorial writers. Where the *quantitative* approach is concerned, media coverage can be viewed as an independent variable, and majority opinion as a dependent variable. Regarding the *functional concept*, *public opinion* is seen as an intervening variable, influencing individuals to take a stand in public. This in turn influences public opinion (regarded as the opinion perceived by individuals as the dominant opinion). The *quantitative* approach assumes a linear relationship between media coverage and *public opinion*, but recent research has revised this linear relationship, favouring more complex notions (see, for instance, Justin Lewis, 2001: 83; Roessler, 2008: 205). The *functional* approach assumes a more complex relationship in which media coverage plays an important role (Kepplinger, 2008). Price (1992: 81) captures this poignantly in asserting: “[T]he media allow the attentive public to keep track of political actors (surveillance) and organize its responses to them (correlation).”

Of course, there is also a qualitative component of what the public debate on a certain issue constitutes, which stands in a dynamic relationship with the level of attention. However, for the purpose of this study, the level of *political salience* is of greatest importance. This is because of the effect *political salience* has on the nature of the debate about a certain issue. The level of politicisation changes how an issue is discussed at the political level and how the process of preference formation takes place. This has an impact on the final outcome of the national preferences. The above discussion shows there is a

close relationship between media coverage and public opinion. Consequently, measuring *political salience* by means of media coverage must be seen as a robust way of measuring the concept. This is discussed in detail in Chapter Three.

Nature of the Decision-Making Process

In light of the hypothesis, it is argued that if preference formation is sheltered from the attention of the masses, the debate is more bureaucratic than political. If this is the case, the debate is more likely to give more prominence to the potential benefits of immigration, for instance, filling labour shortages or establishing a strategic partnership with a third country. Caviedes notes: “Only labor migration policy that manages to pass under the radar of the general debate over immigration is immune from the caprices of public opinion.” (Caviedes, 2010: 3). If a regulatory policy question is complex and technically orientated, it is easier to disconnect the debate from distributive questions, and the discussions are likely to develop into a conversation of national experts in the respective regulatory policy field (Héritier, 1996: 155). If the issues at stake are technically and legally complex, if they are not straightforwardly accessible to the public at large, and if the *political salience* and the possibility of political mobilisation are low, a bureaucratic rather than a political debate is probable. Conversely, if the issues raised entail the redistribution of costs in an obvious and easily noticeable way, the discourse is likely to be more politically loaded (Héritier, 1996: 159). The absence of urgent *political salience* shields the debate from being framed in an anti-immigration way and from taking a restrictive turn. Increased *political salience* changes the interest group dynamics. As more interest groups become active, the government is forced to take more interests into account. This, in turn, is likely to reduce the importance of the arguments in favour of the policy, and the effect of

the attempts to influence by interest groups supporting the policy (Mahoney, 2007: 50-53). Hence, if the debate is technical and bureaucratic, it is easier and more probable for a Member State to delegate competencies to the EU level to realise the benefits they promise to offer. Accordingly, *Hypothesis Two* states the following:

A Member State will agree to liberalise economic migration policy at the EU level if the decision-making process proceeds in a bureaucratic way and political salience of immigration is either low or not linked to the policy proposal.

III. International Politics

Foreign policy considerations

This section focuses on analysing how the desire to attain certain foreign policy goals impacts on national immigration policies, i.e., how immigration policy can be deployed as a tool of foreign policy. The literature on EU immigration policy development tends to make the link the other way round. For instance, Boswell (2008a: 491) notes: “The idea was to adjust the Union’s foreign policy and development cooperation to advance EU goals on migration management. Since then, there has been a variety of initiatives to implement and expand this agenda, most recently in the form of the 2005 Global Approach.” In order to analyse how immigration policy might be used for foreign policy ends, a number of questions need to be answered: What is the link between foreign policy and immigration policy? How does the impact manifest itself and what kind of immigration policy does foreign policy impact? When does a country or a group of countries become relevant? Why would a sending country be interested in the open immigration policies of a host

country (or a group of host countries)? How can a third country or a group of third countries impact the preferences of a Member State?

Foreign policy has not featured prominently in scholarship on migration, and if so, it has often been analysed by international relations scholars in the context of the bearing certain immigrant groups may have on a country's foreign policy (see, for instance, Christol & Ricard, 1985; Koslowski, 2005; Tucker, Keely, & Wrigley, 1990). The impact certain immigration policies may have on foreign policy considerations has also been explored (see, for instance, Délano, 2009; MacPherson, Gushulak, & Macdonald, 2007). Comparative politics research, by and large, neglects foreign policy considerations as a factor that informs governmental preferences on immigration policy. Mitchell (1992: 6) defines foreign policy aptly as "a set of concerns and actions in relation to foreign governments and societies, focused on the goals of security, prestige, and economic well-being."

A number of scholars argue that countries are generally willing to accept immigrants from particular countries for the sake of foreign policy goals, such as fostering relations with allies, sustaining political links established in the past, or to pry open a country's foreign political isolation (Díaz-Briquets, 1995: 161; Gatev, 2008; Meyers, 2004: 15; Oltmer, 2005: 423; Schönwälder, 2004; Stanton Russell, 1995 61-70; Thränhardt, 1996a: 254; Zolberg, 1995: 120-121).

To be more precise, a country or a group of countries need to bear a certain foreign policy relevance for a government in order for these concerns to influence immigration policy. Using the US as a case study, Mitchell suggests a number of factors that make such a

scenario more likely; for instance, the sending country should be important (at least momentarily) for the country's foreign policy, the migration flow out of the country should be sizeable, and changes in migration policy should promise to advance foreign policy goals (Mitchell, 1992: 23).

The link between immigration policy and security- or military-motivated considerations has been used in the literature to explain national immigration policies (Meyers, 2000; Mitchell, 1992; Rosenblum, 2004a, 2004b; Rudolph, 2003, 2006). This is in accord with realist (see, for instance, Morgenthau, 1978) and neo-realist writings (see, for instance, Waltz, 1979) on International Relations, putting forward a simplified model of the state as a unitary actor behaving rationally in the pursuit of maximising its power, and attributing the highest importance to security issues on the foreign policy agenda (Hollifield, 2004a; Meyers, 2000: 1263).⁵ While realist approaches are seen as having only marginal value in explaining international migration policies (apart from refugee policies) (Meyers, 2000: 1265), this study shows that foreign policy considerations are also relevant for other sub-areas of immigration policy. This is because the economic benefits promised by emigration may induce a sending country to embark on a lobbying campaign that in turn might influence the immigration policy of a receiving country.

Rudolph offers a theoretical model explaining different outcomes of migration policy by the primary independent variable *structural threat environment* (Rudolph, 2003: 605-607; 2006: 29-40). His *threat hypothesis* predicts there is a positive relationship between the occurrence of external threats to geopolitical security and the openness of a state's

⁵ For a discussion of the problems of realism and neo-realism see: Allison, G. T., & Zelikow, P. (1999). *Essence of decision: explaining the Cuban Missile Crisis* (2nd ed.): Addison-Wesley Educational Publishers.. For a discussion of International Relations theory in light of international migration see: Rudolph, C. (2006). *National Security and Immigration: Policy Development in the United States and Western Europe Since 1945*. Stanford: Stanford University Press..

migration policy – both in terms of numbers and type. Facing such a threat, a state will have more open policies in order to maximise material power through the economic gains that result from increased labour mobility and reduced domestic instability. Rudolph's hypotheses also predict that if under these circumstances migration flows are associated with a military adversary, more restrictive policies for those migrants will result (Rudolph, 2003: 606-607). Problematic with this approach is the simplistic assumption that migration is necessarily beneficial. As the following discussion of immigration and labour market needs will show, more immigration does not necessarily lead to increased welfare and domestic stability. It will only do so if it aids to fill labour shortages. If it fails to do so, immigration can be economically harmful as it might have negative distributional effects. Most useful are Rudolph's insights in combination with Mitchell's works discussed above: if a country can ameliorate a certain security threat, it is important from a geopolitical perspective. This increases the likelihood that the foreign policy with regard to that country affects the immigration policy.

While this is certainly a critical point, there are other factors that amplify the foreign political importance of a country, such as the density of trade relations, military alliances and diplomatic ties, and sustaining political links that have been established in the past (e.g. former colonial ties) (Meyers, 2004: 15; Rosenblum, 2004b: 41).

To provide a richer and more precise insight into when foreign policy matters and with regard to which countries, an additional framework proves useful: Rosenblum (2004b) combines insights of the international relations literature with domestic politics, and comes up with a framework that predicts under what domestic conditions foreign policy factors are most likely to shape migration policies. The author uses the US as a case study. In order for foreign policy to play a role in immigration policy-making, the country needs to attach

significant weight to foreign policy. While generally foreign policy has a higher standing for the US than for many other countries, the major EU host countries all attribute significant importance to foreign policy – France and the UK because of their status as nuclear powers, members of the UN Security Council, and their history as colonial powers; and Germany in light of the Cold War, as copula between Eastern and Western Europe. Although none of the EU countries are military superpowers like the US, foreign policy is generally an important policy field. Thus, the framework’s parameters are likely to travel to other countries beyond the US.

By using two variables, *foreign policy value* and domestic *political salience*, and displaying a striking similarity to Freeman’s work (Freeman, 1995, 2002, 2006), Rosenblum’s framework distinguishes four possible modes of immigration policy making (Rosenblum, 2004b). For this reason, the approach is informed by international considerations but also captures how they are filtered by domestic politics. *Foreign policy value* is defined as “the importance of migration to U.S. bilateral relations with particular states *and* the importance of those states for the overall U.S. foreign policy agenda” (Rosenblum, 2004b: 41). The more important the sending state, the higher the *foreign policy value*. The importance is relative and depends on the respective host country. In contrast, as spelled out in the preceding section, *political salience* is marked out as “the level of popular attention to immigration issues” (Rosenblum, 2004b:41). Foreign policy considerations are likely to play out most drastically when the *foreign policy value* of a country is high and the *political salience* of migration in the host country is low. Put differently, under these conditions we would expect foreign policy consideration to shape governmental preferences on immigration policy to a sizeable extent.

As for the causal link between foreign policy and immigration policy, we can distinguish two dimensions of influence. First, direct influence, and second, issue linkage. Direct influence of migration policies refers to the direct impact of a receiving country's migration policies on a certain sending country (or certain sending countries), and how these policies relate to foreign policy goals. For instance, a government might decide to embarrass or weaken a hostile regime, to stabilise less radical but unstable regimes, and to support regimes in line with its foreign policy objectives. Accordingly, migration policies towards adverse countries can under certain conditions be more generous and open than towards friendly regimes, as argued by Mitchell (Mitchell, 1992). He makes this claim by examining, for instance, the open US immigration policy towards Cuba and Nicaragua in the 1960s and 1970s, which were at that time "adversary" governments. He contrasts these cases with US attempts to deter migrants who declared political motivations and originated from friendly regimes, such as El Salvador (Mitchell, 1992: 23-24). With regard to the second dimension, concessions on migration policies are used in a bargaining scenario to attain particular benefits in a foreign policy domain (Rosenblum, 2004b: 29), for instance, the pledging of allegiance of a sending country (or a group of sending countries) against an opponent regime.

If a sending country (or countries) has (or have) a vested concern for more open immigration policies in a particular receiving country (or a group of receiving countries), the sending country might lobby to push for its objectives. Why would a country care about more open policies? Emigration countries generally advocate open policies because of the prospects to secure remittances (Miller, 2000: 36), decrease domestic unemployment, raise wages, obtain new workers' skills (that then can be used in the home country upon return), and draw level with neighbouring countries with which a historical rivalry exists

(Rosenblum, 2004a).⁶ The more a sending country cares about a receiving country's (or a group of receiving countries') immigration policy, the more likely it is to make an active effort at influencing and in turn to be successful with its attempts (Rosenblum, 2004b: 99). Sending countries affect immigration policy indirectly by lobbying parliament or the government. These efforts may include providing host state officials with information or attempting to shape public opinion. Another form of influence might be to mobilise expatriates living in the receiving country (Mitchell, 1992: 287; Rosenblum, 2004b: 28-29). Further ways of influence include the setting up and maintaining of a network of support organisations for emigrants in the host countries by bilateral labour recruitment agreements that may enable sending countries to partake in the political processes of the host countries. The main rationale of these networks is the promotion of long-term temporary migration (Schmitter Heisler, 1985: 77-78). Thus, *Hypothesis Three* can be formulated as follows:

If the foreign policy value of a country (certain group of countries) is perceived as being high, domestic political salience of immigration is low, and if the sending country (countries) exert(s) relevant pressure on the host government(s), a Member State will support relatively open immigration policies with regard to this country (those countries) both at the national and EU-level.

IV. Conclusion

Three hypotheses are now in place to explain the political processes that lead to a Member State agreeing to delegate competencies on regulating economic migration to the

⁶ For instance, Turkey might want to export a similar number of workers as Greece with which it has a long-held competitive relationship.

EU level. In order to make predictions about how they bring about the final outcome of the governmental preferences, a *bureaucratic politics* approach is used. The hypotheses are structured into two different themes, domestic politics and international politics, which are informed by an additional theme, labour market concerns. Regarding domestic politics, the study presents two hypotheses. Hypothesis One states that the *misfit* between the EU policy and the national policy cannot be too pronounced in order for support of EU-level liberalisation of economic migration policy to happen. Hypothesis Two proposes that support is likely if the decision-making process takes place in a bureaucratic and apolitical way. Hypothesis Three relates to foreign policy and proposes that EU-level liberalisation will happen if the *foreign policy value* of a sending country (to which the measure relates) is high, *political salience* is low, and if the government of the sending country lobbies for an EU-level liberalisation of economic migration policies. The first theme contextualises Hypothesis One. It discusses the concept of *labour shortages* and issues of measuring them. This includes the ambiguity of the concept, the important and delicate role of employers, the absence of straight-forward and objective ways of measurement, and the resulting importance of using a multitude of carefully selected sources.

The hypotheses are tested empirically in the chapters to come. Each hypothesis is discussed in all case studies to shed light on their relevance; the analysis shows that the explanatory power of each varies by case study. This suggests that the causal importance of the factors under investigation differs. As each hypothesis relates to specific causal factors, the hypotheses in their entirety establish a number of conditions necessary for a Member State to support EU-level liberalisation of economic migration policies.

Chapter Three – Methodology

Approach and Methodology

The dependent variable is the preference of an EU Member State government – in this case Germany. As defined in Chapter One, the preferences of a government are regarded as an aggregate comprised of the individual preferences of several actors. The dissertation starts with a number of hypotheses that each relate to an independent variable. The independent variables are the *misfit* between the relevant national legislation and the policy measure that is proposed at the EU level; the *political salience* of immigration; and the *foreign policy value* of a relevant sending country. The independent variables are then used as a starting point to link them to the dependent variable via the relevant actors. This process is structured by a *bureaucratic politics* framework that provides an analytical lens for how different actors coordinate or assert their respective positions and interests (Allison, 1969; Allison & Halperin, 1972; Allison & Zelikow, 1999). The dissertation uses the method of process-tracing to identify the causal mechanisms between the independent variables and the dependent variable. It divides the causal chain between these variables into several steps; this allows establishing a number of intervening variables. Intervening variables are affected by the independent variable and in turn have a causal impact on the dependent variable (see, for instance, Bryman, 2008). The intervening variables of this study are the preferences of relevant actors, namely, different government ministries, employer associations, trade unions, the German parliament, the *Länder*, and governments of relevant sending countries. No data could be found regarding the notable influence of further actors, such as non-governmental organisations (NGOs). Each step is supported by theory or an analytical narrative (cf.

Checkel, 2005; George & Bennett, 2005). According to Roberts (1996: 66), this *microcorrelation* is “the minute tracing of the explanatory narrative to the point where the events to be explained are microscopic and the covering laws correspondingly more certain.” In addition to the independent variables and the intervening variables, the role of labour shortages is discussed to provide a further context for the causal chains analysed by this dissertation.

The investigation starts with the prerequisite that legislative measures that would liberalise economic migration policies at the EU level need to be put on the agenda. The policy proposals need to come from somewhere, particularly because Member States do not take the initiative to lobby for common EU policies on economic migration. The policy-making process of the EU foresees a number of avenues for a policy initiative to be proposed. Before 2004, the right of legislative initiative was shared between the Commission and Member States (Hix, 2005: 355). With regard to economic migration, no Member State has made use of this right. After 2004, the Treaties foresee an important role for EU institutions to propose a certain policy proposal, namely, for the European Commission, which holds the right of legislative initiative (see, for instance, Wonka, 2008: 1145). However, the impetus for a certain policy proposal can come from elsewhere. Member States, the Council, and the European Parliament regularly attempt to influence the Commission to come up with a particular policy proposal (Hix, 2005: 223; Princen, 2007: 23). The most straightforward possibility is a proposed Directive that comprises issues of economic migration. Where the idea of an initiative originates is less relevant for this investigation, and is often hard to establish. Thus, how Council conclusions – those of the Tampere European Council in 1999, for instance – come into being, or what motivates them, is beyond this study’s scope. With the same effect, a common policy can also arise from the

initiative of a third country, for instance, in the form of filing an application to become an associate member. This presumes that immigration provisions are part of the Association Agreement. Hence, policy needs to be on the agenda as a precondition for a Member State to support EU involvement in liberalising economic migration.

Case Study Selection

Selection of Germany as case study

Owing to the longitudinal perspective of the puzzle, the time frame of the analysis spans from the beginning of the European Integration project until the entering into force of the Treaty of Lisbon on 1 December 2009. Germany has been selected as case study for a number of reasons.

For a study investigating developments from the founding of the EEC, in 1957, to 2009, only the EEC's six founders are possible options: Belgium, the Netherlands, Luxembourg, Italy, France, and the Federal Republic of Germany. Of these countries, the most interesting ones, analytically, are France and Germany. For much of the 20th century these two countries have been a dominant force in Europe, referred to as the Franco-German axis of European Integration (see, for instance, Dinan, 2004; Hailbronner, 2000: 126). By improving our understanding of preference formation on economic migration in these two countries, we will better understand what drives European cooperation on economic migration policies, and EU cooperation in general. Thus, the analytical leverage of the findings is likely to be greater if France or Germany is used as a case study, compared to Italy and the Benelux countries. Comparing France with Germany, Germany is the better choice for two chief reasons. First, the variation of the dependent variable is greater for

Germany; this increases the determination of the research design (see discussion below). Second, Germany is emblematic of the guest worker recruitment era. This makes discussions about what drove the German government's preferences with regard to EU involvement on economic migration likely to shed light on motivations behind guest worker recruitment in general. It marks an important part of recent European history whose consequences still resonate in the present day. German immigration history and its relationship to the sub-cases of this dissertation are discussed in a later part of this chapter.

It is important to first discuss the variation of the dependent variable and the methodological implications in more detail. In the early period of European Integration, Germany was extremely enthusiastic in supporting European involvement in liberalising economic migration policies; the Ankara and the Athens Agreements are of particular significance here. However, since the European Council pushed forward with the Tampere Programme, Germany has been sceptical with regard to delegating competencies for regulating migration to the EU level, in particular, when that meant a liberalisation. This U-turn is the most drastic amongst the founding members of the EEC and consequently promises the most significant causal inferences. It is also more pronounced in direct comparison with France, which, in regard to the Association Agreement, held a much more sceptical stance to conclude the Agreement, and favoured one as minor as possible (Council of the European Economic Community, 1961, 1962). Hence, France as a case study is missing an instance where it can be said it held significant support for liberalising economic migration policies at the EU level. With regard to the Economic Migration Directive, where Germany, along with Austria, was the most sceptical Member State, French reservations were less pronounced, as the relevant minutes of the Council

Working Party on Migration and Expulsion show.⁷ Consequently, the variation of the dependent variable across the four sub-case studies is greater for Germany than for France, which makes Germany the more valuable case analytically. In addition, Germany shows a great variation of the three independent variables (*misfit*, *political salience*, and *foreign policy value*).

According to King et al. (1994: 129-130), variation of the dependent variable increases the quality of the research design. However, selecting the dependent variable also risks the danger of introducing selection bias. If the dependent variable varies, this can happen if the variation is truncated, i.e., if the observations are limited to less than the full range of variation on the dependent variable (King, et al., 1994: 130).

Taking this warning into account, Germany is still the strongest choice out of the cases available. Judging from the existing information, it allows for the greatest variation of the dependent variable, reducing any potential selection bias as far as possible. If selection happens on the dependent variable, and independent variables are not taken into account, selection bias only occurs if the values of the dependent variable are truncated. If the dependent variable varies fully, there is no selection bias, as Collier and Mahoney state: "In the special case of a selection procedure designed to produce a sample that reflects the full variance of the dependent variable, the selection procedure will not be correlated with the underlying error term, and will not produce biased estimates" (Collier & Mahoney, 1996: 62-63).

⁷ See, for instance, Council doc 13954/03 and Council doc 7557/02.

As the research question dictates that the relevant time period spans from 1959 until the present day, we cannot know what scope for variation exists beyond what can be observed for these years. Germany supported EU-level measures for the Ankara Agreement but rejected such measures with regard to the Economic Migration Directive. Hypothetically, it could be possible that Germany might show even greater support for an EU-level measure than it did for the Ankara Agreement, which would mean the variation of this study's dependent variable is truncated. It is important to be aware of this when discussing the generalisability of the study's findings. However, the selection bias is likely to be small; if the variation of the variable stretches from rejecting EU-level liberalisation of economic migration to supporting EU-level liberalisation of economic migration, then the variation of even stronger support is unlikely to constitute a much greater overall variation.

In addition, the dangers of selecting the dependent variable might be overstated by King et al. (1994), who write from the perspective of quantitative researchers, and do not apply to qualitative studies to the same extent, as a number of authors claim (Collier & Mahoney, 1996; George & Bennett, 2005). George and Bennett note:

In other words, in statistical studies selection bias always understates the strengths of the relationship between the independent and dependent variables. This is why statistical researchers are admonished not to select cases on the dependent variable.

In contrast, case study researchers sometimes deliberately choose cases that share a particular outcome. Practitioners and analysts of case study methods have argued that selection on the dependent variable should not be rejected out of hand. Selection of cases on the basis of the value of their dependent variables is

appropriate for some purposes, but not for others. Cases selected on the dependent variable, including single-case studies, can help identify which variables are not necessary or sufficient conditions for the selected outcome.

(George & Bennett, 2005: 23).

Moreover, George and Bennett state the following: “The most damaging consequences arise from selecting only cases whose independent and dependent variables vary as the favoured hypothesis suggest, ignoring cases that appear to contradict the theory, and overgeneralising from these cases to wider populations” (George & Bennett, 2005: 24). This pitfall has been avoided as case studies have been chosen to guarantee the greatest possible variation of the dependent variable and the independent variables, without ignoring potentially contradictory cases as the hypotheses suggest. Because of the small number of EU-level policy initiatives on economic migration, it was possible to include all relevant cases as sub-case studies. The hypotheses have been constantly refined in an iterative process that meant going back and forth between data and theory (Bryman, 2008: 11-12).

Even though the dissertation focuses on Germany, the research design is not a single case study as it includes four sub-cases within Germany. This can be characterised as a *longitudinal case*, which is given as a rationale by Yin for focussing on a single case that is studied in four different points in time (Yin, 2003: 39-42). The four sub-cases make sure that the dependent variable varies, which increases the determination of the research design, as discussed above (King, et al., 1994: 129-130). In addition, Van Evera argues for selecting cases with large within-case variance in the value on the independent and dependent variables for building a theory. If the value of the variable to be studied varies,

i.e. the dependent variable for this study, the causes and effects of this variable should also vary widely in such a case, in line with the dependent variable. This makes the causes easier to be identified against the case background (Van Evera, 1997: 82).

In addition, concentrating on one country has the chief merit of controlling for the institutional framework and thus obviating institutional explanations of the research question. Certainly, between the 1960s and the present day countries have been subject to endogenous and exogenous changes. However, they are difficult to control for, as each country is subject to particular changes and these variations are still smaller than discrepancies between different countries.

Sub-case studies

Table 3: Sub-Case Studies

	Case Study	Time Period
1	Association Agreement between the EEC and Turkey (Ankara Agreement)	July 1959 – September 1963
2	Association Agreement between the EC and Poland (Europe Agreement)	November 1990 – December 1991
3	Economic Migration Directive	July 2001 – November 2003
4	Blue Card Directive	October 2007 – May 2009

The country case is complemented by four sub-case studies to ensure within-case variation. Like the country case, the sub-cases have been selected according to variation in the outcome of the dependent variable and constitute the entirety of key cases. In other words, they guarantee the greatest possible variation of the dependent variable for Germany. The cases are different policy initiatives, such as Directives or Agreements that

aim at regulating some aspect of economic migration at the EU level. Some initiatives have been supported by Germany while others have been opposed. Given the relative scarcity of instances where a liberalising measure was adopted – or at least discussed – at the EU level, the study includes an example of each kind of liberalising measure on economic migration that has occurred at the EU level between the foundation of the EEC and the Treaty of Lisbon.

Case Study One is the EEC – Turkey Association Agreement, which was concluded in 1963 and had as one of its objectives to establish freedom of movement for workers between Turkey and the EEC. Germany supported the Agreement. The EEC had concluded a similar agreement with Greece two years before the Agreement with Turkey. However, the Ankara Agreement is the more interesting case analytically, because migration-relevant provisions were more contested, and the Agreement had a more significant impact on Member States' immigration and integration policies due to a number of important decisions by the Association Council as well as several weighty rulings by the European Court of Justice (ECJ).

Case Study Two is the Association Agreement the EC concluded with Poland in 1991. The Agreement is part of several agreements the EC completed with most Central and Eastern European countries (CEECs) – Hungary, Poland, the Czech Republic, Slovakia, Romania, Bulgaria, Slovenia, Estonia, Latvia, and Lithuania – in the early and mid-1990s, the so-called Europe Agreements (EAs). The provisions relevant for the movement of workers are almost identical across the agreements. With regard to the freedom of movement provisions, Poland was the most active of all CEECs in influencing the negotiations (Auswärtiges Amt, 1991a; Bundesministerium für Wirtschaft, 1991a, 1991j). As a

consequence, the process of negotiations between the EEC and Poland also affected the content of the freedom of movement provisions of the other agreements. Thus, to explain why the provisions relevant for migration are included in the way they are, it is instructive to study the EA with Poland. Germany supported the Agreement that granted access to the Member States' labour market for self-employed CEEC nationals, and thus opened a loophole for employed workers disguised as, for instance, one-man companies.

Case Study Three is the Directive on the conditions of entry and residence of third country nationals for the purpose of paid employment and self-employed economic activities (COM(2001) 386 final). The European Commission proposed the Directive in 2001; it was the first post-Tampere endeavour that sought to liberalise economic migration policies at the EU level. However, it was not adopted by the Council as it did not find enough support amongst Member States. Germany was opposed to the Directive. The Directive presents the instance where Germany was most opposed to EU-level regulation of economic migration. Consequently, its inclusion is important to guarantee the maximum possible variation of the dependent variable.

The fourth and final case study is the Directive on the conditions of entry and residence of third country nationals for the purposes of highly qualified employment, the so-called Blue Card Directive. With the aim to facilitate access to the EU labour market for highly qualified third country nationals, this Directive was the first post-Tampere measure supported by the Council, including the German government, that intended to liberalise economic migration policies.

The study is concerned with admission policies and not with policies regarding immigrants already in the EU. Hence, for instance, the Council Directive 2003/109/EC of 25 November 2003 concerning the status of third country nationals who are long-term residents does not qualify as a case study for this dissertation. In addition, the European Commission proposed a directive in 1976 with the aim to combat illegal migration.⁸ However, this policy initiative does not qualify as a case study, as studying illegal migration is beyond the scope of this project. As a consequence, the selected sub-case studies cover all relevant initiatives and guarantee the greatest possible variation of the dependent variables.

Strengths and limitations of the data

The data used to test the hypotheses and forge the empirical argument was collected from a number of archives, namely, the German Federal Archive (*Bundesarchiv*) in Koblenz, Germany; the Historical Archives of the European Union in Florence, Italy; the Political Archives of the German Foreign Office (*Politisches Archiv des Auswärtigen Amtes*) in Berlin, Germany; and the Newspaper Archives of the State Library of Berlin, Germany (*Zeitungsarchiv der Staatsbibliothek zu Berlin*). The archives are used for the empirical part of the chapter that focuses on common European efforts on labour migration in the young European Community. The files on the Ankara Agreement have been reviewed before, for investigating the processes that led to the entire Agreement. However, this has never been done with a particular focus on the freedom of movement provisions.

With regard to the Europe Agreement, archival material of the Federal Ministry of Economics was used. This was the first time the material was used, and special

⁸ COM/76/331FINAL.

permission was necessary to access the files because the 30-year archival retention period had not yet expired. To gather data on the period which falls within the 30 year archival retention period and for which no special permission could be obtained, or to provide additional contextual information to complement the archival research, the dissertation relies on 43 semi-structured open-ended elite interviews and six personal communications. For the interviews, a list of specific questions was used, but the respondents had a lot of leeway in how to reply to the questions. In addition, questions did not always follow the outline on the interview guide, and they did not always exactly follow the list of questions. This flexibility was needed to explore the underlying dynamics of preference formation that were seen as an internal governmental matter and regarded as sensitive. Consequently, it was important to dig deeper into a certain topic or aspects of a topic that might have come up unexpectedly but seemed important for the research. Interviewees included a wide range of policy makers and experts, such as governmental officials, ministerial directors, heads of units, policy officers, trade union representatives, business association representatives, European Union officials (European Commission, Secretariat of the Council of the European Union, and the European Parliament), Brussels-based diplomats, representatives of EU-level trade unions and business associations, and German parliamentarians.

The above sources are triangulated with official government documents, agreed policy measures (e.g. EU directives or national Parliamentary acts), government or interest group statements, committee reports, press agency articles, newspaper articles, minutes of meetings and parliamentary plenary sessions, and public opinion surveys. In addition to the above qualitative indicators, a number of quantitative indicators are used, such as economic indicators (real GDP growth rate and unemployment rate), and figures of

immigrants in Germany. The primary data is supplemented by scholarly literature of relevant fields.

Selection of interviewees

With regard to qualitative research based on interviews, most methodology scholars recommend using *purposive sampling* or *snowball sampling*. In *purposive sampling*, the researcher strategically selects interviewees who are relevant to the research question (Bryman, 2008: 458). Bryman adds to this the approach of *theoretical sampling*, which he includes as a sub-group of *purposive sampling*. When using this approach, an emerging theoretical framework is used to select interviewees until *theoretical saturation* is achieved. The main idea of *theoretical sampling* is that interviewees continue to be selected until a category has been saturated with data (Bryman, 2008: 426, 459).

This study has followed a *purposive sampling* approach informed by theoretical considerations. The only exceptions are a few exploratory interviews from the early stages of the research project. When conducting exploratory research on the Economic Migration Directive chapter of the study, the minutes of the Council meetings in which the Directive had been discussed were not available to the public. Hence, a number of people were consulted to establish the main issues in the discussions. Accordingly, interviews were conducted with the Permanent Representation of the United Kingdom to the European Union (Brussels, 04/07/07), Permanent Representation of Finland to the European Union (Brussels, 04/07/07), and with a diplomat who prefers to stay anonymous (30/04/2008). When later the full minutes of the Council meetings became available, the data was complemented. These interviews also served to get a feeling for how well the questions

flow and to get some experience with the process of conducting interviews (see, for instance, Bryman, 2008: 443).

For the other interviews, the *rules of the game* concept was used to select the relevant interview partners. According to the *bureaucratic politics* framework, the *rules of the game* determine which actors play a role in the process of preference formation. The *rules of the game* for the case of Germany are the rules of internal procedure of the German federal government (*Bundesgeschäftsordnung der Bundesministerien* or *BGO*). They determine which actors have to be part of the decision-making process, namely, which ministry is in charge of coordinating the process, and if and how the social partners and the parliament are to be included. Consequently, the relevant representative or representatives for each actor were tried to be identified. In some cases this was straightforward. For instance, the *BGO* clearly assigns the Ministry of the Interior as the ministry responsible for coordinating preference-formation on immigration matters. It has the power of discretion to decide which other ministries need to be included in the process, i.e., which other ministries' areas of responsibility are being affected. Thus, not all relevant actors can be identified from the rules of internal procedure. *Snowball sampling* was therefore employed to identify all relevant actors, or respondents that could provide information about relevant actors, such as representatives of research institutes and academics. Bryman defines *snowball sampling* as follows: "With this approach of sampling, the researcher makes initial contact with a small group of people who are relevant to the research topic and then uses these to establish contacts with others" (Bryman, 2008: 184).

The interview selection was stopped when neither the conceptual frameworks used in the study nor respondents suggested there were further relevant interview partners that had

not been interviewed. While the majority of chosen persons were willing to be interviewed, a few high ranking German politicians were not willing or did not have the time to take part in an interview. However, I was referred to people in charge of immigration policy-making, who were often even better qualified to comment on the preference formation of the German governments with regard to liberalising economic migration policies at the EU level. This is because dealing with issues relevant for this study was or is part of their daily routine, whereas for high-level decision-makers the subject of this study is only one amongst many other issues which can make it difficult to recall all the details involved in the decision-making process. This is particularly likely if the issue was not seen as controversial or sensitive at the time of decision-making.

Interview Questions

When selecting questions and compiling the interview guide a number of points were kept in mind. Bryman (2008: 442) suggests considering, “[w]hat do I need to know in order to answer each of the research questions I’m interested in?” as a guide to devising the list of interview questions. In addition, the author suggests a number of basic elements to steer the process of choosing questions. These include establishing some sequence in the topic areas to which the questions refer, in order to make sure the interview flows nicely; avoiding asking leading questions; and relating the questions as closely as possible to the central research question of the study (Bryman, 2008: 442). The interview guide contained some contextual introductory questions about the general developments surrounding the respective proposal, and, as the interview progressed, more specific questions digging deeper into dynamics of the decision-making process of the German government. In case

an important thread emerged, follow-up and probing questions were asked to dissect more information about the relevant processes.

Archival Resources – some considerations

Archival resources are an important source of primary data. Often they are the principal or only way to reconstruct certain aspects of decision-making processes that took place a long time ago. Consequently, they can provide a longitudinal perspective of a certain topic or policy area. In addition, they can give clear and detailed insights into governmental decision-making, particularly if the archival material consists of declassified documents. This is because they can comprise a plethora of information that interviewees might withhold for reasons of confidentiality or sensitivity. However, archival research involves a number of pitfalls that need to be kept in mind and addressed by the researcher.

The collections of certain archives may have important documents missing – either because they have been lost, accidentally destroyed, or removed intentionally (Trachtenberg, 2006: 157). Archival documents could also have been subject to purposeful manipulation. This could reflect a certain agenda of policy-makers, for instance, portraying their actions in a certain light, or attempts to make specific actors believe that their points of view have been taken into account in the process of decision-making, while in truth the decision has been made by a senior governmental figure without considering all appropriate actors (George & Bennett, 2005: 101-102; Trachtenberg, 2006: 159). In particular, intentional misinformation or manipulation of the sources poses the danger of creating bias that might lead the researcher to draw the wrong conclusions. However, there are a number of possible ways to deal with the weaknesses of archival research.

Archival sources should be considered with the wider historical context in mind that provided the background to which the documents were produced. This includes the examination of contemporary public sources, such as media, secondary literature, alternative archival resources, or even interviews if possible (George & Bennett, 2005: 111; Milligan, 1979: 196; Trachtenberg, 2006: 158). It is important to analyse the same file or document from different sources, for instance, to compare different minutes of the same meeting obtained from different sources. Trachtenberg (2006: 159-160) suggests that earlier versions of documents often contain less bias, as manipulation of documents tends to happen with later final versions. If certain documents are seen as politically sensitive, governments may decide carefully which documents to make available to the public for later consultation (Trachtenberg, 2006: 157). In addition, George and Bennett suggest that lower level actors are often the better source of information. This is because they have a better recollection of what happened since they were dealing with the matter on a daily basis. Conversely, senior officials have to deal with a plethora of issues simultaneously and might find it more difficult to put together the details of a particular issue (George & Bennett, 2005: 103). Moreover, lower-level officials carry less political responsibility, which reduces the incentive for manipulating the documents according to a certain political agenda.

It is important to go through archival research with certain questions in mind but to keep an open mind to challenge established information and mind-sets (Brooks, 1969: 91-92; Trachtenberg, 2006: 146). Even though archival resources may not provide the complete list of documents, they still can serve to establish the processes that happened in the past. In the words of Trachtenberg: "Every piece of evidence is a window into the same

historical reality, and you don't need to look through every window to get some sense for what the historical reality is" (Trachtenberg, 2006: 158). Finally, the advice of King et al. also applies to addressing the weaknesses of archival research: "The most important rule for all data collection is to report how the data were created and how we came to possess them" (King, et al., 1994: 51).

This dissertation reduces the weaknesses posed by archival research by using different sources. Archival research is complemented by consulting newspapers, interviews (where possible), other historical accounts, and different archives. With regard to the Ankara Agreement, for instance, the Federal Archives in Koblenz, the Political Archives of the Foreign Office, as well as the Archives of the European Union in Florence are used. With regard to the Europe Agreement case study, only one archival resource was available (the files of the Federal Ministry of Economics at the Federal Archives in Koblenz), but careful attention has been paid to consult newspaper accounts and other relevant scholarly work to compare and provide the historical background. In addition, with regard to the Ankara Agreement, within one archive, the files of different ministries are examined, which have been recorded and archived separately. Most documents have been compiled by lower-level civil servants. In addition, several documents are included with more than one version or in different archives or files which increases the validity and reliability of the data, as discussed above. In particular, with regard to the Ankara Agreement case study, the sensitivity of the freedom of movement provisions was low, reducing the incentive and thus the likelihood of a manipulation of the records.

Analysis of data

To analyse the data from interviews and archival research, the qualitative research software NVivo was used.⁹ The content was coded according to themes that emerged while doing the research. A major advantage of using qualitative data analysis software is that data from interviews can be coded together with data from archival, newspaper, and government sources as well as secondary sources. This enables a direct comparison and triangulation of the different data sources. Coding is the starting point for most forms of qualitative data analysis (Bryman, 2008: 550). The process of making sense of the empirical data has been guided by some of the points that Bryman, with reference to Lofland and Lofland (1995), lists as a general guide to coding (Bryman, 2008: 550). These points advise to consider of what general category the item of data is an instance; what the item of data represents; what question about a topic does this item of data suggest; what sort of answer to a question about a topic does this item of data imply; and what kind of event is going on here (Bryman, 2008: 550). The data was coded during the process of transcribing the interviews and analysing archival and newspaper sources. Codes have been constantly reviewed in light of the developing conceptual framework and modified if necessary. Importantly, after the coding of the data the findings were interpreted in light of the research question and related to existing theoretical concepts.

Criticism of using coding as a tool for analysing qualitative data include the danger of losing the context of what is said, and the fragmentation of data leading to the loss of the narrative flow to what interviewees have said (Bryman, 2008: 553; Coffey & Atkinson, 1996: 23). These criticisms are addressed by keeping the general context in mind by

⁹ The NVivo software provides a platform where several different sources, such as interview transcripts, notes of archival material, pictures of archival documents, newspaper articles, and journal articles can be uploaded and coded according to certain themes.

constantly triangulating the information with other sources. The second criticism is of less relevance to this study as the research question is not particularly conducive to the in-depth analysis of narratives (Bryman, 2008: 554). This is because of the plethora of actors involved in the decision-making process and the regulated decision-making environment leaving not much leeway for individuals to shape the process single-handedly.

Generalisation

The theoretical framework explains the liberalisation of economic migration measures for the case of Germany and thus intends to explain why and under what conditions the German government agrees to liberalise economic migration policies at the EU level. In addition, the study hopes that the findings elaborated for the case of Germany can be generalised to the type or class of cases of which Germany is a member (see, for instance, George & Bennett, 2005: 110). As discussed above, in the most narrow sense, the class of cases are the other founding members of the EEC, i.e., Belgium, France, Italy, Luxembourg, and the Netherlands. The cases differ on a number of variables, but still share many commonalities, such as the main characteristics of parliamentary and governmental institutions, the organisation of the economy, geographic situation, history of economic migration, immigrant stock, organisation of the economy, and being subject to similar foreign policy demands with several other countries (see, for instance, Hall & Soskice, 2001; Lijphart, 1999). Hence, the risk of mistaken inferences is relatively low.

More broadly, the findings of this study may travel to other EU Member States. Compared to the original six, by including all 27 EU Member States there is more variation with regard to the relevant causal variables because of the greater diversity of country characteristics.

This increases the likelihood that other variables that have not had a causal impact with regard to Germany might play a role. However, some countries, for instance, Austria, share a great deal of common characteristics with Germany, which increases the likelihood of the findings for Germany also being applicable. In the broadest sense of generalisation, the findings might provide insights into the preference formation on economic migration for any country. However, claiming that this is definitely the case risks the danger of overgeneralisation and must be treated with caution. As the characteristics of countries outside the EU differ greatly, and also if we regard preference formation on economic migration in general, i.e., without the EU context, many variables may change or new variables become relevant. Thus, the generalisability of the findings on this general level is likely to be small – but still possible.

In addition, the findings may also be applied to future policy proposals on economic migration. Very important for this is the broad nature of the explanatory framework. By including a number of different causal factors in the *bureaucratic politics* framework, the explanatory framework of this dissertation is likely to be flexible enough to allow for changes in the EU and national decision-making procedures. The latter is particularly relevant, as the Treaty of Lisbon changed the voting procedure on legal migration from unanimity voting to qualified majority voting. Here the value of having used different kinds of policy measures on economic migration might show.

Immigration background of Germany: domestic context

This section provides the immigration context of the Federal Republic of Germany, focussing on key developments that shaped immigration to Germany and the Republic's young history, relating these to the four sub-cases of the dissertation.

Gastarbeiter recruitment

Shortly after the end of the Second World War, an export-driven boom led the German economy to expand significantly. To maintain high growth rates, more workers than the German working population could provide were required; consequently, from the mid 1950s the German economy experienced labour shortages. In addition to robust economic growth, this was for a number of reasons: The working population was still rather small, attributable to wartime loss of life; furthermore the rearmament of the Federal Republic meant that over 500,000 workers were no longer available on the labour market (S. Green, 2004: 32). As the Iron Curtain cut off the most obvious possibility to recruit people from East and Central European countries, which had strong cultural ties with Germany, labour recruitment focused on Southern European countries (Katzenstein, 1987: 213). Bilateral labour recruitment agreements were concluded with Italy in 1955, Spain and Greece in 1960, Turkey in 1961, Morocco in 1963, Portugal in 1964, Tunisia in 1965, and Yugoslavia in 1968. Labour shortages were further increased because the building of the Berlin Wall in 1961 stopped the inflow of workers from the German Democratic Republic (Thranhardt, 1996b: 202-203). This period of labour recruitment influenced the history of the Federal Republic like few other developments. Immigration was ostensibly temporary and the (in)famous term *Gastarbeiter* (guest worker) was used to stress this (seemingly) temporary dimension. Foreign workers were supposed to return to their home countries after a few

years of work, not integrate into German society. Hence, no policies were put in place to provide a smooth transition to continued residence in Germany and most guest workers lived segregated from the German population (Thränhardt, 1996b: 206); neither were there policies implemented to provide foreign workers with an incentive to return to their countries of origin. In retrospect, the *Gastarbeiter* policies are largely seen as a massive failure, and the idea that workers would return to their respective home countries after the job was done turned out to be an illusion (Korte, 1987: 164). The first sub-case of this dissertation falls in this period of enthusiastic labour recruitment. In addition to guest worker recruitment, this era was also characterised by the political and economic tensions between the Soviet Union and the Western world.

Recruitment Stop (?)

The guest worker recruitment period came to an end in 1973, when the German government implemented the recruitment stop (*Anwerbestopp*) in November of that year. This happened in the context of the oil crisis of October 1973 and the worsening economic situation in Germany. 2.6 million guest workers were living in Germany and the labour market was saturated (Bundesministerium des Innern, 2011). However, the recruitment stop did not bring to an end the inflow of foreigners. It did discontinue the inflow of workers, but immigrants kept coming to Germany, most notably in the form of family reunification or persons seeking asylum. Hence, the recruitment stop of 1973 could be more appropriately termed *labour recruitment stop*. As a consequence, in 1980, 4.5 million foreigners lived in the Federal Republic of Germany (or seven percent of the total population) (Münz & Ulrich, 1997: 83).

“Germany is not an immigration country”

Immigration did not cease in the 1970s, and the social challenges that the large numbers of foreigners in the Federal Republic posed became apparent. The most striking problems were those of the education system coping with the increased number of immigrants (organisationally and educationally), and the housing issues, i.e., foreigners tended to live under worse conditions than Germans, and in certain areas, which meant a segregation between the foreign and native population (Klusmeyer & Papademetriou, 2009: 97-98; Korte, 1987: 168-1976). In addition, the unemployment rate of foreigners had risen proportionally higher than that of the native population, which created concerns about foreigners posing a burden to the German welfare state (Martin, 2004: 232). These issues, combined with the worsening of the economic situation after the oil shock in 1979/1980, gave rise to a wave of xenophobia mainly targeted at the Turks, the largest group of foreigners in Germany (Thränhardt, 1996b: 210-211). Migration had become a massive political issue.

In an attempt to establish a new policy framework, a joint federal-*Länder* commission was put into place in August 1976; it presented its report in April 1977. The commission was supposed to develop policies that reflected the fact that Germany was not and should not be “a country of immigration”. The recommendations of the Commission entrenched the dictum that Germany is not a country of immigration (*“Deutschland ist kein Einwanderungsland”*) in German migration politics and political debate. It determined political thinking about immigration policy by German policy-makers for more than twenty years (S. Green, 2004: 38). The dichotomy between the reality of a large stock of immigrants and the continued inflow of foreigners (Germany’s foreign population increased from 4.6 million in 1981 to 5.3 million in 1990 (S. Green, 2004: 55)) on the one hand, and

the political class's denial that Germany needed a coherent framework of immigration policies on the other hand, is tellingly expressed by Bade with the heading: "The German Paradox: Immigration Country without Immigration Policies" (Bade, 1997: 28). This approach did not change in the course of the 1980s, with the consequence that political and social tensions grew while politicians denied the existence of problems that people in Germany were confronted with on a daily basis (Bade, 1997: 29).

Xenophobia and Asylum Compromise

The disintegration and eventual collapse of the Soviet Union and German reunification in 1990 had serious migration repercussions for Germany, as they removed obstacles for migration. Flows of East Germans and ethnic Germans from Poland, the Soviet Union, and Romania started to arrive in the Federal Republic of Germany. In addition, many people from Eastern Europe applied for asylum (Thränhardt, 1996b: 213). Civil war in Sri Lanka, ethnic cleansing in the former Yugoslavia, and the repression of the Kurdish minority population in Turkey and its neighbouring countries further augmented the increase in asylum applications to Germany. In the absence of legal routes for migration, asylum became the most promising avenue to enter the country (Klusmeyer & Papademetriou, 2009: 137; Menz, 2009: 180). These developments led to further tensions between the native and foreign populations in the Federal Republic of Germany, which resulted in another wave of xenophobia and even violence against foreigners that lasted for three years (Thränhardt, 1996b: 218). The violence included a fire-bombing by a group of neo-Nazis in the town of Solingen that killed five Turks who were permanent residents of the Federal Republic of Germany (Hollifield, 1994). On 6 December 1992, the federal government together with the social democratic opposition reached the so-called asylum

compromise (*Asylkompromiss*), the objective of which was to reduce possibilities of abuse of the German asylum legislation, and make it more restrictive to reduce the number of asylum seekers coming to the Federal Republic of Germany. The asylum compromise came into force on 30 March 1993. It helped to resolve what had been called “Germany’s biggest political crisis since World War II” (Joppke, 1999: 94); public outbreaks of xenophobia decreased after the asylum compromise became law. (Bundesministerium des Innern, 2011; Thränhardt, 1996b: 219-220). The Europe Agreement case study falls into this period of German immigration history. The Iron Curtain had fallen and the CEECs sought to reinvigorate their ties with the West. The Europe Agreement case study highlights the migration challenges of this development. The case study also sheds light on the dilemma the government of the Federal Republic of Germany found itself in, by seeking to receive the CEECs with open arms on the one hand, and facing political limits for liberalising immigration policy on the other, as immigration became a salient political issue domestically.

Green Card and Zuwanderungsgesetz

Public criticism, and criticism within the then ruling party (the CDU/CSU), about the dictum that the Federal Republic of Germany is not a country of immigration became louder during the course of the 1990s. However, the federal government kept its position until the late 1990s (Bade, 1997: 28; Joppke, 1999: 62; Thränhardt, 1996b: 198). Even though in the 1990s the government concluded a number of agreements with the CEECs¹⁰ allowing foreign workers to work in the Federal Republic of Germany as subcontractors for certain projects, and seasonal foreign worker programmes, there was no route for permanent

¹⁰ Poland, Hungary, Croatia, Slovenia, Bosnia–Herzegovina, Macedonia, Romania, the Czech Republic, Slovakia, Bulgaria, Latvia, and Turkey.

economic migration to the Federal Republic of Germany (Martin, 2004: 239-240; Menz, 2001: 255; Thränhardt, 1996b: 214). It was the coalition government of the SPD and the Greens, which came into power in October 1998, that slowly started to turn its back to the political immigration orthodoxy that had dominated the 1980s and much of the 1990s. The government introduced a bill that established a legal route of labour migration for highly qualified ITC specialists. The government further established a high-profile expert commission (*unabhängigen Kommission „Zuwanderung“*) to make recommendations for a comprehensive reform of German immigration law. Giving consideration to the recommendations of the Commission, it issued a proposal for a new immigration act to regulate immigration in August 2001, which in its first version even contained a point-based system of selection later erased from the text. The process of implementing the law was a lengthy and controversial one, and the final version of the new immigration act (*Zuwanderungsgesetz*) that came into force on 1 January 2005 was more restrictive than the initial draft. This reflected the lengthy political battles the process of passing the law had involved. These developments indicate that the political leadership felt there were labour shortages in certain sectors of the economy that necessitated a legal platform for labour migration. The last two case studies (the Economic Migration Directive and the Blue Card Directive) of the dissertation are part of this time period. They help to understand Germany's slow move towards opening new channels for economic migration and its even slower preparedness to accept EU involvement in this policy area.

Immigration background and governmental preferences

The Federal Republic of Germany has a particular immigration history. It provides the context within which domestic preferences on migration are formed in the Federal

Republic of Germany. The four hypotheses of this dissertation include causal variables that were established in an iterative process that meant going back and forth between data and theory. Of course, immigration policy-making in the Federal Republic of Germany does not happen in a vacuum. As discussed above, one of the key aspects of German immigration history includes guest worker recruitment, which led to a large immigrant stock and had serious social effects that shaped German society until the present day. Givens and Luedtke (Givens & Luedtke, 2005) observe that *political salience* is more significant for policy outputs on immigration than the number of immigrants in a country. The general migration context and political developments regarding immigration influence the causal variables, by for instance increasing the *political salience* of immigration or inducing the government to pass certain domestic laws. Apart from factors that do not directly relate to the national context, such as foreign policy value, domestic migration developments are operationalised by the causal variables of the dissertation's hypotheses. In other words, the domestic context is captured by the causal variables of this dissertation.

In addition, the Federal Republic of Germany shares the history of guest worker recruitment with most other Western European countries, such as Britain, France, Scandinavia, the Low Countries, Austria, and Switzerland (Katzenstein, 1987: 210; Thränhardt, 1996b: 206). Thus, recruitment of foreign labour in the 1950s and 1960s with the intent to send workers back to their country of origin is not a German particularity. Neither are waves of xenophobic violence directed towards the foreign population a phenomenon particular to the Federal Republic of Germany as they also occurred, for instance, in the UK and France (Thränhardt, 1996b: 210). Consequently, even though the Federal Republic of Germany has a particular domestic immigration context, governmental preferences on economic migration are best explained by the causal variables included in

the four hypotheses. The fact that the Federal Republic of Germany shares certain aspects of its immigration background with other European countries may be taken as a starting point to expand the findings of this study to other countries, as factors such as guest worker recruitment, immigrant stock, and xenophobia can be controlled for.

Comparability of measures

The dissertation explains why a Member State government supports common EU measures on liberalising economic migration and why it sometimes decides not to do so. Hence, the dissertation is interested in looking at policy measures that propose an EU-level liberalisation of this policy area. It is important that the policy measure has or had (or would have had if adopted) a binding effect that means or would mean a liberalisation of economic migration policies at the EU level. In addition, the measure needs to require support of Member States before entering into force. Thus, for instance, rulings of the European Court of Justice (ECJ) do not fall into the scope of this study. Assessing the impact of ECJ on economic migration policy is beyond the scope of this dissertation. It is of less importance what kind of policy measure it is. In other words, the policy measure can be an EU directive, regulation, association agreement or another sort of agreement or treaty.

The dissertation examines the causal factors that played a role in forming governmental preferences. If, for instance, foreign policy factors played an important role in bringing about governmental support for a certain policy measure, then this does not pose problems of comparability; instead, it is of great significance that foreign policy factors can play a key role in the process of supporting EU-level liberalisation of economic migration. It

is important also to include policy measures, such as association agreements, which may be more susceptible to foreign policy factors. This allows discussing the role of these factors in the process of national preference formation.

This study sets out to explain why and under what conditions a Member State supports EU-level liberalisation of economic migration in a more comprehensive way, and thus goes beyond the literature that focuses on post-Tampere developments. In addition, by using the *bureaucratic politics* framework as a general analytical lens, the explanatory framework of the dissertation encompasses, in particular with the *rules of the game* proposition, procedural aspects of the governmental preference formation. Thus, procedural differences and what kind of *rules of the game* are most likely to bring about Member State support for liberalising economic migration policies at the EU are taken into account in the explanatory framework. Consequently, different kinds of measures, most notably EU directives and association agreements, can without problem be used as case studies for this dissertation, even if they entail differences in decision-making procedures.

Moreover, if the explanatory framework holds for a large number of different policy measures, its explanatory power is more convincing and valuable than of an explanatory framework that can only explain a certain kind of policy measure, such as EU directives, for instance. The contribution of the latter explanatory framework to explain EU-level liberalisation of economic migration would be very narrow. The important point is to explain liberalisation of economic migration at the EU-level independent from the form of policy measure it takes. This also increases the likelihood that the findings can be generalised beyond the case study of this dissertation.

Identifying labour shortages

There is no clear way to identify labour shortages. There are no official measures or easy indicators (Migration Advisory Committee, 2008: 118). Thus, studies that have embarked on measuring labour shortages deploy a range of different indicators (see, for instance, Migration Advisory Committee, 2008; Ruhs & Anderson, 2010; Veneri, 1999). Even though analysing the factors that lead to the development of labour shortages is beyond the scope of this study, it is helpful to briefly consider the factors involved in generating labour shortages, in order to contextualise policy making on economic migration. Ruhs and Anderson offer a sophisticated account, suggesting that labour shortages are produced by an “interdependence between labour demand and supply, and the effects of dynamic regulatory, institutional, and policy systems” (Ruhs & Anderson, 2010: 17). Their conceptual framework can be broken down to three main points. First, labour demand and supply are mutually conditioning. For instance, the workers that employers would like to hire depend on the workers they think they will be able to attract. Second, the term *skill* is both conceptually and empirically ambiguous. For instance, *skills* can mean soft skills or skills related to particular professions. This can include, as the authors point out, “a willingness to accept certain wages and employment conditions” (Ruhs & Anderson, 2010: 6). Third, labour shortages can be produced by what the authors call “system effects”. This refers to the institutional and regulatory frameworks of the labour market, such as the lack of training programmes, increasing the benefits of recruiting immigrants who have already been trained abroad (Ruhs & Anderson, 2010: 6; Wickham & Bruff, 2008: 41). Hence, labour shortages tend not just to emerge as unavoidable occurrences, but are the product of a number of factors. In the words of Geddes and Scott: “It is important to recognize here that shortages are socially, economically, culturally, and politically constructed and that they need not exist” (Geddes & Scott, 2010: 211).

A critical point is that employers are central to both the production of labour shortages and their measurement. Regarding measurement, employers are important because they are an essential source of information (F. Green, Machin, & Wilkinson, 1998: 165). However, it is important to keep in mind that employers may exaggerate or misjudge the labour shortages they experience (Migration Advisory Committee, 2008: 110; Veneri, 1999: 18). Labour shortages can be reduced by a number of ways – immigration being just one of them. Measures to reduce labour shortages other than immigration include increasing wages and/or improving working conditions, changing the production process to make it less labour-intensive, relocating production to countries where costs are lower, producing less labour-intensive commodities and services, increasing overtime, increasing hours worked, increasing subcontracting, and retaining existing staff (Geddes & Scott, 2010: 212; Migration Advisory Committee, 2008: 113; Ruhs & Anderson, 2010: 34). Employers often do not engage in these alternatives as they are either not available or much more cost intensive than immigration, in case immigrant labour is readily available (Ruhs & Anderson, 2010-42; Veneri, 1999: 18).

Consequently, measuring labour shortages should involve a number of different indicators, which do not rely entirely on employer information. A very highly developed methodology to measure labour shortages is presented by the Migration Advisory Committee. It combines what the authors call top-down with bottom-up evidence. Regarding top-down evidence, in total, indicators are used to measure labour shortages. They can be segmented in four categories: employer-based indicators (for instance, reports of shortage), price-based indicators (for instance, earnings and growth), volume-based indicators (for instance, employment or unemployment), and indicators of imbalanced

based on administrative data (for instance, vacancies or vacancy/unemployment ratios) (Migration Advisory Committee, 2008: 109, 116).¹¹ By using the above indicators, rather than only a few, the methodology reduces the chance of the evidence suggesting a shortage where one does not exist. However, it is still possible that the data gives wrong indications about the existence of labour shortages (Migration Advisory Committee, 2008: 132). The methodology suggests considering, if possible, the top-down together with evidence in order to establish whether labour shortages exist in a certain profession. Regarding the use of bottom-up evidence, the Migration Advisory Committee states:

Bottom-up evidence enabled us to get more detail and more fully understand the context for the data trends we were considering. It enabled us to drill down to occupations that were often very specialised. Working with a wide variety of stakeholders to gather this evidence also provided the opportunity to refine further our methodological approach (Migration Advisory Committee, 2008: 78).

The bottom-up evidence was gathered by extensive engagement with stakeholders. This included launching a call for evidence; carrying out visits to every country and region of the UK; engaging with the Sector Skills Councils and Sector Advisory Panels; setting up a formal Stakeholder Panel; establishing a broader Stakeholder Forum; other meetings with employers, employees and representative organisations; and commissioning some

¹¹ **Employer-based indicators:** percentage of skill-shortage vacancies/employment by occupation; percentage of skill-shortage vacancies/all vacancies; percentage of skill-shortage vacancies/hard-to-fill vacancies.

Price-based indicators: percentage change in median hourly pay for all employees; percentage change in mean hourly pay for all employees; relative premium to an occupation, given NQF3, controlling for region and age.

Volume-based indicators: percentage change in unemployed by sought occupation; percentage change in hours worked for full-time employees; percentage change in employment; absolute change in proportion of workers in occupation less than one year.

Indicators of imbalance based on administrative data: absolute change in median vacancy duration and stock of vacancies/claimant count by sought occupation.

independent research into staff shortages and immigration across key sectors (Migration Advisory Committee, 2008: 78). Only if both top-down and bottom-up data suggest there are labour shortages in a certain profession, does the methodology acknowledge the existence of labour shortages.

Data requirements for such a methodology are enormous and necessitate externally commissioned studies, consultation with stakeholders, and a team of researchers. Where the dissertation refers to labour shortages, the potential pitfalls are highlighted.

Relevant national legislation

As discussed in Chapter Two, this dissertation is interested in the *misfit* between the existing national legislation and what is proposed at the EU level. This can be measured in a very straightforward way by investigating the relevant legislative acts. For the sub-case studies of the dissertation, see *Table 4* below.

Table 4: Relevant national regulations for each sub-case study

	Case Study	Relevant national regulation
1	Ankara Agreement	Bilateral Recruitment agreement with Turkey
2	Europe Agreement	1. Bilateral agreements the Federal Republic of Germany had in place with Poland, most notably, the agreement for workers posted by subcontractor companies (<i>Vereinbarung zwischen der Regierung der Bundesrepublik Deutschland und der Regierung der Republik Polen über die Entsendung von Arbeitnehmern polnischer Unternehmen zur Ausführung von Werkverträgen.</i>) 2. <i>Gesetz zur Neuregelung des Ausländerrechts</i>
3	Economic Migration Directive	2001 draft of <i>Zuwanderungsgesetz (Entwurf eines Gesetzes zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern (Zuwanderungsgesetz))</i>
4	Blue Card Directive	<i>Zuwanderungsgesetz</i>

Measurement of *political salience*

This study uses a generally agreed upon definition from the literature on *political salience*, i.e. *political salience* of immigration is the level of popular attention to, or awareness of, immigration issues (see, for instance, Givens & Luedtke, 2004: 150; Rosenblum, 2004b: 40-41). To measure this level of popular attention, most commonly, *political salience* is operationalised as references in newspapers (see, for instance, Baumgartner & Jones, 1993: 252-268; Givens & Luedtke, 2004: 150; 2005: 17; Lee, Rainey, & Chun, 2009: 468-469; Ringquist, Worsham, & Eisner, 2003: 150). The most straightforward form is to count the number of articles that reference a certain issue over a specified time period in a particular publication. Studies covering the US often use *the New York Times*. This study uses *Die Zeit*, *Der Spiegel*, and *the Frankfurter Allgemeine Sonntagszeitung*. *Die Zeit* is a major German nationwide weekly newspaper. The first edition was printed in February

1946. *Die Zeit* offers an easily accessible archive that allows counting the number of articles for all four case studies of this dissertation.

Der Spiegel is Germany's largest weekly news magazine and was first published in January 1947. It also offers an easily accessible archive that includes all issues of *Der Spiegel*.

The *Frankfurter Allgemeine Sonntagszeitung* is the Sunday newspaper of the *Frankfurter Allgemeine Zeitung* which is a centre-right newspaper. The *Frankfurter Allgemeine Sonntagszeitung* is used instead of the daily *Frankfurter Allgemeine Zeitung* in order to make results comparable with the weekly *Die Zeit*. Archival data for the *Frankfurter Allgemeine Sonntagszeitung* is only available from 1993. Consequently, it can only be used to measure *political salience* for the latter two case studies of this dissertation.

At the point of writing, I am not aware of other German newspapers that offer an archive that is available online and dates back to the 1950s. Even though it is possible to count the number of articles of daily newspapers for the latter two case studies, it is not possible to include all cases. Consequently, *Die Zeit* is the most promising source of measuring *political salience* of immigration for the cases used by this dissertation. In combination with *Der Spiegel* and the *Frankfurter Allgemeine Sonntagszeitung* it is a sound instrument to measure *political salience* in Germany. Whereas *Die Zeit* is a centrist to social democratic newspaper, the *Frankfurter Allgemeine Sonntagszeitung* has a centre-right outlook. Having data from two sources from different sides of the political spectrum strengthens inferences about the level of *political salience* at certain points in time. The position of *Der Spiegel* on the political spectrum can be classified as centrist, with slightly liberal positions

at times. *Figures 1 to 5* show that the data of the three sources correlate. The number of relevant articles in *Der Spiegel* is lower than in *Die Zeit* and *Frankfurter Allgemeine Sonntagszeitung*. However, this may be because of the structure of the magazine and the amount of content in one issue, which is likely to differ to the other two publications that are newspapers rather than weekly news magazines. What is important is that the data across the four case studies correlates between the three sources, as *Figure 5* indicates. The *political salience* was highest for the Economic Migration Directive. *Political salience* was second highest for the Europe Agreement and the Blue Card Directive. The level was rather similar for these two case studies. *Political Salience* was the lowest for the Ankara Agreement case study. Even though data of the *Frankfurter Allgemeine Sonntagszeitung* is only available for the latter two case studies, the data correlates with the other two sources. Thus, we can extrapolate that it is very likely that – if available – the data would also correlate for the former two case studies. The *political salience* as measured by means of counting newspaper articles is in line with what the analysis of the historic contexts suggests (see discussion in relevant chapters).

To measure the *political salience* of immigration, the German terms *Zuwanderung* and *Einwanderung* have been used. Both terms are translated with the English term *immigration* (see, for instance, Collins German Concise Dictionary, 1998). Thränhardt argues that *Zuwanderung* is a more neutral term than *Einwanderung*, but that the difference between the two terms cannot be translated into other languages (Thränhardt, 1996b: 200). Joppke (1999: 96-97) highlights the ideological dimension of the two terms:

[...] the different positions in Germany's immigration debate had narrowed down to a cryptic distinction between 'inmigration' (*Zuwanderung*) and 'immigration'

(*Einwanderung*). This was still a distinction of principle. *Zuwanderung*, the term preferred by restrictionists, means unwanted immigration that is tolerated for constitutional and moral-political reasons. *Einwanderung*, by contrast, connotes actively solicited, wanted immigration. Critics of a self-conscious 'immigration' policy and law have so far correctly pointed out that such a framework is foreign to European nation-states, which – in contrast to the transoceanic new settler nations – have never pursued active policies to populate unsettled lands. But once the inevitability, even necessity, of immigration is acknowledged, the difference between *Zuwanderung* and *Einwanderung* is one of words only, and it is bound to disappear.

Consequently, the two terms are well-suited to identify articles that deal with immigration issues. Also, the German term *Immigration* refers to immigration; however this expression has only become more common in recent years. Consequently, its use would run the danger of biasing the results, as it is less likely to be used, for instance, in 1960 than in 2008.

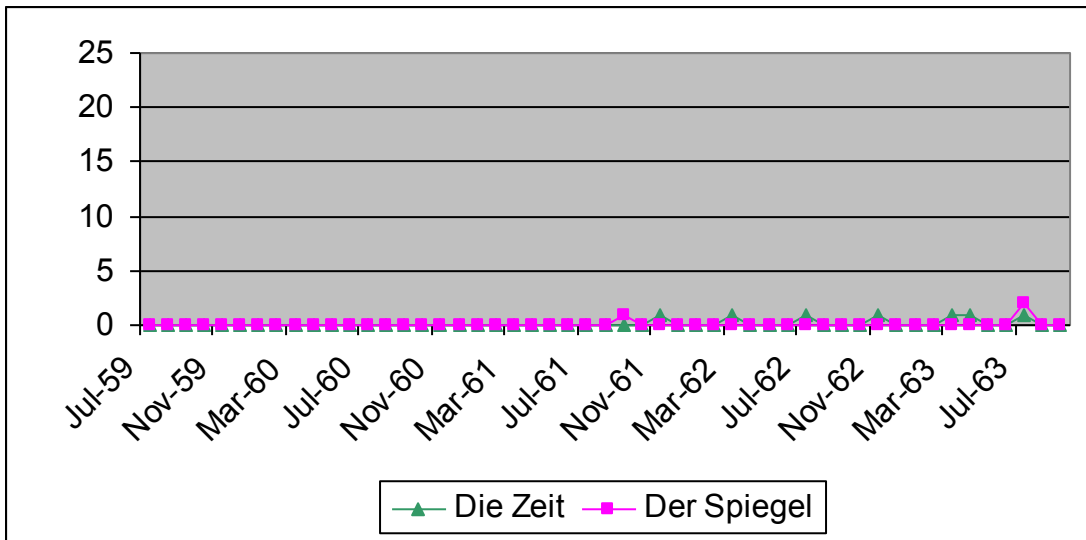
The study counts the number of articles in *Die Zeit* per month in order to measure the *political salience* immigration had during the relevant time periods of preference formation of the German government. Articles from ZEIT ONLINE, the internet service of the *Die Zeit*, are not considered. This is because ZEIT ONLINE was only established in the mid-2000s. Including articles from that source would make the results for the different sub-case studies difficult to compare as ZEIT ONLINE is only available for the period the Blue Card Directive was negotiated. Also articles from the Austrian edition of *Die Zeit* are excluded.

Only articles that mention either *Einwanderung* or *Zuwanderung* in the context of contemporary immigration to the Federal Republic of Germany are counted; articles that mention the terms *Einwanderung* or *Zuwanderung* but refer to immigration in different parts of the world, or to immigration to the Federal Republic of Germany in a different time period, are excluded. In addition, articles are included that mention *Einwanderung* and *Zuwanderung* in the European context in a way that includes the Federal Republic of Germany or is relevant to the Federal Republic of Germany. Careful attention has been paid not to count twice articles that mention both *Einwanderung* and *Zuwanderung*. In order to compare the results for the different sub-case studies, the average number of articles per month mentioning *Einwanderung* or *Zuwanderung* during the periods relevant for each sub-case study has been calculated (see *Figure 5*).

To use media attention to measure *political salience* is not a perfect form of measurement, as the salience of an issue in the media and in public opinion can be treated as distinct. However, it is generally accepted in the literature, especially as the relationship between the salience of an issue in the media and in *public opinion* is an interdependent one.

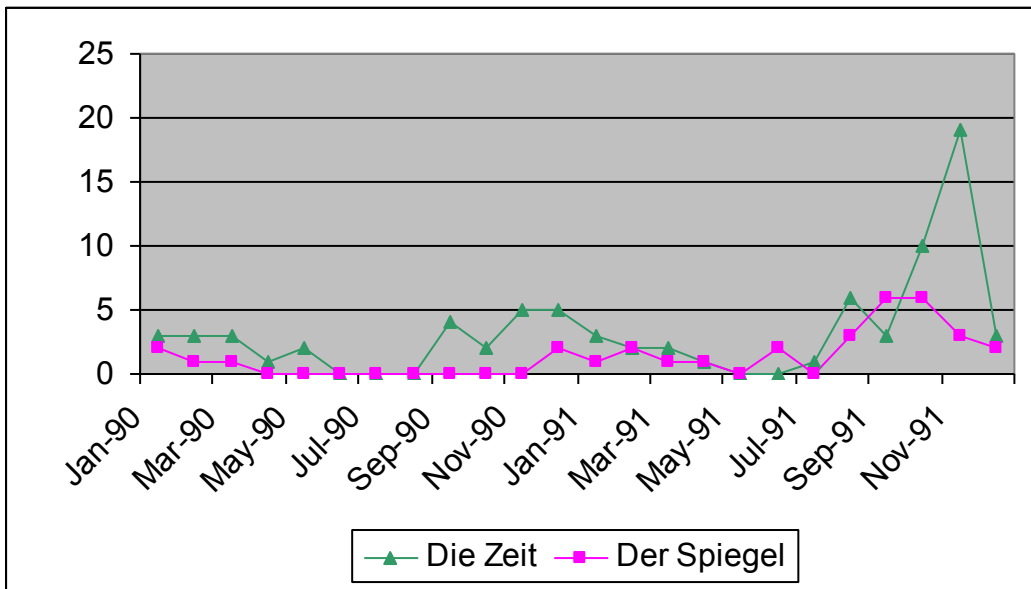
This quantitative measurement of *political salience* is supplemented by a qualitative analysis of the debate in the Federal Republic of Germany in the relevant time periods using secondary literature and newspaper articles. If available, public opinion surveys ranking public attention to different issues can be used. At the point of writing, no relevant studies for the Federal Republic of Germany could be identified. However, the method of measuring *political salience* by counting newspaper articles complemented by a qualitative analysis of the historical context provides a robust measurement of *political salience*.

Figure 1: Political Salience of Immigration, Ankara Agreement (number of relevant articles per month)



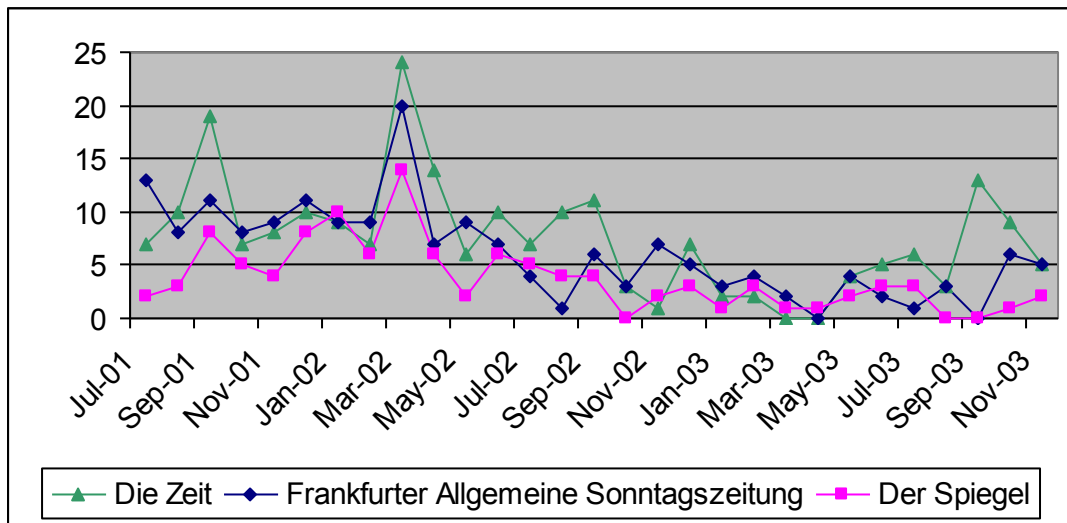
Source: Online archives, calculation by the author

Figure 2: Political Salience of Immigration, Europe Agreement (number of relevant articles per month)



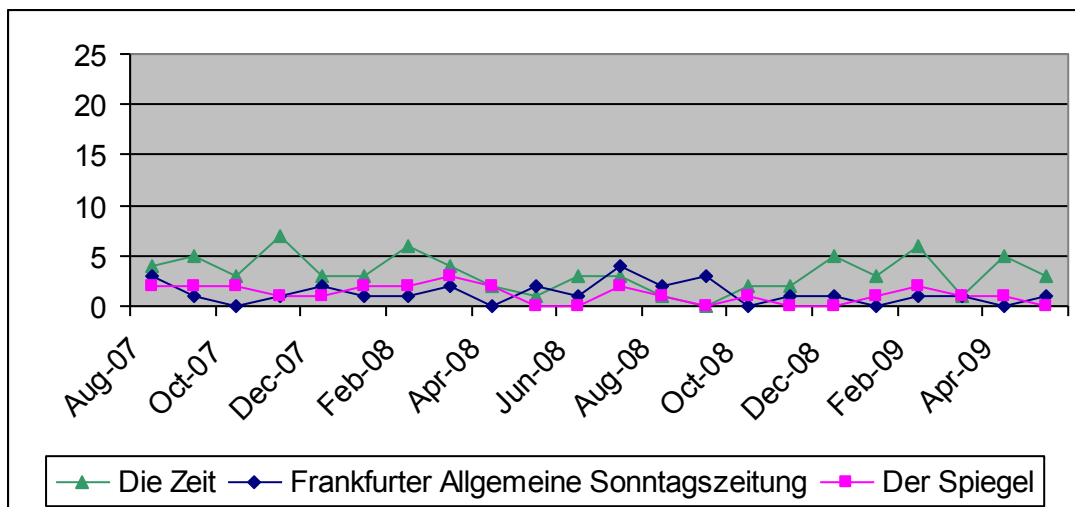
Source: Online archives, calculation by the author

Figure 3: Political Saliency of Immigration, Economic Migration Directive (number of relevant articles per month)



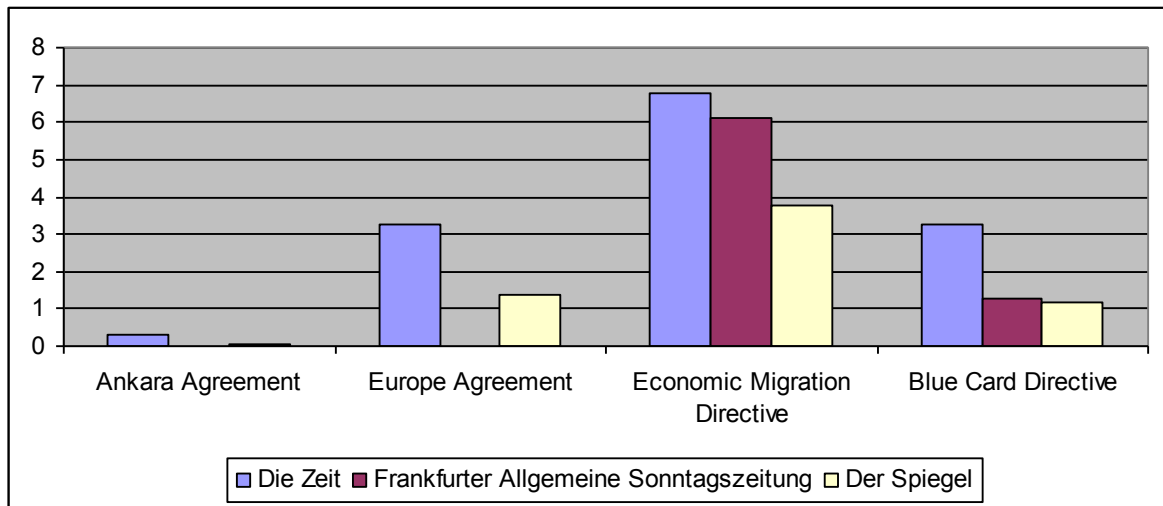
Source: Online archives, calculation by the author

Figure 4: Political Saliency of Immigration, Blue Card Directive (number of relevant articles per month)



Source: Online archives, calculation by the author

Figure 5: Average number of mentions per month during respective periods of negotiation¹²



Source: Online archives, calculation by the author

When does political salience arise?

The literature mentions a number of factors that can contribute to increasing *political salience* of a certain issue. These factors include: “real-world conditions”, in the words of Behr and Iyengar (1985: 53-54), such as external shocks (for instance, with regard to migration a surge of TCNs trying to enter the country or seeking asylum); discovery of new scientific knowledge; the formation of political groups or campaigns attempting to push a particular view on a certain issue and framing an issue in a certain way; and increased government activity regarding an issue (Baumgartner & Jones, 1993: 122-125). What gives rise to increased *political salience* varies by issue area. For instance, the discovery of new scientific knowledge is likely to be more relevant to car safety than to immigration.

¹² Data from the *Frankfurter Allgemeine Sonntagszeitung* was available only for the Economic Migration Directive and the Blue Card Directive case studies.

In addition, the emergence of *political salience* is not a straightforward process and no clear causal process is established by the literature. For instance, if we take press coverage as an indicator of *political salience*, Baumgartner and Jones observe the relationship can also happen the other way around, i.e. press coverage results in government action (Baumgartner & Jones, 1993: 247).

This study takes *political salience* as an independent variable in its analysis. Thus, to determine what exactly caused the *political salience* of immigration on certain occasions is beyond the scope of this study. However, the qualitative narrative describing the *political salience* of immigration in the respective case studies also gives an indication of what factors played a role in bringing immigration to the attention of the public. If the *political salience* of immigration is high, it can change the decision-making process of the governmental preference formation, for instance, by changing it from a mode of *client politics* to *interest groups politics* (see, for instance, Freeman, 2006). However, such a possible shift can be constrained by institutional factors, such as the *rules of the game* (see, for instance, Allison & Zelikow, 1999). This is discussed in more detail in the empirical chapters.

Operationalisation of foreign policy value

The foreign policy value of a sending country is defined as the importance of a sending country to Germany's overall foreign policy agenda. The importance can be diplomatic, strategic, and economic (Rosenblum, 2004b: 42). Factors that indicate a high foreign policy value are the following: the potential of the sending country to ameliorate a certain security threat (it is important from a geopolitical perspective), the density of trade relations

(or the prospect of establishing them), the existence of political links, such as past or present military alliances, or former colonial ties (see, for instance, Rosenblum, 2004b: 41-42). *Table 5* indicates the high *foreign policy value* for the Ankara Agreement and the Europe Agreement chapters and the non-applicability and thus relevance of the variable for the Economic Migration Directive Chapter and the Blue Card Directive Chapter.

Table 5 Factors indicating a high foreign policy value

	Ankara Agreement	Europe Agreement	Economic Migration Directive	Blue Card Directive
<i>Potential to ameliorate security threat</i>	X	X	N/A	N/A
<i>High density of trade relations or potential to establish them</i>	X	X	N/A	N/A
<i>Political links (existence of military alliance)</i>	X		N/A	N/A

Conclusion

This chapter has established and discussed the methodology of the dissertation. Particular attention has been paid to the selection of the interviewees, conducting archival research, and the analysis of the data. The case selection of the Federal Republic of Germany and the sub case studies, i.e. the Ankara Agreement, the Europe Agreement with Poland, the Economic Migration Directive and the Blue Card Directive have been considered. It has been shown that to answer the research question, the Federal Republic of Germany is the best choice, taking into account the criteria that have been proposed by the literature to increase external and internal validity of the research. In particular, this is because the variation of the dependent variable is the greatest for the Federal Republic of Germany compared to other potential case studies, most notably France. The immigration background of the Federal Republic of Germany has been given to contextualise the four

sub-case studies. In addition, it has been discussed why the three hypotheses put forward in Chapter Two are best suited to explain the dependent variable. Even though the Federal Republic of Germany has a distinct immigration history, the developments are captured by the causal variables on a higher level of abstraction, so that the explanatory framework may be applied to other countries. Furthermore, the chapter has addressed concerns of comparability of the four sub-case studies. Even though they do not constitute the same kind of policy measure, the explanatory framework is broad enough to explain liberalisation of economic migration policies in different forms. This is important for a potential generalisability of the results. Finally, the chapter has presented the operationalisation of *political salience*. The counting of newspaper articles covering immigration issues with regard to the Federal Republic of Germany, complemented by accounts of immigration's *political salience* as provided by secondary sources, has been singled out as the most appropriate way of operationalising *political salience*.

Chapter Four – Germany’s Preferences on the Freedom of Movement Provisions of the Ankara Agreement

Introduction

On 12 September 1963, the European Economic Community concluded an association agreement with Turkey (Ankara Agreement). The Agreement entered into force on 1 December 1964. It was supposed to establish a customs union between the two parties in three steps and possibly prepare Turkey for EEC membership. The Agreement contained provisions on the establishment of the freedom of movement for workers between Turkey and the EEC and thus constituted the first instance of liberalising economic migration policies at the EU level.

This is puzzling for a number of reasons. EEC Member States could agree on common European action for provisions on freedom of movement between the EEC and Turkey, which constituted a liberalisation. However, around 40 years later, efforts to create common EU measures on legal economic migration from outside the Union into the Union failed because of pronounced opposition and disagreement about the nature of such measures.¹³ In addition, the Federal Republic of Germany had become one of the fiercest opponents of common EU measures on economic migration. Moreover, the federal government of the Federal Republic of Germany concluded a bilateral labour recruitment

¹³ Council Directive on the conditions of entry and residence of third country nationals for the purpose of paid employment and self-employed economic activities, COM(2001) 386 final, which was proposed by the European Commission in July 2001, had to be formally withdrawn in 2006, as Member States could not reach an agreement on the Directive.

agreement with Turkey on 30 October 1961 (*Vereinbarung zur "Regelung der Vermittlung türkischer Arbeitnehmer nach der Bundesrepublik Deutschland"*), before the Association Agreement with Turkey was brought to a successful conclusion. These developments pose an array of important questions. First, why did the federal government of Germany see the need for EEC involvement in this domain when everything was already regulated on the bilateral level? Second, why did the EEC only put in place provisions on freedom of movement with Turkey (and Greece) and not with other countries, such as Spain, Portugal, Morocco, Tunisia, and Algeria, which have been used as a source of labour migrants by EEC Member States? Third, why do the freedom of movement provisions feature at all in an agreement which had the establishment of a custom union as its main objective? Finally, did the commitment to implement the freedom of movement provisions lack from the very beginning, thus leaving ultimate power to implement the freedom of movement provision with the Association Council, where every Member State has the right to veto? While all these questions need to be – and will be – answered, the main and overarching question that concerns this chapter is: why did the Federal Republic of Germany support the freedom of movement provisions of the Ankara Agreement?

The chapter focuses on the period between the points in time when Turkey applied for European Economic Community (EEC) associate membership in 1959 and the Ankara Agreement entered into force in 1964. The analysis is concerned with the Federal Republic of Germany (FRG).¹⁴

¹⁴ The focus of this chapter is on the Ankara Agreement itself and not the decisions of the Association Council, because the Articles of the Agreement contain the most far-reaching provisions with regard to the freedom of movement for Turkish workers. Although its implementation is not tied to a particular deadline, Article 12 contains a binding obligation for Member States to establish the freedom of movement.

The empirical analysis consists of three themes – domestic politics, international politics, and labour market concerns. In 1961, the Federal Republic of Germany concluded a bilateral labour recruitment agreement with Turkey. Its existence then minimised the *misfit* and the cost of including provisions on freedom of movement and right of establishment in the Ankara Agreement, which happened on Turkish demands. But only the constellation of the high *foreign policy value* of Turkey together with the relatively low domestic *political salience* of immigration matters, and the bureaucratic nature of the decision-making process led to the German government's support of the provisions.

The chapter looks at the different actors involved in the formation of governmental preferences. The most relevant were ministerial actors. Nevertheless, the chapter also considers the *Länder* and interest groups such as trade unions and employer associations. The chapter uses archival primary data from three different archives which has been looked through for the first time with a particular focus on the freedom of movement provisions.¹⁵ Most of the materials are governmental documents that are now accessible. While, by and large, they are well archived, sometimes the context in which they are written is not clearly established. Secondary literature plus interviews with experts in the field are used to triangulate the information obtained in the archives. The chapter is structured as follows. It begins with an overview of the Ankara Agreement, its freedom of movement provisions and an outline of Germany's preferences on the Agreement and the provisions. The chapter then moves on to the empirical analysis that puts the hypotheses to the test. The chapter ends with a concluding section.

¹⁵ The German Federal Archive (*Bundesarchiv*) in Koblenz, the Historical Archives of the European Union in Florence, and the Political Archives of the German Foreign Office (*Auswärtiges Amt*) in Berlin.

I. Genesis of the Ankara Agreement and its provisions on freedom of movement and the right of establishment

Background

The first steps towards the association agreement were undertaken by Turkey and not the EEC. Accordingly, Turkey applied to become an associate member of the European Economic Community (EEC) on 31 July 1959. This was shortly after Greece had put forward its application. An association agreement between the Republic of Turkey and the EEC (Ankara Agreement) was signed on 12 September 1963 and entered into force on 1 December 1964 (Bridge, 1976: 161). The association agreement between Greece and the EEC was concluded two years earlier, on 9 July 1961, after negotiations that were less lengthy than the ones connected to the Ankara Agreement. The former entered into force in November 1962 (Önis, 2001: 108; Rey, 1963: 54; Wülker, 1971: 63).

The negotiations on the Ankara Agreement started on 28 September 1959, and took ten at times slow and difficult rounds lasting several days each, before they could be concluded on 25 June 1963. Three reasons for this can be found. First, the lack of preparation of the Turkish side regarding the content of the negotiations (Commission of the European Economic Community, 1959a) and domestic political changes resulting from the military coup of 27 May 1960 (Ete, 1963: 42; Kramer, 1988: 33-34). Second, disagreement within the Commission about the desirability of a far-reaching agreement with Turkey and the lesser importance the Commission attributed to the agreement with Turkey (compared to the one with Greece whose successful conclusion was seen as very important because it was the first association agreement in the history of the EEC) (Ceylanoglu, 2004: 152-153). Third, disagreement between Member States in the Council of Ministers delayed the

negotiations which made it difficult to agree on a common decision (Ceylanoglu, 2004: 293-294). On the one hand, the Federal Republic of Germany favoured a more encompassing Association Agreement, and together with the Benelux countries supported a rapid conclusion to the negotiation (Ständige Vertretung der Bundesrepublik Deutschland bei der Europäischen Wirtschaftsgemeinschaft, 1963). On the other hand, France and Italy were reluctant to do so and preferred a loose Association Agreement (Auswärtiges Amt, 1959b; Birand, 1978: 54; Ceylanoglu, 2004: 193; E. Krieger, 2006: 127). Italy saw Turkey as a main competitor for its agricultural exports to the other EEC countries and wanted to avoid further competition. Although agricultural competition also played a role, the reasons for France's sceptical positions towards the Agreement are more complex. France was sceptical about the benefits of an association agreement with Turkey and for a long time argued against its conclusion (Auswärtiges Amt, 1959b). However, as a letter from the German Embassy in Paris to the *Auswärtige Amt* shows, the French government was aware from the very beginning of the Turkish bid that a rejection of the bid was hardly possible for foreign political reasons (Botschaft der Bundesrepublik Deutschland Paris, 1959). Nonetheless, during the course of the negotiations, France was careful to avoid making too many concessions to Turkish demands and favoured an agreement that was as minor as possible. This complicated the process of concluding the Agreement (Council of the European Economic Community, 1961, 1962).¹⁶

¹⁶ France's policy towards Turkey was characterised by frustration resulting from the loss of the significant geopolitical influence it once held in the region and Turkey's lack of European credentials Kramer, H. (1988). *Die Europäische Gemeinschaft und die Türkei: Entwicklung, Probleme und Perspektiven einer schwierigen Partnerschaft*. Baden-Baden: Nomos Verlagsgesellschaft, Krieger, E. (2006). *Die Europakandidatur der Türkei: Der Entscheidungsprozess der Europäischen Wirtschaftsgemeinschaft während den Assoziierungsverhandlungen mit der Türkei 1959 - 1963*. Zürich: Chronos Verlag.. In addition, Turkey's support for the Algerian rebels fighting for independence from France caused a cooling of the diplomatic relations between the two countries and resulted in an increasingly negative French stance towards the Turkish bid. Only after Algerian independence was sealed in March 1962, France took again a more positive position Ceylanoglu, S. (2004). *Europäische Wirtschaftsgemeinschaft, Griechenland und die Türkei: Die Assoziationsabkommen im Vergleich (1959-1963)*. Baden-Baden: Nomos Verlagsgesellschaft.. In the end, France and Italy gave in, mostly because of political security considerations *ibid*.

Content, Aims and Objectives

The Ankara agreement was concluded to make Turkey an associate member of the EEC, to establish a customs union, and to possibly pave the way for Turkish membership of the EEC (Deutscher Bundestag, 1964; Joseph, 2006: 3).¹⁷ *Article 2* of the Ankara Agreement states the objectives of the agreement as follows: “[t]he aim of this Agreement is to promote the continuous and balanced strengthening of trade and economic relations between the Parties [...]” (Council of the European Union, 1992). To attain that, the Agreement sought to establish a customs union. Due to the big economic development gap between the EEC and Turkey, this was envisioned to happen in three stages, as otherwise the Turkish economy might have been crushed by full competition with Community businesses. First, in the preparatory stage, Turkey was supposed to strengthen its economy with financial aid from the EEC. This preparatory stage was meant to last for at least five years. Second, in the transitional stage, a customs union between the EEC and Turkey was to be progressively established and the economic policies of the two parties were to be aligned more closely. This stage was supposed to last no longer than 12 years. Third, the final stage was the customs union, meant to entail even closer coordination of the economic policies of the Community and Turkey.

An Association Council was established that consisted of members of the governments of Community Member States, members of the Council and of the Commission, and members of the government of Turkey. The Association Council’s mandate was to ensure the implementation of the Agreement’s provisions by binding decisions (Akyürek, 2005: 8;

Council of the European Union, 1992: 4).¹⁸ In order to guarantee continuity in advancing the Agreement in between the Association Council's meetings, an Association Committee was appointed. In addition, a Joint Parliamentary Committee was established to debate certain issues based particularly on the annual report of the Association Council (Deutscher Bundestag, 1963). The committee was supposed to make recommendations to the respective Parliaments and the Association Council (Cameron, 1999: 5-6; Karabetsis, 1976: 24-25).

Article 28 states that when the implementation of the Agreement has advanced far enough, the possibility of the accession of Turkey to the EEC shall be explored.¹⁹ Hence, the Agreement does not contain any binding provisions for Turkish membership to the EEC (cf. Deutscher Bundestag, 1964). The careful wording of potential Turkish membership to the EEC indicates that the EEC was aware of at least some of the difficulties involved, for instance, the massive developmental gap between Turkey and the EEC, as well as the prominent question of whether Turkey is a European country. On the one hand, the EEC wanted to root Turkey firmly in the West, but was, on the other hand, not so sure if Turkish membership to the EEC might be a step too far. An internal letter of the Federal Ministry of Economics (*Bundeswirtschaftsministerium*) stated that the possibility to attain full EEC membership should – contrary to Greece – not apply to Turkey. The sentence was later deleted but shows that Turkish EEC membership was considered a sensitive issue (Bundesministerium für Wirtschaft, 1959h). In order to establish the customs union, the Agreement includes provisions on agriculture, freedom of

¹⁸ For a detailed discussion of the Association Council's duties and powers see Akyürek, M. (2005). *Das Assoziationsabkommen EWG - Türkei: Aufenthalt und Beschäftigung von türkischen Staatsangehörigen in Österreich*. Wien: Springer-Verlag. P. 8-10.

¹⁹ Given the great controversy more concrete discussions about Turkish EU membership sparked a few years later, it can be suspected that talks about Turkish EEC membership at that time might have been opportunistic rhetoric, at least to some extent (see, for instance, Krieger 2006).

movement for workers, transport policy, trade in capital goods, and coordination regarding trade policy with third countries (Kramer 1988: 39; Council of the European Union 1992). As the task of this chapter is to explain Germany's support for the freedom of movement provisions, the following section introduces these provisions in more detail.

Free Movement of Workers (Articles 12, 13 and 14)

Article 12:

The Contracting Parties agree to be guided by Articles 48, 49 and 50 of the Treaty establishing the Community for the purpose of progressively securing freedom of movement for workers between them.

Article 13:

The Contracting Parties agree to be guided by Articles 52 to 56 and Article 58 of the Treaty establishing the Community for the purpose of abolishing restrictions on freedom of establishment between them.

Article 14:

The Contracting Parties agree to be guided by Articles 55, 56 and 58 to 65 of the Treaty establishing the Community for the purpose of abolishing restrictions on freedom to provide services between them.

Article 12, 13 and 14 of the Agreement comprise provisions of economic migration, i.e., the freedom of movement of workers and the right of establishment. Ceylanoglu (2004: 18) suggests that these provisions were taken from the Treaty of Rome which together with its

four freedoms²⁰ served as a model for the association agreement, and that there was no disagreement about the freedom of movement provisions in the negotiations.²¹ The chapter shows that this is only partially true, as there was disagreement and the wording and content of the freedom of movement provisions in the Ankara Agreement differ from both the Treaty of Rome and the Association Agreement with Greece.

Article 12 refers to the establishment of the freedom of movement between the EEC and Turkey. This provision is based on Articles 48, 49 and 50 of the EEC Treaty.²² Article 13 establishes the abolishment of restrictions on the freedom of establishment between the EEC and Turkey. It is based on Articles 52 to 56 and Article 58 of the EEC Treaty.²³ Article 14 obligates the contracting parties to do away with any restrictions on freedom to provide services between them (Council of the European Union, 1992). The Agreement also contains a number of further economic provisions for economic union regarding, for instance, transport, competition, taxation, balance of payment, and movement of capital. The Articles, including the ones on the freedom of movement, are only brief and rather vague in their wording. They are supposed to be supplemented with additional protocols by the end of the preparatory stage (Wülker, 1971: 65). Article 36 of the Additional Protocol from 1977 provides for the gradual establishment of free movement by 1986, with the process managed by the Association Council (Ugur, 1999: 143).²⁴ As Member States have veto powers in the Council, freedom of movement was never established.

²⁰ The four freedoms include the freedom to move (I) people, (II) goods, (III) services and (IV) money freely around the EEC (and later the EU).

²¹ Supplemented by personal communication with author, 28 April 2008.

²² Articles 48-50 of the EEC Treaty lay down the provisions on freedom of movement for workers within the Community.

²³ Articles 52-56 and 58 of the EEC Treaty refer to the freedom of establishment within the EEC.

²⁴ Official Journal of the European Communities, No L 361/1, 31.12.77

II. Germany's Preferences

Rules of the game

Germany's preferences were formulated by the government and relevant ministries (Ceylanoglu, 2004: 21; Haftendorn, 1983: 51). The GGO II²⁵ mentions the relevant actors to be included in the governmental preference formation. Paragraphs 22, 75 and 76 determine that the ministries in charge of the file are the Federal Ministry of Economics and the Foreign Office. Paragraph 24 states that the *Länder* need to be included if their affairs are touched upon, which was not the case for the foreign political matters the association agreements belonged to. There is no mention that interest groups need to be involved in matters of association agreements. The stipulations of the GGO II are corroborated by the literature and the archival material.

While the Ankara Agreement was debated, the European Integration process happened almost unnoticed by the general public (Görtenaker, 2002: 145-146). There was very little newspaper coverage of the Ankara Agreement, not even to mention the provisions on the freedom of movement.²⁶ Hence, public opinion and the media did not play an important role in the preference formation on the Ankara Agreement and the freedom of movement provisions. Neither is there any indication that the employer associations held active positions with regard to the Agreement. The *Länder* governments as well as the social partners did not play a significant and direct role in German preference formation on the freedom of movement provisions.

²⁵ *Gemeinsame Geschäftsordnung der Bundesministerien – Besonderer Teil*, as in force in 1959-1963.

²⁶ As revealed by a visit to the Newspaper Archives of the *Bundesarchiv* in Berlin but also by research in the *Bundesarchiv* in Koblenz and the *Politische Archiv des Auswärtigen Amts* in Berlin. There was no reference to the public debate. Only occasional newspaper articles about the general Agreement that were very brief could be found.

However, interest groups or private actors came in through the “back door” as they contributed their part in making the German government sign the bilateral recruitment agreement with Turkey, which in turn had an important impact on the German government’s preferences on the freedom of movement provisions. This will be analysed in detail in section III. Competency on formulating the preferences on the Ankara Agreement was largely a bureaucratic matter and happened between the relevant German Ministries. As the EEC was still in its infancy, competencies on formulating Germany’s position on European integration were not yet clear. Both the Foreign Office and the Federal Ministry of Economics shared responsibility on European Integration and thus also with regard to the Association Agreements. The Foreign Office was masterminding the general process, with the Ministry of Economics having the final say on economic matters. In practice, general and economic matters were sometimes difficult to disentangle, which produced fertile ground for competency struggles between the two ministries (Bundesministerium für Wirtschaft, 1959a). Thus, Germany’s preferences on the Ankara Agreement were, by and large, formulated between the Foreign Office and the Federal Ministry of Economics. Other Ministries, such as Justice, Employment and Social Affairs, and the Interior, only played a marginal role. With regard to macro decisions, the final say was with Chancellor Adenauer (cf.: Müller-Rommel, 1994: 162; Rudzio, 2003: 289-290). However, no evidence could be found that Chancellor Adenauer took action on the freedom of movement provisions of the Ankara Agreement.

Domestic Politics

Misfit

The point of reference to determine the *goodness of fit* between the Ankara Agreement and Germany's national regulations was the bilateral labour recruitment agreement the German government had concluded with its Turkish counterpart on 30 October 1961. It entered into force retroactively on 1 September 1961 (Bundesminister für Arbeit und Sozialordnung, 1962; Hunn, 2005: 46) (*Vereinbarung zur "Regelung der Vermittlung türkischer Arbeitnehmer nach der Bundesrepublik Deutschland"*). Labour migration of foreign nationals to the Federal Republic of Germany commenced in 1955, when the booming German economy had depleted domestic resources and was calling for the import of further workers from abroad (S. Green, 2007: 31-32). The legal framework was generated by bilateral labour recruitment agreements, starting with Italy in 1955, Spain and Greece in 1960, and with Turkey in 1961. The wave of conclusion of such agreements continued with Morocco in 1963, Portugal in 1964, Tunisia in 1965, and Yugoslavia in 1968. Before the recruitment agreements, the principal legal basis to recruit foreign labour was the 1938 *Ausländerpolizeiverordnung* that had been revived in the early 1950s. The *Ausländerpolizeiverordnung* was replaced in 1965 by the Foreigner Law (Klusmeyer & Papademetriou, 2009: 91).

The implementation of the agreement on the German side was put into the hands of the Federal Agency for Employment Service and Unemployment Benefits (*Bundesanstalt für Arbeitsvermittlung und Arbeitslosenversicherung*). It was supposed to act together with its Turkish equivalent as an agent to place Turkish workers with German employers. The Federal Agency was given authority to determine whether the workers preselected from

the Turkish side fulfilled the professional and health requirements to work in the Federal Republic of Germany. The agreement further stipulated that each accepted worker was issued a standard work contract and a *legitimation card* (*Legitimationskarte*). The card replaced the work permit, which would usually be required, for a maximum period of one year. If the worker desired to stay longer than this period, the agreement foresaw that the worker would need to request a work permit at the local employment office and a residence permit at the local Aliens Authority. The residence permit could only be issued for a maximum period of two years. The agreement was less generous than the ones with the other European countries, such as Italy, Spain, and Greece; it contained no provisions on transferring earnings, family reunification, the right to receive child allowances, or the possibility for German firms to request specific Turkish workers by name, who would then enjoy a simplified admission procedure. Moreover, it restricted residency in the Federal Republic of Germany to two years (Bundesminister für Arbeit und Sozialordnung, 1962; Hunn, 2005: 55-56; Steinert, 1995: 308).²⁷ This confirms that the German government was less keen to conclude such an agreement with Turkey compared to countries such as Italy, Spain, and Greece.

Labour shortages affected the conclusion of the bilateral agreement with Turkey. However, foreign political dynamics also played an important role in convincing the German government to conclude the agreement. Turkey made use of the strong desire of Turkish workers to work in the Federal Republic of Germany and that many of them approached German diplomatic representations in Turkey. In addition, the Turkish government made targeted efforts to manoeuvre the German government to support these provisions, by making continuous reference to NATO membership and the need to sustain good relations

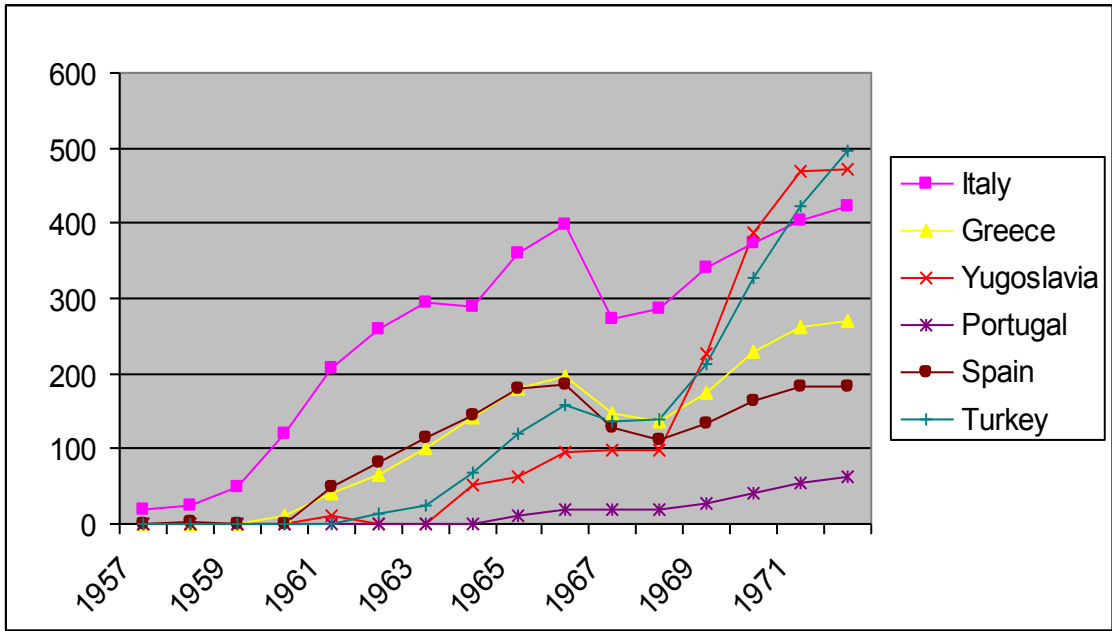
²⁷ A revised version of the agreement came into force on 30 October 1964, which made its provisions very similar to the other bilateral labour recruitment agreements.

with a NATO partner of strategic importance during the Cold War (Schönwälder, 2001: 252; Steinert, 1995: 306-307). The bilateral agreement also referred to the need for equal treatment to countries with similar geographic distance, namely Greece (Auswärtiges Amt, 1960; Botschaft der Bundesrepublik Deutschland Ankara, 1961b; Bundesanstalt für Arbeitsvermittlung und Arbeitslosenversicherung, 1960). The Ministry of Labour (for labour economic reasons) and the Foreign Office (for foreign political reasons) were the first ministries to support the conclusion of the bilateral agreement (Hunn, 2005: 49). The Interior Ministry was most reluctant and fought to keep the agreement less generous than the ones concluded earlier with Italy, Spain, and Greece. Its position was that there should be no permanent employment for Turkish nationals in the Federal Republic of Germany, and that there should be health checks and strict control of recruitment (Steinert, 1995: 308). In the end, it had to give in to the points of view of the other ministries and interest groups, most notably employer associations (Hunn, 2005: 52-59).

The bilateral agreement is certainly more concrete than the provisions in the Ankara Agreement. This shows that the Ankara Agreement was an EC-wide compromise, albeit shaped by the countries with bilateral agreements in place. The Ankara Agreement contains a binding commitment to establish freedom of movement and establishment for workers from Turkey. In contrast, the bilateral agreement consists of specific measures that had an immediate effect on regulating labour migration from Turkey to the Federal Republic of Germany (see, for instance, *Figures 6 and 7*). Hence, the national regulations were more open than the EEC-level measures and the fights had taken place in the preference formation on the bilateral agreement. Consequently, the German stance on the provisions on freedom of movement and establishment was rather relaxed. Given that the national measures already allowed significant migration from Turkey to the Federal

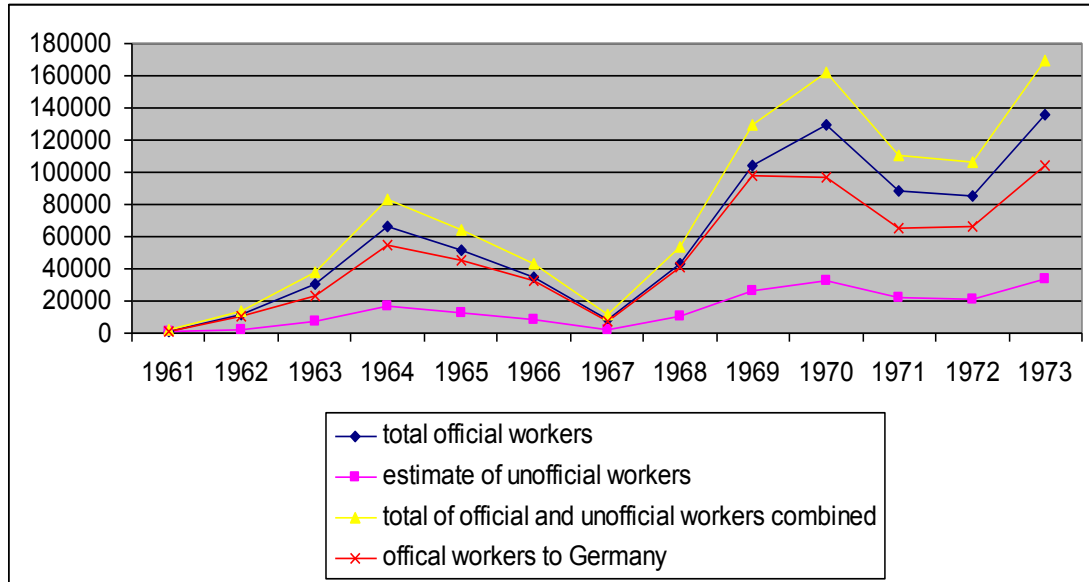
Republic of Germany, any regulation of the Ankara Agreement that referred to a future opening of the EEC labour market to Turkish nationals was easy to back for the German government as no intra-governmental actor was in danger of incurring significant costs. Neither did the Agreement thwart any national regulations or preclude the inauguration of future bilateral agreements. Accordingly, in a departmental meeting, it was concluded that specifications on freedom of movement and establishment should already apply in the preparatory stage of the Agreement. Given that the bilateral agreement was more detailed than the relevant provision of the Ankara Agreement, and allowed Turkish nationals to enter the German labour market with immediate effect, there was no *misfit* that could trouble the German decision makers. Consequently, consent to the provisions on freedom of movement of the Ankara Agreement was easily given as no political or economic costs were looming as a result of a *misfit* between national and EU-level regulations.

Figure 6: Foreign Workers in the Federal Republic of Germany, by country of origin (in thousands)



Source: Statistisches Bundesamt

Figure 7: Turkish workers sent abroad through the Turkish Employment Service²⁸



Sources: Martin (1991: 22), Keyder and Aksu-Koç (1988: 17)

Nature of the Decision-Making Process

No actor involved in the preference formation process in the Federal Republic of Germany was in danger of incurring concentrated costs or benefits from the provisions on freedom of movement and the right of establishment. The point of reference that regulated economic migration from Turkey since 1961 was the bilateral agreement. Therefore, the Ankara Agreement was not expected to make an immediate real-life difference to workers, and by and large, it was neutral with regard to costs and benefits. Neither actor had an incentive to mobilise particular resources to push for a certain outcome of the provisions. Thus, it is unsurprising that the national preference formation process on the Ankara

²⁸ For the years 1961 and 1962, Keyder and Akso-Koç (1988) list different figures than the ones from the Turkish Employment service used by Martin (1991) for official workers sent abroad (4041 and 8620 respectively). The estimates of unofficial migration assume that unofficial emigration is 25 percent of official migration rounded to the nearest 100.

Agreement followed the bureaucratic pattern given by the *rules of the game*, and there was no publicly voiced contestation.

Given that European Integration was a very new development at that time, competencies and decision rules were still being developed. Unlike today, where the governmental regulations stipulate which actors need to be consulted in the governmental preference formation on a certain EU initiative, in the early 1960s the preference formation process was more flexible and in the hands of the government. Thus, there is no indication that the *Länder* governments were involved in the preference formation of the German government on the freedom of movement provisions at the European level. Even if they had, they probably would have been in-line with the federal government as it did not face any significant opposition in the *Bundesrat* between 1959 and 1964.²⁹ The position of the German government concerning associating Turkey with the EEC was shared in trade union circles (cf. Donner, 1959, 1961, 1963; Schröder-Brzosniowsky, 1959).³⁰ However, there are no separate statements on the provision on freedom of movement, right of establishment, and the provisions of services. As the preference formation happened in an intraministerial way, and no actor incurred concrete benefits or costs from the freedom of movement provisions, the debate remained a bureaucratic one and did not get politicised.

Immigration was not politically salient at the time of the Ankara Agreement. Immigration was largely seen as a temporal phenomenon that would help the German economy to push ahead with full force. The problems of integrating migrants were unknown. In

²⁹ The *Bundesrat* is the upper house of the German parliament and represents the *Länder*.

³⁰ In the Journal *Gewerkschaftliche Monatshefte*, which is supposed to be the theoretical centre for debate in the German trade unions, it has been repeatedly argued (for instance, by Donner and Schröder-Brzosniowsky) that concluding an association agreement with Turkey would be beneficial for the EEC on political and economic grounds. Nonetheless, the problems an association agreement with Turkey posed were also discussed.

addition, the Ankara Agreement hardly appeared in general public debate which made any politicisation of the decision-making process even more unlikely. Hence, the decision-making process on the freedom of movement provisions of the Ankara Agreement followed the route laid out by the *rules of the game* – an exception is the role of the Turkish government, but this will be discussed in more detail in the section on *bureaucratic politics*. The process was not influenced by any form of domestic *political salience*.

International factors

Foreign policy value

Turkey was of high *foreign policy value* for the Federal Republic of Germany for a number of reasons. Most notably, its role in fighting the threat emanating from the Soviet Union, interlinked with strong support for the Association Agreement by the US and Germany's desire to promote European integration as a means to regain a foreign policy profile. Finally, there was a historically established special relationship between Germany and Turkey.

The German Minister of Economics Ludwig Erhard mentioned the importance of finding a quick solution for the Greek and Turkish bids, in order not to upset the governments and people of these two countries that constituted a cornerstone of NATO (Council of the European Economic Community, 1959a). A German *aide-mémoire* indicates the importance of Turkey's geographic location and military considerations for the conclusion of the Agreement (Bundesministerium für Wirtschaft, 1963b). In a meeting held in the Council of the EEC on 3 April 1962, the German delegation reminded the other Member States that it was important not to offend Turkey for geopolitical security reasons (Ständige

Vertretung der Bundesrepublik Deutschland bei der Europäischen Wirtschaftsgemeinschaft, 1962).

At the end of the 1950s, the Cold War was raging. The Soviet Union, with its expanding nuclear programme, was perceived as a very prominent threat in the West. This was particularly the case for the Federal Republic of Germany, which was the epicentre of the Cold War. As a defeated power of World War II that was not in possession of nuclear arms, it was not in a position to defy the Soviet Union with its own military capacities. The threat of war was most immediate during the Berlin Crisis, when the Soviet Union annulled the four-power status of Berlin, climaxing with the building of the Berlin wall in 1961 (Hacke, 2003: 86-87). It was crucial for the Federal Republic of Germany to have very close ties with the Western powers and to intertwine as deeply and quickly as possible with the member countries of organisations, such as the EEC and NATO. Being integrated into the EEC gave the Federal Republic of Germany a voice at the European level and was one of the main priorities of Chancellor Adenauer (Lappenküper, : 89; Moravcsik, 1998: 27). Integrating with its Western European neighbours was then seen as the prime route to re-establish some of Germany's geopolitical power. It also made the Federal Republic of Germany, at least *de jure*, an equal partner in the European project.

The Federal Republic of Germany was dependent on US goodwill and support in order to have a comfortable position in terms of geopolitical security and avoid the outbreak of a war on its territory. Germany was no nuclear power and needed support of the Western powers, in particular the US, to deter the Soviet Union whose influence began immediately after the Federal Republic of Germany's eastern borders (Adenauer, 1959: 247-250; Rudzio, 2003: 17; Ständige Vertretung der Bundesrepublik Deutschland bei der

Europäischen Wirtschaftsgemeinschaft, 1962). This “fundamental dependence” (Johnson, 1973: ix) made the Federal Republic of Germany subordinate to the US, and meant that German politicians had to take into account US interests when making foreign policy (Besson, 1970: 185). Negotiations of the Ankara Agreement show that US pressure was an important factor in the EEC’s efforts to integrate Turkey into Europe. This is particularly the case for the Federal Republic of Germany (Commission of the European Economic Community, 1963; E. Krieger, 2006: 189; Özren, 1999: 243). The US also exercised diplomatic pressure in support of the Athens Agreement, including a visit to the *Auswärtige Amt* in 1960 (Ceylanoglu, 2004: 217-218). US influence also impacted the Federal Republic of Germany in another way, namely direct US diplomatic pressure with regard to the EEC association agreement with Greece. The head of the unit dealing with European Affairs in the Federal Ministry of Economics, Mr. Jentsch, was called by the US embassy inquiring about the validity of rumours that the Minister of Economics, Ludwig Erhard, did not support the EEC Association Agreement with Greece (Bundesministerium für Wirtschaft, 1959b). With regard to the Ankara Agreement, such direct pressure cannot be found (Ceylanoglu, 2004: 217-218). Nonetheless, the US was favourable towards Turkey becoming an associate member of the EEC.

The containment policy of the US inaugurated by the Truman Doctrine in 1947 made it an important US foreign policy goal to support states endangered by Communism and Soviet rule, such as Turkey, and to anchor them in the West (E. Krieger, 2006: 171-172; Rudzio, 2003: 14-15). Turkey was particularly important as on 30 October 1959, it had agreed to station US missiles on its ground that could reach the Soviet Union. Only two further countries (the UK and Italy) had agreed to station such missiles on their territory (Jamin, 1998: 70-71). Consequently, the US supported the Ankara Agreement, largely on political

grounds (Ceylanoglu, 2004: 213-218). The US was even prepared to put up with exposing its products, most notably tobacco, to increased competition with Turkish (and Greek) products within the EEC's markets in order to tie Turkey closer to the West (Council of the European Economic Community, 1963). Regarding economic relations, increasing financial aid from the EEC to Turkey meant a relief for US finances (Gürbey, 1990: 175; E. Krieger, 2006: 37; Özren, 1999: 293). In particular, with regard to the Federal Republic of Germany and its increasing economic prosperity and capacity, the US expected a return service for the Marshall Plan (E. Krieger, 2006: 178). In addition, the US held particularly close ties with the Federal Republic of Germany so as to prevent it from becoming a negative force in Europe again, and lay the foundation of legitimacy for US hegemony in Europe (W. Krieger, 2004: 182). The US supported closer and institutionalised ties between the EEC and Turkey also on budgetary grounds. Nonetheless, it must be noted that financial aid to Turkey was politically motivated and sought to increase the West's influence in the region. The US expected the German government to take "the leading role" in providing financial assistance to Turkey. The German government did not have much latitude in that respect and met the demands. Thus, the Federal Republic of Germany supported Turkey's fast integration in the West by means of the Ankara Agreement. It sought to avoid any weakening of Turkey which was seen as an important pillar for the West and NATO partner *vis-à-vis* the Soviet threat (Erhard, 1959; E. Krieger, 2006: 178).

The *foreign policy value* of Turkey to the Federal Republic of Germany was further increased by the fact that the relationship between the two countries had been a special and cordial one. This made the German administration rather receptive to Turkish demands. Germany was an important trade partner and ally for Turkey and, in addition,

the two countries were united by the long-established “German-Turkish friendship” and the alliance in the First World War. Unlike a few years later, in the 1950s and early 1960s, this “friendship” was still an appropriate characterisation of German-Turkish relations (Gürbey, 1990: 9-10). The German Foreign Office praised this alliance and friendship strongly in 1963 and attributed great significance to it – at least officially. Hunn describes the reciprocity of these appreciations with reference to archival material (Hunn, 2005: 34-35).³¹ An internal document of the Foreign Office indicates that the traditional bond with Turkey and its history as a reliable ally were still important considerations for the Federal Republic of Germany when the Ankara Agreement was discussed (Auswärtiges Amt, 1959a). In July 1962, the Turkish government thanked the German government in an *aide-mémoire* for its continued support of the Turkish bid (Turkish Embassy to the Federal Republic of Germany, 1962). This special relationship further increased Turkey’s *foreign policy value* and gave Turkey the opportunity to voice its interest to the German government with a good chance of being taken seriously.

Domestic Salience of the Freedom of Movement Provisions

As discussed above, decision-making on freedom of movement provisions did not feature in contemporary mainstream political debate and happened to a large degree within the government bureaucracy. Thus, the level of politicisation of the subject was low, which increased the importance of the *foreign policy value* of Turkey in the preference formation. This is corroborated by *Figure 1* and *Figure 5* (to be found in Chapter Three) that show that the *political salience* of immigration was low compared to the other sub-case studies.

³¹ Bundesarchiv Koblenz, Politische Archiv des Auswärtigen Amts, Berlin.

Turkish Diplomatic Efforts

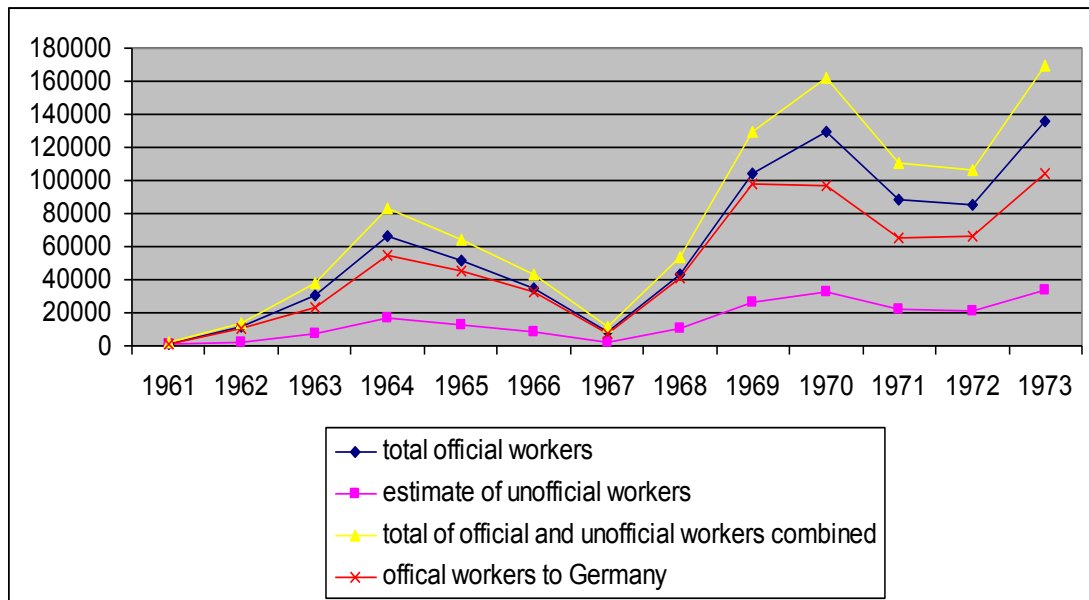
Concerns about political security provide a convincing explanation for why the Federal Republic of Germany supported the Ankara Agreement as a whole. However, they do not give an indication of why the freedom of movement provisions feature in the Agreement. The inclusion of Turkey's diplomatic efforts in the conclusion of the Agreement allows important insights.

The provisions of the freedom of movement for workers were important for Turkey. In the late 1950s, Turkey was in an economic and political crisis with inflation increasing by 60 percent between 1954 and 1958 (Gitmez, 1989: 4). The Turkish government anticipated that the freedom of movement provisions promised several immediate benefits to Turkey that would change the *status quo* for the better (Escobar, Hailbronner, Martin, & Meza, 2006: 716).³² First, Turkey's economy was suffering sustained underemployment (Hunn, 2005: 33). This was because its high birth rate, mechanisation of agriculture, and rapid industrialisation had left many workers without a job. The possibility of exporting workers to the EEC promised relief for the domestic labour market. A further benefit was that Turkish workers could obtain professional qualifications in the EEC that would benefit Turkey's economic development after the return of the workers. Remittances from workers abroad could improve Turkey's balance of payments (Wülker, 1971: 69). *Figure 11* indicates the increasing number of Turkish labour emigrants from 1961 to 1973. Interestingly, the Turkish delegation initially was more interested in receiving qualified workers from the EEC to provide technical assistance, rather than sending Turkish workers to the EEC (Bundesministerium für Wirtschaft, 1959g; Commission of the European Economic

³² At the time when the freedom of movement provisions were negotiated, it was not clear that their date of implementation would be kept extremely vague.

Community, 1959b; Council of the European Economic Community, 1959b). In addition, the long-lasting rivalry with Greece, which applied for EEC associate membership a few months before Turkey, was important for Turkey's motivations. This point will be discussed in more detail below.

Figure 8: Turkish workers sent abroad through the Turkish Employment Service³³



Sources: Martin (1991: 22), Keyder and Aksu-Koç (1988: 17)

It is argued here that the Federal Republic of Germany supported the provisions on freedom of movement so as not to endanger the conclusion of the Ankara Agreement. In order to advance its goals, Turkey used two framing devices, first the Soviet threat, and second being disadvantaged *vis-à-vis* Greece. For instance, in April 1962, the Turkish Prime Minister, İsmet İnönü, stressed the fragility of the country despite it being an

³³ For the years 1961 and 1962, Keyder and Akso-Koç (1988) list different figures than the ones from the Turkish Employment service used by Martin (1991) for official workers sent abroad (4041 and 8620 respectively). The estimates of unofficial migration assume that unofficial emigration is 25 percent of official migration rounded to the nearest 100.

important pillar of NATO and expressed his concern about the prolongation of the conclusion of the Agreement by the Community (Ständige Vertretung der Bundesrepublik Deutschland bei der Europäischen Wirtschaftsgemeinschaft, 1962). On a more general note, in August 1961, the Turkish Foreign Minister, Selim Rauf Sarper, conveyed an *aide-mémoire* to the German Embassy in Ankara expressing explicit Turkish expectations for German support of the Turkish bid for associate membership (Botschaft der Bundesrepublik Deutschland Ankara, 1961a).

The most important point is that Turkish motivations to join the EEC have to be seen in light of the developments that took place in the wake of Greece's bid for EEC membership. Turkey did not want to fall behind its main rival Greece, which had applied for EEC association membership in June 1959, two months before Turkey (Auswärtiges Amt, 1961; Commission of the European Economic Community, 1960). Thus, the Turkish government used the necessity of equal treatment with Greece as a second framing device to make its case *vis-à-vis* the EEC. A letter about the German position sent around within the German Ministry of Economics states that the Commission also saw the Turkish desire for equal treatment with Greece as the main reason for its attempts to conclude the Association Agreement with the EEC. The letter further argues that the sensitivity of the Greeks and the Turks as well as their mutual jealousy blocked the way to an Association Agreement with Turkey that differed fundamentally from the one with Greece. The letter further put forward that although an Agreement with Turkey that was completely identical to the one with Greece was not desirable due to Turkey's lack of economic development, there was not much latitude to take this into account (Bundesministerium für Wirtschaft, 1961). In addition, a note of the federal government's position with regard to the Association Agreement with Turkey shows that it was considered as politically impossible to refuse

Turkey from becoming an associate member of the EEC, as Greece now was (Council of the European Economic Community, 1961). This argument is further corroborated by the fact that the Turkish delegation was at times badly prepared for the negotiations and predominantly tried to achieve the same provisions that had been agreed in the Athens Agreement (Commission of the European Economic Community, 1959a, 1960). Turkey actively exerted pressure on the Federal Republic of Germany and the other EEC Member States, for instance, vocally by the Turkish Foreign Minister, Fatin Rüştü Zorlu, including reference to the importance of equal treatment with Greece (Bundesministerium für Wirtschaft, 1960).

This Turkish behaviour, induced by its relative position to Greece, is also the key to the freedom of movement provisions in the Ankara Agreement. Before the Athens Agreement was concluded, Turkey did not have any particular demands with regard to freedom of movement, apart from technical assistance from the EEC (Council of the European Economic Community, 1959c). At a later stage of the negotiations and after the Athens Agreement was successfully signed, the Turkish delegation's proposal for the content of the freedom of movement provisions consisted of a copy of the text of the Athens Agreement's relevant provisions (Bundesministerium für Wirtschaft, 1963a). It is important to note that Turkey made explicit demands with regard to the freedom of movement provisions, i.e., they needed to be similar to the ones in the Athens Agreement. However, after Turkey articulated these demands, the Community did object to having the same provision in the Ankara Agreement, and pushed for formulations that were less encompassing (Auswärtiges Amt, 1963). Title III of the Ankara Agreement does not include articles on the exchange of young workers and the provision of technical assistance by the Community, like the ones in the Athens Agreement. In addition, the

wording of the freedom of movement provisions in the Athens Agreement is stronger than in the Ankara Agreement. Thus, Title III of the Ankara Agreement was neither completely uncontested, nor is it just a copy of Title III of the Athens Agreement.

Ministerial cost and benefits distribution with regard to foreign policy considerations

As foreign policy is the domain of the Foreign Office, it understood the concrete costs and benefits of nourishing significant diplomatic relations with a country such as Turkey. By maintaining good relations with a politically important foreign country, it stabilised the West's ring of support against the Soviet Union. This constituted concrete benefits for the Foreign Office. A deterioration of the relationship with Turkey would mean less geopolitical stability and, hence, concrete costs. Thus, the Foreign Office was strongly in favour of concluding the Agreement and was generous with regard to giving in to Turkish demands to include provisions on freedom of movement and the right of establishment. The Ministry of Economics was initially in favour of a looser agreement in the form of a free trade area, which may not have included significant provisions on freedom of movement. However, during a visit of the Minister of Economics, Ludwig Erhard, to Turkey in August 1959, it was stated that the German government would lobby to support Turkey becoming an associate member of the EEC (Bundesministerium für Wirtschaft, 1959c). Documents of the Ministry of Economics and the Ministry of the Interior show that while the Minister did not want to endanger the conclusion of the Agreement, the position of the Ministry was nonetheless that a free trade area would be more beneficial for the Federal Republic of Germany. The Ministry of Economics preferred a looser form that could be applied to several countries, while the Foreign Office in contrast was in favour of concluding individual agreements (Bundesministerium des Innern, 1959; Bundesministerium für

Wirtschaft, 1959e). While the Ministry of Economics was aware of foreign political considerations that were part of the decision-making process on the Ankara Agreement, these considerations manifested themselves less concretely than they did for the Foreign Office. Therefore, the benefits of finalising an association agreement, rather than a free trade area, did not surpass the costs that would occur if finalising a free trade area was foregone.

Also, the Ministry of Finance was more worried about financial concerns than foreign policy considerations and thus preferred different association agreements with Greece and Turkey. The financial costs were still in the forefront, and foreign policy benefits reached the Ministry to a smaller extent (Bundesministerium der Finanzen, 1961). Due to its focus on internal security, the Ministry of the Interior also did not experience immediate benefits from the foreign policy considerations. To conclude this theme, we can state that foreign policy was an important factor that contributed to the freedom of movement provision to feature in the Agreement (and that the Agreement was concluded in the first place). The high *foreign policy value* of Turkey, the low *political salience* of immigration matters, a general societal acceptance of labour recruitment, and the decisive lobbying efforts of the Turkish government played a crucial part in making the German federal government support the freedom of movement provisions.

Labour market concerns

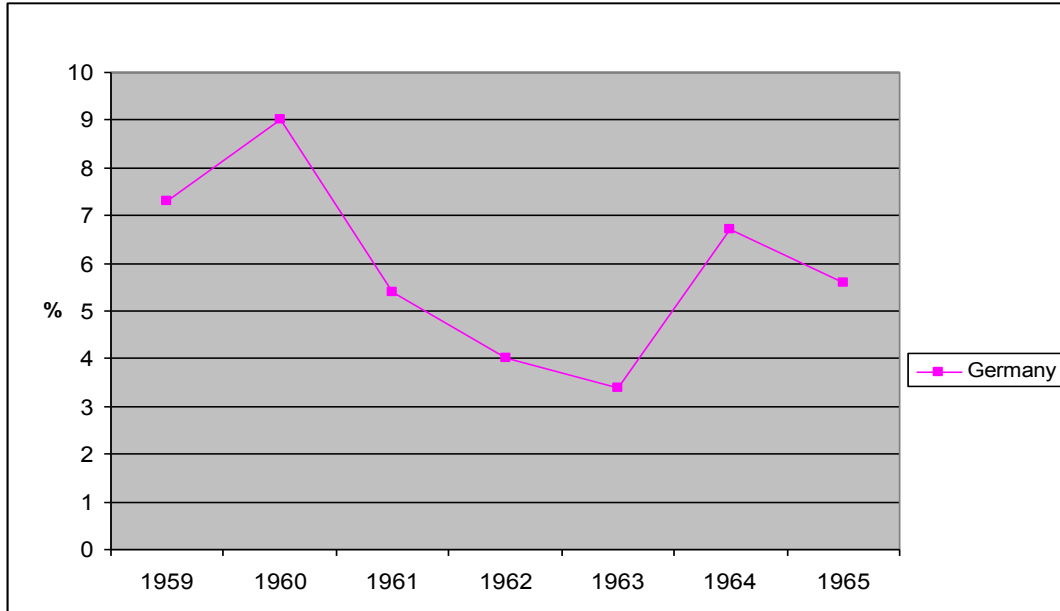
Figure 9 indicates the healthy shape of the German economy in the late 1950s and early 1960s. Between 1950 and 1960, the German economy experienced a productivity rise of 6.7 percent annually. After 1958, unemployment decreased rapidly, and within three years

it arrived at a level that was considered equal to full employment (Korte, 1985: 30-31). *Figure 10* shows the number of employees in the Federal Republic of Germany that were foreign nationals. There was a sharp increase in foreign nationals working in the Federal Republic of Germany from 1959. In fact, the number of foreigners working in the Federal Republic of Germany doubled between 1959 and 1960 (Korte, 1985: 30). The labour shortages that were filled with foreign workers were in the agricultural sector (in the mid-1950s), but in the 1960s this shifted to the fields of manufacturing, construction, mining, and services. Most shortages occurred in semiskilled and unskilled positions (Klusmeyer & Papademetriou, 2009: 92). In addition, the strong economic expansion, the age structure of the German population, the build-up of the *Bundeswehr*, the prolonged schooling time, and the cut-off of the migration flow from Eastern Germany due to the erecting of the Berlin wall in 1961, increased the demand for foreign workers in the Federal Republic of Germany (Schönwälder, 2001: 159). The decrease of the German labour force is illustrated by *Figure 12*. The figure also demonstrates that the overall labour force slightly increased up until 1965 due to labour immigration. This is made even clearer when also taking into account *Figure 13*, which displays increased labour migration to the Federal Republic of Germany. *Figure 13* also shows that the number of vacancies is more or less constant between 1960 and 1965 – despite growth in the overall work force. This suggests that new jobs kept being created. *Figure 11* splits up the number of foreign workers according to nationality. It indicates a significant increase in Turkish workers once the bilateral recruitment agreement between the Federal Republic of Germany and Turkey was put in place in 1961 (and when its revised version entered into force in 1964).

The positive economic climate enabled Germany to give substantial financial assistance to Turkey within the framework of the Association Agreement. The Federal Republic of

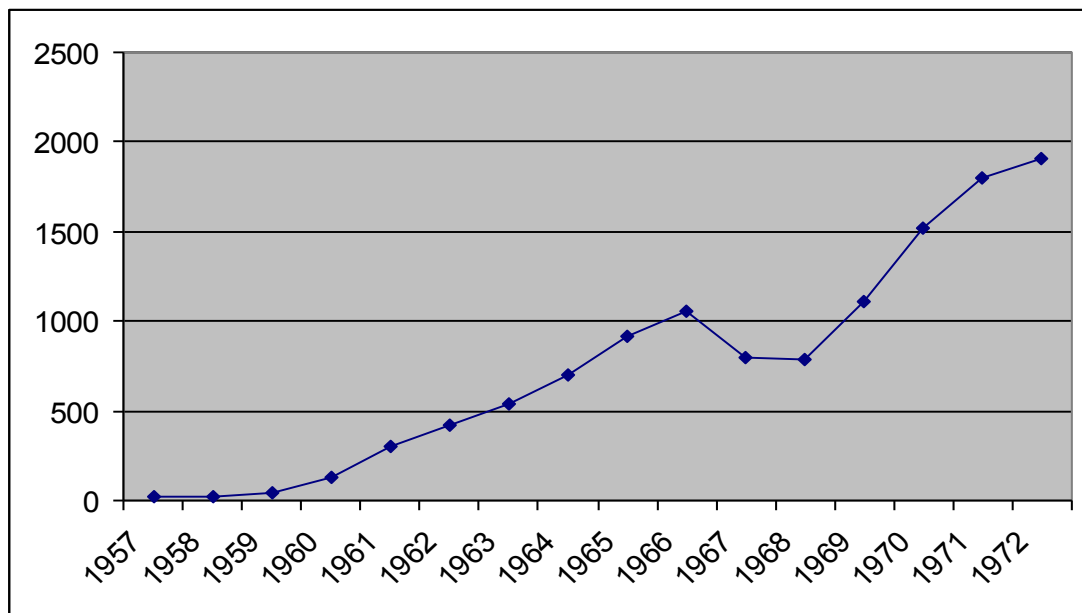
Germany could afford to make sure that the negotiations would not collapse or be postponed even longer due to the EEC's unwillingness to provide support to the Turkish economy, and without which no realistic plans for a customs union – not to mention EEC membership for Turkey – could be made. For instance, Germany took the biggest share of the burden to provide financial assistance to Turkey. Of the \$175 million US of pre-association aid, the Federal Republic of Germany provided \$58.5 million US (around one third) (Özren, 1999: 244).

Figure 9: Real GDP Growth Rate in the Federal Republic of Germany, 1959-1965



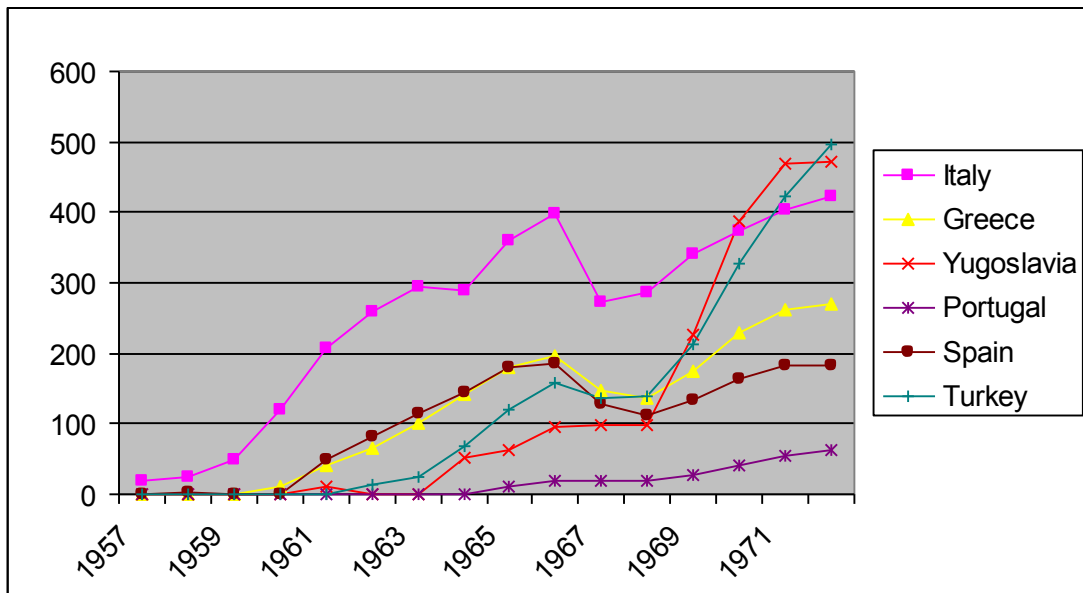
Sources: Herbert 1986, 2001

Figure 10: Foreign Workers in the Federal Republic of Germany (in thousands)



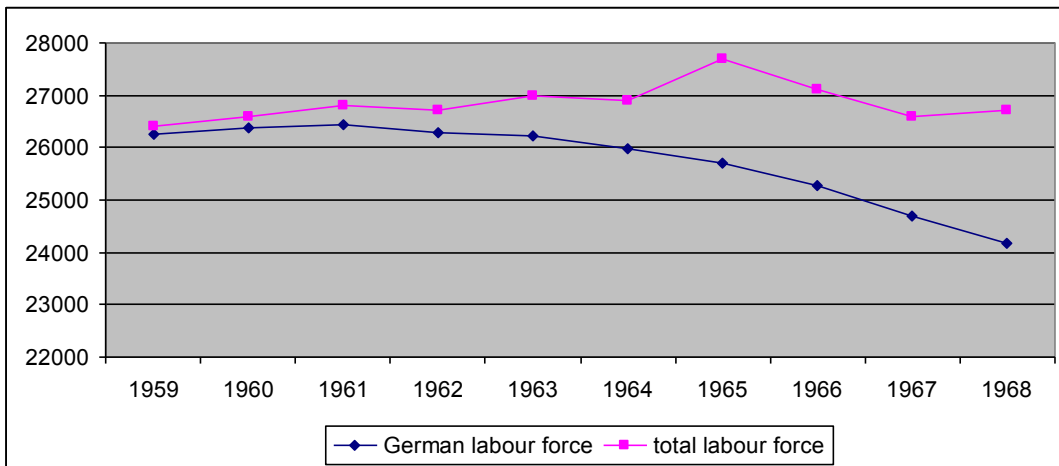
Source: Statistisches Bundesamt

Figure 11: Foreign Workers in the Federal Republic of Germany, by country of origin (in thousands)



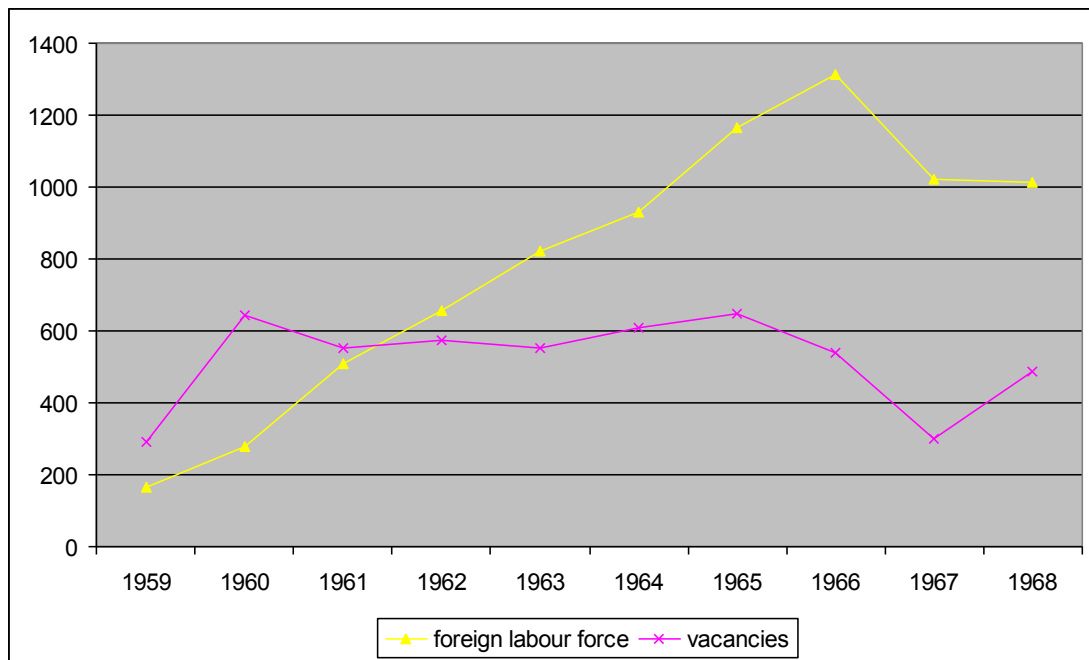
Source: Statistisches Bundesamt

Figure 12: Labour Force in the Federal Republic of Germany (in thousands)



Source: Herbert (2001: 207)

Figure 13: Foreign labour force and job vacancies in the Federal Republic of Germany (in thousands)



Source: Herbert (2001: 207)

Germany was suffering labour shortages by the time the Ankara Agreement was negotiated, and there was no sign that the situation would change in the near future (Bundesministerium für Wirtschaft, 1959d; Deutsche Zeitung und Wirtschaft Zeitung, 1959; Düsseldorf Nachrichten, 1961; Kölner Stadt Anzeiger, 1963). Since the Federal Republic of Germany actually needed foreign labour, immigration was a topic that was not controversial in domestic politics, and decisions could be made within the government ministries, largely shielded from the general public. In addition, it was believed that labour shortages were hampering economic growth and thus standards of living. At that time, no major interest group (e.g. employer associations and unions) or party was opposed to labour migration to the Federal Republic of Germany (Chin, 2007: 37-38). The number of foreigners in the Federal Republic of Germany was low compared to today's figures, and

potentially negative effects of large-scale migration, such as problems of integration, were not yet known. Furthermore, despite the high immigrant inflow during the 1950s and 60s, there was no significant opposition in the German public (Brochmann, 1996; Hollifield, 1992). The first scattered critical voices began to emerge in the mid-1960s in the form of newspaper articles and references in parliamentary debates (Schönwälder, 2001: 179-182).

Although the existence of labour shortages in Germany during the Ankara Agreement negotiations is now taken as a given, there are no available studies that measured the labour shortages at that time in a way that would today be considered up to date. The existing data is chiefly based on employer information. However, it is reasonable to assume that labour shortages existed during that period, even if they might have been overstated by employers keen to recruit cheap immigrant labour. This is corroborated by the fact that recruitment of foreign labour to the Federal Republic of Germany decreased temporarily during the recession between 1966 and 1967, and came to an standstill – with the exception of family reunification, asylum, and migration of the highly skilled – after the first oil shock hit the German economy in 1973 (Geddes, 2000: 2; 2003:81-82).

Finally, in line with Hypothesis Two, it can be noted that the passing of national legislation opening access for labour migrants from Turkey reduced the *misfit* between the national legislation and the proposals of the Ankara Agreement. Labour market concerns did not directly impact the German government's preferences with regard to the inclusion of the freedom of movement provisions in the Ankara Agreement. While they are likely to have had an impact on the conclusion of the bilateral labour recruitment agreement with Turkey,

other factors, most notably foreign policy concerns, also played a role in the conclusion of the agreements (as discussed in the *misfit* section of this chapter).

Bureaucratic politics

Responsibility for forming Germany's position on the Association Agreement with Turkey was shared between the Foreign Office and the Federal Ministry of Economics. The Foreign Office was responsible for questions regarding association agreements. The economic appraisal of the agreement rested with the Federal Ministry of Economics. This constellation placed the two ministries in the most important positions for negotiating the Ankara Agreement. But it also gave rise to a turf war in the establishment of ministerial competencies in a new policy-making domain where boundaries of responsibility and influence were still rather fluid (Bundesministerium für Wirtschaft, 1959a). An internal note, circulated within the Ministry of Economics, complained that the Foreign Office tried to become chiefly responsible for dealing with association matters (Bundesministerium für Wirtschaft, 1959f). Over the long-run, the Foreign Office managed to become more significant in national decision-making processes for European Integration matters, but that was certainly aided by the increasingly political nature of the European Integration project. Other ministries that were involved in preference formation were the Ministries of the Interior, Justice, Family, Agriculture, and Employment, though they played a less prominent role (Müller-Rommel, 1994: 1994). With regard to macro decisions, final judgements were made by Chancellor Adenauer (Rudzio, 2003: 289-290).

Allison's first proposition holds with regard to the Foreign Office. Its principal objective is the fostering of relations with other states as well as international and supranational

organisations. Lending evidence to Allison's proposition, the Foreign Office was the first ministry to support the Agreement and the freedom of movement provisions. Other Ministries voiced concerns. For instance, the Ministry of Finance was worried about money flowing from the Federal Republic of Germany to Turkey, which was in a poor state of development in the 1960s. In addition, Turkey was not forced to adhere to developmental measures outlined by the European Community in the first phase of the Agreement. Being the guardian of the German federal budget, this position is not surprising. The Foreign Office did not regard these concerns as worthy of blocking the agreement, and remained committed to its stance that the Agreement was urgently necessary for geopolitical reasons (Özren, 1999: 242-243).

The Minister of Economic Affairs, Ludwig Erhard, initially rejected a customs union with Turkey in favour of a large free-trade area, which would not have included provisions on the movement of persons. Concerned with the economic well-being of the Federal Republic of Germany, the Ministry was distressed about the potential repercussions that a uniform external duty might have had on the export-orientated German economy, should a customs union with the EEC and Turkey have been implemented (Ceylanoglu, 2004: 195-196; Özren, 1999: 242). But also, similarly to the Ministry of Finance, it was worried about the potential economic costs that the conclusion of an association agreement with Turkey might entail. Providing economic assistance to a country of Turkey's size was seen as surpassing the capacities of the Federal Republic of Germany (Bundesministerium für Wirtschaft, 1959e). In addition, the Ministry of Agriculture voiced some reservations regarding the inclusion of tariff-quotas, with the option of extension, for Turkish tobacco to enter the Community. The Ministry was concerned that this might disadvantage domestic tobacco producers (Bundeskanzleramt, 1961).

In the end, the view of the Foreign Office prevailed. This was certainly not due to any superior structural power of the Ministry. Rather, the foreign political argument was the most powerful one and found resonance in the highest echelon of the German government (Auswärtiges Amt, 1959a; Özren, 1999). It allowed Turkey to include provisions on freedom of movement and establishment in the Agreement, which resembled the provisions outlined in the Athens Agreement. This implies that the Turkish government belonged to the relevant actors that were involved in the decision-making process. Allison and Zelikow (1999: 258) acknowledge that foreign officials can be part of the process; however, the framework does not further elaborate on how exactly foreign governments can take part. Given how the framework is established, we would expect the *rules of the game* to include them somehow, for instance, through consultation with allies before taking action against a hostile regime. The *rules of the game* for this investigation relate to bureaucratic *decision-making* processes for the German government. In addition to written regulations, the *rules of the game* can also include conventions and even culture (Allison & Zelikow, 1999: 302). The Turkish government is not included as a player through either of these. However, it managed to elbow its way into the *decision-making* process of the German government. Consequently the definition of the *rules of the game* should allow a point of entry for other actors, such as for instance foreign governments, by external pressure.

With the strategic *foreign policy value* of Turkey, reinforced by the Soviet threat and US interests, coupled with the low domestic *political salience* of immigration, the conditions for foreign policy interests shaping the federal government's preferences were ideal. In combination with the bureaucratic nature of the debate and the fact that the provisions on

freedom of movement and establishment did not thwart any national regulations and would thus not involve adaptation costs, there was clear support from the German government for a policy measure that liberalised some aspects of immigration policy at the European level.

III. Conclusion

Three themes have been used to explain why the German government supported the provisions on freedom of movement and right of establishment in the Ankara Agreement: domestic politics, international politics, and labour market concerns. The themes relate to different causal factors that influenced the relevant actors. As a broader theoretical lens, the chapter uses a *bureaucratic politics* stance that analyses actors' positions and their influence according to their position in the organisation, their power structures, and the institutional design that organises the relations between the actors. The three themes are discussed in light of how they impact on the cost and benefits distributions as perceived by the relevant actors.

Reported labour market factors did not play a direct role in shaping the considerations regarding the provisions. However, they were important, as the Federal Republic of Germany concluded a bilateral labour recruitment agreement with Turkey. The bilateral recruitment agreement had feedback effects, as discussed with regard to domestic political factors: it reduced the costs of yielding to Turkish bids to include provisions with relevance for migration in the Ankara Agreement. This is because, according to the *misfit* hypothesis, the Ankara Agreement did not entail any significant costs for actors as the national regulations, i.e., the bilateral labour recruitment agreement between the Federal Republic

of Germany and Turkey would continue to apply. Hence, the Association Agreement did not infringe upon Germany's national regulations. The second theme – foreign policy considerations – elucidates why Turkey was in the position to, and in fact did, propose the insertion of provisions on freedom of movement in the Agreement. It did so principally because it did not want to conclude an agreement that would be significantly less profound than the agreement concluded between the EEC and Greece. Doing otherwise would have produced national embarrassment for Turkey *vis-à-vis* its long-term rival, Greece. That the German government was receptive to Turkey's bids can be explained by several foreign policy concepts. Given the geopolitical insecurity of the early Cold War years, Turkey was a key ally for the West that the US did not want to be susceptible to Soviet courtings. Hence, its *foreign policy value* for the Federal Republic of Germany was high. This together with the low domestic salience and the uncontroversial as well as prevalent dictum of the need to continue fueling the post-war economic boom with foreign labour, maximised the influence Turkey could have on the German government. The government in Ankara gladly used this opportunity.

The case nicely demonstrates the interplay of the different hypotheses underpinning full German support for a liberalisation measure at the EU level. Each hypothesis played a role in the process of preference formation. The most important hypotheses are Hypotheses One and Three. The high *foreign policy value* of Turkey, together with the low *political salience* of migration matters in Germany and the targeted lobbying efforts of the Turkish government, facilitated the inclusion of the freedom of movement provisions in the final agreement. The German government did agree to these provisions because there was no *misfit*, as the bilateral labour recruitment agreement would continue to regulate immigration from Turkey to the Federal Republic of Germany.

The chapter fills a gap in the literature on the Ankara Agreement and on EU immigration policy. The existing literature on the Ankara Agreement (see, for instance, Ceylanoglu, 2004; Gürbey, 1990; E. Krieger, 2006; Özren, 1999) fails to provide a satisfactory explanation of why the freedom of movement provisions are included in the Agreement, and focuses too much on political security factors. As a result, it misses the complex interplay of political and economic factors that led to Germany's support of the freedom of movement provisions. The chapter has shown that the freedom of movement provisions were not just taken from the Treaty of Rome, as put forward by the literature, but are modified versions of the provisions in the Athens Agreement. With regards to the literature on EU immigration policy, it has been shown that Member States have supported liberalisation of immigration measures at the EU level – given that the factors on which the three hypotheses are built are in place. This point challenges the assumption that has been implicitly present in the work on EU immigration policy, i.e., that cooperation at the EU level is only possible if it contributes to making immigration controls into the Union stricter; the immigration of highly skilled workers is the exception. The findings of this chapter outline the foreign policy factors that were crucial for this process. They show the importance that foreign policy factors can have for the EU-level liberalisation of immigration policies, as well as the significance of the Foreign Office. The Foreign Office is generally concerned with relations with other countries and less so with domestic political matters that are the chief concerns of the Interior, Employment, Economics and Finance Ministries, such as domestic security, and potential fiscal, political, or social costs of immigration. The role of the Foreign Office in the decision-making process was instrumental in Germany delegating competencies that entail a liberalisation of immigration policies to the EU level.

Theoretically, the chapter has assembled different theoretical concepts that are usually not associated with EU policies on immigration. In particular, the *bureaucratic politics* framework, together with actors' perceived costs and benefits, provide a sound base to approach the black box of governmental sovereignty concerns with regards to delegating immigration competencies to the European level. Furthermore, the *bureaucratic politics* framework constitutes an analytical lens that might also be applied to other countries and policy initiatives to better understand the causal processes that form certain government preferences on immigration matters. With particular regard to the *bureaucratic politics* framework, Allison and Zelikow's *rules of the game* definition should be modified to enable a point of entry for a foreign government to influence governments' preference formation without being formally invited to take part in the process. This case study shows that the Turkish government made an important contribution to the *decision-making* process by lobbying the German government out of its own initiative.

Chapter Five – The Unknown Effects of the Europe Agreements: EU Economic Migration Liberalisation Through the Back Door?

Introduction

When does an EU Member State decide to delegate competencies on regulating immigration to the EU level? The most common response is the Fortress Europe argument: Member States choose to cooperate at the EU level if it contributes to sealing off the EU's labour market from third-country workers; highly qualified workers being the exception (see, for instance, Bigo, 1998; Geddes, 2000: 56). However, this is not necessarily the case. This chapter questions that assumption, beginning with the proposition that cooperation at the EU level with regard to liberalising economic migration for third country nationals of all skill levels is possible – and in fact already happened. Whether (and what type of) cooperation occurs at the EU level depends on the set of conditions in place at a particular point in time, and the definition we adopt for “cooperation at the EU level”.

Following the founding of the European Community (EC) in 1957, Member States agreed on including provisions on the freedom of movement in the Association Agreements with Greece and Turkey in 1961 and 1963, respectively. However, what followed these agreements was, by and large, a history of not agreeing on common EU regulation, such as the proposed Economic Migration Directive of 2001. When common EU policies were

agreed upon, they tended to have the aim of restricting the flow of immigrants into the Community, such as Directives and Regulations on combating illegal migration, border control, and returning illegal migrants. A case that lies in between liberalisation and non-liberalisation are the Association Agreements the Community concluded with Hungary, Poland, the Czech Republic, Slovakia, Romania, Bulgaria, Slovenia, Estonia, Latvia, and Lithuania in the early and mid-1990s; the so-called Europe Agreements (EAs). In those Agreements, Member States agreed on provisions on the movement of workers, the right of establishment, and the freedom to provide services. The Agreements have direct effect and constitute a *de jure* modification of German national immigration regulations.

The existing literature on the EAs treats the provisions on freedom of movement and the right of establishment in an unsatisfactory way, focussing chiefly on the provisions on trade and market liberalisation (see, for instance, Kramer, 1991; Langhammer, 1992; Lippert, 1999; Mayhew, 1998; Müller-Graff, 1997; Palánkai, 2000; Papadimitriou, 2002; Phinnemore, 1999; Rupp, 1999; Sedelmeier, 2005a, 2005b; Sedelmeier & Wallace, 1996; von Hagen, 1996) or their role as a gateway to actual EU membership (Tebbe, 1997). When authors discuss the freedom of movement provisions, they generally tend to argue that the EAs do not give labour market access to workers from the associate countries, but only give recommendations on how to improve the current situation; create new facilities; or facilitate some restrictions (Müller-Graff, 1997: 30; Sedelmeier, 2005a: 63-64). It is generally assumed that the free movement of labour is only a possibility in principle, as Member States were unwilling to give any real concessions to the Central and Eastern European Countries (CEECs). This was mainly because of the gloomy economic situation in the Community and a feared mass migration of workers from the East.

These claims are based on a simplified reading of Title IV of the EAs and a focus that relies heavily on Chapter I, i.e., the freedom of movement provisions. This case study bases its analysis on the Europe Agreement with Poland. The provisions relevant for the movement of workers are almost identical across the agreements. With regard to the freedom of movement provisions, Poland was the most active negotiator of all CEECs (Auswärtiges Amt, 1991a; Bundesministerium für Wirtschaft, 1991a, 1991j). For this reason, the negotiation process between the EEC and Poland also affected the content of the freedom of movement provisions of the other agreements. Consequently, to explicate why the provisions relevant for migration are included the way that they are, it is most valuable to study the EA with Poland. The existing literature is correct that the EC was extremely wary of opening its labour market for workers from Poland through the freedom of movement provisions. However, with the exceptions of a few analyses (Barros, 2001; Fuchs, 1995; Jestaedt, 1996; Meinel, 2003; Vogt, 2001), the literature ignores the fact that through the regulations of Chapter II, i.e., the right of establishment, which include natural persons, liberalising measures slipped in through the backdoor. Even these authors focus on the legal implications of the Agreement and do not give a detailed or theoretically embedded account of the political processes that led to the provisions. Article 44(3) grants Polish nationals a treatment no less favourable than national citizens:

Each Member State shall grant, from entry into force of this Agreement, a treatment no less favourable than that accorded to its own companies and nationals for the establishment of Polish companies and nationals as defined in Article 48 and shall grant in the operation of Polish companies and nationals established in its territory a treatment no less favourable than that accorded to its own companies and nationals.

This article would forbid the German authorities to refuse a self-employed worker on the grounds of an existing overcapacity on the German labour market. This was common practice in the Federal Republic of Germany under the “recruitment stop” policy (*Anwerbestopp*) that had been in place since November 1973. Also the so-called “needs test” for the labour market (*Bedürfnisprüfung*) was to be omitted (Vogt, 2001: 297). Article 44(3) can also be read to prohibit demanding a Polish self-employed national to be able to sustain him or herself, as that is not a requirement for self-employed German nationals (Jestaedt, 1996). In addition, Article 52(1) EA grants a Polish company the employment of key personnel. The Article states:

Notwithstanding the provisions of Chapter I of this Title, the beneficiaries of the rights of establishment granted by Poland and the Community respectively shall be entitled to employ, or have employed by one of their subsidiaries, in accordance with the legislation in force in the host country of establishment, in the territory of Poland and the Community respectively, employees who are nationals of Community Member States and Poland respectively, provided that such employees are key personnel as defined in paragraph 2 and that they are employed exclusively by such beneficiaries or their subsidiaries. The residence and work permits of such employees shall only cover the period of such employment.

Thus, the EA also provides the right of a certain group of highly skilled employed workers to enter the labour market of the EC. While not all analysts agree (Strunz, 2004), more detailed treatments of the matter generally come to this conclusion (Barros, 2001: 122; Vogt, 2001: 298). Both Article 44(3) and 52(1) have direct effect (Vogt, 2001: 282-283 and

294-295)³⁴ and thus can be seen as constituting a *de jure* change of immigration regulations in the Federal Republic of Germany, and as opening the Single Market to self-employed workers from Poland, to some degree (Vogt, 2001: 298). However, *de facto*, the German authorities did not apply these regulations. This is exemplified, for instance, by the case of the Polish student Gabriela Janusz, who was pursuing studies at the Technical University of Berlin, and wanted to sell attire at an art market in Berlin. This would have made her a self-employed worker. Ms. Janusz was not granted this permission by the responsible authorities (*Landeseinwohneramt*) as, according to the German authorities, foreign nationals were not allowed to be self-employed while pursuing education. Ms. Janusz appealed twice to the Administrative Court of Berlin (*Verwaltungsgericht*) with reference to the EA, but was unsuccessful (European Union Delegation of the European Commission in Poland, 1995; Vogt, 2001: 268-269). In addition, with regard to the right of key personnel of Polish companies to enter the Community, some authors argue that the Agreement stipulates that these persons should not be included in the quota of the bilateral posted workers agreement between Poland and the Federal Republic of Germany. However, the prevalent praxis of the German authorities was to count these toward the quota determined by the bilateral agreement (Fuchs, 1995: 61). These practices, as well as the forceful rejection to grant Polish workers access to the Community's labour market, seem to stand in contradiction with the political pathos of German decision-makers promulgating their full support to anchor the CEECs in Europe (Agence Europe, 1994; Bundesministerium für Wirtschaft, 1991h).

As in the preceding chapter, the *bureaucratic politics* framework is used as a general approach for this chapter, which allows predictions about how governmental preferences are formed. This chapter is based on newspaper analysis; an analysis of articles of the

³⁴ See also discussion in Section II.

press agency Agence Europe, archival research in the Federal Archives of the Federal Republic of Germany (*Bundesarchiv*); and a number of interviews with experts in the field. The chapter is structured as follows. It will first introduce the conceptual framework. The second section discusses the genesis of the EA with Poland, followed by the empirical analysis. The chapter closes with concluding remarks.

I. Genesis of the Europe Agreement and Title IV

Up until the associate countries from Central and Eastern Europe joined the EU in 2004 and 2007, the EAs were the main legal instruments for regulating the relations between those countries and the Community. All legal disputes between the parties were settled by referring to the agreements (Mayhew, 1998: 41). The EAs were signed with Hungary, Poland, and Czechoslovakia³⁵ in December 1991; with Romania in February 1993; with Bulgaria in March 1993; with Estonia, Latvia, and Lithuania in June 1995; and with Slovenia in June 1996 (Guild, 2001: 176; Sedelmeier, 2005b: 403).³⁶ With regard to freedom of movement, the agreements are similar in their content. The main differences are that in the agreements with Estonia, Latvia, and Lithuania, the provisions on establishment only apply to individuals from 31 December 1999 onwards, but in the agreement with Slovenia, they apply after the end of a transitional period of a maximum of

³⁵ The Europe Agreement with Czechoslovakia was replaced with agreements with the two successor-states in October 1993.

³⁶ Because of the ratification process involved the EAs came into force some time after they were signed:

EA with Poland: 1 February 1994; Official Journal of the EU 1993 L 348

EA with Hungary: 1 February 1994; Official Journal of the EU 1993 L347

EA with Czech Republic: 1 February 1995; Official Journal of the EU 1994 L360

EA with Romania: 1 February 1995; Official Journal of the EU 1994 L 357

EA with Bulgaria: 1 February 1995; Official Journal of the EU 1994 L 358

EA with Slovakia: 1 February 1995; Official Journal of the EU 1994 L 359

EA with Estonia: 1 February 1998; Official Journal of the EU 1998 L68

EA with Latvia: 1 February 1998; Official Journal of the EU 1998 L26

EA with Lithuania: 1 February 1998; Official Journal of the EU 1998 L51

EA with Slovenia: 1 February 1999. Official Journal of the EU 1999 L 51

six years duration (Guild, 2001: 176; see also, Weiss, 2001: 243-4). In the earlier agreements these confinements do not apply. The main purpose of the agreements was to institutionalise the commitment of a political dialogue and to develop a free trade area (Kramer, 1991: 127; Müller-Graff, 1997: 16; Phinnemore, 1999: 44). Furthermore, the objectives of the agreements are to progress towards realising the economic freedoms of the Community, creating policies to integrate the associate countries into the Community, promoting the transition to a market economy, and setting up institutions for the implementation of the association agreement (see, for instance, EA with Hungary).

Direct Effect

The Title IV provisions of the EAs have direct effect. While this was not clear when the agreements entered into force (Gargulla, 1995: 189), it was confirmed by a number of judgments of the European Court of Justice (ECJ) and is now generally accepted in the relevant literature (see, for instance, discussion by Guild, 2001: 195-201; Meinel, 2003: 154-160; Strunz, 2004: 131). The relevant cases are as follows: Case C-63/99, Gloszczuk; Case C-235/99 (27/09/2001), Kondova; Case C-257/99 (judgement 27/09/01), Barkoci and Malik (judgements 27/09/2001); and Case C-268/99, Jany (judgement 20/11/2001). They all refer to the right of establishment and enshrine the right that self-employed workers can enter the Community. However, as paragraph 31 of the Jany case (C-268/99) shows, this does not preclude a system of prior control according to the rules of the respective Member State.³⁷ This is pointed out by a number of scholars (Guild, 2001: 208; van Ooik, 2002). However, van Ooik (2002) mistakes the regulations of British national law with minimum conditions of entry made by the EAs (cf. Baudenbacher, 2004: 225). The EAs do

³⁷ See, for instance Article 44(3) of the EA with Poland or Articles 45(3) and 59(1) of the EA with the Czech Republic.

not put forward minimum conditions, but only refer to the right of Member States to apply their national rules of entry. The ECJ considers those stipulations as reasonable to apply with regard to the qualifying clause,³⁸ but they are not included in the text of the EAs.

Even though the Agreements have direct effect and constitute a *de jure* modification of German national immigration regulations, *de facto*, the German authorities were extremely reluctant to recognise this. This exemplifies the dilemma the German federal government found itself in, which resulted in contradictory declarations and actions. On the one hand, Germany was keen on rooting its Eastern neighbours in Europe and helping to create a politically stable and secure zone. This was important for foreign and security policy reasons. On the other hand, domestically, the government was reluctant to make any concessions in the EAs allowing workers from the CEECs to enter the labour markets of EC Member States.

Title IV of the Agreement with Poland, “Movement of Workers, Establishment, Supply of Services” is divided into four chapters: I. Movement of workers, II. Establishment, III. Supply of services between the Community and Poland, and IV. General provisions. Chapter I (Article 37-43) does not establish the free movement of workers, but awards workers who are legally established in the Community equal treatment with workers from the EC. The provisions on establishment (Article 44-54) are more meaningful with regard to immigration. They allow self-employed workers from the associate countries to establish themselves in the Community. In addition, they permit self-employed workers from the associate countries to bring in key personnel from their home countries.³⁹ The provisions

³⁸ See, for instance, Article 58(1) of the EA with Poland and Article 59(1) of the EA with the Czech Republic.

³⁹ The first six EAs only allow this for subsidiaries, whereas the EAs with the Baltic states and Slovenia include branches.

on the supply of services (Article 55-57) do not concede anything concrete, except the commitment of the parties to carry out the necessary measures to gradually allow the supply of service. Compared with the EC Treaty, these provisions have the most minor reach of the entire EA. The last article of Title IV (Article 58), General Provisions, creates some tension with the other articles of the Title, especially with regard to the right of establishment, as it permits national regulations to apply if they do not “nullify or impair the benefits accruing to any parties under the terms of a specific provision of this Agreement”. This made the interpretation of the Agreement rather difficult and eventually necessitated the involvement of the ECJ to establish whether Title IV of the EAs has direct effect.

Negotiations

After the Commission presented the negotiation mandate at the beginning of November 1990 (Bundesministerium für Wirtschaft, 1990a), the Council of Ministers agreed upon the negotiation mandate for the Commission on 18 December 1990 (Council of the European Community, 1990). The negotiations were opened in December 1990 and continued in the second week of February 1991 after a short break (Bundesministerium für Wirtschaft, 1991d). They concluded after ten rounds, on 22 November 1991 (Papadimitriou, 2002: 37), and were signed in Brussels on 6 December 1991 (Auswärtiges Amt, 1991c). The negotiations with the other Visegrád states took place simultaneously. A key issue was EC membership of Poland. Initially, Member States were reluctant to include any reference to EC membership in the Agreement. However, pressure from Poland (and the other Visegrád countries), backed by the governments of the UK and the Federal Republic of Germany, finally led to the inclusion of the possibility of joining the EC (Phinnemore, 1999: 68-69; Sedelmeier & Wallace, 1996: 370).

A large part of the negotiations were concerned with trade (Mayhew, 1998: 22). In particular, France obstructed rapid progress on several occasions due to its unwillingness to accept concessions on liberalising trade of agricultural products. The Commission had to go back to the Council in April 1991 to modify the negotiation mandate in a few areas in which it had been proven to be unrealistically restrictive (Mayhew, 1998: 22). Furthermore, at the beginning of September 1991, negotiations almost broke down because of the inflexible position of the French government on granting further trade concessions (Bundesministerium für Wirtschaft, 1991f; Handelsblatt, 1991). As a result, from 30 September to 1 October 1991, the Council again modified the negotiation mandate in the areas of trade with agricultural products, trade with textiles, financial cooperation, and freedom of movement of workers, coal, and transit. This led to conclusion of the Agreement at the end of November 1991 (Council of the European Community, 1991).

The regulations on freedom of movement were until the last stage of the negotiations a highly contested point, as the EC was not willing to move and Poland was not prepared to desist from its claims. The key issues were the refusal of the EC to give any ground on granting improved freedom of movement for Polish workers *vis-à-vis* vehement Polish insistence on such an improvement. Moreover, Polish demands for the regularisation of Polish nationals residing illegally in the Community caused controversy. Regarding the regulations on the provision of services, it took some time to agree on a common position. The EC wanted them to conform to the criteria stipulated by the General Agreement on Tariffs and Trade (GATT), but was also cautious not to open a loophole for Polish workers. The provisions on the right of establishment caused the least controversy.

II. Germany's Preferences

Regarding the agreement as a whole, the Federal Republic of Germany was a strong supporter of concluding it – possibly the strongest amongst the Member States (Dinan, 2004: 273; Hirn, 1991; Papadimitriou, 2002: 90). By and large, the German government was keen not to endanger the conclusion of the agreements and was willing to compromise on sectoral issues, as long as they were not too substantial (Sedelmeier, 2005a: 63-64). It even argued that it was the EU's responsibility to take advantage of the opportunity offered by the political changes in Central and Eastern Europe (Agence Europe, 1994; Sedelmeier, 2005b: 56).

With regard to Title IV, the Federal Republic of Germany had a tougher position which was in contrast with the political rhetoric of anchoring Poland and the other CEECs in Europe. The German government was unwilling to grant any opening of the labour market to Polish workers. It stayed firm, even when Poland tried hard to influence the Community to include more generous provision on freedom of movement in the Agreement. The German demeanour was shared by the UK, France, Belgium, and the Netherlands. Other accounts even claim that all Member States had problems with the freedom of movement of persons (Bundesministerium für Wirtschaft, 1990a) (Interview Eastern Europe Expert, Academia). However, the German government was the most fiercely opposed to the requests for freedom of movement made by Poland and Hungary (Bundesministerium für Wirtschaft, 1991c, 1991d). Generally, the issue of freedom of movement was one of the most sensitive issues in the negotiations and the association debate (Gurgalla, 1995: 182; Kramer, 1991: 130; Kuschel, 1992: 99; Mayhew, 1998: 332; Papadimitriou, 2002: 61).

Eleven ministries were involved in forming the position of the German federal government. The Federal Ministry of Economics (*Bundesministerium für Wirtschaft*) and the Foreign Office (*Auswärtiges Amt*), according to paragraphs 23, 79, and 80 of the GGO II⁴⁰, were in charge of the file and responsible for including other relevant ministries according to their respective portfolios. The Ministry of Economics and the Foreign Office involved the following ministries: the Federal Ministry of the Interior (*Bundesministerium des Innern*); the Federal Ministry of Justice (*Bundesministerium der Justiz*); the Federal Ministry of Finance (*Bundesministerium der Finanzen*); the Federal Ministry of Food, Agriculture and Consumer Protection (*Bundesministerium für Ernährung, Landwirtschaft und Verbraucherschutz*); the Federal Ministry of Employment and Social Affairs (*Bundesministerium für Arbeit und Soziales*); the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (*Bundesministerium für Umwelt, Naturschutz und Reaktorsicherheit*); the Federal Ministry of Mail and Telecommunications (*Bundesministerium für Post und Telekommunikation*); the Federal Ministry of Research and Technology (*Bundesministerium für Forschung und Technologie*); and the Federal Ministry of Economic Cooperation and Development (*Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung*) (Bundesministerium für Wirtschaft, 1990b, 1990d). Other ministries that played a prominent role were the Federal Ministry of the Interior and the Federal Ministry of Employment and Social Affairs. According to paragraph 80 of the GGO II, the *Länder* were informed about the progress of the negotiations but did not play an active role in the preference formation. The involvement of interest groups, such as the social partners, was not stipulated by the GGO II.

⁴⁰ *Gemeinsame Geschäftsordnung der Bundesministerien – Besonderer Teil*, as in force in 1990/1991.

Domestic Politics

Misfit

The *fit* with national legislation and arrangements has two dimensions for the EA with Poland. First, the Federal Republic of Germany had existing bilateral agreements in place with Poland, most notably, the agreement for workers posted by subcontractor companies (*Werkvertragsvereinbarungen*) that granted yearly quotas to Polish workers to enter the German labour market and thus bypassed the recruitment stop for foreign workers (Vogt, 2001: 42). It was signed on 31 January 1990 and entered into force on 11 April 1990. The Agreement fixed the quota to 21,670 workers. In addition, there was a quota of 5,000 for service contracts that involved small and medium-sized companies in the Federal Republic of Germany, a quota of 500 for employees working as conservators, and a quota of 8,000 for workers in the construction industry (between the years 1991 and 1993).⁴¹ The quotas could be adapted to improving or worsening situations of the labour market. Generally, the agreement allowed the issuing of a work permit for a maximum of two years. If the work took longer to be completed, a prolongation of six months was possible. If the work was from the outset deemed to exceed the two years duration, the work permit could be issued for a maximum duration of three years. Workers in leadership or managerial positions could receive a work permit for up to four years.⁴²

The second dimension consists of the existing national regulations on granting access to the German labour market for workers from third countries. The German federal

⁴¹ Paragraph 2, *Vereinbarung zwischen der Regierung der Bundesrepublik Deutschland und der Regierung der Republik Polen über die Entsendung von Arbeitnehmern polnischer Unternehmen zur Ausführung von Werkverträgen*.

⁴² Paragraph 5, *Vereinbarung zwischen der Regierung der Bundesrepublik Deutschland und der Regierung der Republik Polen über die Entsendung von Arbeitnehmern polnischer Unternehmen zur Ausführung von Werkverträgen*.

government made frequent reference to the bilateral agreement with Poland and to the need that these regulations should co-exist alongside the Association Agreement (Bundesministerium für Wirtschaft, 1991c). They were regarded as important for foreign policy, labour market, migration, development and economic reasons (Faist, Sieveking, Reim, & Sandbrink, 1999: 140-143).

In February 1991, representatives of the Federal Ministry of Employment and Social Affairs went to a meeting with Director General Degimbe of DG V of the European Commission, to make sure that the bilateral agreements with Poland and the other CEECs could co-exist with the provisions of the EAs. The Commission showed support for the German concerns (Auswärtiges Amt, 1991e). As a particular statement reveals, the Federal Ministry of Employment and Social Affairs expressed support for making reference in the EAs to the existing bilateral agreements. Perceived attempts by the Commission to gain more influence over the regulations of the bilateral agreements found immediate resistance on the German side (Bundesministerium für Arbeit und Sozialordnung, 1991). The Ministry of Employment was in charge of concluding the bilateral agreement and thus felt responsible to make sure the agreement was not thwarted by the EA.

Without the co-existence of the bilateral agreements and the quotas they stipulate, agreement to the Title IV provisions by the German federal government would not have been possible. Changing the provisions of the bilateral agreement would have been costly for the Federal Republic of Germany because of loss of control over the quotas set by the agreement, and consequently over who enters the German labour market.

At the time the EA with Poland was negotiated, immigration to Germany was regulated by what was called the Act for the New Regulation of the Alien Law (*Gesetz zur Neuregelung des Ausländerrechts*). It came into force on 1 January 1991 and was voluminous, detailed, complicated, and difficult to understand for foreigners (Rittstieg, 1996: XI). Its predecessor was a comparatively slim law from 1 October 1965 (*Ausländergesetz*) which, by and large, put the decision regarding issuing, prolonging or terminating residency permits into the hands of bureaucrats and was thus a somewhat arbitrary arrangement.

German immigration law stipulated that Polish nationals did not need a residency permit for stays of up to three months, as Poland featured on the list of countries that were exempted from a residency permit for short stays.⁴³ After entry, in exceptional circumstances, Polish nationals could obtain a residency authorisation for a further stay of a maximum duration of three months without taking up employment (Sieveking, 1995: 240).

The federal government was unwilling to make any changes to these regulations because of the EA with Poland. Doing so would have been extremely costly, because granting access to the German labour market was undesired. Giving support to an EA that would leave national regulations untouched was safe for Germany. In addition, the enshrinement of the reference to the validity of bilateral agreements in the EA made sure there was no significant *misfit*. The provision on the right of establishment was different, as it constituted changes in German national regulations. However, as will be shown below, this was not clear to German policy-makers at that time.

⁴³ Paragraph 1, *Verordnung zur Durchführung des Ausländergesetzes* (DVAusIG)

Nature of the Decision-Making Process

Decision-making on the EA happened in a bureaucratic way. While there were disagreements between the intra-governmental actors, they were not large enough to change the *rules of the game*. Thus, there was no fierce political contestation that would have been publicly noticed. Also, neither of the extra-governmental actors in Germany were experiencing concentrated costs or benefits that would lead them to take an active position in the decision-making process.

Figure 2 and *Figure 5* (to be found in Chapter Three) indicate that immigration was a salient issue while the process of preference formation on the Europe Agreement took place. Immigration was debated domestically in the wake of reforming German asylum law, and changes in the Foreigners Act (1990) regarding family reunion. The number of asylum applications had risen since the beginning of the 1990s, most notably due to the war in the former Yugoslavia. The feeling in Germany was that the German asylum law was too generous, the country could not cope with the increased influx of asylum seekers, and asylum law needed to be made more restrictive. This eventually led to the so-called Asylum Compromise that was agreed upon on 6 December 1992 (Takle, 2007: 101-103).

Immigration was framed as a possible threat to internal security if immigrants could not be absorbed by the labour market (Die Tageszeitung, 1991d). Mass immigration from Eastern and Central Europe through the channel of asking for asylum was especially feared (see, for instance, Die Tageszeitung, 1991a, 1991b; Takle, 2007: 103). In addition, the debate was further fuelled by increased racially motivated violence against asylum seekers. In fact, the German population saw foreigners and asylum as the most important issues facing the country. Xenophobia, citizenship, and asylum were hotly debated themes in

mainstream politics in Germany (Koopmans, 1999: 629). *Political salience* of immigration was high when the preference formation on the EA with Poland took place, and decision-makers were favouring restrictive immigration policies, most notably regarding asylum (Takle, 2007: 103). The public debate included economic migration and the need to prevent migration flows from the CEECs (see, for instance, Die Zeit, 1990a; Handelsblatt, 1990a).

As the *political salience* of immigration was high, the political costs to support provisions on freedom of movement and the right of establishment would have been high for most actors involved. In the public debate, the Agreement was not linked to opening an avenue for immigration from Eastern and Central Europe. Given the *political salience* of immigration, German decision-makers were cautious that the Agreement would not allow immigration from the East, and that it was not framed like that in public debate. Press coverage of the Agreement tended to focus on the economic aspects of the Agreement and the prospect of EC membership. Migration was not mentioned (see, for instance, Die Tageszeitung, 1990, 1991c; Die Zeit, 1992). Consequently, the debate about the Agreement followed a bureaucratic logic even though *political salience* of immigration, especially from Eastern and Central Europe, was high. This was conducive to German support of the Title IV provisions.

International Politics

Foreign Policy Value

The German government certainly had important foreign policy interests regarding Poland and the region of Central and Eastern Europe in general. This gave Poland considerable

foreign policy value from the view of the German government. After being a divided country for around 40 years, it was felt strongly amongst German decision-makers that the CEECs should be brought closer to the EU. Continuous acknowledgment of the Community's traditional pan-European orientation meant decision-makers were obliged to adhere to their commitment to reaching out to the CEECs, once this had become geopolitically feasible (Die Zeit, 1991a; Schimmelfennig, 2001: 76-77). This should have ended Europe's division that followed the Second World War; it was deemed important to have economically and politically stable countries to the East of Germany (Die Zeit, 1990b, 1990c; Handelsblatt, 1990b, 1992). The economic gains that the Central and Eastern European economies promised once they regained their strengths also played a critical role (Dinan, 2004: 273; Kramer, 1991: 126; Sedelmeier, 2005b: 53, 56; Sedelmeier & Wallace, 1996: 359). Moreover, increased economic prosperity in the CEECs was expected to reduce the threat of mass immigration to the EC, about which decision-makers were worried (Langhammer, 1992: 8). Consequently, the official rhetoric of German decision-makers was one of anchoring Poland and the other CEECs firmly in Europe (Bundesministerium für Wirtschaft, 1991h; Die Zeit, 1991c). The principal means for this were seen as helping Poland with its political and economic reforms, by, for instance, drawing up a timeline for a step by step strengthening of Poland's links with the West (Membership of the Council of Europe and the Association Agreement with the EC), and measures such as debt annulments. For instance, the then CEO of *Volkswagen*, Kai Rieckmann, claimed that after having fought communism for forty years, now, when it had finally been defeated, the West must not rest (Die Zeit, 1990c, 1991a, 1991b). In a speech in St. Gallen on 27 March 1991, German Chancellor Kohl called for a rapid conclusion of the EAs and the openness of the EC for full membership of the CEECs, given they fulfilled the necessary economic and political conditions (Auswärtiges Amt, 1991g).

Political salience

As established in the preceding section, domestic salience of immigration matters was high. This increased the costs of using immigration policies to attain certain foreign policy goals, i.e., the economic and political stabilisation of Poland. For political decision-makers, openly supporting more liberal immigration policies for a country from Eastern and Central Europe would have entailed substantial political costs.

Polish diplomatic efforts

In addition to its foreign political significance, the Polish government was very eager to have rights on the movement of workers to the EC included in the Association Agreement, and was committed to make its voice heard in the negotiations (Interview Federal Ministry of Finance) (Gurgalla, 1995: 182). A reason for this was its difficult economic situation, and the high unemployment it was suffering. The Polish government attempted to ease this delicate situation by sending workers to the Community (European Commission, 1990) (Interview Office for European Integration). Thus, the desire also had economic motivations and was not predominantly political, as for instance the case with Czechoslovakia (Auswärtiges Amt, 1991f). In the negotiations, the Polish delegation was the most outspoken of the Visegrád countries and repeatedly demanded improvements in freedom of movement. This would have gone beyond the annual quota set by the bilateral agreement between Poland and Germany, which in 1991 was around 35,000 Polish workers (see, for instance, Auswärtiges Amt, 1991a, 1991b). In addition, the Polish government actively asked for a legalisation of 500,000 Polish nationals who resided illegally in the Community, and for Polish workers taking part in Member States' social

insurance systems (Bundesministerium für Wirtschaft, 1991k). According to Polish figures, there were around 100,000 Polish nationals living illegally in Germany (Bundesministerium für Wirtschaft, 1991b). Poland continued to repeat its claims, even when it was clear that the Community was not prepared to agree to the improvement of freedom of movement and the legalisation of illegal immigrants. The Polish delegation stressed that the inflexibility of the EC would need to be dealt with at the political level. It also threatened that it was willing to inform the Council of Ministers of the drastic divergence of positions, which could have led to the abandonment of the negotiations (Bundesministerium für Wirtschaft, 1991a). Poland also took part in an attempt at the highest political level of the Visegrád countries to push forward the stagnating negotiations; the then Polish president, Lech Wałęsa, together with the President of the Czech and Slovak Federal Republic, Václav Havel, and the Prime Minister of Hungary, József Antall, wrote a letter on 23 August 1991 to the Dutch Prime Minister, Ruud Lubbers, who was then president of the Council of the European Union. The letter referred to the attempted *coup d'état* in the Soviet Union in August 1991 by Communist hardliners, which increased the political instability of Soviet Union and thus of the region as a whole. It argued that the importance of a successful conclusion of the EAs for the political stability of the region would be enormous, and that it should not be obstructed by narrow political interests (Auswärtiges Amt, 1991d). The Polish Government even tried bilateral talks with the German Federal Ministry of Economics and representatives of the *Länder* to further its ends (Interview Office of European Integration). In October 1991, shortly before the conclusion of the Agreement, Poland still demanded comprehensive freedom of movement rights (Bundesministerium für Wirtschaft, 1991j).

Ministerial costs and benefits distribution

The German Foreign Office repeatedly alluded to the high importance Poland gave to the inclusion of concessions on the free movement of persons, the pressure that Poland was expected to exert in this area in the negotiations of the Agreement, and its attempts to push ahead the negotiations (see, for instance, Auswärtiges Amt, 1990a, 1990b). The Foreign Office is likely to have had a cautious eye on the precarious political relations with that country, which were bearing a heavy historical burden. However, the German stance as a whole remained firm, which to a large extent can be attributed to the unmoveable position of the Federal Ministry of Employment and Social Affairs, but also of the Federal Ministry of the Interior. This can be linked to the high domestic *political salience* and the consensus of German decision-makers that immigration from Eastern and Central Europe needed to be restricted (see, for instance Takle, 2007). Thus, Polish pressure, even in light of the foreign political importance of the country, had very little effect on Germany's position and the position of the EC as a whole (Interview Office for European Integration). Rather than giving any concessions on the freedom of movement, the German federal government was willing to accommodate Polish wishes in other areas of the Agreement, for instance, trade (Auswärtiges Amt, 1991b).

However, with regard to the regulations on the right of establishment, things took a different course. Neither Germany nor another Member State saw any large migratory potential of these provisions. Hence, they were uncontroversial but, in fact, were the provisions that actually deviated from the national regulations. A small note of caution by the Federal Ministry of Employment and Social Affairs with regard to these provisions can be found (Bundesministerium für Wirtschaft, 1991e). However, there is nothing that suggests that the German government was concerned that the provisions on the right of

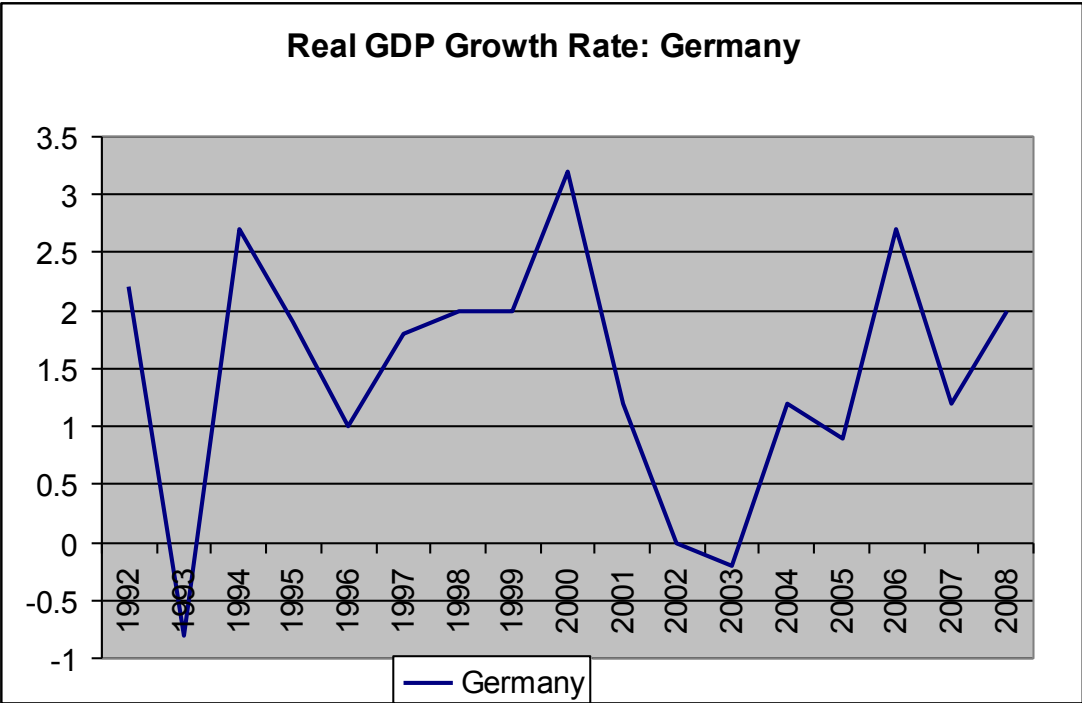
establishment might lead to increased migration from Poland to Germany. In speaking notes for the Council of Economic Ministers in Brussels on 3 and 4 July 1991, outlining the state of the negotiations and the outstanding controversial points, there was no mention of the provisions on the right of establishment. In contrast, provisions on the freedom of movement were brought up (Bundesministerium für Wirtschaft, 1991b).

In July 1991, when the negotiations were stuck, the Commission came up with a new proposal on including new regulations on the right of establishment. The proposal was agreed upon with Poland and Member States were not consulted (Bundesministerium für Wirtschaft, 1991I). It seems that some of the wishes Poland had with regard to freedom of movement made their way into the provision on the right of establishment. Whether or not this was intended by Poland – or the Commission – cannot be established with 100 percent certainty. However, it is fair to assume that Poland tried to get concessions for the movement of persons in one way or another (Interview Office of European Integration). Nonetheless, the German federal government was not worried about the establishment provisions, but only about the regulations on the provisions of cross border services (Bundesministerium für Wirtschaft, 1991I). Even though Poland had a high *foreign policy value* for Germany and pushed for more far-reaching provisions on the subject of migration, the German federal government was not prepared to compromise on the freedom of movement provisions, but tried to accommodate Polish wishes in other parts of the Agreement. The high *political salience* of migration increased the political costs of such concessions and is the reason why the pressure of the Polish government was less successful than, for instance, that from the Turkish government with regard to the Ankara Agreement.

Labour market concerns

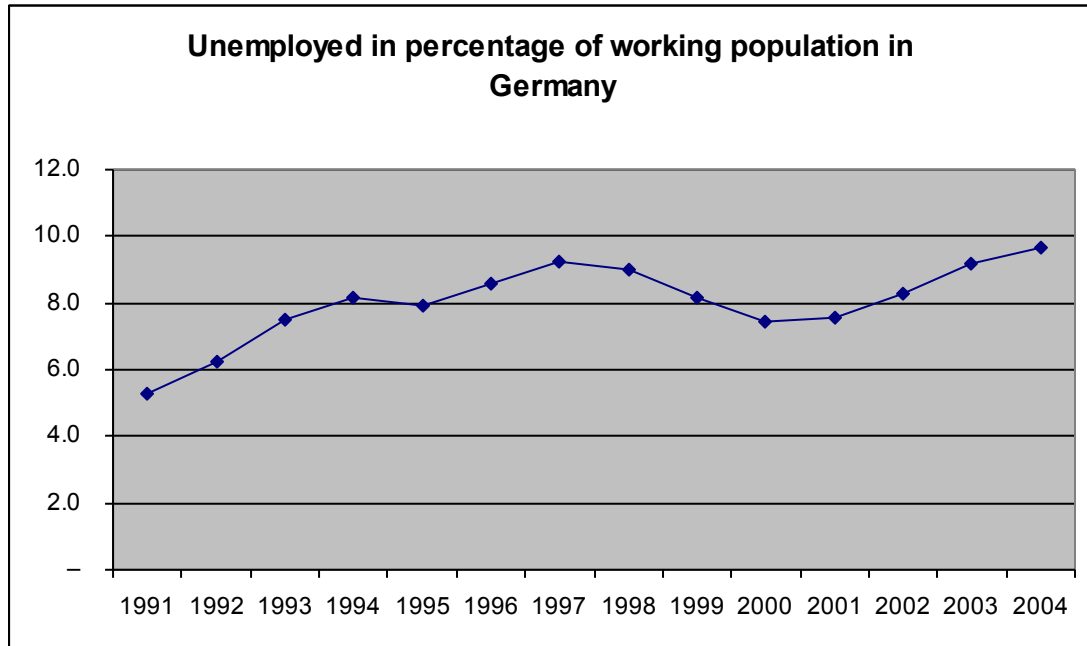
The period in which the EA was negotiated and concluded coincided with low economic growth, high unemployment, and ailing state budgets in the EC. In 1991, GDP growth in the EC was 1.6 percent and falling. By 1993, the EU economy had slid into recession (Papadimitriou, 2002: 62). Germany had a negative growth of 0.8 percent in 1993 (see *Figure 14*). *Figure 15* shows that from 1992 onwards, the situation of the German labour market was tense, as the number of unemployed in proportion to the working population rose by 3 percent in total between 1992 and 1997. However, despite the gloomy economic situation, from 1989 on Germany concluded a number of bilateral labour recruitment agreements with the CEECs for temporary workers (*Gastarbeitnehmer*), seasonal workers (*Saisonarbeitnehmer*), and workers posted by subcontractor companies (*Werkvertragsarbeitnehmer*) (Menz, 2001: 254). This could be an indicator for the existence of labour shortages in certain sectors of the German labour market. However, foreign policy, economic, and developmental considerations also played a role (Faist, et al., 1999: 140-143; Reim & Sandbrink, 1996: 28-29). But still, in the late 1980s and early 1990s, the construction industry reported labour shortages for skilled workers (Faist, et al., 1999: 141; Menz, 2001: 255). In the fourth quarter of 1989, the Institute for Employment Research (*Institut für Arbeitsmarkt- und Berufsforschung*) found that a 12 percent segment of all companies experienced impediments to their production due to labour shortages. Sectors particularly affected were construction and consumption related services. Small companies suffered relatively strongly because of labour shortages (Reyher, Spitznagel, & Kretschmer, 1990: 353). Also, German reunification in July 1990 reinforced the existing regional and sectoral labour shortages (Faist, et al., 1999: 141; Sandbrink, 1996: 95).

Figure 14: Real GDP Growth Rate, Germany



Source: Eurostat New Cronos

Figure 15: Unemployment rate Germany, in percentage



Source: Bundesagentur für Arbeit

The labour shortages the German labour market seem to have been facing at that time did not influence the position of the federal government in a significant way. Although sectoral labour shortages were reported, they did not feature in the political debate, and consequently the debate about the EA was not framed in a way that could allow it to serve as a short- or medium-term solution to fill these shortages. Hence, Title IV of the EA was not linked to the need to fill labour shortages through targeted migration, and labour shortages did not have a direct effect on the freedom of movement provisions. In fact, the most important rationale was the concern not to overburden the labour market with additional labour in light of high domestic unemployment (Domaradzka, 2006: 83; Gurgalla, 1995: 182; Husmann, 1998; Kohlmann, 1997: 95; Reim, 2000: 80; Vogt, 2001: 173). Within the German government, the general view was that concessions on freedom of movement needed to be avoided by all means. The economic term of reference was

therefore the tense situation of the labour market that overlaid the reported labour shortages (Auswärtiges Amt, 1991b), combined with a fear of a significant increase of migration from Poland in case immigration regulations would be loosened in the EA (Ad-Hoc-Gruppe "Einwanderung", 1990).

The German federal government, in particular the Federal Ministry of Employment and Social Affairs, was bent on not including any regulations in the Agreement that might give Polish workers the right to enter the EC labour market. Consequently, it preferred not to include any reference to the possibility of free movement in the EA (Bundesministerium für Wirtschaft, 1990c). The Ministry was of the opinion that in case freedom of movement was to be extended to Poland and the other Visegrád countries, the largest burden would be borne by Germany. Thus, it should be discussed with other Member States whether they would be willing to admit nationals from the Central and Eastern European Associate countries. In addition, the Federal Ministry of Employment and Social Affairs was keen to stress that freedom of movement fell under the responsibility of the Member States, necessitating a mixed association agreement and consequently the involvement of the Member States in the negotiations (Bundesministerium für Arbeit und Sozialordnung, 1990). The Ministry was opposed to acceptance of the freedom of movement as a principle in the Agreement, and did not want to define which conditions of admission into the European labour market would be accepted – as proposed repeatedly by the Federal Ministry of Economics (Bundesministerium für Wirtschaft, 1991d). The Ministry was finally prepared to agree to improve the situation of Polish nationals and their family members who were already legal residents in the Community. For any further improvement, the situation of the labour market needed to be probed (Auswärtiges Amt, 1991g). The Ministry also objected to a locking up of certain quotas for posted workers in the EA as

they – unlike with regard to the bilateral agreement – might not be changed (Bundesministerium für Wirtschaft, 1991g). In addition, it warned that it might be difficult to enforce restrictive freedom of movement provisions in the negotiations while at the same time including more open regulations on the right of establishment (which were supposed to be regulated in a different paragraph of the Agreement) (Bundesministerium für Wirtschaft, 1990b). It is interesting here that not even the Federal Ministry of Employment and Social Affairs was at that point aware of the potential implications of provisions on the right of establishment.

The Federal Ministry of Economics acknowledged the responsibility of the Federal Ministry of Employment and Social Affairs for anything immediately related to foreign workers entering the German labour market, but voiced concerns – together with the Foreign Office – to keep in mind the Association Agreement the EEC had concluded with Turkey in the early 1960s. In this Agreement, concessions on freedom of movement had led Turkish nationals to call upon German courts and the ECJ which led, together with decisions of the Association Council, to the establishment of a number of rights for Turkish nationals. For instance, article 8(1) of Decision No.1/80 of the Association Council grants preferable treatment of Turkish nationals compared to other third country nationals, in case a vacancy cannot be filled with a Community national. Such developments were supposed to be avoided for the EA (Bundesministerium des Innern, 1990b; Bundesministerium für Wirtschaft, 1990e). The Ministry was slightly less concerned about including references to freedom of movement in the Agreement, and together with the Foreign Office requested the Federal Ministry of Employment and Social Affairs to check its position, which had been to make no reference to freedom of movement in the Agreement (Bundesministerium für Wirtschaft, 1990b).

The Federal Ministry of the Interior was very cautious about including provisions that might allow, in one way or another, Polish workers to enter the labour market of the EC. Its position was similar to that of the Federal Ministry of Employment and Social Affairs. The Ministry also made reference to the experience with the Association Agreement with Turkey, and called for not including any regulations that might lead to Member State obligations with regard to migration or granting individual entitlements of rights of the freedom of movement. To that end, it maintained that the term “freedom of movement” should not be included in the Agreement but should only relate to relations between the EC and the Member States (Bundesministerium des Innern, 1990a). The Federal Ministry of Justice expressed its support for this proposition (Bundesministerium der Justiz, 1990). It further argued that the term “freedom of movement” should not be used in a general way, but the Agreement should only contain a reference to the future establishment of some sort of freedom of movement (Bundesministerium des Innern, 1990b). Hence, the German federal government was extremely cautious to grant any concessions that might lead to relaxed rights of admission for Polish workers to the labour market of the EC. The need to fill labour shortages did not feature in the debate, only the tense situation of the German labour market. Consequently, in the case of the Europe Agreement, a direct link between labour shortages and German support for migration-relevant provisions can be established. As the Europe Agreement was not framed as a possibility for reducing labour shortages, employer associations that might have taken action to support the Agreement to this end did not take any action.

Bureaucratic Politics

The *where you stand depends on where you sit* proposition can explain the position of the actors involved. In addition to the Foreign Office and the Federal Ministry of Economics, the Federal Ministry of Employment and Social Affairs was very active, as the admission of workers to the labour market fell in its area of responsibility. The fourth ministry that had strong opinions was the Federal Ministry of the Interior, as immigration and controlling who enters the country were part of its portfolio. Most immediately concerned was the Federal Ministry of Employment and Social Affairs, as the guardian of the German labour market. In light of high unemployment, the Ministry's main objective was not to admit any further workers to the Germany labour market beyond the quota allowed by the bilateral agreement on posted workers. Although labour shortages were reported when the Agreement was negotiated, any references to the filling of labour shortages cannot be found, and the debate about the EA was certainly not framed in a way that the Agreement could be used to fill these shortages. Thus, the costs of including regulations that would allow Polish workers to access the German labour market were seen as constituting concentrated costs, while their benefits were diffuse in terms of helping to conclude the entire Agreement that was politically crucial and economically potentially beneficial.

A very similar distribution of costs and benefits applied to the Federal Ministry of the Interior. It was opposed to giving away competencies to the EU level with regard to being able to decide who can enter Germany's territory. It made particular reference to the provisions of the Association Agreement with Turkey, which had resulted in decisions of the Association Council such as decision no.1/80 which stipulated that if a vacancy could not be filled by an EC citizen, Turkish nationals should be given priority compared to other third country nationals.

The Federal Ministry of Economics and the Foreign Office were slightly less hostile to including some sort of freedom of movement regulations in the Agreement, though certainly not very generous ones. As the Ministries in charge of the entire Agreement, they were more immediately exposed to the political claims of the German leadership that the Agreements should be concluded as soon as possible to anchor Poland and the other CEECs in Europe, for reasons of political stability in the region but probably also with an eye on German reunification. This applies in particular to the Foreign Office. Conversely, the Federal Ministry of Economics is likely to have given most of its attention to regulations on trade liberalisation and economic assistance. In both cases, therefore, costs of provisions on freedom of movements – unless they were extremely far-reaching – were diffuse while the overall benefits of the Agreement were fairly concentrated.

As for the political dynamics of preference formation, no major differences are apparent within the federal government with regard to freedom of movement provisions and the right of establishment. Neither the Economics Ministry nor the Foreign Office were in favour of provisions that would enable immediate migration from Poland to Germany. Both ministries referred to the burden the promise of freedom of movement in the Ankara Agreement posed on Turkey's associate membership to the EEC (Bundesministerium für Wirtschaft, 1991i). The Employment and Interior Ministries were more strongly opposed to any provisions that might mean migration from Poland to Germany.

The situation was made more precarious by the Polish government including itself in the preference formation, as it pushed for the inclusion of provisions on freedom of movement and the right of establishment. Thus, parallels to the efforts of the Turkish government with

regard to the Ankara Agreement emerge. Given the *political salience* of migration was high on this occasion, Poland's lobbying efforts were less successful than Turkey's with regard to the freedom of movement provisions. However, concerning the provisions on the right of establishment, the lobbying efforts were fruitful and helped the German government to agree to these provisions. German decision-makers were not aware of the consequences the provisions might have with regard to immigration, and saw them also in the light of offering benefits for German companies attempting to do business in Poland, for instance, by facilitating the opening of subsidiaries there. In the end, it was those provisions that had an actual impact on the possibilities of Polish workers to enter the German labour market. Consequently, the Polish government also features amongst the relevant actors that took part in the decision-making process on the EA.

Regarding the *Länder* governments, they were informed about the state of the negotiations via the *Bundesrat* and even managed to send a representative to discussions in the relevant working group of the Council of the EU (Bundesrat, 1991). However, there is nothing that suggests the *Bundesrat's* position was different from the federal government's. This also applies to the German parliament, the *Bundestag*. As the *Länder* did not take any action, we can assume that the costs and benefits were moderate and diffuse, not necessitating any action. It is likely that the *Länder* would be concerned with Polish workers entering the German labour market, but as the general government stance was very tough in that respect, there was no necessity for *Länder* representatives to take action.

III. Conclusion

The analysis of this case study does away with the common misconception of the existing literature on the EAs that the migration relevant provisions of the Agreement with Poland did not have a direct and tangible effect on national migration regulations. In particular, the provisions on the right of establishment and the clause that prohibits the national regulations to nullify or impair provisions of the Agreement constitute a *de jure* modification of German national regulations. These are the refusal of entry due to overcapacity of the German labour market, the omission of the needs test of the labour market, and the need for demands of self-employed Polish workers to be able to sustain themselves.

The position of the German federal government on Title IV of the EA with Poland, i.e., the part of the agreements that bears relevance to the discussion about the regulation of economic migration at the EU level, can be explained by three themes – domestic politics, international politics, and labour market concerns – that are linked by a *bureaucratic politics* framework. The first theme, domestic politics, includes two hypotheses. Hypothesis One concerns the *fit* between existing national regulations. It showed that the federal government was not prepared to give any concessions on the movement of workers that would go beyond or thwart the national regulations, most notably, a bilateral agreement with Poland on the sending of posted workers to Germany. Hence, Germany was not willing to accept any *misfit* between national and EC regulations and was 100 percent determined to *upload* its preferences to the EC level. This happened in the form of including a reference to the co-existence of bilateral agreements with the EA. The discussions with regard to Hypothesis Two showed that the debate about the freedom of movement provisions took place in the style of *bureaucratic politics* even though *political salience* of immigration was high. This could happen because decision-makers made it

quite clear from the beginning that the Agreement could not allow increased immigration from Poland to Germany and it was not framed publicly in that way either. Rather, the Agreement tended to be portrayed as facilitating economic cooperation and potentially leading to EU membership at a later point in time.

The second theme of international politics relates to foreign political factors. Accordingly, Hypothesis Three discussed Poland's *foreign policy value* to Germany in terms of creating political and economic stability in the region. The *foreign policy* value of Poland was high; however, so was the *political salience* of immigration in Germany. The latter was fuelled by a heated debate about the need to curb asylum flows by making national asylum legislation more restrictive; this was because of increased asylum applications due to, for instance, the war in former Yugoslavia. The Polish government lobbied for the inclusion of provisions in the Agreement that would allow further immigration from Poland to Germany. The German government remained tough because of the high political costs involved. Instead of including more generous provisions on freedom of movement, it tried to give concessions in other areas of the Agreement, most notably, trade, in order not to endanger its conclusion. Nonetheless, the Polish government's efforts made a difference as they contributed to the inclusion of provisions on the right of establishment. They indeed constituted *de jure* changes to the German national immigration regulations. German decision-makers were not aware that these would have this effect.

The third theme considers labour market concerns. Labour shortages did not have a direct impact on Germany's position on the Europe Agreement. The provisions were not framed in a way that coupled them with the ability to reduce domestic labour shortages. Nonetheless, they were instrumental in making the German government conclude a

bilateral labour agreement with Poland for posted workers. The existence of that agreement, and reference to the co-existence of such bilateral agreements in the EA, reduced the *misfit* and helped to secure German consent to the freedom of movement provisions of the EA.

Discussing the *bureaucratic politics* of preference formation has revealed that the Ministry of Employment and Social Affairs as well as the Foreign Office were slightly advantaged by the *rules of the game*, as they were jointly in charge of the file. This meant they had to establish the German government's position by coordinating the diverging views of the relevant ministries. Thus, they had some degree of flexibility to lead the discussions in a certain direction or to stress a few particular points. Both ministries were aware of the political importance of the Agreement (and what concerned the Economics Ministry – its economic potential). Consequently, they attributed high priority to its successful conclusion. The Employment Ministry and the Interior Ministry, supported by the Ministry of Justice, strongly cautioned about including provisions that could mean increased immigration from Poland to Germany. Consequently, the federal government was not prepared to include such provisions and tried to appease the Polish government by giving concessions in other areas of the agreement, most notably trade. German preference formation followed a pattern that is better characterised as coordination rather than hard-nosed bargaining. That is because there was broad agreement about the general position on the freedom of movement provisions.

In addition to these executive actors, the Polish government pushed itself into the game. This resembled developments regarding the Ankara Agreement. However, given the high *political salience* of immigration and the experiences of the German government with the

relevant provisions of the Ankara Agreement, the Polish government was less successful in gathering German support for extensive freedom of movement provisions. However, it contributed to the inclusion of provisions on the right of establishment that opened a loophole for Polish workers to migrate to Germany as self-employed workers or key personnel. The German government was not aware of this effect. It was more concerned about the provisions on the freedom to provide services, which it saw in light of facilitating access for German companies to the Polish market.

Each of the three hypotheses contributes to explaining the preferences of the German federal government, and to answering under what conditions a Member State agrees to liberalise economic migration policies at the EU level. However, it is still possible to discuss differences in the importance of the hypotheses. In determining the exact position of the federal government, domestic politics are the most important theme. Notably the *misfit* hypothesis (Hypothesis One) is the most crucial one, as the existing regulations, i.e., the bilateral agreement with Poland on posted workers, marked the red line indicating the maximum of what Germany was willing to concede to the EU-level in the EA. Hypothesis Two contributes to the explanation by highlighting the significance of the *political salience* concept. It made it difficult for the German government to openly support any provisions that would lead to increased migration from Poland to Germany. Nonetheless, the German government succeeded in not framing the EA as a policy measure that might have this outcome. Consequently, the position on the freedom of movement provisions could be formed without causing too much political stir, which could have endangered the conclusion of the overall Agreement.

International political considerations (Hypothesis Three) indicate two main things. First, Polish insistence on some sort of improvement of the movement of persons resulted in the regulations on the right of establishment that contained some flexibility for workers to enter the EC labour market. This confirms the findings of the case study of the Ankara Agreement that foreign governments can wrestle themselves into the governmental decision-making process, even though they are not formally included by the *rules of the game*. This substantiates the call to modify the *politics framework* to incorporate the ability of foreign governments to push themselves into the game to make a substantive contribution to the governmental decision-making process. Second, it indicates again the importance of the concept of *political salience* in explaining German reluctance to agree to noteworthy migration provisions. Even continued pushes by the Polish government could not induce the German government to agree to outright provisions on immigration. It took a misinterpretation of the provisions on the right of establishment to make a tangible difference. Hence, the increased *political salience* decreased the impact of the Polish government compared to that of the Turkish government with regard to the Ankara Agreement.

Chapter Six – Germany’s Resistance to the Economic Migration Directive

Introduction

Since the early 1970s, when the most prominent European immigrant-receiving countries stopped their guest worker recruitment, the official debate about immigration – if there was one – tended to be dominated by a logic of restrictionism. Calls for harmonising Member States’ immigration policies and even delegating competencies of regulating migration to the EU level were fuelled by the signing of the Single European Act in February 1986. This established the goal of a European Common Market by 1992, the communitarisation of immigration, and the incorporation into EU law of the Schengen Agreement that abolished internal border controls through the conclusion of the Amsterdam Treaty in October 1997. In the Conclusions of the 1999 European Council in Tampere, the EU Member States embarked on outlining a programme of action that would create legally binding instruments on asylum and immigration policy, justice cooperation, and the fight against crime. Point 22 of the programme states (European Council, 1999): “The European Council stresses the need for more efficient management of migration flows at all their stages.” It also linked the carving of the Schengen Agreement into EU law with the need to further cooperate in that area, and in particular in order to guarantee an effective control of the Union’s external border.

While these developments can be seen as progress towards a common immigration policy, the formulations are general and do not give any detailed indication about the content of an EU policy on legal migration. A crude distinction can be made between a restrictive logic of immigration, which dominated European thinking about immigration since the end of the keen recruitment of guest workers era, and a policy that acknowledges the need for immigration and allows for channels to admit migrants for purposes of employment. As the Commission was asked to elaborate policy proposals, it was up to the Commission to interpret the Tampere programme. With regard to legal migration, the Commission proposed a Directive on family reunification and long-term residents as well as the admission and residence of third-country nationals for employment purposes. In particular, the latter was a clear commitment to a controlled opening to economic migrants from outside the Union. The proposal states (European Commission, 2001: 22): “In an increasingly global labour market and faced with shortages of skilled labour in certain sectors of the labour market the Community should reinforce its competitiveness to recruit and attract third-country workers, when needed.” Thus, the Commission attempted to frame the migration debate as a response to the need to fill labour shortages and to take advantage of the EU’s resources to attract the brightest migrants worldwide. In its 2005 Policy Plan on Legal Migration,⁴⁴ the Commission acknowledged the issue of brain drain and the need for ethical recruitment. However, in the Economic Migration Directive, references to brain drain issues were missing.

The proposal did not find much acceptance amongst Member States and the Commission was finally forced to shelve and withdraw the proposal. This chapter analyses why Member States were unwilling to support the Directive. A standard explanation for why the

⁴⁴ COM(2005) 669 final.

proposal was not adopted by Member States is that the European value added by a common EU policy is not enough to justify EU-level cooperation (see, for instance, Ryan, 2007). However this approach is too simplistic. The chapter argues that the *misfit* between the proposal and the German national regulations of migration was too high. As the domestic *political salience* of migration was very pronounced, the political costs of agreeing to the Economic Migration Directive were extremely high. Even though labour migration had started to be framed as able to contribute to reducing the existing labour shortages, the link between EU-level liberalisation of economic migration and the reduction of labour shortages had not been made. Foreign policy factors did not play a role in the preference formation on the proposal. The case studies of the Ankara and the Europe Agreement substantiated the potential of foreign policy factors to increase the likelihood of a Member State government supporting EU-level liberalisation of economic migration policies, under certain conditions. As a consequence, these factors were not part of the equation and reduced the decision to the other factors. The chapter is organised as follows. It discusses the genesis of the Directive, followed by the empirical analysis of the process of preference formation of the German government, and a concluding section reflecting on the relevance of the hypotheses.

1. Genesis and Background of the Directive

Genesis

The Treaty of Amsterdam, which entered into force 1 February 1999, communitarised the immigration policy area by moving it into the first pillar of the EU. This resulted in the conclusion of the Tampere European Council of 15-16 October 1999. The conclusion drew up a programme of action in an attempt to establish a comprehensive legal policy

framework in Justice and Home Affairs. The programme set targets and deadlines in areas such as immigration and asylum policy, justice cooperation, and the fight against crime. The Tampere programme additionally invited the Commission to propose the respective legislation. As regards legal migration, the Commission proposed Directives on the right to family reunification;⁴⁵ on long-term resident status;⁴⁶ students;⁴⁷ researchers;⁴⁸ and on economic migration.⁴⁹ The Economic Migration Directive was proposed on 11 July 2001 and was based on a feasibility study commissioned by the DG Justice, Liberty and Security of the European Commission. The study compared and analysed the legal and administrative frameworks of the then 15 EU Member States with regard to the admission of third country nationals for the purposes of paid employment or self-employment. The study established a number of commonalities across Member States, such as the distinction between paid employment and self-employed economic activities; a generally restrictive orientation that nonetheless leaves opportunities to react to shortages on the domestic labour market; residence and work permits as two separate titles granted by different authorities; and the sanctioning of illegal residence and illegal employment. However, not surprisingly, the differences outstripped the commonalities. These included the application of a quota system; the regulation of immigration by one or several laws; eligibility criteria as well as length of residence; the use of a work permit in addition to a residence permit; the regulation of family reunion, voting rights for third country nationals; and the authorities in charge of the admission of immigrants (ECOTEC, 2000: 33).

⁴⁵ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, Official Journal L 251, 03/10/2003 p. 12 – 18;

⁴⁶ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third country nationals who are long-term residents, Official Journal L 016, 23/01/2004, p. 44 – 53.

⁴⁷ Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, Official Journal, L 375, 23/12/2004, p. 12–18.

⁴⁸ Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third country nationals for the purposes of scientific research, Official Journal L 289, 03/11/2005, p. 15–22

⁴⁹ COM(2001) 386 final.

Content

The Directive followed a horizontal approach, covering conditions for entry and residence for any third country national. Thus, it would have applied to both skilled and unskilled migrants working in various professions and sectors. The Directive was divided into six chapters. Its main points were the following: First, it laid down common definitions of the relevant terminology (such as third country national, self-employed person, the different residence permits, seasonal worker, transfrontier worker, intra-corporate transferees, and trainees) and its scope. It left room for Member States to put in place more favourable provisions than the Directive's. It merged the residence and work permits into one single permit (*residence permit – worker*). Second, it laid down the application process, the requirements for admission (*Articles 5 and 6*), and the rights granted once admitted. These included a job offer in a Member State that could not be filled by an EU national or legal resident, and that had been advertised for a period of at least four weeks. It gave the Member States the right to couple admission to a minimum annual income to be determined by the Member State. The *residence permit – worker* was supposed to be valid for up to three years and renewable for periods of up to three years. Initially, the permit was restricted to specific professional activities. After three years these restrictions should have been lifted, giving the holder the right to work in other Member States and to take on other jobs. The permit also allowed re-entry after temporary absence, and equal treatment with EU citizens; for example, with regard to working conditions, vocational training, recognition of qualifications, social security, and union membership. Third, the proposal specified rules for special categories of workers, such as seasonal workers, intra-corporate transferees, trainees and *au pairs*. Fourth, the Directive covered conditions for admission

of self-employed workers who were covered by the *residence permit – worker*. It was supposed to be issued for a period of up to three years and to be renewable for up to three years. During the first three years, it was supposed to be restricted to a specific economic activity or field of activity, or to a specific region. After three years those restrictions were lifted. Fifth, it contained several horizontal provisions, such as allowing Member States to set quotas or to restrict the issuing of permits to a certain period. Sixth, the Directive included articles on procedure and transparency thought to ensure that all details of the application procedure were publicised. Finally, it made a few general statements about the Directive's taking of effect.

The proposal constituted an attempt by the Commission to change the paradigm of restrictionism to one of controlled openness, as it had already announced in its communication on a community immigration policy of November 2000.⁵⁰ However, it still tried to leave the determination of actual numbers to the Member States in an effort to make the proposal more easily digestible for Member States.

Main Issues

The content of the proposed Directive caused concern for a number of Member States. The main issues were the following. First, the legal basis of the Directive, Article 63(3) of the EC Treaty, was questioned. Article 63(3) stipulates that the Council shall adopt:

“measures on immigration policy with the following areas: (a) conditions of entry and residence, and standards on procedures for the issue by Member States of

⁵⁰ COM(2000) 757 final.

long-term visas and residence permits, including those for the purpose of family reunion;”

In particular, Germany and Austria were doubtful about the competence of the Community to adopt rules concerning access to Member States’ labour markets. It was considered that under the current Treaty, and, in particular, on the basis of Article 63, the Commission did not have the competence to propose legislation in this policy domain (Bundesrat, 2002a; Council of the European Union, 2003) (Interview 3 Commission, Interview 2 Council, Interview Diplomat). Second, merging residence and work permits into one single permit was seen as a problem by some Member States. This was a problem especially for Member States with a federal structure, as in addition to federal authorities, regional ones were also involved in admitting third country nationals to the labour market (Council of the European Union, 2002: 3-4). Third, some Member States found the system established by the Directive rather bureaucratic and not responsive to the needs of their labour market, in particular regarding the possibility of recruiting third country national workers quickly (Interview 2 Permanent Representation, Interview UK Permanent Representation). Having one procedure that would apply to all kinds of migrants who, for instance, require different qualifications, was not seen as efficient (Council of the European Union, 2002, 2003) (Interview 3 Commission, Interview 2 Council, Interview Diplomat). Moreover, restricting workers to specific professional fields in the first three years was not seen as flexible enough (Peers & Rogers, 2006: 673). In addition to these problems, Member States found a multitude of other issues in almost all provisions of the proposal. These included: suspicion about the link between decisions on migration for employment and self-employment and the issue of visas to the persons concerned; the possibility to file an application while in-country; the need for further conditions that needed to be met in order

for a permit to be granted (accommodation, requirement of integration, or commitment of employer to pay tax expenses); and unemployment not constituting a sufficient reason for revoking a *residence permit – worker* (Article 10(3)) (Peers & Rogers, 2006: 672).

Negotiations

The Directive was proposed in July 2001. The German government was one of the most outspoken opponents of the Directive (together with the Austrian government). However, Member States were not enthusiastic about the Directive in general. Already the first reading of the proposal indicated that it would be very difficult for Member States to agree on the Directive. The Working Party on Migration and Expulsion of the Council of the European Union discussed the proposal briefly at four meetings in 2002 (21 March, 16 April, 10 June, and 8 July), after which discussions came to a halt (Council of the European Union, 2003: 1). The Commission pursued a strategy to overcome disagreement over details by putting forward a general “escape” clause. Nevertheless, the general reluctance of Member States to change national legislation and procedures was too pronounced. Neither the Seville European Council in June 2002, nor the Conclusions of the Thessaloniki European Council in June 2003 set a deadline to agree on the proposal. The Directive was debated again in July 2003 and in October 2003 by the Working Party on Migration and Expulsion. That concluded the first reading of the proposal. November 2003 marked the last time the proposed Directive made it to the Council, when the Justice and Home Affairs Council mentioned the “state of play” concerning the proposal. The Council only stated the serious differences and reservations of Member States concerning the proposal. The Commission formally withdrew the

proposal in March 2006 (Council of the European Union, 2007; European Commission, 2006: 12; Peers & Rogers, 2006: 671-675; Sénat, 2004).

II. Germany's Preferences

The formation of governmental preferences in Germany is a process that involves a number of different actors. Given the federal and decentralised structure of government in Germany, this does not come as a surprise. Which actors are involved is structured by the institutional set-up. How actors' positions, influence, and moves are aggregated to form a certain governmental position and action is conceptualised by Allison (Allison & Zelikow, 1999: 300-304) as the *game*.

In Germany, the macro-structure for governmental preference formation is given by the *Gemeinsame Geschäftsordnung der Bundesministerien* that regulates interministerial affairs. Accordingly, the central actors are the federal government, the social partners, and the *Länder*. However, if there is a vivid public debate about a certain legislative endeavour, the list of actors might increase, as political actors from inside and outside the government voice their opinions, which are filtered by the media. The relevant actors for the Economic Migration Directive are as follows. For the German government, the Ministry of the Interior was in charge of the file. In addition, several other ministries were involved: the Federal Ministry of Employment; the Federal Ministry of Economic Affairs; the Foreign Office; the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, the Federal Ministry of Education and Research; the Federal Ministry of Transport, Building and Urban Development; and the Office of the Federal Representative for Migration, Refugees and

Integration. The Federal Ministry of the Interior and the Federal Ministry of Employment had the strongest influence on the decision-making process.

The social partners were represented by their respective peak organisations – the employer associations by the Federation of German Employer Associations (*Bundesvereinigung der Deutschen Arbeitgeberverbände* or BDA) and the trade unions by the Confederation of German Trade Unions (*Deutscher Gewerkschaftsbund* or DGB), the peak organisation of the German trade unions (Interview BDI). The *Länder* also took part in the process, via the *Bundesrat*. In addition, the position of the parliament (*Bundestag*) needed to be taken into consideration. The Directive was proposed when immigration was a hot topic domestically as it coincided with lively discussions about immigration policy and the effects of immigration on Germany. This raised the stakes for actors involved in the debate.

Domestic Politics

“Agreeing openly to adopt the Economic Migration Directive would have meant political suicide.” (Interview 2 Permanent Representation).

Misfit

The point of reference for the national legislation is not clear-cut, as Germany was in the process of changing its domestic immigration legislation. This endeavour caused controversy. Soon after the Schröder Government came into power in 1998, it embarked on reforming German immigration law. At that time, immigration to Germany was regulated by what was called the Act for the new Regulation of the Alien Law (*Gesetz zur Neuregelung des Ausländerrechts*). It had come into force on 1 January 1991 and was voluminous, detailed, and complicated. Consequently, it was difficult to understand for foreigners (Rittstieg, 1996: XI). Its predecessor was a comparatively slim law from 1 October 1965 (*Ausländergesetz*) which, by and large, put the decision over issuing, prolonging, or terminating residency permits into the hands of bureaucrats and was thus a rather arbitrary arrangement. The process of reform was initiated by a speech given by Chancellor Schröder at the CeBIT, a tradeshow for the digital industry, in Hanover on 23 February 2000. He announced the introduction of a so-called Green Card to lure IT specialists to Germany, consequently launching a debate about a fundamental renewal of German immigration policy (Schröder, 2000). It was the first time the Schröder government publicly mentioned the Green Card initiative that sought to give a work permit to third country nationals to work in the IT industry. It was the first step away from a solely restrictive labour immigration policy towards one of providing selected entry points for skilled workers that complemented the national labour force. The only exception are a

number of bilateral recruitment agreements with CEECs on temporary, seasonal, and posted workers the German government had concluded since 1989 that did not gain much public attention (Menz, 2001: 254).

The Green Card initiative entered into force on 1 August 2000.⁵¹ The residence permit was limited to five years and restricted to IT professionals with either a relevant university degree or a minimum annual salary of €50,000. In addition, the total number was restricted to 10,000 initially, but was later increased to 20,000 – as planned from the outset. By German standards, the initiative was generous, but it still included restrictive elements, as, for instance, the residence permit was non-renewable and the Green Card thus provided no long-term perspective to prospective migrants.

The Green Card initiative provides some insights into the German regulation of economic immigration. Apart from this, it is difficult to establish what the point of reference for German immigration legislation was, as Germany was in the middle of an immigration law reform. On 3 August 2001, a first draft of a new immigration act was proposed by the Minister of the Interior, Otto Schily. It was adopted in a modified version by the Cabinet on 8 November of the same year (*Entwurf eines Gesetzes zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern (Zuwanderungsgesetz)*) (Beauftragte der Bundesregierung für Ausländerfragen, 2002: 19).⁵² However, it was not until 1 January 2005 that the act entered into force as a highly watered-down version of the initial proposal. This was because the views on what constituted immigration policy were greatly divergent between

⁵¹ Verordnung über Aufenthaltserlaubnisse für hoch qualifizierte ausländische Fachkräfte der Informations- und Kommunikationstechnologie (IT-ArGV).

⁵² Drucksache 14/7387.

the government and the opposition parties that had held a blocking majority in the *Bundesrat* since 1999. Many analysts criticised the legislation for falling short of being a comprehensive answer to Germany's immigration related issues (Münz, 2004).

The legislation proposed by the government in November 2001 does reflect its stance on how German immigration legislation should look. Hence, it can be taken as a point of reference to gauge the *fit* with the proposed EU Directive. The proposal envisaged only two kinds of residence permits, one limited to a maximum of three years – although renewable – (*Aufenthaltserlaubnis*) and the other one permanent (*Niederlassungserlaubnis*). It also provided two main channels for third-country workers to enter the German labour market for employment purposes. The first route was thought to provide highly skilled workers with a permanent residence permit by means of a point-based selection process that was independent from an existing job offer. Highly qualified workers were defined as scientists with specialist knowledge, teachers and scientific workers in special functions, as well as specialist workers and executive staff in general with an annual salary of at least approximately €85,000. The criteria according to which applicants were assessed would be determined by the federal government. The Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*) and the Federal Agency of Labour were supposed to determine a maximum number of available permits. By providing highly qualified workers with the opportunity to attain a permanent residency permit, the draft proposal attempted to avoid repeating the mistake of the Green Card initiative, which did not include a long-term perspective for migrants and was thus less attractive for the highly qualified.

The second route foresaw the attainment of a temporary residence permit for specific employment and was supposed to be a flexible instrument for reducing immediate labour shortages. A precondition was approval by the Federal Agency of Labour (*Bundesanstalt für Arbeit*), given only if the vacancy could not be filled with a German national or another person with equal rights and privileges to German nationals (e.g. EU citizens). In addition, an assessment needed to confirm that filling the position with a third country national was reasonable from a labour market and integration point of view. The legislation also contained provisions for self-employed persons. If the proposed self-employed activity was approved by the relevant authorities, the self-employed worker would be eligible for a temporary *Aufenthaltserlaubnis*. The draft provided the possibility to obtain the permanent *Niederlassungserlaubnis* after three years, subject to the business being successful.

By providing clearly denoted routes of entry to the German labour market, the draft constituted a break with the hitherto applicable recruitment stop policy. It reflected the view of the government; the CDU/CSU was more conservative and opposed the proposal. It argued that the legislative proposal would encourage immigration and did not foresee enough measures to strictly limit immigration (Klusmeyer & Papademetriou, 2009: 252). So when the German Parliament voted on the proposal on 1 March 2002, the CDU/CSU fraction (with the exception of three delegates) voted against it, and the Free Democrats (FDP) abstained. The governing parties held the majority in the House so the act could be passed. However, the adoption of the proposal in the *Bundesrat* proved more difficult, as the opposition parties held the majority there. This led to the inauguration of an arbitration commission, as the *Bundesrat* rejected the proposal on 20 July 2003. This was the second vote of the House; the first one had been declared void by the German Constitutional Court because of violations of the official voting process. No agreement could be reached

in the arbitration commission, and the proposal ended up being discussed on the highest level before a compromise could finally be reached and was adopted on 9 July by the *Bundesrat*. The final version was more restrictive than the first proposal and, for instance, no longer contained the points-based system for issuing certain highly skilled workers with a permanent residence permit.

As the national law was in the process of being reformed, the government found it difficult to agree to EU legislation in this domain (Interview 2 Permanent Representation, Interview 2 Council, Interview 2 MinInterior). It was difficult for the government to reform domestic immigration legislation, which was further complicated by the existence of a number of veto players, such as those in the *Bundesrat*. Thus, agreeing to an Act that would need to be changed again shortly after its adoption (because of EU legislation) would have resulted in high political costs for the government. However, the national legislation being in flux, it also could have offered the possibility of incorporating the tenets of the EU proposal into the national legislation. This would have circumvented the need to change it soon after its adoption. That the latter scenario did not happen implies that the federal government did not desire to do this, and held different preferences on how immigration should be regulated, or was sceptical of EU involvement *per se*.

There was a *misfit* between the proposal of the *Zuwanderungsgesetz* and the Economic Migration Directive. In addition to a number of technical details, two points stood out. First, the *Zuwanderungsgesetz* contained a system of admission based on points. This supply-side measure stands in contrast to the Economic Migration Directive that presupposed a job offer for a specific job in order to be eligible for admission to the EU labour market. The *Zuwanderungsgesetz* also included temporary residence permits that could be obtained by

taking on a job that could not be filled without a third country national. However, strong proponents of a points system were unlikely to support a Directive that would not allow for this kind of policy measure, as the points system among experts was seen as the most effective way to use immigration to counter structural shortfalls in the labour market (see, for instance, Council of the European Union, 2003: 2; Unabhängige Kommission „Zuwanderung“, 2001: 83-118). Second, the *Zuwanderungsgesetz* attributed great significance to the Federal Agency of Labour, especially for the demand-side route of admission, by requiring its approval of the admission of third-country workers for specific jobs according to clearly denoted criteria. This sat uneasily with the conditions for admission set by the Economic Migration Directive, which were broader. As the final version of the *Zuwanderungsgesetz* was more restrictive than the initial government proposal, the *misfit* compared to the Economic Migration Directive was larger.

The *misfit* affected the relevant actors in different ways. Most ministries would have suffered costs due to giving away authority on who enters the country. For the Employment Ministry this was relevant from a labour market perspective, and for the Interior Ministry from a perspective of potential security issues. In addition, as the Economic Migration Directive would have reduced the influence of the Federal Agency of Labour in the admission process, the Employment Ministry would have suffered a loss of authority, as the agency is under its control. Regarding the employers, they considered the Directive as not taking sufficiently into account the specifics of the national labour markets, and thus had problems with setting criteria for admission that were applicable EU-wide (Communication BDA). The EU Directive also deviated from the position of the German trade unions, as they supported a supply-side system rather than a demand-driven one as put forward by the Directive. In addition, the trade unions considered the Directive to target

too many categories of migrants, i.e., not only highly skilled, and made too little efforts to avoid wage dumping (Interview 1 DGB) (Deutscher Gewerkschaftsbund, 2001). In light of Hypothesis One, the findings suggest that the pronounced *misfit* between the Economic Migration Directive and the national regulations was a major problem for most of the actors involved in the decision-making process. The *misfit* manifested itself in two ways. First, the Economic Migration Directive and the national legislation differed considerably in their approach to admitting migrants. Second, the government was not willing to accept that EU legislation overruled its national legislation. Regarding the second point in particular, *political salience* played an important role. This will be further analysed in the following section.

Nature of the Decision-Making Process

As shown by *Figure 3* and *Figure 5* (to be found in Chapter Three), the domestic *political salience* of immigration policies, i.e., the level of popular attention (cf. Rosenblum, 2004b: 40-41), was very high when the Economic Migration Directive was proposed. This was because ever since Gerhard Schröder kick-started the domestic debate about immigration, the discussions had gained further momentum. Thus, it was not possible to have entirely bureaucratic decision-making on the Economic Migration Directive that would be unnoticed by popular attention. In addition, the cost and benefit distribution of the relevant actors was also influenced by high *political salience*.

The domestic immigration debate was driven by a number of strands: the Green Card Initiative (see, for instance, Agence France Presse, 2001); the convening and the report of the Independent Commission on Immigration published on 4 July 2001 (*Unabhängige*

Kommission Zuwanderung)⁵³ headed by Rita Süssmuth, a former president of the German Parliament (see, for instance, *Die Tageszeitung*, 2001c; *Impulse*, 2001); the new immigration act (*Zuwanderungsgesetz*) (*Die Welt*, 2001c); integration and *guiding culture* (*Leitkultur*) as well as the question of whether female Turkish teachers should be allowed to wear headscarves in school (see, for instance, *Die Tageszeitung*, 2001b); the use of anti-immigration rhetoric in the federal election campaign of CDU/CSU contender Edmund Stoiber (see, for instance, *Focus Magazin*, 2002; Geddes, 2003: 89; S. Green, 2004: 4; *Süddeutsche Zeitung*, 2001); the link between immigration and terrorism in the aftermath of 9/11 (see, for instance, *Der Spiegel*, 2001); the question of whether citizens of the Central and Eastern European countries due to join the EU in 2004 should be allowed access to the German labour market (see, for instance, *Berliner Morgenpost*, 2001; *Die Tageszeitung*, 2001a); and discussions about related EU Directives, such as the ones on family reunification and long-term residents (*Associated Press Worldstream*, 2001a).

Given the prominence of the immigration debate, it was impossible to have a governmental debate concerned only with the technical issues of the Directive without being framed in a different way, or without being mixed with other agendas related to the above driving themes of the general immigration debate. The centre right CDU and CSU, especially, made an effort to frame EU involvement as an increased liberalisation and link it to Germany's limited absorption capacity (see, for instance, *Die Welt*, 2001d). There was hardly any differentiation between the different migration-related EU directives. For instance, the directives on family reunification, long-term residents, and economic migration were mixed together, without referring to their particular provisions. They were framed in an over-simplified way that stipulated that they would result in strongly increased

⁵³ The Commission comprised 21 representatives of different parties, employer associations, trade union, churches as well as academia and was supposed to find a compromise acceptable by all parts of society.

migration to Germany in case of their adoption (see, for instance, Associated Press Worldstream, 2001b; Die Tageszeitung, 2001c; Focus Magazin, 2001). Moreover, the Social Democratic Interior Minister, Otto Schily, held a conservative stance and considered the EU Directives as too liberal. Only the Green party did not subscribe to this policy frame and argued that the EU Directives were close to its position (Der Spiegel, 2003).

The highly politicised debate had a strong impact on the distribution of costs and benefits regarding the Economic Migration Directive. Any statement with regard to the Directive could be linked to one of the existing policy frames, most notably, the one that adoption of the Directive, together with the other relevant directives, would lead to waves of immigration to Germany, in turn exceeding Germany's absorption capacity in terms of existing job vacancies and social integration. Given this constellation, no governmental actor could openly support the Directive without having to swim against the restrictive tide and consequently having to incur political costs. This affected all ministries in a similar way, but perhaps the Foreign Office slightly less, as support of the Directive might have had a positive effect on how the German government was perceived in Brussels. At that time, Germany was regarded as being highly sceptical of any of the initiatives on legal migration that were on the negotiation table, and thus had the reputation for being one of the main nations that attempted to circumvent a common EU policy on economic migration.

Support for the Directive was not sustainable and costs would have included losing electoral support by swimming against the flow of the public debate at that time. This could have easily manifested itself in *Länder* elections. According to Freeman's framework, only a skilled policy entrepreneur could have overcome this resistance by investing resources

into supporting the Directive for political gain and consequently creating benefits for the initiative (Freeman, 2006: 233; Kingdon, 1995: 122). Given the unwelcoming climate for EU-level measures that would render immigration policies more open, such a move was beneficial for no political actor. Thus, no supporting group for the Directive formed, and the actual governmental preference formation on the Directive happened largely without public involvement. It is important to note that the salient debate was caused by above mentioned factors such as reform of domestic immigration legislation and EU enlargement, not by the Economic Migration Directive. Nevertheless, the debate increased the concentration of costs accruing to an actor that would have supported the proposal.

International Politics

The proposed Directive included workers from all third countries. Hence, there was no particular sending country or a clearly defined group of sending countries to which the policy measure related. Even supposing an urgent foreign policy security threat to Germany's security, there was no country that could be targeted to reduce this security threat. Rather, any perceived threat to Germany's security would derive from international terrorism, and consequently relate directly to immigration policy and who might be able to enter the country. The policy frame linking immigration to the threat of international terrorism was particularly pronounced during the immediate aftermath of 9/11. For instance, Friedrich Merz, the leader of the CDU/CSU fraction in the *Bundestag* at that time, argued that the terrorist attacks showed that Germany needs a comprehensive concept to control and restrict immigration that also takes into account the necessities to provide internal security (Associated Press Worldstream, 2001c). The threat of terrorism was a constant theme in the immigration debate (see, for instance, Associated Press

Worldstream, 2002; Die Welt, 2001b) (Interview 2 Council). Hence, the external threat stemming from international terrorism instigated another dynamic, as suggested by Hypothesis Three. It gave rise to a policy frame that sought to restrict immigration for the good of internal security.

In addition, the variables of *foreign policy value* and lobbying by a third country do not apply for the case of the Economic Migration Directive as there was no third country that could be singled out. The third part of the hypothesis still holds. *Political salience* was high; hence hardly any foreign policy considerations played a role, the security threat of terrorism aside. The high domestic *political salience* and the absence of any of the other factors due to the inexistence of a clearly denoted sending country, led to foreign policy considerations not being a significant factor in the formation of the German government's position.

Labour Market Needs

The independent Commission for Immigration stated there were labour shortages in Germany that could not be filled with the domestic work force. It based its conclusions on reports by four different research institutes.⁵⁴ The use of four different reports substantiates these claims of the existence of labour shortages. Difficulties for filling certain vacancies varied across economic sectors and regions (Unabhängige Kommission „Zuwanderung“, 2001: 37). This was also taken up in the November 2001 version of the *Zuwanderungsgesetz* which reported that in certain sectors, in particular biotechnology and information and communication technology (ICT), there was a demand for qualified

⁵⁴ *Institut der deutschen Wirtschaft* (IW-Consult GmbH), Ifo – *Institut für Wirtschaftsforschung*, *Institut Zukunft der Arbeit* gGmbH (IZA), and *Hamburgisches Welt-Wirtschafts-Archiv* (HWWA).

workers and managers that could not be met by the domestic work force (SPD & Bündnis 90/Die Grünen, 2001: 55).

An international employer survey carried out by the Institute for the Study of Labour (IZA) found that firms in Germany (and in France, the UK, and the Netherlands) recruited foreign workers because they required skills that only foreign workers were able to supply (IZA, 2001: II-IV). In addition, there was a scarcity of workers with very specialised professional and task-specific knowledge and skills, such as information scientists, mechanical engineers, and controllers (see, also, Bundesministerium für Bildung und Forschung, 2001; Deutscher Bundestag, 2001). More specifically, other reports indicated that the most straightforward partial labour shortages that could be identified in Germany were shortages of ICT professionals. In the first six months of 2000, 90,000 vacancies for ICT professionals could not be filled (see, for instance, Zentrum für Europäische Wirtschaftsforschung, 2001: 7-9). In addition, the German IT association *Bitkom* projected that the need for IT experts would increase to more than 720,000 until 2003. In the metal and electro industry, there were more than 240,000 vacancies in April 2001. An increase in vacancies was also predicted for these professions (Die Welt, 2001a). According to the discussion of labour shortages in Chapter Two, these employer-based indicators have to be treated with caution and might be an overly optimistic estimation of labour shortages at that time, as they are employer-based.

Due to a slowdown of the business cycle, the ICT shortages were a bit less pronounced in 2001, but they were still significant. The fact that labour shortages were reported even in an economic downturn is an indicator that the shortage of ICT professionals was structural, rather than a business cycle problem. A further indicator for labour shortages is

the time period that it takes to fill an existing vacancy (Kettner, 2007). In 2001, there were 49,200 vacancies; it took an average of 94 days to fill them. This was a significant increase from the year before, when it took 79 days on average (Bundesanstalt für Arbeit, 2002: 134). The national average of all professions was 55 days in 2001 (Bundesanstalt für Arbeit, 2002: 140). This suggests difficulties filling vacancies for ICT jobs with appropriate candidates.

The shortages that were publicly announced related to qualified migrants. Although there was a small segment of jobs that natives were reluctant to do, such as temporary harvesting jobs or low-prestige cleaning jobs, this did not feature in the debate. The number of these jobs was small and the high unemployment rate of 10.3 percent suggests that there was indeed a domestic pool of workers available that could fill these jobs (Klusmeyer & Papademetriou, 2009: 256). In addition, given the highly politicised debate, low-skilled migration was framed as an absolute “no-go” for German immigration policy.

Even though the above data suggests that Germany was experiencing labour shortages while the Economic Migration Directive was debated, it is possible they are slightly overstated, as a significant part of the data relies on employers or employer-friendly organisations. In addition, there is no direct causal link that can be traced between the existence of labour shortages and support for EU-level measures on liberalising economic migration. Even if it is highly likely that some labour shortages existed in Germany at the time the Economic Migration Directive was negotiated, they did not matter in the respective preference formation of the German government.

Bureaucratic Politics

How the final preferences of the government came about can be analysed with the help of Allison's bureaucratic politics framework. The first proposition is that where an actor sits within the organisation determines the actor's position. Regarding power in the organisation, the Ministry of the Interior is predicted to have a structurally elevated position as it was in charge of the file. Thus, its task was to coordinate the government's position by taking into account all other relevant ministries and their respective points of view. As the Ministry of the Interior was in charge of producing the first version of the *Zuwanderungsgesetz*, this can be taken as reflecting its view on immigration matters. Consequently, an EU regulation that interfered with the propositions of the proposed law would have been costly.

The Employment Ministry was active. Its main concern was to keep a points system as proposed by the *Zuwanderungsgesetz*. The provisions of the Directive were not seen as providing the best solution for regulating access to the German labour market, and thus the Ministry opposed a number of the Directive's propositions. Replacing the proposal for the *Zuwanderungsgesetz* with the Economic Migration Directive was perceived as costly. For instance, the Ministry did not like Articles 3(1), 5(3), and 6(1), which were seen as incompatible with national regulations (Interview 2 BMAS, Personal Communication BMAS).

The Foreign Office cautioned about the potential negative effects on relations with other Member States if the federal government would be too ferociously against the proposed Directive. However, it accepted the argument that access to the German labour market

was better regulated domestically. The Foreign Office was not very active in the preference formation process on the Economic Migration Directive (Interview 2 BMAS).

The social partners had to be included in the governmental decision-making process, according to paragraph 41 of the regulations for interministerial relations (*Bundesgeschäftsordnung der Bundesministerien* or *GGO*). They were invited to meetings in the respective ministries and were encouraged to issue statements and often even specific information to the relevant ministries (Interview BMAS, Interview DGB) (Edinger, 1993: 181). Generally, by taking into account the views of the associations, the government makes sure that the associations are, by and large, happy with the respective initiative (Rudzio, 2003: 95). There are also a number of informal channels, such as personal familiarity, membership of civil servants in associations and trade unions, and interchange of personnel between the associations and the government bureaucracy (Rudzio, 2003: 95-96). However, these channels are difficult to measure empirically. Through them, the associations have a significant bearing on the process. However, their power to influence is not as great as the relevant ministries'. For instance, the associations are not present in the departmental meetings where the government's position is elaborated. Both employer associations and trade unions enjoy the same formal privileges regarding considerations in the governmental decision-making process. While the employer associations may have more financial means, the DGB is also financially solid and able to resort to considerable financial resources (Edinger, 1993: 187; Rudzio, 2003: 101). However, it is unlikely that differences in resources between employer associations and trade unions had a significant bearing on their influence with regard to the Economic Migration Directive. Neither of the two kinds of organisations attributed particular attention to the Directive. The DGB, for instance, focussed its resources on lobbying with regard to

the national debate, including the independent expert commission on migration (Interview 1 DGB). The employer associations were in favour of keeping economic migration under national control, and thus in line with the government on whether the EU level should be involved or not (Communication BDA, Interview DIHK). Even though the employer associations can carry more weight in terms of lobbying than the trade unions (Interview IG Metall), this did not matter with regard to the Economic Migration Directive, as neither the employers nor the trade unions engaged in extensive lobbying efforts.

The BDA expressed the need to recruit further immigrants to Germany (Bundesvereinigung der Deutschen Arbeitgeberverbände, Bundesverband der Deutschen Industrie, Deutscher Industrie- und Handelskammertag, & Zentralverband des Deutschen Handwerks, 2001). However, the competence to admit migrants and to set admission criteria should remain at the national level (Communication BDA). The BDA had some concerns with regard to specific provisions. For instance, tying the work permit to work in a specific sector or region was seen as inflexible, and as decreasing the value of third-country workers to reduce labour shortages. Also, to limit the work permit to three years was seen as inappropriate, especially as highly qualified workers should be bound to the host country by the provision of attractive working conditions. The BDA further argued that provisions on the rights for social security did not belong in such a directive, and also rejected that employers should supply security benefits for seasonal workers (a point of collision with the trade unions). In line with the “where you stand depends on where you sit” proposition, the position of German employers can be summarised as “to be able to quickly and flexibly recruit desired migrants without much governmental involvement and without the obligations to provide social benefits to the migrants.” The most positive

contribution of the Economic Migration Directive proposal was seen as its giving further impetus to the liberalisation of national immigration policies (Interview DIHK).

The position of the trade unions differed clearly from the employer associations'. The DGB preferred a supply-driven measure, such as a points system, rather than a demand-driven system as proposed by the Directive. It was very careful not to support a measure that would undermine migrants' rights. Thus, the DGB espoused an equal treatment of migrants compared to German citizens in terms of social rights. In that respect, it clearly differed from the employers' position (Interview DGB, Interview IG Metall).

With regard to equal treatment of migrants in the subject area of social security, including healthcare (Article 11 (f) (iv)), the German delegation entered a reservation. This indicates that the final government position was reluctant to provide too many rights to migrants, and consequently corresponded to the points made by the employer associations (Council of the European Union, 2003: 27-28). This suggests that the BDA lobbied effectively on that point.

The *Gesetz über die Zusammenarbeit von Bund und Ländern in Angelegenheiten der Europäischen Union* that regulates the affairs of the *Bundesrat* stipulates in Paragraph 5 that the federal government needed to take the *Bundesrat's* position into account in its preference formation regarding the Economic Migration Directive. However, the *Bundesrat* did not have a veto in the decision-making process and was thus less powerful than the intra-governmental actors.

On 1 March 2002, the *Bundesrat* adopted a position on the Economic Migration Directive in which it asked the federal government of Germany to oppose the Directive.⁵⁵ The position was elaborated by the relevant advisory committees and rejected the Directive for a number of points.⁵⁶ The four main ones were the following. First, the *Länder* did not see an overall Community competence in admitting economic migrants, and thus questioned the legal basis of the proposal. Second, the *Länder* wanted to keep the right to admit economic immigrants to the German labour market under national competence. The *Länder* saw no single European labour market, but significant difference between the labour market situations in Member States. They argued that an EU-wide harmonisation of admitting economic migrants was not justified. Third, it was expressed that immigration to the Union needed to be controlled and restricted, and integration problems of Member States with a high proportion of foreigners needed to be taken into account. Fourth, it was argued that it needed to be guaranteed that immigration did not undermine the national welfare state. The *Bundesrat* voiced concerns that the Directive was not seen to guarantee that (Bundesrat, 2002a, 2002b, 2002c). As the government did not have a majority in the *Bundesrat*, the position of the house was also influenced to a significant extent by the opposition parties, most notably the CDU/CSU. In particular, this is reflected by the points made by the *Bundesrat* with regard to the need to take into account integration problems and the potential undermining of the welfare state. These points depart from constituting an instrument to fill labour shortages, such as that proposed by the first version of the *Zuwanderungsgesetz*. Despite these minor differences, the conclusions of the *Bundesrat* concurred with the government's, i.e. rejection of the proposal. Hence, the Ministry in charge, which was the Interior Ministry, did take into account the position of the *Bundesrat*,

⁵⁵ *Beschluss des Bundesrates: Vorschlag für eine Richtlinie des Rates über die Bedingungen für die Einreise und den Aufenthalt von Drittstaatsangehörigen zu Ausübung einer unselbständigen oder selbständigen Erwerbstätigkeit KOM(2001) 386 endg.; Ratsdok. 11803/01.*

⁵⁶ These were the committees for Employment and Social Policy, Interior Affairs, and Economic Affairs under the leadership of the committee for European Affairs.

as demanded by the regulations for interministerial affairs. The *Bundestag*'s point of view needed to be considered. Nothing suggests that it differed fundamentally from those of the government and the *Bundesrat*.

The final position of the federal government includes input from all the above actors. The executive actors had an advantaged position, so the strongest influence was exerted by the Interior and Employment Ministries. However, the employer associations also managed to shift the focus away from bestowing rights to immigrants. The latter was closer to the position of the trade unions. Finding a common position was facilitated by the fact that all major actors preferred the national regulation of migration, and were not willing to accept the overruling of national regulations by the Economic Migration Directive. Consequently, the chance for the proposal to find the German government's support was evanescently small from the very beginning.

III. Conclusion

The sceptical view of the German government with regard to the Economic Migration Directive is explained by the *misfit* between the proposal and national regulations and the high *political salience* of migration matters in Germany. The absence of a high *foreign policy value* of a relevant sending country, and of a sending country government's lobbying efforts, meant that the additional push for Germany's support of economic migration liberalisation at the EU level was missing. The inability to fill all vacancies that existed on the German labour market with domestic workers induced several political voices to propagate immigration as a means to reduce those shortages. After setting up an expert commission to come up with proposals on how immigration should be regulated in

Germany and the inauguration of a programme devised to attract qualified third-country ICT specialists, the German Interior Ministry proposed a new draft legislative act to regulate immigration to Germany.

For a number of reasons, the *misfit* between the law and the EU proposal was significant; most notably, domestically a points system was proposed while the EU Directive pushed for a demand-side approach necessitating a job offer, and restricting the work permit to a clearly denoted geographic area. In addition, the domestic *political salience* of immigration was high, as there was a vivid and politicised domestic debate going on. It was fuelled, for instance, by the report of the expert commission on migration, issues of the link between immigration and the threat of terrorism, and the discussions about the reform of German national regulations on immigration. Foreign political factors did not play a role in the governmental preference formation. Hypothesis Two suggests that if the *foreign policy value* is high, *political salience* is low, and the sending country (or countries) exert pressure on the host government, there will be a relatively open immigration policy with regard to that country (or countries). Neither of these conditions was in place. As the Directive applied to all third country nationals, there was no particular country that could have had a high *foreign policy value* and that could have engaged in lobbying efforts. In addition, the *political salience* of immigration was very high, making foreign political influence on migration policies less likely. The constellation of these factors made it unlikely that the German government would adopt a position similar to the proposed Directive. Without a constellation advantageous for foreign policy influence in favour of liberalising immigration policies on the EU, the likelihood of a Member State government supporting such measures decreases to a great extent. The chapters on the Ankara Agreement and the Europe Agreement show that if the constellation of these factors is

more advantageous, cooperation on delegating competencies on liberalising immigration policy to the EU level can happen.

This chapter demonstrates another dynamic foreign policy certain factors can bring underway: the pressure of a sending country (or a group of sending countries) can help to bring national preferences in line with EU-level measures. Open immigration policies *per se* are not enough to dispose a Member State to support EU-level liberalisation of immigration policies.

The view of the German government was strongly determined by the Ministry of the Interior, which had a strong interest in pushing forward its view as it was the ministry that proposed the first draft of the *Zuwanderungsgesetz*. The *Zuwanderungsgesetz* constituted a first attempt to make German immigration legislation fit for the 21st century. Any measure that would mean a moving away from the tenets of the draft law would have been costly. In addition, the Ministry was in charge of the coordination of the German government's position on the Directive. This gave the Interior Ministry a slight advantage that it could use to its ends when gathering the different points of other Ministries. This position in the organisation of the federal government gave the Ministry increased structural power to foster its objective compared with other Ministries involved in decision-making (cf.: Allison, 1969; Allison & Halperin, 1972; Allison & Zelikow, 1999; Brummer, 2009).

The three themes of the chapter and the respective hypotheses provide a sound framework to explain why the German government did not support the Economic Migration Directive. By considering the relevant actors, the chapter unpacks the processes that led to the specific position of the German federal government on the Economic Migration

Directive. Ironically, the points system that made a big difference in the German government's reservation regarding the Directive was later a victim of the heated and controversial discussion to adapt the *Zuwanderungsgesetz*. Because of conservative pressures, the points-based system did not feature in the final version of the law. The points-based system that would have allowed a targeted migration to Germany was opposed to the CDU/CSU's dictum of the necessity of a consequent enshrinement of restrictions for immigration with regard to the new immigration law (*Notwendigkeit der konsequenten Festschreibung der Zuwanderungsbegrenzung*) (CDU/CSU-FRAKTION, 2003: 1).

Chapter Seven – Germany’s support for the EU Blue Card Directive: Policy Fit and Technocratic Politics

Introduction

This chapter explains why the German government agreed to delegate competencies on regulating economic migration to the European Union. This happened because of support for a Directive regarding the conditions of entry and residence of third country nationals for the purposes of highly qualified employment. The Directive was proposed by the European Commission in October 2007 and adopted by the Council of the European Union in May 2009. This is important for a particular reason. In 2001, the Commission had already made an attempt to liberalise economic migration policies at the EU level by creating a European framework to manage migration. However, at that time, there was no political will to agree on even a watered-down version of the Directive, as happened with the Directive on family reunification, for instance, (Council Directive 2003/86/EC) and to a lesser extent, with the Directive on the status of long-term residents (Council Directive 2003/109/EC). The question then becomes: what was different regarding the developments of the Blue Card Directive that made Member States support this Directive? Establishing the differences in the configuration of causal factors allows fleshing out a number of hypotheses that explain when a Member State agrees to delegate competencies regulating migration to the EU. These hypotheses will help to elucidate where the preferences on EU immigration policies come from and how they are aggregated.

The most relevant hypothesis for this chapter is the hypothesis which relates to the *misfit* between the national regulations and the measure proposed at the EU level. The German government was happy to support the Blue Card Directive because it acknowledged the continuing validity of the relevant national legislation. The Blue Card Directive made the German government adopt national legislation for the regulation of highly skilled migration. The existence of this national legislation, and the fact that the Blue Card allowed for the co-existence of national and EU-level legislation, nullified the *misfit*. Foreign Policy considerations did not play a causal role in this case study. The chapter is structured as follows. Initially, the developments that led to the Blue Card proposal, its content, and the course of the negotiations are imparted. This is followed by the empirical analysis and a concluding section.

1. Genesis and Purpose of the Blue Card Directive

The Commission failed in its attempt to create a binding common EU policy on legal economic migration, which it hoped to do with the 2001 proposed Directive regarding the conditions of entry and residence of third country nationals for the purpose of paid employment and self-employed economic activities.⁵⁷ Afterwards, the Commission started a period of intense public consultation to gauge what kind of policy measures were likely to be adopted. As legal migration legislation still had to be adopted under unanimity voting in the Council of the EU, each Member State retained the right to veto proposed legislation.

⁵⁷ COM(2001) 386 final.

In January 2005, the Commission released the Green Paper,⁵⁸ which marked the start of public consultations. The paper contained questions regarding the possible nature of an EU economic migration policy, and invited responses by Member States, EU bodies, social partners, NGOs, academia, and anyone who wanted to contribute to the discussion. The results were more than 130 contributions⁵⁹ that were incorporated into both the Policy Plan on Legal Migration, which was launched in December 2005,⁶⁰ and the Commission's impact assessment of the Blue Card Directive.⁶¹ The German contribution stressed the need for migration provisions at the EU level to be flexible. Also, with regard to the movement of third-country workers to other Member States, the German government expressed some reluctance, arguing that the second Member State needed to carry out effective checks before admission could be granted.

The Policy Plan on Legal Migration laid down a road map for the Hague Programme, which included policy measures to be adopted until 2009. From the public consultation, it was clear that there was not enough support amongst Member States for the horizontal approach that the Commission had hitherto pursued; and that Member States requested sufficient flexibility to accommodate labour market differences across the EU. Consequently, the Commission opted for a sectoral approach and split up the policy area of legal migration into different legislative pieces, as the consultation process revealed that Member State support for highly-skilled migration was higher than for low-skilled migrants (Guild, 2007: 1). Following the Policy Plan on Legal Migration, on 23 October 2007 the Commission proposed the Directive on the conditions of entry and residence of third

⁵⁸ COM(2004) 811 final.

⁵⁹ The contributions can be found here:

http://ec.europa.eu/home-affairs/news/consulting_public/consulting_0016_en.htm

⁶⁰ COM(2005) 669 final.

⁶¹ SEC(2007) 1403.

country nationals for the purposes of highly qualified employment (Blue Card Directive),⁶² and the Directive for a single application procedure for a residence and work permit and a common set of rights for Non-EU Member Country workers.⁶³ The policy plan also stipulates legislative proposals on the conditions of entry and residence of seasonal workers and of remunerated trainees, and the procedures regulating entry and residence of Intra-Corporate Transferees. However, neither has been proposed by the European Commission at the time of writing.

Negotiations

After negotiations lasting around one and a half years, the Directive was adopted on 25 May 2009 by the European Council without any further discussion. However, the political decision to adopt the Directive was taken by the Justice and Home Affairs Council on 25 September 2008 (Kuczynski & Solka, 2009: 220). This was preceded by intensive negotiations that were pushed forward ambitiously by the French Presidency. Each of the presidencies overseeing the negotiations of the Directive (Portugal, Slovenia, France, and the Czech Republic) attributed high significance to the legislative proposal. Nonetheless, the negotiations started rather sluggishly and only picked up drastically under the French Presidency, which made the adoption of the Directive a priority (Agence Europe, 2008a) (Interview 1 Permanent Representation EU, Interview Council, Interview EP). This was aided by the fact that Member States assumed in the first half of 2008 – before the Irish referendum – that the Lisbon Treaty would enter into force. As the Treaty would have put legal migration under qualified majority voting in the Council, it would have been easier for the Commission to push through a Directive that was more far-reaching. Hence, Member

⁶² COM(2007) 637 final.

⁶³ COM (2007) 638 final.

States were eager to assert their influence under unanimity voting to modify the proposal according to their national preferences. By the time the Irish rejected the Treaty of Lisbon by referendum, the negotiations had already reached great momentum, which was further increased by the French Presidency. Hence, the realisation that the Treaty of Lisbon would enter into force with delay did not negatively affect the process of reaching agreement on the Blue Card proposal (Kuczynski & Solka, 2009: 221).

France took the Directive to the political level, by discussing it in the Justice and Home Affairs Council on 24 July 2008. Member States, by and large, agreed with the Directive and its chief objective to increase the competitiveness of the Union to attract the best and brightest. However, a few details in the content of the Directive went too far in the view of several Member States, causing opposition (Kuczynski & Solka, 2009: 220-221). France and Spain saw the Directive in the most positive light (Agence France Presse - German, 2007b). The proposal sought to harmonise admission procedures and requirements for highly-skilled third-country workers and to enable them to work in other EU Member States after two years.

Content of the Directive

The Directive consists of six chapters (I. General provisions, II. Criteria for Admission, III. Blue Card Procedure and Transparency, IV. Rights, V. Residence in other Member States, and VI. Final Provisions). The first chapter lays out the applicability of the Directive for entry and residence of highly qualified third country nationals and their family members. Highly qualified worker is defined vaguely as being a paid employee and possessing adequate competencies, supported by relevant qualifications. The definition is further

specified in Chapter II. The scope includes the applicability of the Directive to third country nationals but lists a number of exceptions, such as subjects of international protections or family members of Union citizens. The Directive does not prejudice Member States to issue residence permits for employment other than the Blue Card. The Directive allows Member States to adopt more favourable provisions than the provisions it stipulates, including bilateral or multilateral agreements.

The second chapter specifies the criteria for admission. A third country national has to be in possession of a binding job offer for highly qualified employment for at least one year. In addition to the definition provided by Chapter I, the salary of the job to be taken on by the candidate shall not be inferior to a relevant threshold of at least 1.5 times the average gross annual salary in the Member State concerned. For professions with particular need for third-country workers, the salary threshold may be at least 1.2 times the average gross annual salary in the Member States affected. The Directive would not infringe upon a Member State's right to establish the volume of admission of third country nationals that are admitted to its territory for the purpose of highly skilled work.

The third chapter covers the Blue Card, procedure and transparency. The Blue Card is issued for a period of one to four years, unless the work contract covers a period less than that. In that case, the Blue Card shall be valid for the duration of the work contract plus three months. The Blue Card holder is entitled to enter, re-enter and stay in the territory of the Member State issuing the Blue Card. A Member State can apply its national procedures for filling a vacancy when issuing or renewing (during the first two years of legal employment) the Blue Card based on an examination of its labour market. The application for a Blue Card can be filed from abroad or inside the territory of the respective

Member State if the applicant holds a valid residence permit or long-stay visa. The application for a Blue Card shall be turned around within 90 days.

The fourth chapter confers certain rights to the Blue Card holder. For the first two years, the Blue Card holder is restricted to employment activities that meet the conditions for granting a Blue Card. Thereafter, the Member State may grant the Blue Card holder equal treatment with nationals with regard to access to highly qualified employment. Unemployment is not a reason for withdrawal of the Blue Card, unless it exceeds three successive months, or it occurs more than once during the validity period of the Blue Card. The Blue Card grants equal treatment with nationals of the Member State. However, a few exceptions apply, for instance, concerning the eligibility for grants and loans to finance education and access to university or post-secondary education. The Directive grants the right of family reunion and refers to the Family Reunification Directive (Council Directive 2003/86/EC). Regarding the attainment of long-term residence status, the Blue Card holder is allowed to accumulate periods of residence in different Member States. A Blue Card holder is eligible for long-term residence status if two conditions are met. The first is five years of legal residence within the Community as a Blue Card holder. The second is legal and continuous residence for a period of two years in the respective Member State prior to filing the application for long-term residence status.

The fifth chapter lays down the provisions for residence in other Member States. After 18 months of legal residence as a Blue Card holder in the first Member State, the person and his or her family members may move to another Member State to pursue highly qualified employment. However, the person needs to apply for another Blue Card in that Member

State. If the application is unsuccessful, the first Member State has to readmit the worker and his/her family members.

The sixth chapter lists a few final provisions. For example, the Member States shall provide the Commission with statistics of Blue Card issuances and renewals. Member States shall implement the Directive by 19 June 2011.

As Member States are free to refuse to issue a Blue Card, it is ultimately up to Member States to determine which workers enter their country. The Blue Card is far from achieving its initial objective – creating a permit offering highly skilled migrants a route of immigration to the EU significantly superior to the opportunities offered by individual Member States. Rather, the Blue Card constitutes an extra system of admission, in addition to the national systems of Member States. The Blue Card differs considerably from the initial Commission proposal and is largely of symbolic value, unless the Member State does not yet have regulations for admitting highly skilled third country nationals (mostly the new Member States). The Commission was hoping that a more substantial text would be passed by the Council, but soon realised that Member States were not willing to compromise on a few important points. Nonetheless, it was seen as a first step to create a body of EU legislation on the admission of economic migrants (Interview 1 Commission). Given that the 2001 Economic Migration Directive was not adopted, expectations were low. In addition, in some Member States the Directive improves the rights of highly skilled third country nationals, which is a significant achievement. For example, in certain Member States, a third-country worker loses the residence permit once he or she gets laid off. The Blue Card Directive grants the Blue Card holder three months to find new employment.

Main Issues

Member States did not want to give up their existing national schemes for admitting highly qualified workers and were only prepared to accept a Blue Card that would co-exist with national schemes and leave the number of admitted migrants in the hands of Member States. This point, in particular, was raised by Germany (Interview 1 European Commission, Interview European Council, Interview 1 *Bundestag*) (Associated Press Worldstream - German, 2008), but also by other Member States, such as Austria (Agence Europe, 2007a) and the Netherlands (Deutsche Welle, 2007; Finanzen.net, 2007) (Interview Council).

Member States took issue with the definition of highly skilled workers, in particular, the minimum pay requirement, which was initially set at three times the minimum wage, or the salary that enables the Blue Card holder to receive social benefits. In the final version, this was increased to one and a half times the average salary of the respective Member State. Germany had a particularly strong opinion about the salary threshold and considered the threshold in the initial proposal as much too low (Agence Europe, 2007b; Hamburger Abendblatt, 2008).

In addition, the ability of Blue Card holders to work in other Member States after a period of two years, as proposed by the initial proposal, was curtailed. This requirement necessitated the worker to apply for another Blue Card in the second Member State where he or she would like to work. Moreover, the second Member State has the right to refuse to issue the Blue Card. Germany voiced strong criticism about Blue Card holders being able to work in another Member State after two years without giving the second Member State the right to refuse entry. A concern was – which also relates to the salary threshold –

that a Member State with a lower standard of living would accept a migrant who would qualify as highly skilled in the first Member State but might not qualify as a highly skilled worker in Germany (Interview Think Thank) (Hamburger Abendblatt, 2008).

Another issue, mostly articulated by the Czech Republic, but with the backing of the other new Member States, was that there should be no facilitated access for third country nationals through the Blue Card Directive while most Member States still had transitional restrictions in place for workers from the new Member States. Consequently, the Czech Presidency postponed the adoption of the Directive until the majority of Member States lifted the restriction in May 2009 (Agence Europe, 2008b, 2009) (Interview 1 European Commission).

II. Germany's Preferences

The *rules of the game* were stipulated by the rules regulating the interministerial affairs of the federal government of Germany (*Gemeinsame Geschäftsordnung der Bundesministerien*). The Federal Ministry of the Interior was in charge of coordinating the different ministries whose areas of responsibilities were affected by the proposal (Bundestag, 2007). In total, nine ministries were involved, with the responsibilities of the Federal Ministry of the Interior and the Federal Ministry of Employment being the most affected and consequently becoming the most important. Additionally, the Federal Ministry of Economics and the Foreign Office played a significant role. Further ministries involved on specific issues were the Federal Ministry of Justice; the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth; the Federal Ministry of Education and Research; and the Federal Ministry of Defence. The office of the Federal Representative

for Migration, Refugees and Integration also participated in the process, but mostly as an observer (Interview Ministry of Economics, Interview German Permanent Representation to the EU, Interview Ministry of the Interior, Communication MinJustice). In addition, the *Bundestag* and the *Länder* were involved by means of the *Bundesrat*, as they were consulted by the government about the current state of play. As there were no significant differences between the position of the government and the positions of the *Bundestag* and the *Bundesrat*, there was no necessity for the *Bundestag* or the *Bundesrat* to take any further action (Interview CDU/CSU Fraction, Interview Ministry of the Interior, Interview 2 *Bundestag*) (Bundesrat, 2007; Frankfurter Allgemeine Zeitung, 2007b). On the interest group side, employer associations and trade unions were the relevant actors.

Domestic Politics

Misfit

In the debate about the Blue Card Directive, there were frequent references to the predominance of national immigration policies (Interview 2 *Bundestag*, Interview 1 Commission, Interview Council) (Associated Press Worldstream - German, 2008). It was clear from the beginning of the Blue Card debate that Germany was not prepared to agree to any EU measure that would overrule or significantly change its national regulations. Immigration to Germany is regulated by the Immigration Act (*Zuwanderungsgesetz*),⁶⁴ which also contains provisions on highly skilled migrants and came into force on 01 January 2005. Paragraph 19 of the *Aufenthaltsgesetz* (which makes up Article 1 of the *Zuwanderungsgesetz*) states that highly skilled migrants in science and the private sector

⁶⁴ The Immigration Act (*Zuwanderungsgesetz*) can be found here: http://www.bmi.bund.de/SharedDocs/Gesetzestexte/DE/Zuwanderungsgesetz.pdf?__blob=publicationFile

can enter the German labour market provided they have a job offer, and, regarding workers in the private sector, if they earn a minimum salary that equals double the amount of the social security contribution ceiling of the compulsory health insurance (*Beitragsbemessungsgrenze der gesetzlichen Krankenversicherung*). In 2007, this equalled around €85,500 gross annual salary (Berliner Morgenpost, 2007; Die Welt, 2007b). The workers that qualify are issued with a residence permit (*Niederlassungserlaubnis*) that entitles the holder to stay in Germany for an indefinite amount of time (regulated by Paragraph 9 of the *Aufenthaltsgesetz*) and is thus more generous than even the first Blue Card proposal.

In light of the concepts of adaptation pressure (Héritier, 1996) and the costs of a *misfit* between national and EU regulations (Börzel, 2002; Börzel & Risse, 2003), a number of costs would have been involved if the first version of the Blue Card had been adopted. The perception that Germany was successful in attracting the best and brightest migrants was still prevalent amongst decision-makers. As a result, hardly any actor of significance in the German decision-making process officially acknowledged the need to increase the competitiveness of the EU as a whole in attracting such migrants by means of a concerted effort (Interview Ministry of Economics). Likely costs included the modification of the Immigration Act, which at that time had only been adopted recently; it had been implemented after fierce and difficult negotiations and constituted a precarious compromise. In addition, the German government issued a resolution at a convention of the German Cabinet (*Bundeskabinett*) in Meseberg close to Berlin, on 23/24 August 2007, which initiated the development of a concept to attract highly skilled foreign workers and to manage their migration to Germany. The resolution resulted in a programme of action that the federal government released on 16 July 2008 (Bundesregierung, 2008). *Inter alia*, the

programme of action lowered the minimum salary to around €65,500, as it was changed to equal the social security contribution ceiling of the general pension insurance (*Beitragsbemessungsgrenze der allgemeinen Rentenversicherung*). This provision entered into force on 01 January 2009. As these national measures began shortly before the Blue Card was proposed, changing or abandoning them would have been highly costly in terms of wasted Government resources. In addition, regarding public perception, it was important for the German government not to give up or significantly change these initiatives because of the Blue Card (Communication Foreign Office, Interview Ministry of Economics) (Hamburger Abendblatt, 2007). This would have also run the danger of providing a platform for anti-European and anti-immigrant groups to mobilise voters in the upcoming *Länder* elections, thus potentially weakening the federal government.

In addition to these general adaptation costs, there was a significant *misfit* between the proposed Directive and the national regulations that also seemed to generate costs. Most notably, the entry-level gross annual salary requirement of the Blue Card would have been an estimated €40,000 to €50,000 (Die Welt, 2007b) which was much lower than the gross annual salary required by German legislation at that time (around €85,500) (see, also, Bundesrat, 2007). This, in combination with the right to move to another Member State after two years, scared German decision-makers, as they thought that a worker accepted by a much poorer state might not fall under the German definition of highly skilled, and these requirements would bring unneeded workers to the German labour market (Interview Think Tank) (cf. Hamburger Abendblatt, 2008). This concern was voiced, amongst others, by the German Federal Minister of the Interior at a meeting of the EU Interior and Justice Ministers in Brussels (Frankfurter Allgemeine Zeitung, 2007b). Thus, the *red line* (beyond which the government was not willing to compromise) for Germany was that the national

regulations would not be thwarted by the Blue Card Directive, or that the Directive would resemble the German immigration regulations, i.e., Germany would be able to *upload* its preferences to the EU level (cf. Börzel, 2002). There was no actor of significance in Germany that disputed this rationale. The final version of the Blue Card gave the German government the option to keep its national regulations, as Germany and the other Member States were successful in manipulating the Directive to accommodate, or at least tolerate, their national regulations. Therefore, the *misfit* is zero and the costs of supporting the Directive became insignificant.

The nature of political contestation

As indicated by *Figure 4* and *Figure 5* (to be found in Chapter Three), the *political salience* of immigration was fairly high when the German government formed its position on the Blue Card Directive. The development of the German position on the Blue Card shows a particularity: While the actual preference formation happened at the bureaucratic level, a number of high-level politicians were tempted by the sensitivity of the topic to voice concerns about the Directive publicly, without subjecting the proposal to thorough scrutiny by all relevant actors. More than a month before the Directive was proposed by the Commission in October 2007, Commissioner Frattini heralded the Directive in a speech⁶⁵ at a conference on legal migration in Lisbon, in which he also discussed the benefits of targeted migration to offset some of the problems facing Europe, such as demographic aging and the lack of certain kinds of workers.

⁶⁵ The speech of Commissioner Frattini given on 13 September 2007 in Lisbon, Portugal can be found here: <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/07/526>

This speech garnered a rather negative reaction by the German government, which at that time consisted of a Grand Coalition between the Christian Democrats (CDU/CSU) and the Social Democrats (SPD) (Kuczynski & Solka, 2009: 220). This negative reaction was an immediate backlash to the speech and was not the result of a rigorous analysis of the Directive, which had not been proposed at the time (Interview Ministry of Employment, Interview Ministry of the Interior). The reaction was negative and political, and it did not make any difference which party the commentators belonged to. Hence, the Social Democratic Minister of Employment, Franz Müntefering, and the Minister of the Economy, Michael Glos, from the Christian Social Union of Bavaria (CSU), both made very strong statements against the Directive. Müntefering was quoted two days after Frattini's speech as saying that it was not possible to regulate this kind of thing at the EU level, and that it had to be under the responsibility of national political structures (Frankfurter Allgemeine Sonntagszeitung, 2007). Glos argued shortly after the speech that it was not possible to let a mass of immigrants into the country without employing the huge reservoir of unused domestic labour. Therewith, he called into question any need at all to accept immigrants into the country to fill labour shortages (Spiegel Online, 2007).

When the Directive was eventually proposed, that reaction was echoed by Annette Schavan (CDU), the Minister for Education and Research, who argued that labour shortages had to be reduced predominantly by further education of German workers (Associated Press Worldstream - German, 2007b). Also, the federal government's Representative for Immigration, Refugees, and Integration, Maria Böhmer, rejected the Directive immediately after it was officially proposed. She justified this with a categorical rejection of EU involvement in regulating economic migration. In her view, labour market needs of Member States were too different as to require harmonised measures (Presse-

und Informationsamt der Bundesregierung, 2007). The Minister of the Interior, Christian Democrat Wolfgang Schäuble, also received the proposal unenthusiastically. However, he was more cautious and factual than Müntefering and Glos, and the concerns he voiced referred to certain aspects of the content of the Directive, rather than fundamental attacks on attempts to harmonise EU immigration policies or to instigate more open policies for accepting highly skilled workers. Schäuble was quoted by the *Frankfurter Allgemeine Zeitung* as calling the proposal “not demanding enough” and “unclear” regarding its definition of “highly skilled” workers (Frankfurter Allgemeine Zeitung, 2007a). In a speech given in October 2007 in Berlin, a week before the Commission officially proposed the Directive, he said he was awaiting the Directive “with excitement – but also a degree of scepticism”.⁶⁶ He also noted that it still had to be examined whether there was a need for this Directive (Schäuble, 2007).

This initial rejection in light of the final outcome suggests that these commentators had in mind the coalition contract of the government, which stated that a European immigration policy must not curtail national employment policy (CDU, CSU, & SPD, 2005). Without knowing the exact details of the Blue Card, the immediate reaction shows a deep scepticism amongst German decision-makers with regard to EU-level regulation of immigration, and demonstrates the politically charged nature of the subject.

When the Blue Card Directive was proposed and debated within the German government, domestic debate about immigration and integration was still taking place vividly in Germany and had not stopped since the year 2001 when the Economic Migration Directive was discussed. A number of developments kept the debate running, such as imposing a

⁶⁶ Translation by the author.

set of requirements by the state of Baden-Württemberg to make sure that Muslim immigrants wanting to immigrate to that state would agree to the principles of the German Basic Law (*Grundgesetz*). The questions immigrants had to answer spanned issues such as homosexuality and the September 11 attacks. The media continued to cover events inside and outside Germany that reflected concerns of the consequences immigration had on German society (Klusmeyer & Papademetriou, 2009: 270-271). The debate was also kept going by the elaboration of the national integration plan, publicly introduced by Chancellor Merkel on 12 July 2007. The plan was attacked by the four main Turkish organisations, which accused the reforms of being discriminatory against Muslim Turks and thus boycotted the event (Klusmeyer & Papademetriou, 2009: 280). Another attempt by the federal government to improve integration of Muslim migrants was the German Islam Conference (*Deutsche Islamkonferenz*) that aimed to engage directly with immigrants and in particular religious minorities. The Federal Minister of the Interior, Wolfgang Schäuble, was in charge of the conference. It first convened in September 2006 and attracted a good deal of public attention. In addition, the convening of the second German Islam Conference was accompanied by a fervent debate on whether a veiled woman should be part of the panel of participants (Klusmeyer & Papademetriou, 2009: 281). In addition, the German government incorporated some changes to the 2005 Immigration Act. *Inter alia*, this included the transposition of the EU Directive on family reunification. Another driver of the debate was the newly introduced naturalisation test (*Einbürgerungstest*) (Stuttgarter Zeitung, 2008b). Highly skilled migration was covered in the press in a differentiated way from the general migration debate, and there were many articles referring to the need to facilitate the migration of highly skilled workers to Germany (see, for instance, ddp Basisdienst, 2008; Spiegel Online, 2008; Stuttgarter Nachrichten, 2008). Hence, highly skilled migration had begun to be framed as being beneficial to fill

reported labour shortages. However, as the harsh reactions of Ministers Glos, Müntefering, and Schavan as well as the Migration Representative Böhmer show, there was a fine line between a policy measure being framed as only relating to highly skilled migration and discussions regarding more general issues of immigration, problems of integration, and the high number of domestic unemployed (see, for instance, Die Welt, 2007a). Contrary to, for instance, the Europe Agreement with Poland, the Blue Card Directive could not be framed as being separate from the debate – at least not in public debate. The domestic debate continued the entire time the Blue Card Directive was discussed. Hence, the domestic *political salience* of immigration was fairly high.

However, the decision-making process occurred on the technical level. There, discussion about the Blue Card Directive could be differentiated from the general migration debate. The *rules of the game* trumped the politicised contestation by redirecting the preference formation on the Directive to the technical level. In Germany, the preference formation process is given by the joint rules of internal procedure of the German federal ministries (*Gemeinsame Geschäftsordnung der Bundesministerien*) or GGO. Thus, these regulations represent the *rules of the game* for the preference formation of the German government. Paragraph 74(5) stipulates that the ministry in charge of the file needs to include all other ministries whose content is touched by the proposed EU measure, as well as the social partners. This needs to happen as soon as possible to allow sufficient time to scrutinise the proposal. In addition, paragraph 74(2) and (4) instruct that the *Bundestag* and the *Bundesrat* need to be consulted and included. As agreement on the position of the German government could be reached between the different actors involved, there was no need for the preference formation to involve levels beyond the technical level. In German bureaucratic jargon the process of calling upon the political level (secretary of state or

minister) to resolve a dispute between two ministries that could not be settled on the technical level is referred to as an *escalation* (*Eskalieren*). But this did not happen with regard to the Blue Card. Already determining the position of the German government without following the procedure outlined by the GGO would have meant an infringement of the relevant rules and procedures and would have been unlawful. Hence, the statements of Ministers Glos, Müntefering, and Schavan as well as of Migration Representative Böhmer were indeed political messages targeted at the general public to indicate a certain position in respect to immigration. The actual preference formation was based on an in-depth scrutiny of the proposed Directive by the relevant actors.⁶⁷

In light of Hypothesis Three, the findings confirm that bureaucratic decision-making increases the likelihood of a government agreeing to support liberalisation of economic migration policies at the EU level. At the same time, they show that high *political salience* can induce high-level decision makers at the ministerial level to voice public claims about certain EU proposals. The initial response should be seen as an immediate reaction by politicians who felt the need to send a political message of being tough on immigration. In light of the high domestic salience of immigration this makes sense. The reactions should not be regarded as part of the actual governmental preference formation. At the time these statements were made, the Directive had not been scrutinised and thus neither of the speakers were aware of the exact content of the Directive; the speech was taken as a point of reference. The cautious rhetoric of Interior Minister Schäuble, whose ministry was in charge of the file, underpins this.

⁶⁷ This information was given by three different interviewees independently from each other. The interviewees would like to remain anonymous.

Of conceptual importance here is that Freeman's *mode of politics* framework can also be used to explain the shift of the pattern of decision-making from a highly politicised contestation at the highest political level to a bureaucratic debate at the technical level. However, the explanation differs from the one given above, which differentiates between political rhetoric and the process of preference formation that follows the *rules of the game*. Accordingly, following the line of argument proposed by Freeman's *mode of politics* framework, the change of pattern could be explained by a change in the *mode of politics* due to differences in the cost and benefits distribution, namely from *entrepreneurial politics* to *majoritarian politics*, once certain aspects of the policy proposal had been changed. In order to accommodate this, Freeman's typology would need to be modified: in case actors face concentrated costs, it is not necessarily a case of an emerging policy entrepreneur, but an actual change of the policy proposal that in turn transforms the distribution of costs and benefits.

If the *mode of politics* changed during the process of adopting a single policy proposal, the link between the categories of concentrated distributive, diffuse distributive, redistributive, and regulatory policies would be obsolete. While Freeman acknowledges that an immigration policy area can have characteristics of different kinds of categories or change from one kind to another (Freeman, 2006: 236-237), if a single policy proposal, such as the Blue Card, cannot be attributed to one specific category, the overall usefulness of the categorisation is dubious. It would be more useful to link solely the distribution and magnitude of costs and benefits to a certain *mode of politics*. However, to make sense it would be necessary to include not only non-governmental interest groups in the analysis, but also different governmental actors that together form the position of the federal government (see, for instance, criticism of Statham & Geddes, 2006).

However, this explanation has one important flaw: as argued above, the initial reactions do not constitute the actual preference formation on the Blue Card Directive. Rather, they were political messages aimed at a domestic electoral audience that lacked substantiation according to a rigorous analysis of the costs and benefits of the proposal. Hence, there was no change in the *modes of politics* as the preference formation did not include these public statements. This casts doubts upon the added value of applying Freeman's framework to the liberalisation of economic migration at the EU level. In the case of liberalising economic migration at the EU level, the *mode of politics* is subject to less variation than Freeman's framework suggests, but is largely determined by the relevant rules and regulations. With regard to the Blue Card Directive, after the politicised rhetoric, high-level decision-makers adhered to the *rules of the game*, which foresaw finding a governmental position by scrutinising the proposal by all ministries affected according to the content of the proposal. This is coherent with the explanations delivered in the preceding chapters, as the respective *rules of the game* remain a constant factor in all cases under investigation. In case the process of decision-making is moved from the technical to the political level (*escalation*), the *mode of politics* would change. However, this would be still in line with the *rules of the game*.

International Politics

Very similarly to the Economic Migration Directive, the Blue Card Directive does not relate to a particular sending country that has a particular *foreign policy value* or could undertake lobbying efforts for the Directive. In addition, *political salience* of immigration was high and there was a prolonged and heated debate about a large number of immigration-related

issues. Hence, the conditions for foreign policy factors to play a role in the process of preference formation were unfavourable; foreign policy considerations did not play a role in this case study.

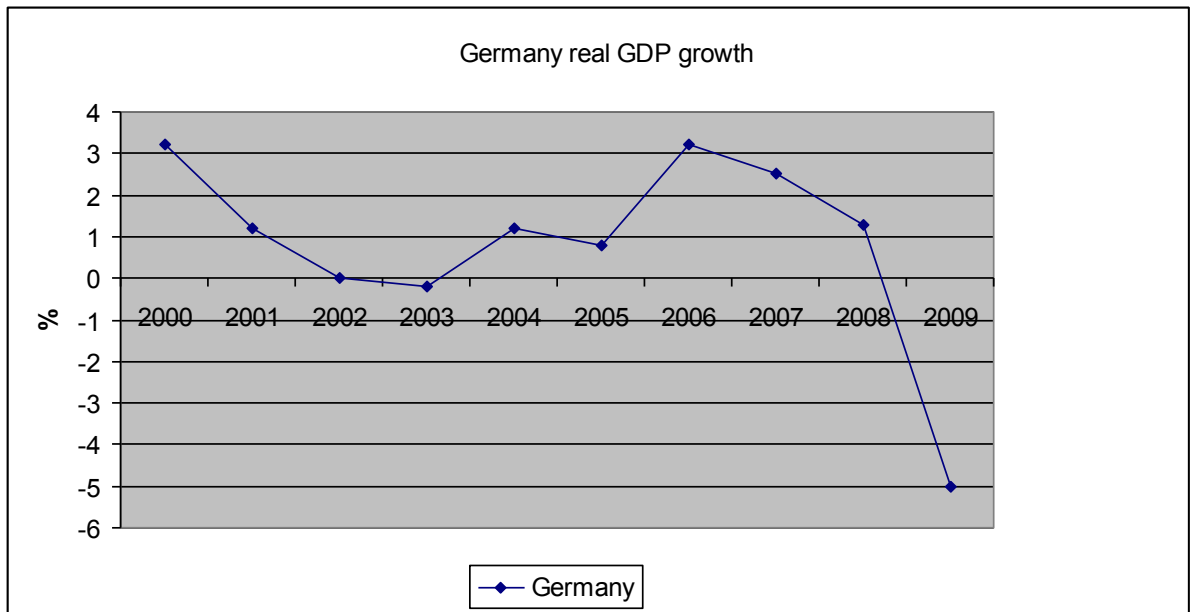
Labour Market Concerns

If we look at *Figure 16* and *Figure 17*, they clearly indicate that while the Directive was being proposed and negotiated (September 2007 until May 2009), Germany's economic situation was declining. When the financial crisis began in mid-2008 and turned into an economic crisis, German exports were in freefall, taking economic production with them. This real annual GDP growth decreased from 2.5 percent in 2007 to a predicted -5 percent in 2009. Unemployment was slightly on the decrease, from 2005 until 2008, but remained at a high level and has been rising again since 2008. The unemployment rate amongst highly skilled workers was also quite high in Germany, for instance, exceeding 5 percent in 2004 (European Commission, 2007a). Despite this, labour shortages for specialised workers were reported in certain areas of the labour market. According to a study by the employer-friendly *Institut der deutschen Wirtschaft Köln*, German companies were unable to fill around 48,000 engineer vacancies (Koppel, 2007). Another publication of the *Institut der deutschen Wirtschaft Köln* calculated that in 2006, around 165,000 vacancies for highly skilled workers could not be filled because of a lack of applications. More than three quarters of these vacancies were technical positions.

As a result of the economic crisis described above, the economic loss for the German economy is indicated as €18.5 billion, or 0.8 percent of the Gross Domestic Product (Koppel, 2008). A survey conducted in 2005 by the Association of German Chambers of

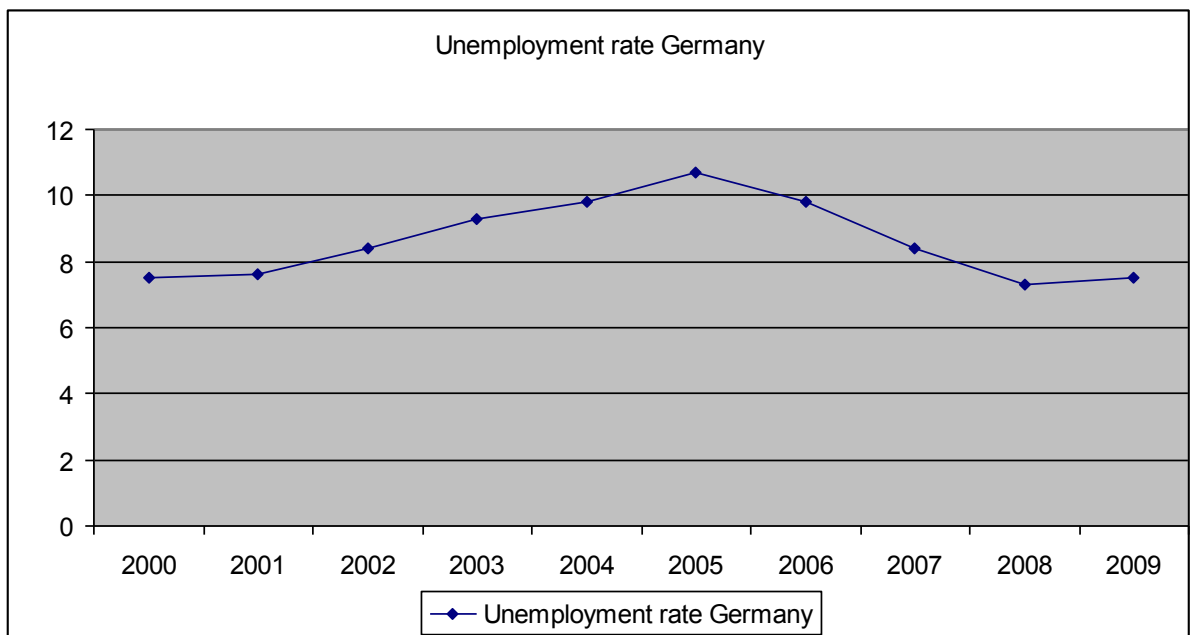
Industry and Commerce (*Deutsche Industrie- und Handelskammertag or DIHK*) found that 16 percent of German companies indicated that they were, at least partially, unable to fill vacancies – despite high unemployment and relatively low recruitment (Deutscher Industrie- und Handelskammertag, 2005: 2). Furthermore, the European Commission, in its impact assessment accompanying the Blue Card Proposal, found that Germany was experiencing highly skilled shortages in the pharmaceutical industry, companies specialising in mechanical engineering, and vehicle construction (European Commission, 2007a: 103).

Figure 16: Real GDP Growth in Germany, 2000-2009



Note: 2009 value is forecasted.
Source: Eurostat

Figure 17: Unemployment Rate in Germany, 2000-2009



Source: Eurostat

The need to fill labour shortages in order to remain economically competitive was one of the major goals of the Blue Card Directive. This is clearly stated in the proposal for the Directive, issued by the Commission in October 2007 (European Commission, 2007b). The other two main arguments for the Directive were the need to compete for the best and brightest with countries such as the US, Canada, and Australia, which were depicted as doing a far better job than the EU countries in attracting foreign talent, and the ageing of the EU working population. Both the then EU Commissioner for Justice, Liberty and Security, Franco Frattini, and the Commission President, José Manuel Barroso, repeatedly stressed the aspirations of the Directive to provide a solution to the imminent problems associated with a lack of skilled labour in the EU (see, for instance, Berliner Zeitung, 2007; General-Anzeiger (Bonn), 2007; Tages-Anzeiger, 2007).

The Federal Ministry of the Interior initially responded positively with regard to the Directive – as opposed to completely blocking it as happened with the 2001 Economic Migration Directive – and acknowledged that in the area of highly skilled immigrant workers there could be a need of or benefit from a concerted European effort. In particular, the Federal Ministry of Employment and Social Affairs was more concerned about the high number of domestic unemployed, and paid careful attention not to agree to anything that might be an overly generous measure of accepting foreign workers (Interview Federal Ministry of the Interior, Interview Office of Federal Representative of Migration). Economic interests and labour shortages were brought forward by the Federal Ministry of Economic Affairs. However, there was general agreement that although there were labour shortages, and there was scope for further immigration of highly skilled workers, this should happen in a more targeted way at the national level (Interview Office of Federal Representative of

Migration, Interview Ministry of Economics). This is also mentioned in the coalition agreement between the CDU/CSU and the SPD (CDU, et al., 2005). The German government did not see any benefits that the Directive could offer over the national regulation of economic migration, and consequently associated EU-level involvement chiefly with increased costs, such as being unable to accept the workers most needed by the domestic labour market or disadvantaging the unemployed domestic work force.

As discussed in Chapter Two, the interest groups that have the closest relationship with labour shortages are the business and employer associations. The most enthusiastic of these associations was the German Engineering Federation (*Verband Deutscher Maschinen- und Anlagenbau* or VDMA). The president of the Federation, Manfred Wittenstein, mentioned that according to a survey of the Federation, the German engineering and plant construction industry were lacking 9,000 engineers and several thousands of technicians. He stated that the Blue Card initiative was overdue, and stressed the importance of foreign workers for the industry of the Federation with reference to labour shortages on the German labour market (Associated Press Worldstream - German, 2007a; Süddeutsche Zeitung, 2008; Verband Deutscher Maschinen- und Anlagebau e.V., 2007). At the time of the VDMA's first press release, the mood in Germany was rather hostile with regard to the Directive, as the negative statements from the highest political level were still resonating. The VDMA attempted to establish a targeted counterbalance with its comment (Interview VDMA EU Office).

The President of the Federal Association for Information Technology, Telecommunications and New Media (*Bundesverband Informationswirtschaft, Telekommunikation und neue Medien* or BITKOM), August-Wilhelm Scheer, welcomed the Commission's endeavour in

principal to open the EU's labour market to highly qualified third country national workers; however, he also voiced some reservations. For instance, he warned that the final decision about such a sensitive topic needed to be made at the national level (Euro am Sonntag, 2007). The Association of the Chambers of Industry and Commerce (*Deutsche Industrie- und Handelskammertag* – DIHK) made statements in a similar vein: support for the Commission's initiative with the reservation that the final decision about who enters needs to rest in the power of the Member States (Agence France Presse - German, 2007a; Associated Press Worldstream - German, 2007b).

While supporting a nationally regulated points system, the Federation of German Employer Associations (*Bundesvereinigung der Deutschen Arbeitgeberverbände* or BDA), representing all sectors of the German economy, was not very positive with regard to the proposal and lobbied against it. It did not see any benefit in EU involvement in regulating skilled migration (interview BDA) (Agence France Presse - German, 2007b). In a press release of December 2007, the BDA announced that the current version of the Blue Card was not acceptable as it would obstruct more flexible regulations at the national level (Bundesvereinigung der Deutschen Arbeitgeberverbände, 2007).

Supporting voices for the Blue Card also came directly from German companies – especially those directly reporting labour shortages, such as the large export-orientated German motor and fan manufacturer *ebm-papst*, which released a press statement in support of the Blue Card and its potential to help the company meet its future demands for employees (ebm papst, 2007). However, smaller companies that were less integrated with the global economy tended to prefer domestic workers; they worried about the costs of training a foreign worker to be able to work with them – for example, small Freiburg-based

United Planted GmbH in Freiburg (Markt und Mittelstand, 2007) – or did not believe there were any foreign workers that could provide the specific skills needed, such as the Krefeld-based machine construction company Jagenberg AG.

Consequently, the picture is mixed regarding representatives of the German economy. While there was almost unanimous agreement about the benefits of immigration to fill labour shortages, enthusiastic embracement of the Blue Card only happened with regard to the VDMA. As there was no unanimous support from the German business lobby for this version of the Blue Card, together with a clear statement of the ruling coalition government in the coalition agreement, support for a Blue Card that would overrule national legislation was impossible to attain. However, the German government saw the benefit of a loose European framework within which Member States could fill their labour market needs (interview Ministry of Economics). The existence of a homogenous European labour market was widely denied and the necessity that a special domestic labour market needs had to be managed nationally was widely heralded (Interview 1 *Bundestag*, Interview 2 *Bundestag*, Interview Ministry of Economics, Interview Migration Expert).

As in the preceding chapters, labour shortages did not directly influence the decision-making process on the Blue Card Directive. The benefits that EU-level regulation of highly skilled migration might have promised did not induce German decision-makers to support the Blue Card Directive (it was mostly associated with costs).

This is a very notable point. With regard to the national level regulation, reference by the government to labour shortages induced the changes of the national immigration law that

opened a route, however small, for highly skilled economic migration to Germany (Bundesregierung, 2008). However, other factors, such as intensive employer lobbying, may have made the passing of these changes possible. The important point for this dissertation in relation to the *misfit* concept and Hypothesis Two is that a national regulation provided a small route for highly skilled migration to Germany. Given these developments, the German government was prepared to support an EU Directive that would not touch these national regulations.

Bureaucratic Politics

Executive

The discussions between the responsible ministries were described as constructive and showed an absence of fierce turf wars. Thus agreement could be reached on the technical level. The different ministries restricted themselves to their respective areas of responsibility (Interview Ministry of Employment, Interview Ministry of the Interior, Interview Permanent Representation EU, Interview Ministry of Economics). With regard to cleavages within the government, the most significant faults have not run along party lines, but along intra-party camps that had a more pro-European, national, liberal, or restrictive stance (Interview Ministry of Employment, Interview CDU/CSU Fraction, Interview Migration Expert) (Stuttgarter Zeitung, 2008a). This could already be observed during the Schröder Government, when then social democratic Minister of the Interior, Otto Schily, adopted a rather conservative view on immigration issues after 2003 (Klusmeyer & Papademetriou, 2009: 283). Hence, these cleavages cannot be chiefly attributed to the grand coalition between the CDU/CSU and the SPD. However, some differences existed between the ministries involved when the German government developed its position, which, as in

preceding chapters, can be explained with the “where you stand depends on where you sit” proposition of the *bureaucratic politics* framework.

The Federal Ministry of the Interior’s main concern is generally to ensure security; it thus tends to take a rather restrictive stance in terms of immigration, and is also very reluctant to give away competencies regarding who enters the country to the EU level. The ministry saw the value added from a common EU framework to regulate migration of the highly qualified. However, due to the differences in the labour market, it was of the opinion that the national regulation of immigration must remain possible (Interview Ministry of the Interior). The initial version of the Directive would have posed strong and concentrated costs, in terms of security concerns, due to – according to the view of the German government – loss of complete sovereignty to control who enters the country. Promised advantages included moderate and diffuse benefits of having an EU framework of regulating migration.

Another ministry that was involved and was very active was the Federal Ministry of Employment and Social Affairs (Interview 2 Commission). For instance, the so-called Jumbo-Council consisting of Justice and Home Affairs as well as the Employment Ministers that was held in December 2007, was summoned on German initiative (Interview Ministry of the Interior), and is an indicator of the prominence of the Employment Ministry in preference formation (see also, Deutsche Welle, 2007). The main target of the Employment Ministry was to use the domestic workforce to fill the reported labour shortages by means of education and training. Consequently, the number of workers that needed to be mobilised to pay unemployment benefits should be reduced (Interview Migration Representative). Hence, a Blue Card that would take power to regulate migration

away from the national government and open the door to a significant number of workers – especially with a definition of highly skilled workers that was not demanding enough – did not accord with this ministry (Interview Ministry of Employment, Interview Ministry of the Interior), and would have constituted strong and concentrated costs.

The Federal Ministry of Economics concurred that Member States needed to determine who enters the country. If that was guaranteed, the Ministry was happy to support EU involvement. The action programme passed by the German Federal Cabinet in *Meseberg* played a role in this; the Ministry was reluctant to have a Blue Card measure that was too broad and would forbid a Member State to determine for itself whether its labour market was in need of a very specialised kind of profession, for instance, chemists (Interview Ministry of Economics). In that respect, the Ministry was in line with the BDA and other German employers and industry associations. As there had been regular meetings with business associations (Interview Ministry of Economics), the position of the Ministry and the BDA was likely to have converged to some degree. Hence, from its perspective, the costs that might have accrued due to the first Blue Card proposal would have been fairly concentrated and strong if the German government had lost the competency to accept only those highly skilled migrants that the labour market required. The benefits of the Directive were diffuse and not strong as the most important measures were those on the national level.

The Foreign Office has the reputation of being more favourable towards European integration than the other ministries. For the Foreign Office, it was important that the German federal government was not perceived as a constant blocker with regard to economic migration initiatives at the EU level. This was because its area of responsibility

includes trade interests and relations with other countries (Interview Ministry of Economics, Interview Permanent Representation). Hence, had the federal government adopted a restrictive, overly aggressive stance that differed strongly from the bulk of other Member States, it might have had negative repercussions in other areas. From the point of view of the Foreign Office, there were possibly concentrated costs involved if the government rejected the proposal outright. The benefits of any decent version of the proposal eventually adopted would probably be diffuse in the form of friendly relations with other countries, and potentially concentrated, as these might be used in bargains concerning other EU initiatives.

Länder

The *Länder* were included in the preference formation as the *Bundesrat* issued a resolution with regard to the Blue Card.⁶⁸ According to the *Geschäftsordnung des Bundesrates* (GO BR) that regulates the affairs of the *Bundesrat*, the federal government needed to factor in the position of the *Bundesrat* in its preference formation regarding the Blue Card. A *Länder* representative was also present at the Council negotiations (Interview Ministry of the Interior). Highlighted among the most important points of the resolution regarding the Blue Card was the national responsibility of Member States – in accordance with the subsidiary principle – to regulate their labour markets and the co-existence of the national systems. Also, the definition of highly qualified was criticised as too broad. Furthermore, the right of the Blue Card holder to move to other Member States was seen as too generous. The *Bundesrat* was generally in line with the federal government and there were no indications of any significant controversies (Interview Permanent

⁶⁸ *Bundesrat, Drucksache 762/07 (Beschluss)*, 20.12.07.

Representation, Interview Ministry of the Interior). A Directive that would violate those concerns would have been regarded as highly costly. The increased competitiveness of the European Union in light of the Lisbon Strategy can be seen as constituting diffuse benefits.

Interest Groups

The employer and industry associations should – according to the proposal's rationale – benefit from the Blue Card, as it should help them to recruit the best suited migrants for the vacancies they cannot fill from the domestic workforce. However, most associations, with only the VDMA most outspokenly in favour of the Blue Card, still preferred the national regulation of immigration and seemed happy with the initiatives taken by the government. However, most associations welcomed the Directive to some extent, in particular for its potential to further advance the debate at the national level. The association that was most active in lobbying the German government with regard to the Blue Card was the BDA (Interview VDMA EU, Interview Ministry of Employment). It was also the most powerful association due to both its official function of representing the German business sector in the government's preference formation, and in its function as an umbrella organisation. Thus, this analysis will concentrate on the BDA.

The BDA saw a further need to bring foreign workers to Germany, but given the particularities of the German labour market, preferred national legislation, namely a points system (Bundesvereinigung der Deutschen Arbeitgeberverbände, 2007). As Germany at that time did not have a points system, the association might have feared that increased competencies at the EU level would distract or obliterate its plans to lobby for a German

points system (Interview BDA). Thus, the proposal offered some diffuse benefits by giving further momentum to the domestic debate about highly skilled labour migration. If the proposal had entered into force in the original version, the BDA would have suffered the costs of potential loss or postponement of a national points system and inflexibility in accepting the most desired workers.

The BDA has access to the government through formal hearings during legislative deliberations (Menz, 2003: 538). Traditionally, it has a well established link with the Federal Ministry of Economic Affairs. Reasons for this are membership of civil servants in employer associations, personal interchange between the ministry and the associations, and regular contacts (Rudzio, 2003: 96). There were regular contacts between the BDA and the Federal Ministry of Economics regarding the Blue Card Directive (Interview Ministry of Economics). Thus, the positions of the BDA and the Federal Ministry of Economic Affairs seemed rather similar. The activity of the BDA seems more associated with the more direct feared costs than the more diffuse benefits.

The equivalent of the BDA on the trade union side is the Confederation of German Trade Unions (*Deutscher Gewerkschaftsbund* or DGB). If no member union holds a particular interest regarding a certain EU Directive, the DGB is responsible for articulating trade union concerns regarding the Blue Card *vis-à-vis* the German government. This is what happened in the case of the Blue Card (Interview ver.di, Interview Ministry of Employment). The position of the DGB was developed by a process that took three to four months and included input of DGB member unions as well as relevant departments of the DGB (Interview DGB).

The DGB was of the opinion that there was a need for a general EU framework for admitting highly skilled migrants. However, the eventual decision as to who enters should rest with Member States and the Directive should not override national regulations. In addition, a chief worry and direct cost would have been a Blue Card that enabled migrant workers with fewer skills to enter the labour market. This was because the employment of migrant workers with lower skills might depress the wages of domestic workers, and could potentially increase the competition for domestic unemployed workers to re-enter the labour market, thus increasing the pressure on the domestic work force (Interview ver.di). A Blue Card with entry conditions that are too loose would thus constitute a direct cost for trade unions and their members. Hence, the DGB proposed to change the minimum salary requirements to one and a half times the value of the national gross annual salary in the industrial and service sectors, which would amount to around €63,600 (Interview DGB) (Deutscher Gewerkschaftsbund, 2008). In addition, the DGB thought that Member States should have the final say about who enters the country and that the Directive should not thwart the possibility of introducing a points system (Deutscher Gewerkschaftsbund, 2008: 9-10). As the Blue Card constituted a step towards managing the immigration of highly skilled migrants while upholding and improving migrant rights, the Directive offered some moderate benefits, both diffuse (benefits for the entire society) and concentrated (improvement in migrant rights).

Regarding influencing the federal government, the DGB has strong links with the Ministry of Employment and Social Affairs (Menz, 2003: 545; Rudzio, 2003: 96), and both institutions generally want to improve the situation of the domestic workforce. With regard to the Blue Card Directive, the DGB was in contact with both the Federal Ministry of the Interior and the Federal Ministry of Employment (Interview DGB). According to Paragraph

41 of the *Gemeinsamen Geschäftsordnung der Bundesministerien*, the ministries are legally obliged to consult the social partners in the preference formation process.

Arguably, the Ministry of the Interior was slightly advantaged in the decision-making process, because it was in charge of the file and responsible for integrating the respective positions of other relevant actors to form the German government's position. Apart from that, no structural advantages can be found within the government. The executive actors have a more prominent position when compared to the non-executive actors, such as the *Bundestag* and the *Bundesrat*. The government has to take into account the position of the two bodies; however, in the departmental meetings where delegates of different ministries discuss their positions on the Directive, members of the *Bundestag* or *Bundesrat* generally do not participate. Only if disagreement is too pronounced will they consider further actions. Also, with regard to the relevant interest groups, the governmental actors are advantaged. Their positions are also to be taken into account by the ministry in charge of the file. However, the interest group actors also do not attend the departmental meetings. Their points of influence are more limited when compared with the executive actors. Consequently, the final position of the federal government reflects to a great degree the positions of the relevant ministries.

Within the government there were some disagreements, but no major ones, and the final position could be established without the occurrence of pronounced inter-ministerial fights. Thus the pattern of preference formation resembles one of cooperation rather than hard-nosed bargaining. There was quickly a domestic consensus that if the main issues (co-existence of national system, definition of highly skilled and minimum salary, as well as allowing the Blue Card holder to work in other Member States after two years of legal

residence in the first Member State) could be addressed and if the proposal were modified accordingly, agreement would be possible.

III. Conclusion

German support for bestowing the EU with competencies to regulate highly skilled economic migration by means of the Blue Card Directive is linked to three themes held together analytically by the *bureaucratic politics* framework. Hypothesis One refers to the *misfit* between the national regulations and the EU-level measure. It is the single most important hypothesis for the explanation of this case study. By the time the Blue Card Directive was proposed, the German government had already introduced provisions that opened a route for skilled labour migrants to enter the German labour market. Shortly before the Directive was proposed, the government had adopted a special programme of action that relaxed these provisions further. The existence of such measures and a broad acceptance thereof made the federal government support the Blue Card, as long as it could continue to use the national regulations. As the final version of the Blue Card granted this point, support was attained.

The high *political salience* of immigration, and the adoption of national legislation and regulations just before the Blue Card Directive was proposed, raised the political costs of supporting the Directive exponentially. This already alludes to Hypothesis Two, which suggests that a Member State supports EU-level liberalisation of economic migration if the *political salience* is either low or does not affect the decision-making process, and the bureaucratic governmental preference formation is not transformed into an open and politically loaded contestation. *Political salience* was high. When the Directive was first

proposed by EU Commissioner Frattini, the proposal was immediately drawn into the politicised migration debate and triggered political messages from a number of high-level politicians. However, soon after the *rules of the game* became the dominant pattern, i.e., when the actual preference formation started (as opposed to speaking to domestic audiences in an attempt to show a tough stance on immigration), the decision-making process could happen on the technical level. On that level, agreement was found soon and without much controversy.

Contrary to the first two case studies of this dissertation, international politics and foreign policy considerations had no significant bearing on the decision-making process of the German government. The Blue Card did not relate to a particular sending country. Thus there was not a sending country that could be of high *foreign policy value* for the German government and lobby in favour of EU-level liberalisation of economic migration. In addition, the high *political salience* further diminished the possibility that foreign policy considerations would influence the government's position on the Blue Card.

Of particular conceptual importance are the initial political statements on the proposal compared to the bureaucratic nature of the decision-making process. The initial statements should not be seen as part of the preference formation. Consequently, there is no change in the *mode of politics* as an explanation informed by Freeman's framework might suggest. Rather, the political statements aimed at showing a tough stance on immigration matters in light of the high domestic *political salience* of immigration. These political statements have to be differentiated from the actual process of preference formation. They were political messages that were not informed by a rigorous analysis of the Directive's content by the appropriate ministries. The findings of this case study

suggest that political messaging by relevant political actors is not necessarily part of the actual process of preference formation, which happens according to rather inflexible rules and regulations. The political messages did not distinguish between the potential benefits of labour migration, but mixed up the Blue Card Directive with the general immigration debate. On the technical level the discussion could be differentiated from the politically salient migration debate.

Chapter Eight – Conclusion

I. Findings

Three themes have been advanced to explain why liberalisation of economic migration policy happens at the EU level (domestic politics, international politics, and labour market concerns). The themes are linked by a model of *bureaucratic politics*. The model provides a framework for tracing how the causal factors related to the three themes influence the relevant actors. Three main propositions are used for this. First, where an actor is located in the bureaucracy will strongly influence its position on the issue. Second, the magnitude of actors' influence on the government depends on their power resources. Third, the negotiations are structured according to action-channels that preselect the main actors and determine particular advantages and disadvantages. We will return to the *bureaucratic politics* model after each of the three themes has been discussed.

Domestic Politics

This theme consists of two sub-themes – the *fit/misfit* between national and EU-level regulations, and the nature of the decision-making process.

Fit/Misfit

The empirical analysis has shown that the *misfit* between the relevant national legislation and the policy proposed at the EU level cannot be too pronounced, as this would involve costs the actors are not prepared to accept. In all the cases where the German government did support EU-level liberalisation of economic migration policies, the *misfit* was not too prominent. Regarding the Ankara Agreement, Germany had concluded

bilateral agreements beforehand that regulated the flow of workers between Turkey and Germany. The provisions of the Ankara Agreement were less detailed and did not infringe upon the bilateral regulations. Thus, there was no *misfit* that could have entailed costs for any of the actors involved.

The provisions on freedom of movement and the right of establishment of the Europe Agreement with Poland were also preceded by a bilateral agreement between Germany and Poland for workers posted by subcontractor companies (*Werksvertragsvereinbarungen*). The Europe Agreement did not thwart this agreement; it even contained a clause that bilateral agreements would not be affected by the Europe Agreement. In addition, Germany had national regulations dealing with the inflow of foreign workers. The Europe Agreement could not touch these provisions. Given that the national and bilateral regulations were kept in place, there was no noteworthy *misfit* that threatened to imply costs for certain German actors. The fact that the provisions on the right of establishment did indeed impact on German law was not realised by German policy makers at that time. They regarded the provisions as largely toothless.

The story is similar with regard to the Blue Card Directive. Accepting the initial proposal would have meant high costs for a number of actors, as it would have made access to the labour market easier for workers with certain qualifications. Thus, a necessary condition for support was that the national legislation could co-exist without suffering any confinements.

The case of the Economic Migration Directive stands out because here the *misfit* was high. It concerned the general idea that immigration legislation should be more restrictive and its

regulation should remain in the hands of the government. In addition, there was also a specific *misfit* between two paradigms of how a measure that is intended to admit labour migrants should look. The German government at that time preferred to include a supply-based system in the national immigration regulations, i.e., a point-based system, whereas the Directive only proposed a demand-side system of admissions. The substantial *misfit* made the relevant actors fear that the costs of adopting such a Directive would be too high. Hence, not enough support for the Directive could be mobilised among actors in Germany that would have rendered the final position of the German federal government sympathetic to the Proposal. Thus, in accordance with Hypothesis One, in order for a government to support an EU-level liberalisation of economic migration policies, the *misfit* cannot be too pronounced.

Nature of the Decision-Making Process

This investigation has shown that the nature of the political contestation, and in particular the *political salience* of immigration, impacts governmental preference formation on liberalising economic migration policies at the EU level. The empirical analysis of the Ankara Agreement reveals that the government formed its position on this agreement, and especially on the provisions relevant to migration, in an intra-ministerial way. Although immigration was a prevalent theme in the national debate due to regular recruitment of foreign guest workers, it was generally seen as having positive effects on the development of the national economy. Social problems – such as integration issues and the reluctance of workers to return to their country of origin – that were later associated with immigration did not feature in the discussion at the time. Hence, there were no significant political costs

involved in supporting the provisions that could have been due to a controversial and politicised national debate about immigration.

The preference formation process on the relevant provisions of the Europe Agreement with Poland proceeded in a similarly bureaucratic way that meant consulting with governmental actors according to the predetermined channels. Neither of the actors involved feared the occurrence of significant costs as a result of the provisions in the agreement. There was public debate about immigration, but the Europe Agreement was not linked to this. It was instead framed as an agreement of trade and market liberalisation. This circumvented any potential politicisation of the debate about the provisions on freedom of movement or the right of establishment.

Regarding the Blue Card Directive, the debate began with public outcries by a number of senior government figures. However, these statements related to a speech given by EU Commissioner Frattini that had introduced it. The statements were made without a rigorous analysis of the Blue Card proposal, and consequently also without a detailed knowledge of its exact content. Rather, they were statements intended to show the domestic electorate a particular position on migration. The actual preference formation of the German government on the Blue Card Directive happened on the bureaucratic level, as stipulated by the *rules of the game*.

The case of the Economic Migration Directive was different. When the Commission publicised its proposal, domestic debate about immigration was very vivid. The debate was fuelled by a number of distinct issues related to immigration, such as debates about the Green Card, immigration and terrorism, the findings of the expert commission on

migration, and reform of the domestic immigration legislation. The preference formation regarding the Economic Migration Directive could not be separated from the highly political debate about the benefits and perils of immigration, and the political costs of supporting the proposal soared. No relevant actor expected to gain any benefits from adopting the Directive that would outweigh the costs involved. Thus, the empirical findings corroborate the predictions of Hypothesis Two that a bureaucratic debate will facilitate agreement to an EU-level liberalisation of economic migration policy, whereas increased *political salience* and a publicly contested as well as politicised debate make such support unlikely.

Foreign Policy Factors

When the German government came to the conclusion to support the provisions on freedom of movement of the Ankara Agreement, foreign political factors played an important role. Because of the high *foreign policy value* of Turkey and the relatively low *political salience* of immigration matters, the Turkish government could undertake successful lobbying efforts for the conclusion of an Agreement that included provisions on freedom of movement. It did so because it did not want to conclude an agreement that would be significantly less generous than the one the EEC had completed with Greece. A slimmer agreement would have meant an embarrassment for Turkey vis-à-vis its long-term rival Greece. Turkey had a high *foreign policy value* for the German government, as in the insecure climate of the early Cold War years it was a strategically important country; the West did not want it to be receptive to Soviet offers of economic assistance and ideology. The *Political salience* of immigration was low; economic migration was widely accepted as a necessity to keep the German economy pushing ahead at full throttle.

The picture is slightly different regarding the Europe Agreement with Poland. Poland had a significant *foreign policy value* for Germany, as after the collapse of the Iron Curtain Germany was very interested in having politically and economically stable countries to the east of its border. However, the *foreign policy value* was less pronounced than regarding Turkey. The threat the Soviet Union posed in the 1960s had disappeared after the USSR had imploded. Moreover, the *political salience* of immigration was higher. There was an intense debate about general immigration matters taking place, with particular regard to asylum, and rhetoric about potential immigration flows from Poland. Hence, the scope of the Polish government to influence the position of the German government was smaller than the Turkish government's. Consequently, even the Polish push did not result in an official change of the German government's view. Nonetheless, the insistence of the Polish government paid off eventually, as a more far-reaching version of the right of establishment provisions found their way into the final agreement. This could only happen because the German government underestimated the potential significance of the regulations for real immigration flows.

In the preference formation regarding the Economic Migration Directive, foreign policy factors did not play a role. The proposal did not relate to a particular country, thus the concept of *foreign policy value* did not apply to the Directive, and there was no sending country government either that could have lobbied the German government for the Directive. In addition, *political salience* of immigration was very high. This further reduced the chances that foreign policy factors could impact on the decision-making process.

A similar dynamic could be observed concerning the Blue Card Directive. The Directive did not relate to any particular country that could have *foreign policy value* for the German

government, or could lobby for support of the Directive. The *political salience* of immigration was arguably slightly less pronounced, as at least the great part of the reform of the national immigration legislation had happened before the Blue Card was debated. Nevertheless, the *political salience* of immigration was still high. Thus, the conditions were still not advantageous to foreign policy factors influencing the decision-making process of the German government. Hypothesis Three can consequently be confirmed if *foreign policy value* is high, domestic *political salience* of immigration is low, and a third country can influence the German government to be more favourable regarding EU-level liberalisation of economic migration. A precondition is that the proposed measure relates to a particular country or a group of countries. A country can have *foreign policy value* by, for instance, being an important ally in a geopolitical conflict with an adverse regime, or constituting an important emerging market that can be developed.

Labour Market Factors

Labour market factors did not play a direct role in the formation of Germany's preference on the freedom of movement provisions of the Ankara Agreement. Although foreign political motivations also played a role in the conclusion of the bilateral labour recruitment agreement between the German and Turkish governments in 1961, the reported labour shortages on the German labour market were a necessary condition for the bilateral agreement's conclusion. The bilateral agreement's regulations were more specific and generous than the provisions of the Ankara Agreement; they were thus the instrument that regulated migration from Turkey to Germany. As discussed above, the agreement's existence nullified the *misfit* between the national legislation and the measures that were

proposed at the EU level. This consequently paved the way for the German government to support the Ankara Agreement and its freedom of movement provisions.

For the case of the Europe Agreement with Poland, there are indications from sources that labour shortages were reported on the German labour market. However, this did not make any difference in the position of the German government regarding the Agreement. In addition, the public debate about labour shortages, and immigration as a means to reduce them, was still in its infancy. In fact, the general debate about the German labour market was framed in a way that stressed the high unemployment rate and did not mention any labour shortages. Thus, the Europe Agreement was not framed as a means to reduce any labour shortages, and labour shortages did not influence the German government to support the provisions on freedom of movement and the right of establishment of the Europe Agreement in a direct way.

Labour shortages were reported on the German labour market when the federal government formed its preferences on the Economic Migration Directive, and it brought under way measures to bring in specific migrants, for instance by means of the Green Card initiative and with attempts to reform domestic immigration legislation. However, there was no link made between these shortages and the need for liberalisation at the EU level, as policy makers did not doubt the national capacity to attract relevant third-country workers without EU involvement. Moreover, the necessity of filling the labour shortages translated into a supply-side paradigm popular amongst the Schröder government, which differed from the demand-side approach outlined by the Directive. Thus, the existence of labour shortages did not contribute to a favourable position of the government with regard to the Economic Migration Directive.

When the Blue Card Directive was proposed, it was widely stated in Germany that not all vacancies could be filled by the domestic workforce – in particular with regard to positions requiring highly specialised skills. Discussions about the benefits of highly skilled foreign labour had become well-established. However, the link between their existence and the necessity to liberalise economic migration policies at the EU level was not made by any actor – not even regarding highly skilled workers.

Bureaucratic Politics

The *bureaucratic politics* framework has been used to understand how the government forms its preferences, i.e., which actors are taking part in the process, what their likely positions are, and how well they are able to make those preferences heard amongst decision-makers. The *rules of the game* are determined by the German administrative regulations and practices (GGO). The rules are specific to the German political system. However, as the outcome of the final governmental preferences depends on the *rules of the game*, this implies that another country with the same rules would have reached the same outcome as Germany – under the condition that the causal factors of the three themes would have been the same.

Role of the Chancellor

The rules of internal procedure of the federal government of Germany (*Geschäftsordnung der Bundesregierung* or GOBReg) stipulate in paragraph 1 that the federal ministers are independently responsible to realise the guidelines of interior and foreign policies. The guidelines are given by the Chancellor. Paragraphs 16 and 17 of the GOBReg state that

the federal government must be informed whenever different ministries cannot agree on a certain position or issue. Thus, in case there is no disagreement or case of doubt, the ministry in charge is responsible for its particular portfolio. As this was not the case with regard to the migration relevant provisions in the sub-case studies of this dissertation, the Chancellor was not involved. Neither the archival material, nor interviews or other primary or secondary sources suggest otherwise. Interviewees working for a ministry in particular were asked whether the Chancellor was involved in the decision-making process. The interviewees gave a negative answer to this question. With regard to the Ankara Agreement and the Europe Agreement, the respective Chancellor was involved in the decision about the general agreements, but not with a particular view to the provisions relevant for migration.

Actors' positions on economic migration

The positions that the different actors hold on liberalising economic migration at the EU level cannot be determined *prima facie* from their respective portfolio. It depends on the constellation of causal factors in relation to the content of the proposed policy measure. For instance, the Foreign Office was strongly in favour of including the provisions on freedom of movement in the Ankara Agreement because it deemed them important to concluding the Agreement for foreign political reasons. Whereas, for instance, with regard to the Economic Migration Directive, the Foreign Office was not in favour of accepting the Directive and was of the view that immigration was better regulated on the domestic level.

Determinants of what actor prevails

It cannot be said *ex ante* which actor prevails. Which actors are most important is determined by the *rules of the game* (the GGO), which stipulates what ministry (or ministries) is in charge of the file and the causal factors advanced in Chapter Two. Thus the more a ministry's area of responsibility overlaps with the content of the proposed policy measure, the more importance the respective ministry has, but in terms of coordinating the process and the power of making factual arguments. For instance, with regard to the Ankara Agreement, the Ministry of Economics and the Foreign Office shared the responsibility of generating the German position. The Foreign Office prevailed; not because it was the strongest ministry structurally, but because the arguments it advanced, i.e., the conclusion of the Agreement, was extremely important for foreign policy reasons and should not have collapsed because of opposition to the freedom of movement provisions requested by the Turkish government. For all sub-case studies the pattern of preference formation was one of cooperation rather than of hard-nosed bargaining. This point is further elaborated in the following section discussing the findings of the dissertation.

What non-ministerial actors are part of the game?

The actors involved are determined by the *rules of the game*, which in the case of Germany are the general rules of procedure (GGO and GOBReg). With regard to the Economic Migration Directive and the Blue Card Directive, the GGO in paragraph 41 stipulates which non-ministerial actors need to be included in the process of preference formation on liberalising economic migration policy. The actors mentioned are the *Länder* and umbrella organisations representing the employers and trade unions at the federal

level. Consequently, the Federal Ministry of the Interior considered their views in the decision-making process. In the case of the Ankara Agreement and the Europe Agreement, the GGO (then called GGO II⁶⁹) mentions the relevant actors to be included in the governmental preference formation. Paragraph 24 (regarding the Ankara Agreement) and paragraph 23 (regarding the Europe Agreement) state that the *Länder* needs to be included if their affairs are touched upon, which was not the case for foreign political matters, which the association agreements belonged to. There is no mention that interest groups need to be involved in matters of association agreements. As the discussions of the Ankara Agreement, and to some extent the Europe Agreement, have shown, there is an exception to the *rules of the game* determining the relevant actors. An extra-executive actor, for the cases of this study a third country government, can force its way into the decision-making process if the *foreign policy value* of the country is high and the *political salience* of immigration is low in the receiving country. It is conceivable that, under certain circumstances, further domestic actors, such as churches, other welfare groups and NGOs, can also force their way into the decision-making process; however, this could not be observed for the cases under investigation for this study. This might be the case if a policy measure is extremely contested resulting in very high costs and benefits for certain actors, as, for instance, stipulated by *interest group politics*. The media influence the decision-making process via the *political salience* channel. The preference formation was a governmental matter, so no non-governmental party influenced the process in a direct way (apart from influence via the *Bundesrat*).

⁶⁹ *Gemeinsame Geschäftsordnung der Bundesministerien – Besonderer Teil*

Under what conditions and how do non-executive actors matter?

The *bureaucratic politics* framework suggests that actors are active in the process when the proposed policy measure offers significant benefits or poses substantial costs. This was not the case for any of the non-executive actors that emerged on the playing field for the preference formation of one of the policy measures analysed by this dissertation. The empirical data gives no indication that from an early stage the positions of the non-executive actor notably diverged from the government's, and no significant influence is indicated. The position of the *Länder*, expressed via the *Bundesrat*, did not differ in a substantive way from the federal government's. With regard to the Ankara Agreement and the Europe Agreement, the data does not suggest that the *Länder* was involved in the preference formation on the provisions relevant to migration (and the entire Agreements, in fact). Where the social partners are concerned, in line with what the GGO II indicates, the empirical material does not give any indication that employers or trade unions were involved in the process of preference formation. With regard to the Economic Migration Directive and the Blue Card Directive, the social partners were formally included in the decision-making process. However, neither the employer associations, nor the trade unions, thought to experience significant costs or benefits from either one of these Directives that would necessitate strong lobbying efforts. Thus, neither of the two actors had a significant influence on the preference formation process.

Ankara Agreement

Regarding the Ankara Agreement, the Ministry of Economics and the Foreign Office were jointly in charge of affairs relating to European Integration, which provided the ministries with an alleviated position to mould the final governmental preferences. Between the two

ministries, in the end the position of the Foreign Office prevailed. However, this was less a result of its superior structural power (as the *bureaucratic politics* framework might suggest), but rather due to the particular constellation of factors relating to international politics (high *foreign policy value* of Turkey, together with low *political salience* and determined lobbying efforts of the Turkish government) that increased the importance of the foreign policy rationale that the Foreign Office propagated. Other Ministries that were involved in the preference formation were the Interior, Justice, Family, Agriculture, and Employment. However, these were less important in the process. No reference could be found about a significant involvement of the *Bundesrat* and the *Bundestag*. Thus, if either of the two bodies was involved in the preference formation, it would have been likely to have had a similar stance as the final government position. Controversies would have manifested themselves in the governmental files. There is no indication that interest groups, such as employer associations and trade unions, were included in the process to a significant degree.

Europe Agreement

In the preference formation on the Europe Agreement, the Ministry of Economics and the Foreign Office were in charge of coordinating the process as well. This helped them to be influential in the decision-making process. Nonetheless, the Interior and the Employment Ministries also had a stake in the process. Each ministry represented the interests that related to its area of responsibility. Both ministries held a tough stance on labour market access, and were firmly against any provisions in the Europe Agreement that would allow Polish workers facilitated access to the German labour market. The Employment Ministry feared an overburdening of the German labour market, and the Interior Ministry was driven

by concerns related to access to German territory by foreign nationals. The Ministry of Economics and the Foreign Office were more favourably inclined to include provisions on freedom of movement (however, not very far-reaching ones). Both Ministries were rather influenced by the bigger picture of what a successful conclusion would mean for the region. In addition, in light of German reunification, the German government presented itself as open towards integrating the CEECs into Western Europe. This was particularly relevant to the Foreign Office. The Economics Ministry wanted to conclude the agreement due to the potential economic benefits of market access to Poland, an emerging market economy. No empirical data could be identified suggesting that interest groups, the *Bundesrat*, or the *Bundestag* played important roles in the process. The main reason for this is likely that their positions did not differ significantly from the federal government's.

Economic Migration Directive

In the process of decision-making regarding the Economic Migration Directive, the *rules of the game* were advantageous to the Ministry of the Interior, as it was in charge of coordinating the ministerial process of preference formation. The Employment Ministry also played a prominent role. The Foreign Office was also involved, but only as one of the players, as the foreign political relevance of the Directive was low. The only immediate foreign policy significance of the Directive was the general impression the German delegation made on the other Member States during the negotiations in Brussels. For instance, if the German delegation was perceived as a constructive partner, this might have improved relations with some of the other Member States. Conversely, if the German delegation had been seen as the main obstructor in reaching an agreement, this might have had negative repercussions in terms of cooling relations with other Member States,

or reaching a consensus in policy areas where Germany would have liked to see rapid agreement in the Council. Furthermore, a few other ministries gave their input. The general line of the government emerged rather quickly, as there was strong scepticism about giving away control over the regulation of who is allowed to enter the German labour market to the EU level. In addition, the proposed Directive did not reflect the kind of immigration policy that was promulgated by the German government at that time, in particular by the Ministry of the Interior.

The *Bundesrat* and the *Bundestag* were both consulted and their opinions were taken into account, but they did not differ in a fundamental way from the line that was emerging within the government. The *Bundesrat* was slightly more sceptical as regards delegating competencies on economic migration to the EU level, as well as liberalising immigration policies in general. This was because of a general reluctance of the *Länder* governments to delegate more competencies than absolutely necessary to the EU level. The main rationale for this was to safeguard its institutional competencies (see also, Halperin, et al., 2006: 38). In addition, the significant presence of the more conservative CDU/CSU in the house might have played a role. Even though the cleavages with regard to economic migration cannot be clearly separated between the political left and right, centre-right parties tend to have more conservative views, by and large. Moreover, the SPD *Länder* governments often belong to the centre (rather than the left) wing of the party, decreasing the ideological differences with the CDU/CSU at the *Länder level* (Interview Ministry of Employment 1).

According to the rules regulating governmental preference formation on EU matters, both employer associations and trade unions had to issue their position with regard to the

Directive, which the government was obliged to consider. The employer associations, which were represented by the BDA, were in favour of liberalising economic migration policies. However, they were sceptical about delegating competencies to the EU and providing immigrants with too many rights in terms of social security. The trade unions held a more positive view and were happy to support liberalisation of economic migration policies at the EU level, although in a less encompassing way than the Commission had proposed, and only if sufficient rights were guaranteed to the migrants. Regarding the employer associations, there was little difference between the position of the government and the position held by the BDA.

Blue Card Directive

In the case of the Blue Card Directive, the Ministry of the Interior was in charge of coordinating the process of governmental preference formation, again giving it a slightly advantageous position. The other most active ministries were Employment, Economics, and the Foreign Office. The *Bundesrat* and the *Bundestag* were also consulted, but there were no major differences between their position and the government's. Most employer associations preferred the national regulation of economic migration but welcomed the proposal as giving further momentum to the national debate. The trade unions, represented by the DGB, saw the benefits of a general EU framework, but thought that the national government should decide on who enters the labour market. There was also concern that the Directive might allow migrants who would not qualify as highly skilled workers according to the German definition to enter the German labour market. Although there were minor differences in the positions of the different ministries, all ministries agreed that the Blue Card should not thwart the national regulations that were in place.

II. Discussion of the findings

Domestic Factors

Misfit

The empirical analysis shows that the *misfit* between the national legislation and the proposed EU-level liberalisation cannot be too pronounced. This implies that the concept is applicable beyond the compliance literature on environmental regulations. The concept of *uploading* is also useful, but its explanatory power is more limited than the *misfit* concept. The ideal position of a government is to *upload* its preferences to the EU level, as this means there are no adaptation costs. However, this becomes more difficult when the number of Member States increases (Menz, 2009: 7). Hence, a more realistic approach is to avoid adaptation costs that are too high. The crucial point is not if the Member State was successful in *uploading* its preferences to the EU level, but if the *misfit* is not too high. For instance, with regard to the Ankara Agreement, the German government did not *upload* its preferences, but tolerated the freedom of movement provisions, as the *misfit* between the bilateral recruitment agreement and the provisions of the Ankara Agreement was small. Hence, the *misfit* can denote the line that cannot be passed if support of the national government for EU-level liberalisation of economic migration policy is desired.

The question that now presents itself is how to specify the degree of the *misfit* in order to determine the area small enough for a government to agree to a policy measure. Existing studies assess the *misfit* as low if there is hardly any adaptation pressure, or as high if there is significant adaptation pressure. Risse et al. (2001: 8) state that “[i]f adaptation

pressures are very high, European institutions seriously challenge the identity, constitutive principles, core structures, and practices of national institutions.” Similarly, Duina (1999: 117) describes significant adaptation pressure as a challenge to the national policy legacies, which are defined as the legal and administrative entities that exist in a country prior to and at the time that a directive is enacted.

These accounts of what significant or high *misfit* amounts to are unsatisfactory because what constitutes a significant challenge to national policies is highly dependent on the context. In the three cases where the German government did support the EU-level liberalisation of economic migration (Ankara Agreement, Europe Agreement, and the Blue Card Directive), the proposed regulations posed no threat to national regulations. Thus, national regulations would still determine which migrants could enter the country. This did not constitute a *misfit* of any significance. The only case where the *misfit* was high was the Economic Migration Directive, where the proposal challenged the national paradigm of how migrants should be recruited. Had the Directive been adopted, its provisions would have determined which migrants would be issued a permit to work in the Union. Consequently, in the policy area of economic migration, the findings suggest that governmental support for EU-level liberalisation can only happen if the proposed policy is either less generous than the national policy (Ankara Agreement and Europe Agreement), or if it does not change the national policy (Blue Card Directive). This *misfit* cannot even be low; for the cases under investigation it needed to be zero. This was also the case when *political salience* was low and foreign policy influence high (Ankara Agreement). Hence, the *misfit* concept can be applied to the case of liberalisation of economic migration. This has important implications for the literature on EU policy-making on immigration, where the concept has so far not had a prominent role.

Nature of the Decision-Making Process

Preference formation within and around the government is at the heart of this study. It matters if there is an open contestation, or if the process happens largely in a bureaucratic way that remains largely unnoticed by the general public. Here, several important findings emerged, i.e., the better applicability of the *bureaucratic politics* framework compared to the *modes of politics* model; the high relative importance of ministerial actors compared to interest groups; the importance of *political salience*; and the different kinds of costs and benefits accruing to actors.

The analysis has contrasted Freeman's *modes of politics* framework (Freeman, 2006) with the *rules of the game* proposition of the *bureaucratic politics framework*. The *modes of politics* framework stipulates that the political contestation follows a particular mode according to the cost and benefit distribution of the actors involved. Conversely, the *rules of the game* suggest that the decision-making process follows a particular pattern determined by governmental rules, regulations, and practices.

The four cases have shown that the *mode of politics* tended to be similar in each case, and that governmental actors were considerably more important in forming the final position of the federal government when compared to interest groups. This could either be because the distribution of costs and benefits was very similar every time and thus induced a similar *mode of politics*, or the nature of the decision-making was predetermined by the *rules of the game* (cf.: Allison & Zelikow, 1999: 302) and was thus largely

prescribed by governmental regulations, leaving little room for variation on a case-by-case basis.

As concluding association agreements is the responsibility of foreign politics, the Foreign Office and, in the case of the Ankara Agreement, the Ministry of Economics were the most important actors; interest groups were less important. The regulations that apply to the preference formation on EU directives, interest groups and the *Länder* have to be included in the process of preference formation. Thus, in the latter two cases of this dissertation, there were more actors involved. The distribution of costs and benefits was fairly similar across the four cases. Several actors feared to incur concentrated costs in case liberalisation of economic migration policies at the EU level happened too quickly, and was infringing too heavily upon national regulations (for instance, the Employment and Interior Ministries). This remained rather constant throughout the four cases. However, the Foreign Office accrued significantly more pronounced benefits in the cases of the two association agreements, which contributed to it being more assertive than with the Economic Migration Directive and the Blue Card Directive. Furthermore, the increased role of further interest groups in the latter two cases made the decision-making process more diversified, and created more possibility for the *mode of politics* to change. Thus, there was some variation in costs and benefits distribution and actors involved, but the mode did not change significantly.

This suggests that the *rules of the game* did not allow too much flexibility in how the process of preference formation unfolded. The regulations attributed great significance to the ministerial bureaucracy, which only in exceptional circumstances might have led interest groups to mobilise vigorously to foster their aims. Consequently, the *mode of*

politics is fixed for the cases of economic migration policy-making at the EU level. It does not refute Freeman's framework, but decreases the conceptual value it can add in analyses of this policy domain in a country such as Germany. The *modes of politics* framework has been created for the case of the US, where interest group politics are less regulated. Thus, its full applicability to any country and policy domain has to be questioned. As for the case of economic migration liberalisation at the EU level, the *mode of politics* does not vary freely from policy measure to policy measure. Hence, it is more useful to apply the predictions that are stipulated by the *bureaucratic politics* framework.

However, there is a note of caution to be addressed. The only case where there was some variation in the nature of the contestation was with regard to the Blue Card Directive. Initially, there had been fierce statements at the highest political level, rejecting the Directive. However, they were soon calmed down as it was realised that the costs of the Directive could be kept rather low and the political messages were not necessary. Given that the statements were not preceded by a scrutiny of the Directive by the ministerial bureaucracy, these statements should not be assessed as constituting a change in the *mode of politics*; rather, they were reactions to the public announcement of the proposal by Commissioner Frattini that immediately added some salience to the debate. These statements were not part of the actual process of preference formation, but were messages to serve political ends. The preference formation happened on the technical level as stipulated by the *rules of the game*.

Given the fixation of the *mode of politics*, the concept of *political salience* gains more prominence in finding out whether the debate is happening in a largely bureaucratic way or whether it is politicised, and if the process of preference formation is hence influenced by

dynamics related to a heated debate about migration that do not directly relate to the proposed measure (for instance, fishing for votes on the political right by political decision-makers). Consequently, an EU policy measure can serve as a platform for political actors to make a point about their stance in the general immigration debate – as happened in the case of the Blue Card Directive.

The *political salience* of migration is externally induced and is not endogenous to the process of preference formation on a certain EU policy measure, i.e., domestic *political salience* is not caused by such a proposal. As discussed in Chapter Three, several factors play a role in increasing the *political salience*. According to the findings of this study, a proposed EU directive alone is unlikely to have the importance to significantly shift the *political salience* from low to high. However, the discussion that follows the directive may contribute to increasing the *political salience* in Germany. Yet more important is that a proposal might coincide with a highly politicised domestic debate about immigration that had emerged independently from the proposal (for instance, because of national immigration reform or reports about xenophobic attacks on immigrants). As shown in the chapter on the Economic Migration Directive, the *political salience* of the immigration debate in Germany was a result of parallel debates on several topics, including reforming national immigration legislation in Germany, the Green Card Directive, and fearful links between immigration and terrorism amplified by 9/11. The increased salience then reinforced the political costs of supporting EU-level economic migration policies. In the words of a German civil servant: “Supporting the Economic Migration Directive would have meant political suicide.”⁷⁰

⁷⁰ Translation by the author.

Regarding the distribution of costs and benefits across actors, it is useful to distinguish between political costs and benefits, and economic costs and benefits. For example, political costs and benefits relate to electoral approval or denegation. This happened with regard to the Economic Migration Directive. Economic costs can relate to the administrative costs of needing to change legislation due to new EU regulations, or the potential benefits of filling vacancies that could not be filled with the domestic work force.

Foreign Policy Factors

The analysis has shown that for the case of the two association agreements, foreign policy factors were important for the government to support the migration-relevant provisions of the agreements. Theoretically, the concepts of *foreign policy value*, *political salience*, and the pressure of the sending country (Rosenblum, 2004a, 2004b; Rudolph, 2003, 2006) explain the dynamics that induce actors' support. This expands the empirical applicability of the concepts to also cover liberalising economic migration policies at the EU level. So far, the concepts have only been used in the context of national immigration policy-making, most notably US migration policy. If the conditions stipulated by the framework are in place, foreign policy factors can be forceful in inducing a government to support liberalisation of economic migration at the EU level. Thus, if these conditions are not in place, rallying support is significantly more difficult. This then begs the question: How relevant are foreign policy factors to EU policy measures other than association agreements? A crucial component of their influence is the lobbying effort of the sending country (or a group of sending countries). For the case of the association agreements, these countries are clearly denoted. However, for a directive that is applicable to all third country nationals that factor is no longer relevant. The absence of foreign lobbying makes

support more difficult. However, the framework is solid and if the above factors (*foreign policy value*, *political salience*, and the pressure of the sending country) are in place, foreign policy factors can also be relevant in the preference formation on policy measures, such as EU Directives.

This is an interesting finding from a policy-making perspective. If a policy measure on liberalising economic migration policies at the EU level can be framed in a way that makes it relevant to foreign policy concerns, this would open another causal avenue that could rally support for the measure. It might offer another line of argument for domestic policy makers to justify support for the policy and thus increase the European added value – which has often been called into question with regard to common EU measures on economic migration (see, for instance, Ryan, 2007). In addition, even though directives such as the Economic Migration Directive or the Blue Card Directive do include nationals from any third country, this does not preclude a particular country (or several sending countries) from taking action to lobby Member State governments to support such a Directive. If a sending country has a high *foreign policy value* for one or several Member States, such an effort could indeed push a few Member States to take a more favourable stance towards EU-level liberalisation of economic migration policies. Finally, increased foreign policy relevance enhances the importance and influence of the Foreign Office in the decision-making process. The empirical analysis has shown that the Foreign Office tends to be more positively inclined to EU-level liberalisation of economic migration than other ministries, most notably the Interior, and Employment and Social Affairs. Consequently, it holds the potential to increase governmental support for such measures.

Labour Market Factors

The analysis of this dissertation has shown that labour market factors, most notably labour shortages, do not have a direct influence; specifically, they do not make certain actors support the EU-level liberalisation of economic migration because they expect to realise political or economic benefits. Thus, labour shortages are not part of the causal factors that decide whether a government supports the EU-level liberalisation of economic migration. This is an important finding in light of the Commission's reasoning for a common EU policy on economic migration, which included references to the benefits of EU-level cooperation and its ability to fill labour shortages in the Economic Migration Directive and the Blue Card Directive (Council of the European Union, 2009; European Commission, 2001). This dissertation shows that this reasoning does not have a causal impact on governmental preferences on liberalising economic migration policies at the EU level.

In line with Hypothesis Two, the dissertation suggests that the *misfit* between national legislation and the proposed EU policy measure has to be zero. Labour shortages are likely to be one of the factors that have an influence in inducing a government to implement national legislation on economic migration that provides channels for the immigration for third-country workers. Examples worth mentioning are the bilateral labour recruitment agreement Germany had concluded with Turkey in 1961, and articles 18 to 21 of the *Zuwanderungsgesetz*. However, it is beyond the scope of this dissertation to determine the exact role of labour shortages in determining the national level regulation of immigration. What matters for this study is the existence of national economic migration policy measures and their *misfit* in relation to the proposed EU-level measures.

Bureaucratic Politics

The *bureaucratic politics* framework has proved to be a useful tool to analyse the process of governmental preference formation on liberalising economic migration policy at the EU level. This extends Allison's important foreign policy framework (Allison, 1969; Allison & Halperin, 1972; Allison & Zelikow, 1999) to the formation of national preferences on economic migration policies. It has been applied to domestic politics but not yet to immigration policies (see, Brummer, 2009 to the reform of the German Federal Criminal Police Office). This poses a number of questions. Do the bureaucratic politics follow the same pattern in all cases, i.e., are the *rules of the game* the same for each policy measure? What are the limitations when applying the framework to EU economic migration policies, and could the framework be further developed?

The *rules of the game* differ slightly, in particular between the two association agreements and the two proposed directives. This is because over time the rules and regulations of governmental preference formation have been modified. There are two main differences. First, with regard to the association agreements, the Foreign Office and the Ministry of Economics had a more advantageous position in the process. The Foreign Office, especially, has a track record of being more supportive to agreeing to liberalise economic migration policies at the EU level. This stands in contrast with the Ministry of the Interior, which is generally security-minded. Thus, the *rules of the game* made the conditions of the first two cases more favourable to supporting policy measures than the latter two cases. Second, involvement of non-executive actors was facilitated with regard to the two Directives. While in particular the *Bundesrat* tended to have a somewhat more conservative position, the trade unions were more favourable to EU-level liberalisation than the federal government. The employer associations had a similar line to the

government's position. Even though the increased interest group involvement might have made government support more difficult, this was certainly not to a great extent.

The “where you stand depends on where you sit” aphorism of the framework proved useful to predict the positions of the different actors. While Allison's framework concentrates on individual actors, for this study it is more valuable to take organisations as the unit of analysis (see, for instance, Halperin, et al., 2006: 25-27), as in the governmental bureaucracy ministerial actors are determined as the main players and are frequently represented by different individuals on varying occasions. One of the most analytically valuable achievements of the *bureaucratic politics* approach is the generating of predictions about the position of respective actors applicable over time. This simplification greatly increases the analytical leverage of the model. Across the case studies, the Ministry of the Interior had the most restrictive position, given that its main area of responsibility is internal security. The Ministry of Employment tended to be reluctant due to the domestic work force being its chief concern. The Ministry of Economics can be more favourable to such measures if it estimates that the economic benefits of the policy surpass potential losses. This was, for instance, the case for the Europe Agreement with Poland. The Foreign Office tended to be the most favourable ministry, either because the policy measure promised foreign political benefits, or support would increase the standing of the Federal Republic amongst the other Member States. The *Bundesrat* tended to be marginally more sceptical than the federal government, due to feared loss of authorities by the *Länder*, and potentially due to an increased conservative presence in the House. The *Bundestag's* position did not differ fundamentally from the government's. Employer associations tended to be more favourable to openness for immigrants than the government, but were in line with its view that the best regulation can be achieved on the

national level. Trade unions were slightly more in favour, given the condition that certain rights of immigrants were preserved. These stances remained rather constant across the cases.

The original *bureaucratic politics* framework attributes great importance to bargaining in governmental preference formation. While the empirical data suggests there was some bargaining happening between the different actors, it was not the type of hard-nosed bargaining seen, for instance, in Council negotiations. If the process is put on a scale with bargaining on the one side and cooperation on the other, then the bargaining pattern becomes more pronounced with an increasing salience of the policy measure, i.e., the costs and benefits that are at stake are more concentrated, and the differences between the vantage points of the different actors are more striking. As stipulated by the rules and regulations that provide the framework for governmental preference formation, the ministry in charge of the file is responsible for incorporating other ministries' and actors' views according to their respective areas of responsibility. Hence, the general pattern of finding the position is better described as a coordination process or at times soft bargaining, rather than as a fiercely fought negotiation. For instance, with regard to the Ankara Agreement, not all actors were initially in favour of the foreign policy argument, i.e., that the Agreement should be concluded as good relations with Turkey and anchoring it in the West were very important from a foreign policy perspective. The view prevailed not because (or at least not only because) the Foreign Office asserted itself in the negotiations, but because the other ministries realised the validity of the argument and the *foreign policy value* of Turkey. If the *bureaucratic politics* framework is applied to the governmental preference formation of a country whose style of government is based on cooperation – as for instance, Germany with a parliamentary consensus democracy (cf.

Lijphart, 1999) – the pattern of preference formation resembles a coordination exercise rather than hard-nosed bargaining. This in turn increases the *power of an argument* in the preference formation. This factor should be included in the *bureaucratic politics framework* alongside the other sources of power, namely structural and individual power.

A final important point with regard to the *bureaucratic politics* framework is the role of extra-executive actors in the decision-making process. The framework does acknowledge the possibility that actors, such as foreign officials, can take part in the game. However, it does not make any propositions on how this might happen. The cases of the Ankara and the Europe Agreements have shown that a government of a foreign sending country can indeed have an important bearing on the final governmental preferences, even though it is not formally included in the decision-making process by the *rules of the game*. However, if certain conditions are in place, namely high *foreign policy value* of the sending country and low *political salience* of migration matters domestically, a foreign government can include itself in the process of preference formation by exerting targeted pressure on the respective Member State government.

III. Final Remarks

Links between the four sub-case studies

The thesis has treated the sub-case studies as different instances. There is a link between the Ankara Agreement and the Europe Agreement case study. The Federal Ministry of Economics, the Foreign Office and the Federal Ministry of the Interior warned against granting rights of freedom of movement to Polish nationals because of the experiences of the Ankara Agreement. The view of the ministries was that the Ankara Agreement had led

to a number of obligations for Member States to provide several rights to Turkish nationals and grant them preferential treatment in case a vacancy cannot be filled with a Community national. Thus, experiences from the Ankara Agreement informed the positions of certain actors in the process of preference formation for the Europe Agreement with Poland. However, these developments are a reflection of the general political climate of the 1990s and are not only related to the Ankara Agreement. That the consequences of the Ankara Agreement were seen as negative is more likely because the general attitude towards immigration had changed as economic, social, and political problems related to immigration had emerged, and immigration had become a politically salient issue in the 1990s. An account on the change in the attitude can be found in Chapter Three.

The data does not give any indication that the Europe Agreement and/or the Ankara Agreement had an influence on the preference formation with regard to the Economic Migration Directive and the Blue Card Directive. The two association agreements are different policy measures and were not associated with policy measures such as EU directives. Thus, the lack of a link is not surprising.

The link between the Economic Migration Directive and the Blue Card Directive is a different matter. The rejection of the Economic Migration Directive was still a rather recent development when the Blue Card Directive was proposed. Hence, when the Blue Card Directive was proposed the initial negative reaction by a number of senior political figures (as discussed in Chapter Seven) may have been motivated by the fact that EU involvement in regulating economic migration – in the form of a binding directive – was not desired by the German government. However, as the discussion of the process of preference formation with regard to the Blue Card shows, the content of the Directive and

its relation to the content of the relevant national legislation were at the centre of the process of governmental preference formation. The empirical data does not give any indication that there is a direct causal link between the Economic Migration Directive and the federal government's preferences on the Blue Card Directive. Rather, the beginning of the new millennium was characterised by a very tough German stance on any EU involvement in legal migration matters. This is also reflected by the position Germany held with regard to the directives on family reunification⁷¹ and third country nationals as long-term residents.⁷²

From a bird's eye view, the thesis provides a confirmation of Germany's enthusiastic support for the European project in the early years of European Integration, and its later restrictive stance with regard to EU involvement in its national policies. This view was particularly visible after the Tampere Programme gave an impetus to creating a common EU policy on immigration. The first paradigm of economic migration, which dominated the years of guest worker recruitment, can be characterised as what today would be labelled a naive and simplistic view of the economic benefits of migration that does not take into account the economic, social, and political consequences. With increasing public scepticism of immigration and its benefits, Germany's role also became more sceptical of EU involvement in economic migration matters. To remain in control over who enters the country and the German labour market became a top priority of German immigration policy. Any EU-level measure that may have infringed upon this national prerogative was seen with the utmost scepticism. This is reflected in the finding that the German government will only support EU-level involvement in economic migration if the *misfit* between the national legislation and the measures that are proposed at the EU level is

⁷¹ Council Directive 2003/86/EC

⁷² Council Directive 2003/109/EC

zero. The sceptical view of the benefits of common EU policy measures contrasts starkly with the role of motor of European Integration (together with France) throughout most of the 20th century.

Generalisability of the findings

The dissertation has developed a number of hypotheses – clustered in three themes – that under the umbrella of the *bureaucratic politics* framework answer why and under what conditions a Member State supports the liberalisation of economic migration policies at the EU level. It has drawn upon a plethora of different literatures and concepts that have not been married in the same explanatory framework before. It has suggested a number of modifications and highlighted the limitations of certain approaches to explain the cases under investigation here. The study does not claim that its findings can be applied to any other country or policy measures. What it does hope, however, is that its findings will be tested by other studies for different scenarios, and that they can serve as a theoretical starting point for the analyses, even though further modifications might be necessary to enhance the scope of this study.

The dissertation has detected for the case of Germany a number of causal patterns and factors for the liberalisation of economic migration policies at the EU level. This poses questions concerning the comparability of the findings. Regarding comparability with other countries, this approach can serve as a starting point at the very least. The *rules of the game* that applied to Germany will not be the same for other countries. For instance, in other countries the Ministry of Employment is in charge of coordinating the governmental preference formation on economic migration. The alleviated role of the Employment

Ministry might give a greater importance to migrant rights, compared to the strong security focus the Interior Ministries tend to have. However, the general structure of the dissertation is likely to translate to other countries, i.e., the *bureaucratic politics* framework with its three main stipulations (“where you stand depends on where you sit”, differences in power resources, and *rules of the game*) in combination with three causal themes (domestic politics, foreign policy factors, and labour market concerns). Of course, there would be differences in the relevance of these three causal factors for other countries. Nevertheless, with regard to economic migration liberalisation at the EU level, the three causal themes are highly likely to also play a role in other countries. But even if a causal factor might play out differently in another country, or other factors that have not played a role in the German case become significant, the framework is broad enough to accommodate such modifications. For instance, the *political salience* of migration and the *misfit* are likely to vary across countries. However, there is nothing that can be said *a priori* which would suggest that a variation of these factors would render the dissertation’s framework inapplicable. Even if one of the themes would need to be amended, the framework still works.

Similarly, as the framework is likely to translate to other countries, it might also apply to other policy areas. With regard to other policy areas, the causal themes are likely to require more modification than when applying the framework to different countries within the same policy area. For instance, with regard to asylum policy, it might matter what reference to asylum is made in the constitution of a country (or basic law for the case of Germany) and if this can be enforced by national courts. Hence, in that case, the judiciary would be part of the *rules of the game*. Nevertheless, the *bureaucratic politics* framework would still be applicable in combination with a number of causal themes, such as domestic

politics and foreign policy concerns – but not labour market concerns. Again, this would not invalidate the applicability of the framework to other cases. Thus the transferable substance of the framework consists of the three stipulations of *bureaucratic politics* complemented by a number of causal themes which can vary across cases. To test the findings of this study for other countries and policy areas is a promising avenue for future research.

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Appendices: Lists of Interviews

Chapter Three: Ankara Agreement

1. Interview with Turkey expert, Stiftung Wissenschaft und Politik, Berlin, 18/08/2008
2. Interview with Ankara Agreement Expert, German Federal Ministry of the Interior, Berlin, 19/08/2008
3. Personal Communication with Ankara Agreement Expert, 28/04/2008

Chapter Four: Europe Agreements

1. Interview Office for European Integration, Polish Office for European Integration (now part of the Polish Foreign Office) phone interview, 09/03/2010
2. Interview Federal Ministry of Justice, former Secretary of State, phone interview 12/01/2010
3. Interview Eastern Europe Expert, Academia, phone interview, 03/02/2010
4. Interview Ministry of Finance, former Secretary of State: phone interview, 12/01/2010

Chapter Five: Economic Migration Directive

1. Interview 2 Permanent Representation : interview Permanent Representation of Germany to the EU, Brussels, 05/07/07
2. Interview 1 Permanent Representation : interview Permanent Representation of Germany to the EU, Brussels, 21/01/2010
3. Interview 2 Council: phone interview with Council of the European Union, 24/04/2008
4. Interview 3 Commission: interview European Commission, Brussels, 02/07/2007
5. Interview 4 Commission: interview European Commission, Brussels 04/07/07
6. Interview 5 Commission: interview European Commission, Brussels, 06/07/07
7. Interview with European Parliament Secretariat, Brussels, 04/07/07
8. Interview 2 MinInterior: phone interview Federal Ministry of the Interior, 06/10/2008
9. Interview 3 MinInterior: interview Federal Ministry of the Interior, Berlin 21/08/2008
10. Interview 4 MinInterior: phone interview Federal Ministry of the Interior, 09/09/2008
11. Communication BDA: personal communication Confederation of German Employer Organisations (*Bundesvereinigung der Deutschen Arbeitgeberverbände*), 25/07/2008
12. Interview 1 DGB: phone interview *Deutscher Gewerkschaftsbund*, 16/09/08
13. Interview 1 Ministry of Employment: phone interview Federal Ministry of Employment and Social Affairs, 13/01/2010
14. Interview BDI: Phone Interview Federation of German Industries (*Bundesverband der Deutschen Industrie*), 15/09/2008
15. Communication BDI: personal communication Federation of German Industries (*Bundesverband der Deutschen Industrie*), 09/09/2008
16. Interview DIHK: phone interview German Association of Chambers of Industry and Commerce (*Deutscher Industrie- und Handelskammertag*), 15/09/2008
17. Interview IG Metall, phone interview Industrial Union of Metalworkers (*Industriegewerkschaft Metall*), 18/09/2008
18. Interview 2 BMAS: interview Federal Ministry of Employment and Social Affairs, 21/07/2010
19. Communication BMAS: personal communication Federal Ministry of Employment and Social Affairs, 21/07/2010
20. Interview ETUC: interview European Trade Union Confederation, Brussels, 05/07/07
21. Interview UK Permanent Representation: interview Permanent Representation of the United Kingdom to the European Union, Brussels, 04/07/07
22. Interview Finish Permanent Rep: interview Permanent Representation of Finland to the European Union, Brussels, 04/07/07
23. Interview Diplomat: phone interview with diplomat who prefers to stay anonymous, 30/04/2008

Chapter Six: Blue Card Directive

1. Interview 1 *Bundestag*, Member of German Parliament, SPD, phone interview, 26/01/2010
2. Interview 2 *Bundestag*, Member of German Parliament, FDP, phone interview, 16/02/2010
3. Interview CDU/CSU Fraction: CDU/CSU Fraction of the *Bundestag*, phone interview 01/02/2010
4. Interview 1 Commission: European Commission, DG JLS, phone interview, 03/02/2010
5. Interview 2 Commission, European Commission, DG Employment, phone interview, 02/02/2010
6. Interview Council: Council of the European Union, interview, Brussels, 21/01/2010
7. Interview EP: Secretariat of the European Parliament, phone interview, 26/01/2010
8. Interview Ministry of Economics: Federal Ministry of Economic Affairs, phone interview, 22/01/2010
9. Interview 1 Permanent Representation: interview Permanent Representation of the Federal Republic of Germany to the European Union, Brussels, 21/01/2010
10. Interview 1 Ministry of Employment: Federal Ministry of Employment and Social Affairs, interview, Berlin, 13/01/2010
11. Interview Ministry of the Interior: Federal Ministry of the Interior, phone interview, 08/01/2010
12. Communication Foreign Office: Foreign Office, personal communication, 11/01/2010
13. Communication MinJustice: Federal Ministry of Justice, personal communication, 08/01/2010
14. Interview Migration Representative: Office of Federal Representative for Migration, Refugees and Integration, interview, Berlin, 15/01/2010
15. Interview VDMA EU, interview with European Office of the Verband Deutscher Maschinen- und Anlagebau e.V., Brussels, 19/01/2010
16. Interview BDA: Federation of German Employer Associations (*Bundesvereinigung der Deutschen Arbeitgeberverbände* or BDA), phone interview, 25/01/2010
17. Interview DGB: Confederation of German Trade Unions *Deutscher Gewerkschaftsbund*, phone interview, 02/02/2010
18. Interview ver.di: United Service Union (*Vereinte Dienstleistungsgewerkschaft*), interview, Berlin, 13/01/2010
19. Interview Migration Expert: migration expert in Germany, phone interview, 02/02/2010
20. Interview Think Tank, phone interview, Brussels, 26/01/2010