“The Developing European Union Policy on Legal Economic Migration: The Impact of Structural Factors on Germany’s Preferences”

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Introduction

In light of demographic aging and labour shortages in the EU, debate about regulating economic migration on the EU level has gained momentum in recent years. From the creation of the European Economic Community by the Treaty of Rome on 25 March 1957 until the Amsterdam Treaty came into force on 1 May 1999, immigration was regulated nationally and agreements on European level were purely intergovernmental. Title IV of the Amsterdam Treaty moved immigration from the intergovernmental third pillar to the first or “Community” pillar of the European Union. This “communitarization” bestows the Community with authority to implement measures on immigration policy. Nevertheless, policy-making is still determined by intergovernmental elements. Regarding legal
economic migration, the Council still votes unanimously and the European Parliament is merely being consulted. In addition, the role of the European Court of Justice is limited.

Member States have been rather hesitant to transfer sovereignty to the EU in the domain of immigration policy (see, for instance, Caviedes, 2004: 289; Geddes, 2003: 142; Margheritis & Maldonado, 2007: 160). This is particularly the case for economic migration. Two conceptual clarifications are needed here. First, the concept of legal economic migration refers to the migration of third-country nationals for the purpose of paid employment or self-employed economic activities through legal channels. Second, common EU policies are regarded as secondary EU legislation that is adopted by the Council of the EU. Since immigration was “communitarized” by the Amsterdam Treaty, there have been some EU measures containing provisions on legal economic migration that have been successfully adopted by the Council, such as the Directives on family reunification (2003/86/EC), third-country nationals who are long-term residents (2003/109/EC), and researchers (2005/71/EC). Nonetheless, there has been also the proposed Directive on economic migration that the Council did not adopt. The uneven character of development of a common EU policy on legal economic migration is the starting point of this paper. The question guiding this inquiry is: Why and under what conditions do EU policies on legal economic migration come about?

The paper focuses on one particular EU Directive on legal economic migration, namely the in 2001 proposed Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities (henceforth, economic migration Directive). This Directive is emblematic for any EU policy development on economic migration since the Tampere European Council in 1999 as it constitutes the most elaborate and ambitious attempt to establish a European framework on the regulation of economic migration. Exploring the factors that led to the non-adoption of this Directive will allow conclusions that are applicable to EU measures on legal economic migration in a more general way. The paper will try to explain Germany’s preferences on the Directive. Although it would be wrong to attribute the non-adoption of the Directive only to Germany, it

1 The European Council held in Tampere (Finland) in October 1999 launched an ambitious agenda of legislative developments for an EU immigration policy.
is clear that Germany was one of its - or perhaps even the - fiercest opponent. Hence, exploring this extreme position will bring findings about the causal factors that lead a Member State to oppose EU competence on economic migration. This is one first step to shed light on the question why and under what conditions EU measures on economic migration come about. The paper is not in the position to produce an all encompassing answer to this question but is to be seen in the context of a wider body of research on EU policy developments on legal economic migration. The structure of the paper is as follows. Part I introduces the main proposition of liberal intergovernmentalism. While agreeing with this framework on the importance of Member State’s preferences for coming up with EU policies in a particular domain, the paper looks at structural factors as *explanans* for Member State preferences, the *explanandum*. Part II gives an overview of the economic migration Directive, the respective negotiations, and the most general explanations that have been given for its non-adoption by the Council. Part III then discusses the five hypotheses put forward with regard to Germany’s preferences on the economic migration Directive. This is followed by a final conclusion.

I. Liberal intergovernmentalism versus Structural Explanations

In an attempt to explain Member States’ preferences, the paper will draw on a theoretical framework generally termed liberal intergovernmentalism. However, the paper seeks to surpass the premises of liberal intergovernmentalism by putting forward two alternative hypotheses based on structural factors. Liberal intergovernmentalism sees European Integration as a two level game (cf. Putnam, 1988). The framework consists of three theoretical parts, a theory of national preference formation, a theory of interstate bargaining, and a functional theory of institutional choice (Moravcsik, 1993: 482; 1998, 1999a; Moravcsik & Nicolaidis, 1999b). The key actors are national governments. Although domestic actors are regarded as having an influence on the national preferences, they are not assumed to shape bargains on the international level in a significant manner. National governments are seen to act rationally in pursuit of their preferences. They calculate the utility of alternatives and opt for the ones that maximises their utility in a given situation (Schimmelfennig, 2004: 77). National preferences are defined as a set of underlying national objectives that are independent of any particular international
negotiation (Moravcsik, 1998: 20). They are formed through a domestic power struggle. As Moravcsik (1993: 481) puts it:

“National interests are, therefore, neither invariant nor unimportant, but emerge through domestic political conflict as societal groups compete for political influence, national and transnational coalitions form, and new policy alternatives are recognised by governments. An understanding of domestic politics is a precondition for, not a supplement to, the strategic interaction among states.”

The paper focuses on Member States’ preferences and attempts to understand and explain them. Hence, the bargaining stage and the functional theory of institutional choice are less relevant here. The paper agrees with the proposition put forward by liberal intergovernmentalism that preferences of Member States are crucial in determining the process of European Integration. However, it disagrees with the explanation given for the formation of these preferences. Whereas liberal intergovernmentalism concentrates on the agency of domestic actors and regards the preferences of a country on a particular issue as the outcome of a power struggle between domestic groups, the focus of this paper rests on a number of structural factors. This preconditions the methodological and ontological claim that action and identity are placed inside structural macrofoundations that are rather stable (cf. Katzenelson, 2002: 102). Hence, it is assumed that macro entities are causally linked to collectives and individuals, for instance the structure of a country’s population to its preferences on a certain policy issue. In this respect, Katzenelson notes (2002: 102):

“[o]f course, structures themselves are the products of human agency, but in a wider scholarly division of labor it makes sense for configurative comparativists to focus mainly on the obverse – that is, on how structures constitute and cause identities and actions by tilting and organizing probabilities.”

The following section sets out the argument of the paper which is based on two hypotheses. It is assumed that Member States support common policies if there is a functional need to do so, i.e. if
costs of non-cooperation are higher than of cooperation. This corresponds to the principle of "subsidiarity", laid down in the Maastricht Treaty, that stipulates that the EU is only responsible for tasks that can be undertaken more effectively in common than by the member-states acting independently (Messina & Thouez, 2002: 98).

The first hypothesis is based on the need of Member States to compete for the most highly skilled migrants on a global level. Throughout the EU, Member States suffer of labour shortages that cannot be filled with domestic labour. This applies to both high and low skilled jobs. Regarding the former, this is because there are no or too few domestic workers with the required skills that are usually very specialised. Concerning the latter, domestic workers are often unwilling to take on uncomfortable jobs that often go along with low social prestige, such as jobs in the cleaning industry, elderly care, or agricultural industry during harvest. Hence, the economic need to recruit immigrants has been acknowledged widely by policy makers, employer organisations, and even trade unions in the EU. The current labour shortages are projected to be aggravated by declining working age population that is one of the effects of the demographic aging of European societies. Consequently, immigration can be expected to increase in importance of EU Member States in the future as one of the measures that can alleviate the detrimental effects of demographic aging. The EU has no problem in attracting immigrants with little qualifications. However, with regard to attracting the most highly qualified immigrants, the EU is greatly losing out against its main competitors - the US, Canada, and Australia. EU initiatives promise more success for Member States in competing for those migrants globally. If Member States could agree on a work permit for all EU Member States and a common European procedure to quickly select and recruit highly skilled migrants these were powerful tools for attracting these desired workers from outside the Union (European Commission, 2005a: 7). Especially, an EU-wide work permit allowing admitted migrants to move within the Union similar to EU citizens seems to be a convincing argument. Although economies of Member States differ and some countries might have a greater need for highly skilled migrants than others, we would expect that Member States’ preference converge around the need to attract skilled labour. A greater number of highly skilled migrants in the EU are predicted to benefit all Member States. The combination of skill shortages, demographic aging, and global competition for the most highly qualified migrants makes a strong argument why a Member
States that acts according to an economic rational will support common EU policy on legal economic migration.

The second hypothesis presented here relates to a country’s existing immigrant stock. If there is a small percentage of foreign born population and consequently little past experience with immigration and integrating migrants into society, Member States are more welcoming towards having economic migration policies on the EU level. It is assumed that if a Member State rather recently has become an immigration country and therefore has a short history of devising immigration and integration policies is more likely to support immigration policies on the EU level. If there is a large immigrant community within a Member State, this country is more likely to have experienced difficulties with integrating immigrants into its society. This is usually tied to a heated public debate about immigration. Under such conditions, it is politically more difficult to support economic migration policies on the EU level without losing domestic electoral support. As will be laid down in Part III, when looking at the relationship between a country’s immigrant stock and its policy preferences, the country specific context needs to be included in the analysis. The following section gives an overview of the Directive, the negotiation process, and the most general explanations that have been given for its non-adoption by the Council.

II. Economic migration Directive

The Directive was proposed by the Commission in 2001. However, it was not adopted by the Council as disagreement among Member States was too pronounced. The Directive follows a horizontal approach, covering conditions for entry and residence for any third country national. Its main points are the following. First, it lays down common definitions, criteria and procedures regarding the conditions of entry and residence of economic migrants. Second, it sets out common principles for the admission procedure of economic migrants from non-EU nationals. Third, it aims to create transparency for administrative procedures for admitting economic migrants. Fourth, it seeks to establish a single national application procedure and one merged title, including both residence and work permit within
one administrative act, with the objective to simplify and harmonise the diverging rules currently applicable in Member States. Fifth, it concedes rights to those migrants who fulfil the criteria laid down by the Directive. It has to be noted that the Directive leaves the ultimate power to accept economic migrants with Member States. Chapter IV of the Directive grants the right to Member State to impose certain restrictions based on public policy, national security, or public health (European Commission, 2001a).² The then European Commissioner for Justice and Home Affairs António Vitorino stated in front of the European Parliament when the Directive was debated in February 2003:

“[…] we [the Commission] do not intend to decide by directive the number of immigrants that our economies and societies are prepared to absorb. The proposed directive leaves that decision to the Member States who, together with their civil societies and, above all, their local and regional authorities, know how many they are capable of integrating.”


Already the first reading of the proposal indicated that it would be very difficult for Member States to agree on the Directive. The migration working party of the Council discussed the proposal briefly on four meetings in 2002 (21 March, 16 April, 10 June, and 8 July), after which discussions came to a halt (European Council, 2003c: 1). The Commission pursued a strategy to overcome disagreement to the detail 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 proposed Directive (Peers & Rogers, 2006: 671-5). The Directive was debated again in July 2003 and in October 2003 by the Working Party on Migration and Expulsion, which concluded the first reading of the proposal. The last time the proposed Directive made it to the Council was in November 2003, when the Justice and Home Affairs Council mentioned the “state of play” concerning the proposal (Council of the European Union, 2007a; Peers & Rogers, 2006: 674). The Council only stated the serious differences and reservations of Member States

concerning the proposal (Senat, 2004). The Commission formally withdrew the proposal in March 2006 (European Commission, 2006h: 12).

There were three main technical issues that emerged from the negotiations of the Directive, first questioning of the legal basis, second criticism of joining residency and work permit, and third complains about the Directive being too bureaucratic and inflexible (communication with EU official).³ The following section briefly discusses these three technical issues. First, the Directive proposes to merge the residence and the work permit into a single permit. Competence to issue such permits belongs to different authorities, i.e. regional authorities (Council of the European Union, 2002). The fact of merging them could create in the view of some Member States problems and difficulties. This concern was mainly raised by federal Member States (communication with EU official) (Council of the European Union, 2002). Second, the majority of Member States claimed that they found the system established by the Directive rather bureaucratic and not really responding to the needs of their labour market, in particular regarding the possibility of recruiting third-country national workers quickly (interviews with Commission officials). Third, and finally, the legal basis of the Directive is Article 63(3) of the EC Treaty was questioned by some Member States. The Article 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 long-term visas and residence permits."

However, some Member States had problems with the competence of the Community to adopt rules concerning the access to Member States' labour markets. Certain Member States, i.e. Germany and Austria, consider that, under the current Treaty, and in particular on the basis of Article 63, there is not such a competence (Bundesrat, 2002c; Council of the European Union, 2003c, interview with

³ A record of the general discussion at the 21/03/2007 meeting of the migration working party can be found in Council document 7557/02. Council document 13954/03 provides a consolidated version of the later discussions. The names of individual Member States have been deleted in the publicly accessible versions of the documents.
Commission official). This view is contested by the European Commission and immigration law scholars, such as Steve Peers. Also the Council Legal Service has validated Community competence on admitting legal migrants on every occasion. However, this was sometimes with reference to another legal basis, i.e. Article 137 TEC. Article 137 (g) lays down that the Community shall support and complement Member States’ activities in the field of “conditions of employment for third-country nationals legally residing in Community territory.” Nevertheless, the relevant legal bases cannot be combined (Papagianni, 2004: 87).

It is argued here that these technical issues were only used as pretexts because Member States did not want to state openly the underlying issues they have with regulating economic migration on the EU level (interview with Commission official). The paper will show that there is a set of underlying factors that seem to have influenced Member States preferences with regard to the economic migration Directive. Another rather straightforward argument brought forward invokes the principle of subsidiary, which states that Member States should regulate a particular policy area unless is can be better dealt with on the EU level. According to this claim, the case for a common EU policy on legal economic migration is less strong than for other policy areas (Ryan, 2007: 501). While this argument might be part of the explanation, this paper argues that there other variables that need to be taken into consideration in order to depict a rather complete picture of why Member States might reject common EU policies on economic migration. Consequently, this paper argues the actual explanation lies in structural factors introduced in the previous section. The next section tests the two hypotheses put forward above with regard to empirical developments, namely the proposed Directive on economic migration and Germany’s preferences. Germany was one of the fiercest opponents of the Directive. The following section tries to explain this outright rejection.

III. Structural Causes of Germany’s preferences

The first part of this section test the hypothesis number one, which was introduced above, namely the need to compete globally for the best migrants induces Germany to favour economic migration policies on EU level. The second part attempts to test empirically hypothesis number two which puts forward
that a country’s immigrant stock and its past immigration experience determine a country’s preferences on EU policy measures on economic migration.

*Global Competition for the Most Qualified Migrants*

Although Germany’s economy has started to pick up in 2007, its unemployment rate in recent years has been one of the highest in the EU. After a period of full employment, in the mid 1970s, unemployment in Germany rose drastically as a result of the first oil crises. Also the recession in the early 1980s led to a resurge in unemployment. After both risings, unemployment could only be reduced to a small extent and remained fairly high. Unemployment rose again after German reunification in 1990 – however moderately (Ochsen, 2006: 174). Figure 1 shows that Germany’s unemployment rate between 2000 and 2005 rose from 7.2 percent to 9.5 percent. This was slightly higher than the EU-15 (the first 15 countries of the EU) average which ranged between 7.3 percent and 8.1 percent. In addition, Figure 2 indicates, that in the same time period, with less than one job vacancy per person of working age, Germany is at the very bottom when compared with other EU Member States. The UK for instance has in the same time frame around 16 vacancies per one person of working age. However, these figures do not convey the full picture. While Germany has high unemployment, this is distributed very unevenly among its population. The great majority of unemployed are workers with little professional qualifications while there is an ever-increasing demand for high skill labour which cannot be met by the domestic labour force (Frölich & Puhani, 2004: 2; Zimmermann, Bonin, Fahr, & Holger, 2007: 33). Unemployment of workers with university qualification averages around 3 percent in the last 30 years and means virtual full employment for the highly qualified (Ochsen, 2006: 174-5, 187). Consequently, Germany is suffering labour shortages. In theory in a flexible labour market this shortages can be filled by domestic labour as workers move to different sectors or regions. However, in practice, labour is rather immobile. Reasons are incomplete information about labour market opportunities and costs attributed to moving to another region or sector. Concerning the former, costs include direct costs of moving house and associated psychological costs. Regarding the latter, costs include loss of sector specific human capital and investment into training for a new vocation (Zimmermann et al., 2007: 70-1). Reducing these costs and
thereby increasing labour mobility takes time. Hence, there is quite a strong case for temporary immigration to fill the immediate labour shortages.

Figure 1: Unemployment Rates in the EU-15: 2000-2005

Unemployment Rates in the EU-15: 2000-2005

Source: (Eurostat New Cronos, 2006d)
The current labour shortages are expected to be aggravated in the future due to the demographic aging of Germany’s society. Germany’s fertility rate is one of the lowest in the EU. Eurostat projections indicate that Germany’s population is likely to decline by 9.6 percent from 2004 to 2050, while the population of the entire EU is projected to fall by 1.5 percent (Castles, 2006: 745). Most strikingly, the portion of the population in the working age (between 15 and 64) is predicted to decrease in the EU of 25 Member States from 67.2 percent in 2004 to 56.7 percent in 2050 (European Commission, 2005a: 23-25). This means that there will be 52 million less inhabitants in their working age. Low fertility rates across Europe cause an increasing number of people beyond the working age and hence reduce the labour force. This has negative economic consequences, such as a reduction in domestic demand, higher public debt, increased difficulty to finance the social security system, decrease in entrepreneurial dynamic, and reduction in societal dynamic (Unabhängige Kommission „Zuwanderung“, 2001: 32-34). The number of the dearly needed high-skilled workers will decrease more strikingly than the number of workers with lower qualifications. In addition, other studies suggest

4 The figure of Ireland is too high in order to fit on this graph, for Austria there is only one value available for 2004 (which is just below 8), for "old" Member States that do not feature, there is no data available.
that especially highly qualified workers are needed to counteract demographic developments as their fiscal contribution tends to be positive. On the contrary, an increase in low-skilled immigration might further strain public finances (Fehr, Jokisch, & Kotlikoff, 2003:3). Nonetheless, also these migrants are likely to be needed to do jobs the domestic population is hesitant in taking on, such as seasonal workers in the agricultural sector or caretakers.

Immigration cannot solve the problem of demographic ageing, but it can alleviate the negative economic effects of the aging society (Zimmermann et al., 2007: 30). Other policy options are increasing the participation rate of the domestic population through training and raising the retirement age, decreasing incentives for early retirement, creating incentives to families to have more children, such as financial incentives or better day care facilities, or increasing the private provision of social benefits (see, for instance, OECD, 1988: 49, 74-6). Nonetheless, increased immigration will still be necessary to alleviate the negative economic effects of an aging society.

In Germany of 2050, 56.5 percent of the population are predicted to support 31.6 percent of persons with 65 or more years, compared to 67.3 percent supporting 18 percent in 2004. For the EU, the figures are only slightly less pronounced with 56.7 percent supporting 29.9 percent in the year 2050 compared to 67.2 percent working for 16.4 percent in 2004 (European Commission, 2005a: 23-25). The Institute for the Study of Labour (IZA) projects that a strong drop of the labour force will start from 2020 onwards. By 2030 the institute reckons with a potential decrease of the labour force by up to 10 million individuals (Zimmermann et al., 2007: 30). The highly qualified labour force is expected to be particularly affected by the demographic decline. This is because in Germany, there is the trend that younger generations are better educated than the generation of their parents and grand parents. It has to be noted that one decade is likely to pass before the population will decline drastically (Zimmermann et al., 2007: 100). Nonetheless, Germany is projected to be affected before most other countries (OECD, 1988: 47). In addition, Germany’s pay-as-you-go scheme that directly redistributes funds from the active working population to people outside the labour force makes Germany likely to be more dramatically affected. Conversely, countries in which the non-working population is financed by accumulated, often private funds, such as in the US or the UK, are expected to having to deal with
negative consequences to a lesser extent (Zimmermann et al., 2007: 84-5). Although these developments are not entirely a European phenomenon, they are less striking in other regions. In 2006, Europe’s population has with 37.7 years the highest median age in the world. By 2050, the median age is likely to be as high as 48 years in Europe, while for instance in the US, the median age will be around 40 (Lutz & Scherbov, 2006: 208). Hence, according to the second hypothesis, we would expect Germany’s preference to converge with other Member States.

These developments have been acknowledged in Germany, by the time the Economic migration Directive was proposed (see, for instance, Die Welt, 2001, 2003; Süddeutsche Zeitung, 2001a, 2002, 2003). In June 2001, the Independent Commission on Immigration (Unabhängige Kommission “Zuwanderung”) that has been established by Otto Schily, then Minister for Interior Affairs in Germany, and was lead by Rita Süssmuth, a former Minister of Youth, Family and Health. The Commission acknowledged that Germany is an immigration country which until then has been vehemently denied by German politicians. In addition, the report of the Commission argued that Germany needs further immigration in light of demographic aging of its society. (Unabhängige Kommission „Zuwanderung“, 2001: 26-36). As EU Member States are projected to face similar public finances problems due to demographic changes, we would expect their policy preferences on economic migration policies to converge, making EU policies more likely. As the developments are forecast to be especially pronounced for Germany due to its higher aging rates and the nature of its system of social security provision, we would assume Germany to be a particularly fervent advocate of common EU policies on economic migration.

Germany and the EU as a bloc are missing out on the most highly skilled migrants who tend to prefer going to the US, Canada or Australia. The “green card” regulation that was enacted by the German government in 2000 with the aim to recruit 20,000 foreign IT specialists serves as a good example. Applications remained rather low and Germany was not able to reach its target (Zimmermann et al., 2007: 29). In addition, the issue has been raised by a number of studies (see, for instance, European Commission, 2005a; Zimmermann et al., 2007). Nonetheless, this fact seems not to have been acknowledged openly by policy makers with regard to the economic migration Directive. Rhetoric of the
need to compete as bloc with the US, Canada and Australia for the brightest migrants cannot be found in the public debate about the economic migration Directive in Germany. Consequently, this hypothesis does not seem to hold for the case under consideration here. In a way this is a puzzling preliminary conclusion. A government that acts according to economic arguments would have been expected to support EU regulation of immigration on grounds of the existing labour shortages, the difficulties to fill them and a projected worsening of the situation in the future. For now, alternative explanations need to be found.

*Existing Immigrant Population*

Lahav suggests that the more immigrants a country hosts the higher is the resentment against foreign nationals among the population (Lahav, 1997: 393-4). Germany has more than fifty years of experience with labour migrants. After the Second World War, the German economy experienced unprecedented growth and the demand for labour grew strongly and could not be satisfied with domestic labour. To satisfy the labour demand, German industry started to recruit workers in Southern Europe. In 1955, Germany concluded a bilateral agreement with Italy, in 1960 with Spain and Greece. The building of the Berlin wall in 1961 stopped the inflow of East Germans and increased the need for foreign labour in West Germany. Hence, further agreements were signed in 1961 with Turkey, in 1963 with Morocco, in 1964 with Portugal, in 1965 with Tunisia, and in 1968 with Yugoslavia. By the end of 1964, the total number of foreigners in West Germany was around 1.2 million (2.1 percent of the population). In 1973, almost 4 million foreigners lived in West Germany (7 percent of the population).

Germany did not have a coherent migration policy but tried to counterbalance labour shortages with temporary workers from abroad (*Gastarbeiter*). The German government stopped recruiting foreign workers after the oil shock in 1973 amid rising domestic unemployment. Despite the recessions in the 1970s and 1980s the number of foreigners living in Germany increased – however to a lesser degree than in the 1960s and early 1970s. This was mainly because of family reunification and asylum seekers, rather than labour migration. After 1987, a new wave of immigration came in form of asylum seekers due to the fall of the Iron Curtain, war and ethnic cleansing in Yugoslavia, and increasing economic openness.

5 It has to be noted that the global competition hypothesis might gain importance in the future with both policy makers and the general acknowledging more widely the need for highly qualified economic migrants.
violence in the Kurdish regions in Turkey and Northern Iraq. Asylum applications peaked in 1992, with 438,200 people applying for asylum in Germany (63 percent of all asylum seekers in Western Europe). In 2001, the number of foreigners, i.e. people without a German passport, living in Germany was 7.3 million, constituting just under 9 percent of the total population (Münz & Ulrich, 2003: 30-5).

Despite this rather extended history of receiving migrants, for a long time, German politicians failed to recognise that Germany is an immigration country and to acknowledge that the former Gastarbeiter were here to stay. Hence, there was a lack of official policies aimed to integrate Germany’s large foreign population. This did not remain without consequences. In 2000, the unemployment rate of foreign nationals in the West of Germany was with 16.4 percent more than double the rate of the German population which was 7.8 percent. Of all unemployed persons in Germany, 12.1 percent were foreigners. However in some regions, the percentage was almost three times this value, for instance, 36.2 percent in Stuttgart, 32.5 percent in Frankfurt am Main, and 31 percent in Cologne (Beauftragte der Bundesregierung für Ausländerfragen, 2002: 348-9).

It took until the turn of the millennium that these problems were officially acknowledged. This however caused a public outcry and a charged media debate about the problems and failings of integration policy in Germany. In 2000 a speech about Germans and immigrants in Germany, the then Federal President Johannes Rau acknowledged the need for further integration measures from the Federal Government and stressed the importance of the knowledge of the German language as a tool for integration (Rau, 2000). The speech was followed by a heated and sometimes ideologically led debate about how integration legislation should look like (Beauftragte der Bundesregierung für Ausländerfragen, 2002: 34). In particular the Turkish minority, as the largest foreign minority in Germany, was at the centre of the debate. For instance, there were dramatic public warnings about a potentially lurking social descent of the Turkish minority in light of an unemployment rate twice as high as that of the German population and extremely high school dropout rates (see, for instance, Süddeutsche Zeitung, 2001b).
Against the background of this debate about integration, German politicians were very cautious to speak out openly in favour of more immigration to Germany or of giving competence on immigration policies to the EU. For instance, Otto Schily then Federal Minister for the Interior, reacted very hesitant to the recommendation of the Independent Commission on Immigration that Germany is in need of more skilled immigrants (Die Welt, 2004b). The domestic climate was unfavourable to any concessions by German politicians to give up sovereignty in this field (interview with German Civil Servant) (Süddeutsche Zeitung, 2001c). This negative public perception of economic immigration was to some extent further intensified by the forthcoming EU enlargement in 2004 (see, for instance, BBC News, 2001; New York Times, 2004). According to this hypothesis, we would expect Germany to oppose delegating power to the EU on immigration policy due to high unpopularity of any immigration policy that would be aimed at bringing in further economic migrants. This includes shifting power to the EU in this domain, as this is equalled with the possibility that Germany’s restrictive stance might be overruled by EU legislation geared at actively managing the further intake of economic migrants. A high proportion of foreigners is shared by other European countries, such as Belgium, Austria, France, the Netherlands and Luxembourg. However, other EU countries, such as Portugal, Spain, or Ireland, have less foreigners and a rather new history of receiving economic migrants. Consequently, this divergence might constitute an important difference in a Member State’s preferences concerning how to manage economic migration.

We need a note of caution here about the relationship between the existing migrant stock and a country’s preference on economic migration policies. As the examples of US, Canada, and Australia shows, a high proportion of immigrants does not necessarily mean policy reluctance to accept economic migrants. Hence, the number of immigrant stock alone cannot explain Germany’s reluctance to make any concession on its rather tough and nationally regulated immigration policy; it needs to be contextualised. Conversely to the US, Canada, and Australia, that are traditional immigration countries, German politicians and public debate in general have long been reluctant to recognise that Germany has become an immigration country. German immigration policy is determined by what Baldwin-Edwards and Schain call the *ethnic model*. This model includes an understanding of the nation as an ethnically homogenous society with a shared descent, language and culture. *Ius sanguinis* (citizenship
by parental nationality) is the norm and naturalisation complicated. The acceptance of immigrants into the host society is accordingly difficult to accommodate with this understanding of nationhood (Baldwin-Edwards & Schain, 1994: 11-12). All through the 1980s, German politicians on the federal level have framed the issue of immigration together with discourse on traditional German nationhood (Minkenberg, 1998: 12-13). While the need for further immigration and the benefits of an EU economic migration policy have been acknowledged in Germany, this logic still seems to be influential among German policy makers and the wider public. A consolidation or even further shift towards national and restrictive immigration policies was stipulated by the rise of radical right-wing parties in Germany, such as the Republikaner (Republicans - REP) and the Deutsche Volksunion (German People’s Union – DVU) which emerged in the 1970s and developed a significant subculture in the 1980s and 1990s (Minkenberg, 1998: 3,19). Although never in power in the Federal Parliament (Bundestag), extreme right-wing parties held seats in the European Parliament as well as in subnational Parliaments on the Bundesland level. These far right-wing parties forced parties in the centre to respond and shift their stance on immigration to the right in order to keep voters from defecting to such parties (Minkenberg, 1998: 12-13). Given Germany’s particular national configuration, the existing migrant stock and the experiences related to it, had the most significant impact on shaping Germany’s preferences on having economic migration policy regulated on the EU level.

IV. Conclusion

The paper has attempted to address the question why and under what conditions common EU measures on legal economic migration come about. Part I has introduced liberal intergovernmentalism and built on its premise that Member State preferences are the key factor in determining whether EU legislation is this domain comes about. However, it has suggested two different hypotheses for determinants of these preferences. First the need to compete globally for the most qualified immigrants leads a Member States to favour EU policies on economic migration. Second, a small existing migrant stock and little past experience of dealing with immigrants induce a Member State to support EU competence on economic migration. Part II has presented the main points of the economic migration Directive, the negotiation process, and the most general explanations that have been given for its non-
adoption by the Council. Part III has tried to test empirically the two hypotheses for Germany’s preferences on the economic migration Directive. Generally speaking, the first hypothesis, i.e. the necessity to compete globally for the best migrants due to domestic labour shortages and demographic aging induces Member States to support EU regulation of economic migration, is based on economic motivations. This hypothesis predicts Germany’s preferences on economic migration to be favourable with regard to policies on the EU level because of domestic labour shortages, the inability to fill them with most highly qualified and desired migrants, and the forecasted worsening of the situation because of a declining labour force. However, this does not correspond to the empirical outcome that we can observe as Germany was against the adoption of the proposed economic migration Directive. Hence, the hypothesis does not seem to hold for Germany. The second hypothesis put forward by this paper is more accurate in explaining Germany’s preferences. Accordingly, the most significant factor for Germany’s opposition to EU policies on economic migration seems to be its large foreign population in combination with the political implications thereof and the linked domestic debate about the problems of immigrant integration. It is important to note that this hypothesis needs to be contextualised. Hence, a strong traditional understanding of nationhood and an immigration policy impetus towards the right, induced by the extreme right, are most likely preconditions for a significant relationship between existing migrant stock and experience and Germany’s policy preference.

These findings differ in important aspects from the propositions put forward by liberal intergovernmentalism. Not the power struggle of domestic groups is seen as determining Germany’s preferences but structural factors. Shifting the emphasis away from agency enables to discuss the importance of factors which the theory of preferences formation suggested by liberal intergovernmentalism misses. This allows taking into account domestic factors but also factors that go beyond the domestic sphere, such as competition for highly skilled migrants on the global level. The two hypotheses proposed in this paper are not thought to make up a coherent framework yet. Rather the attempt has been to discuss their individual importance in shaping Germany’s preferences on legal economic migration.
More research is needed to form a consistent model of hypotheses from the propositions made in this paper. Two key dimensions need to be explored further. First, the process of the formation of Germany’s preferences should be traced better. Therefore more empirical data is needed to identify the major issues and actors. This is supposed to deliver more insights into why preference formation in the case of Germany and economic migration seems to follow political and not economic rationales. In addition, it will enable to disentangle the exact causal relationship of variables, such as immigrant stock, global competition for the best migrant, and the existence of extreme right-wing parties, with interacting national ideational factors, such as a country’s understanding of nationhood. Second, a sophisticated answer of the question why and under what conditions EU measures on economic migration come about necessitates country comparative research. A cross-country comparison with a country that has a different composition of foreign population and less experience as an immigration country, such as Spain, Portugal, Italy, or Ireland, promises important insights for any study that has the existing immigrant stock as the key explanatory variable.
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