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# THE FORMATION OF GERMANY'S PREFERENCES ON THE ECONOMIC MIGRATION DIRECTIVE: INSTITUTIONS, STRUCTURAL FACTORS AND DOMESTIC ACTORS

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## Abstract

In the debate about the role of the EU in regulating economic migration, the German position ranged from full support for common EU measures in the EEC-Turkey Association Agreement of 1963 to strong opposition to such measures in the case of the Economic Migration Directive.<sup>2</sup> The paper answers the question why the federal government of Germany opposed the adoption of the Economic Migration Directive that was proposed by the European Commission in 2001. The paper finds that Germany's preferences can be linked to three causal factors: content of the Directive, deficits of integrating migrants, and slow economic growth. These factors influence the government by means of a number of intervening variables, namely public debate, the *Länder*, employer associations, and trade unions. The paper uses the framework of liberal intergovernmentalism as a theoretical starting point that is complemented by concepts from immigration policy-making in order to sharpen the focus of the analysis. The findings of the paper highlight the importance of structural factors versus theories of preference formation that focus too much on agency. A theory of preference formation needs to feature in any approach to explain European Integration.

**Keywords:** Immigration Policy, Germany, European Union, Preference Formation, European Integration

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<sup>2</sup> Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities

*“All of us who are concerned for peace and triumph of reason and justice must be keenly aware how small an influence reason and honest good will exert upon events in the political field.”*

Albert Einstein

## Introduction

Albert Einstein’s quote touches on a central question of political science: what motivates the actions of political decision-makers? Einstein, somewhat pessimistically, argues important things such as reason and honest good, what one might want politicians or perhaps even expects them to act upon, do not matter all that much. What is it then what causes their actions? Einstein does not provide the answer. Although this paper is not able to give a general answer to the question, it explores what factors motivated the position of the federal government of Germany on a particular issue. It aims to answer the question why the federal government of Germany opposed the adoption of the Economic Migration Directive<sup>3</sup> that was proposed by the European Commission (henceforth, the Commission) in 2001. In so doing, it digs deeper than the usual explanations given for Germany’s opposition to the Directive and its non-adoption in general, i.e. the lacking benefit of the Directive. The paper puts forward a multi-causal explanation consisting of the content of the Directive, shortfalls of integrating migrants and a tense economic climate.

The paper contributes to the wider analysis of why and under what conditions Germany favours common EU measures on legal economic migration, since the enactment of the Treaty of Rome 1 January 1958. Germany’s preferences on economic migration present a puzzle: sometimes, Germany supports common measures on economic migration, for instance the clauses on freedom of movement, right of establishment and the provision of services in the EEC-Turkey Association Agreement of 1963, while under other conditions, Germany opposes EU involvement in regulating legal economic migration, for instance the Economic Migration Directive.

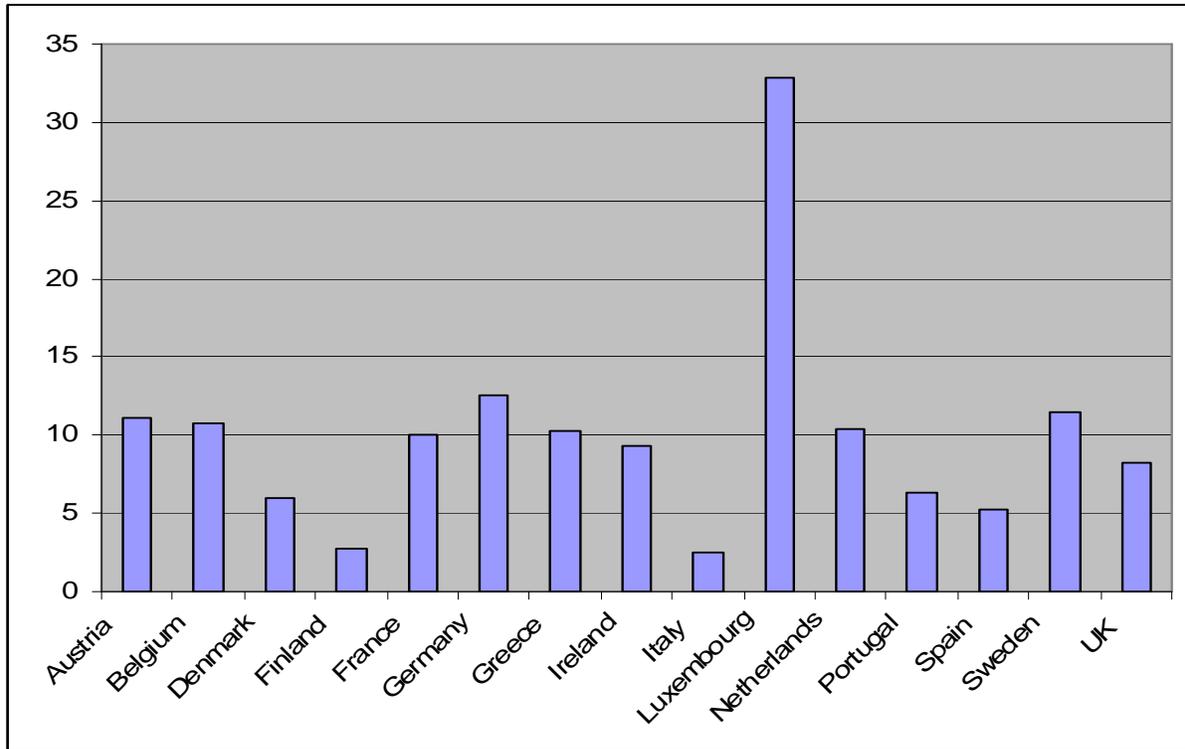
The complexity of immigration policy-making merits in-depth case-study analysis in order to identify the causal mechanisms that lead to the formation of a country’s preferences on EU measures on economic migration. Germany is a good choice for this case study for two reasons. First, in some respects Germany is a typical immigration country showing characteristics, such as a high immigration stock and a history of immigration of more than fifty years, that it shares with a several other EU member states (Austria, Belgium and France, and to a lesser extent, Denmark and Sweden; see also *Figure 1*) (Geddes 2003: 12-13). This allows some of the findings for the case of Germany to be applicable also to other Member States. Second, despite these shared characteristics, Germany displays a unique historical trajectory through re-unification and the long-

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<sup>3</sup> Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities

held self-understanding of not being an immigration country, as well as close geographic proximity to much poorer Central and Eastern European states, that make Germany an important place to explore (Geddes 2003: 79-101; Green 2004-6).

Figure 1: Stocks of foreign-born population in percentage of total population in the EU15, 2001<sup>4</sup>



Source: OECD (2006: 262)

The paper employs the framework of liberal intergovernmentalism as a theoretical starting point that is supplemented by concepts from immigration policy-making in order to sharpen the focus of the liberal intergovernmentalism framework. Following a more nuanced approach compensates for the fact that initially liberal intergovernmentalism was devised for preference formation on the big treaty negotiations rather than for preference formation with regard to support or opposition of association agreements and EU directives. In addition, the paper serves as a test to assess the applicability of liberal intergovernmentalism on policy developments that have so far not been explored with the framework.

This paper argues that at the time the Directive was proposed, immigration was a highly salient and controversial issue in domestic German politics. Consequently, a variety of influential domestic actors, namely the *Länder* empowered by a majority of the federal opposition that rejected the Directive, in the upper German chamber, the *Bundesrat*, and the general public, actively opposed

<sup>4</sup> The figure for France is from 1999.

the Directive and lobbied the government to do the same. Trade unions played a less obvious role while business associations supported the Directive. Given the institutional structure of Germany, the federal government of Germany decided to reject the adoption of the Directive in the Council of the European Union (henceforth, the Council). The preferences of the domestic actors are linked to three causal factors: content of the Directive, deficits of integration, and slow economic growth. The paper is structured as follows. First, the theory of preference formation is presented and supplemented by theory on migration policy-making. Then the background and content of the Directive are presented. Following this section, I present the main argument which is followed by a concluding section.

## I. Theory of preference formation and immigration policy-making

*"[...] the theoretical foundations of LI [liberal intergovernmentalism] need to be elaborated more fully. In areas such internal security, immigration, foreign policy, and parliamentary powers, more deductively coherent and empirically tested theories of national preferences surely require the incorporation of, for instance, insights of learning under uncertainty."*

Moravcsik and Nicolaidis (1999b: 83)

Liberal intergovernmentalism sees European Integration as a two level game. 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; Moravcsik 1997; Moravcsik 1998; Moravcsik 1999a; Moravcsik and 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 framework largely relies on the "logic of consequentiality". According to this logic, human actors are seen as to "choose among alternatives by evaluating their likely consequences for

personal or collective objectives, conscious that other actors are doing likewise” (March and Olsen 1998). This logic is generally opposed to the “logic of appropriateness” which puts forward that actors behave according to rules, ideas, norms, and identities shaped by the actors’ institutional context and associated to particular situations (March and Olsen 1998; Thielemann 2003: 254). For its argument and explanations, the paper relies on the “logic of consequentiality”.

For a more nuanced understanding of preference formation on economic migration policy, the “control dilemma” concept is a useful analytical tool in order to build hypotheses why the German position was opposed to the Economic Migration Directive and to disaggregate the domestic actors involved (Guiraudon 2001: 33). The concept suggests that immigration policies are an outcome of struggles between actors in different fields, i.e. economy, politics, and law (Guiraudon 2003: 192-196; Guiraudon and Lahav 2006: 208-209). The struggles are mediated by the institutional structure of each policy field. This theory expands what is generally known as the “gap hypothesis” to include also policy input factors. The “gap hypothesis” states that there is a gap between the goals of national immigration policy (as set by government executives, laws, regulations, etc.), i.e. policy outputs, and the results of the policies, i.e. policy outcomes (Cornelius, Martin et al. 1994; Hollifield 2000: 143-144). These oppositions between different kinds of domestic actors are conceptualised by Guiraudon and Joppke (2001: 9) as “control dilemmas” between economics and politics on the one hand, and law and politics, on the other. Regarding the former, politicians need to cater both the public and private business interests. In the words of Scharpf: “[D]emocratic self-determination exists in a precarious symbiosis with capitalist economy and its inherent dynamics’ that transcend the given boundaries of any political system.” (Scharpf 1999: 2). This complex relationship often leads to policy outcomes that are not in the best economic interest of the respective country.

Concerning the “control dilemma” between law and politics, policy-makers in liberal democracies are bound to adhere to liberal norms and rights that generally are constitutionally ingrained and enforced by independent courts. These laws protect immigrants from arbitrary policies (Guiraudon and Joppke 2001: 8). It is argued in this paper that for the issue of regulating legal economic migration on the EU level, the relationship between economics and politics is where the explanation for the observed outcomes lies. The focus in the literature of legal aspects is less relevant to economic migration in the current case-study. For this reason, the paper focuses on the relationship between economic and politics. It is further suggested that populism is an important feature of immigration policy-making. In addition, strong economic growth allows the state to fulfil its redistributive function to the benefit of deprived groups. During that period, immigration is not expected to be a salient issue. Conversely, in times of slow economic growth and strained state budgets, immigrants are often seen as taking away jobs and social benefits from nationals of the host country, rendering immigration policy-making a salient issue in domestic politics.

## II. Economic Migration Directive

The Directive was proposed by the Commission in 2001 and was based on a feasibility study the Commission had authorised.<sup>5</sup> However, it was not adopted by the Council as disagreement among Member States was too pronounced. Representatives of the German federal government were against the adoption of the Directive. In fact, Germany was one of the most outspoken opponents of the Directive (Agence Europe 2005b).<sup>6</sup> The Directive was the last one of a package of general framework directives on legal migration under the mandate given to the Commission by the Tampere European Council Conclusions (also known as the Tampere Programme).<sup>7</sup> The package included Directives on third-country nationals and family reunification, the protection of asylum seekers, and the conditions of expulsion of illegal migrants. From the package on legal migration, the Economic Migration Directive was the last one that was proposed. Negotiations on the other two Directives on legal migration, i.e. the ones on family reunification and third-country nationals were rather difficult, and especially, with regard to the former, it was long not clear if the Commission would be able to push through the Directive. That the negotiations took so long was mainly because Germany was for a long time blocking the adoption of the family reunification Directive.<sup>8</sup>

### *Main points and objectives of the Directive*

The Directive followed a horizontal approach, covering conditions for entry and residence for any third country national. Consequently, it is important to note that 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 (for instance what is a “third-country national” or “activity as an employed person”), criteria and procedures regarding the conditions of entry and residence of economic migrants. Second, it set out common standards for the admission procedure of economic migrants from non-EU countries. Third, it aimed to create transparency about administrative procedures and rules for admitting economic migrants in EU Member States. Fourth, it sought 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 that Member States had in place. Fifth, it conceded rights to those migrants who fulfilled the criteria laid down by

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<sup>5</sup> The feasibility study has been carried out by ECOTEC Research and Consulting Limited on behalf of the DG Justice and Home Affairs of the Commission: ECOTEC (2000). Admission of Third Country Nationals for Paid Employment or Self-Employed Activity. Brussels, ECOTEC Research and Consulting.

<sup>6</sup> Phone interview with EU official, 24/04/2008; phone interview with diplomat who prefers to remain anonymous, 30/04/2008.

<sup>7</sup> The Tampere European Council was a special Council meeting that gave the Commission the mandate to implement legislation in order to establish an area of freedom, justice and liberty, including a common EU asylum and migration policy.

<sup>8</sup> Phone interview with EU official, 24/04/2008.

the Directive. This meant, if a migrant satisfied the criteria set out by the Directive he or she may have been admitted and enjoyed equal treatment with Union citizens for instance with regard to social security, health care, working conditions.<sup>9</sup>

It has to be noted that although a big piece of legislation, the Directive would have left the ultimate power to accept economic migrants with Member States. Chapter IV of the Directive granted the right to Member State to impose certain restrictions based on public policy, national security, or public health (European Commission 2001a). This is shown by then European Commissioner for Justice and Home Affairs, António Vitorino, who 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."*

(European Parliament 2003d).

### *Developments after the Directive was proposed*

Immediately after the Economic Migration Directive was proposed, it was clear that there was a lot of resistance on the part of Member States. Germany and Austria were most outspoken to attack the Directive. Other Member States that also were not keen on the Directive could remain more reserved and hide behind Germany and Austria and did not voice fierce disagreement themselves. There was no Member State that was willing to stand up in an effort to "save" the Directive. The Italian presidency decided to stop the negotiations on the proposal after the first reading as agreement seemed to be unattainable. Soon after the Directive was shelved, the Commission started working on its "Green Paper on an EU Approach to Managing Economic Migration".<sup>10</sup> The Commission released the Green Paper in January 2005, which marked the starting point of an intensive public consultation about the usefulness and the nature of economic migration policies on the EU level. The Commission incorporated the input of the debate in its "Policy Plan of Legal Migration" which was adopted in December 2005 and included the proposals of four new Directives economic migration (Ryan 2007: 489-490).<sup>11</sup> This approach reflects the change in strategy of the Commission. Instead of proposing one big piece of legislation on economic migration, it split the policies it intended to have on the EU level into smaller, mostly sectoral Directives with more specific content, such as highly skilled workers, seasonal workers, intra-corporate transferees, and

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<sup>9</sup> For a detailed discussion of the content of the proposed Directive see Peers, S. and N. Rogers, Eds. (2006). EU Immigration and Asylum Law. Leiden, Martinus Nijhoff. Chapter 21.

<sup>10</sup> COM(2004) 811 final.

<sup>11</sup> COM(2005) 669 final.

remunerated trainees. The only horizontal measure concerns migrant rights and a single application for a joint work and residency permit.

### **III. Alternative explanations: lacking benefit of the Directive**

#### *Principle of subsidiarity*

One argument brought forward to explain resistance of a Member State to support the Economic Migration Directive invokes the principle of subsidiarity. The principle states that Member States should regulate a particular policy area themselves, unless it can be better dealt with on the EU level. Political economic theories argue that if common EU policies in the form of mutual alignment of policies can eliminate negative policy externalities or create positive ones more efficiently than national policies, governments have an incentive to harmonise their policies (Keohane 1984: 6, 83; Moravcsik 1998: 35). Conversely, where preferred policies are incompatible or permit a unilateral policy to be adapted without any cost involved, a zero-sum situation exists with little incentive for cooperation. Moravcsik defines externalities as “unintended consequences of national economic activities on foreign countries.” (Moravcsik 1998: 35). According to this logic Germany’s opposition to the common EU measures on economic migration can be explained by claiming that the case for an EU policy in this domain is less strong than for other policy areas (see, for instance, Ryan 2007: 501). While this argument might be part of the explanation, this paper argues that there are other variables that need to be taken into consideration in order to depict the complete picture of why Member States (and Germany) have rejected the Economic Migration Directive. In fact, a controlled intake of third-country national workers, at what the Directive aimed, would have been beneficial for Germany, which at that time was suffering labour shortages and had very restrictive immigration policies in place.

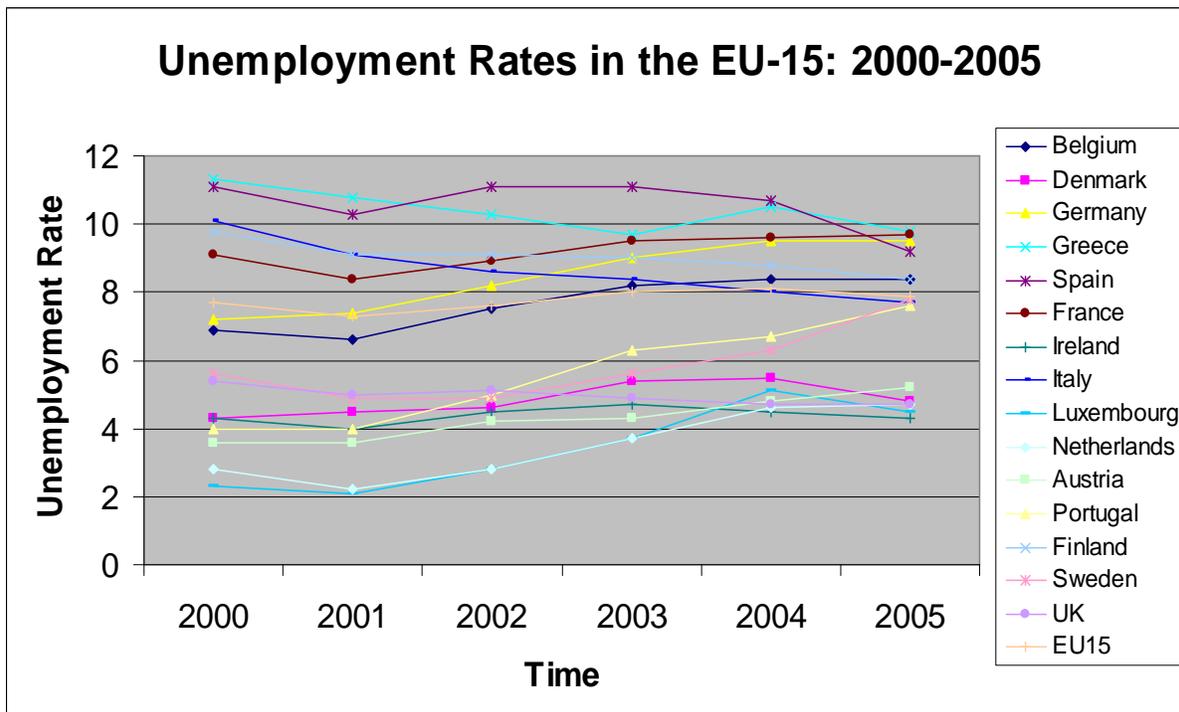
*No Labour shortages in Germany and the EU*

Figure 2: GDP growth rate in Germany



Source: Eurostat New Cronos

Figure 3: unemployment rates in the EU-15: 2000-2005



Source: (Eurostat New Cronos 2006d)

Labour shortages are defined here as an economic condition in which there are not enough qualified workers to fill the labour market's demands for employment at any price. Labour shortages arise through the interplay between labour demand and labour supply. 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 (Bundesanstalt für Arbeit 2002a: 30). Partial labour shortages are also referred to as mismatches of the labour market. Labour market mismatches can also occur because of lack of information between supply and demand (Boswell, Stiller et al. 2004: 5). In addition, it is important to distinguish on a temporal dimension between labour shortages. For instance, there can be short-term labour shortages due to changes in the business cycle, or long-term labour shortages that have structural causes. It is important to keep in mind that labour shortages that are due to a mismatch of the labour market can coexist with significant levels of unemployment (Boswell, Stiller et al. 2004: 5).

#### *Labour shortages on the German labour market*

In 2001, when preferences on the Economic Migration Directive were formulated, there were labour shortages on the German labour market. These were concerning highly skilled workers in the areas of ICT and specialised technical professions, such as mechanical engineers, but as well with regard to less qualified workers, such as domestic workers and caretakers for elderly and sick people. Nonetheless, the structural change thesis suggests the higher relative importance of labour shortages of highly skilled migrants. Furthermore, it implies that these labour shortages are here to stay. Demographic aging and a general reduction of the active working population will aggravate these labour shortages in the years to come (see, for instance, Unabhängige Kommission „Zuwanderung“ 2001: 32-34). Accordingly, most notably through the simplified application procedure and joint residency and work permit, the Economic Migration Directive, by and large, would have been a policy instrument that would have offered significant benefits to the status quo in Germany. Hence, the conclusion about the lacking benefit of the Directive seem to be premature.

#### *Labour shortages in other Member States*

All Member States are affected by the transition of their respective economy to a knowledge-based economy, however this reflects differently in needs of their respective labour markets. Most growth of the EU economy is technology-driven, increasing the demand for workers with sophisticated technological skills (see, for instance, European Commission 2005a: 7). As *Table 1* shows, there is a general increase of vacancies across the Union (European Commission 2000c: 12; European Commission 2001h: 45-52). This puts the labour markets across the Union under pressure to

supply workers with sophisticated technological skills. While these macro-level developments affect all Member States, its exact implications with regard to labour or skill shortages of individual countries are difficult to determine. An account of the convergence of Germany's and the UK's policy responses to immigration and integration is provided by Green (2007). It is also suggested in that work, that most other EU immigration countries, notably France, the Netherlands, Austria and Sweden face similar pressures (Green 2007: 110). While Member States certainly face similar labour market needs, there is still a significant degree of difference between the needs of their labour markets. Moreover, it has to be noted that comparative data on labour vacancies is difficult to obtain. This is because of the complexity to determine labour vacancies in general (as discussed above) and the lack of detailed comparative data on the European level. As a result of the lack of straightforward data, the question of whether there are or there are not similar labour shortages throughout the Union becomes subject to a substantial degree of interpretation. The paper argues that there are some general trends that affect the entire Union. This supports the case for the Economic Migration Directive.

Table 1: Growth in the number of vacancies by countries and comparable sectors

|     | Agri | Industry | Construction | Services | Total |
|-----|------|----------|--------------|----------|-------|
| A   | ●    | ↑        | na           | ↑        | ↑     |
| D   | na   | ●        | ●            | ↑        | ↑     |
| DK  | ●    | ↓        | ↓            | ↓        | ↓     |
| E   | ↑    | ↑        | ↑            | ↑        | ↑     |
| FIN | ●    | ↑        | ●            | ↑        | ↑     |
| F   | ●    | ●        | ●            | ●        | ●     |
| IRL | ↑    | ↑        | ↑            | ↑        | ↑     |
| I   | na   | na       | na           | na       | na    |
| NL  | ●    | ↑        | ↑            | ↑        | ↑     |
| S   | ↑    | ↑        | ↑            | ↑        | ↑     |
| UK  | na   | na       | na           | na       | ↑     |

National sources, sectors compiled by DG employment and social affaires  
 ● Vacancies remains stable      ↓ Decrease in vacancies  
 ↑ Increase in vacancies      na Not applicable or no data

Source: (European Commission 2001h: 46)

#### IV. Causal factors

##### *Content of the Directive*

There were three main technical issues that German officials criticised at the negotiations of the Directive, first, criticism of joining residency and work permit, second, complains about the

Directive being too bureaucratic and inflexible, and third questioning of the legal basis.<sup>12</sup> The following section briefly discusses these three technical issues.<sup>13</sup> First, the Directive proposed 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 Germany (and other Member States) problems and difficulties. This concern was mainly raised by federal Member States (Interview with EU official)<sup>14</sup> (Council of the European Union 2002). Second, Germany (and the majority of Member States) 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 German and British diplomat).<sup>15</sup> Having one procedure that would apply to all different kinds of migrants who for instance require different qualifications was not seen as efficient (interview with Commission official, EU official, and diplomat).<sup>16</sup> Third, and finally, the legal basis of the Directive, Article 63(3) of the EC Treaty was questioned by Germany (and Austria). 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 long-term visas and residence permits.”*

However, Germany (and Austria) had problems with the competence of the Community to adopt rules concerning the access to Member States' labour markets. Germany considered 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 Commission official, EU official, and diplomat).<sup>17</sup> This view is contested by the European Commission and a number immigration law scholars (see, for instance, Peers and Rogers 2006: 677-678). 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.<sup>18</sup> In case it is ratified by all Member States, the Lisbon Treaty will give economic migration a

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<sup>12</sup> Phone interview with EU official, 24/04/2008; phone interview with diplomat who prefers to remain anonymous, 30/04/2008.

<sup>13</sup> 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. Nonetheless, based on information gathered in interviews and communications with civil servants, it can be expected that Germany supported all three technical concerns mentioned.

<sup>14</sup> Phone interview with EU official, 24/04/2008.

<sup>15</sup> Interview with German civil servant, permanent representation of Germany to the EU, Brussels, 05/07/2007; interview with British civil servant, Brussels, 04/07/2007.

<sup>16</sup> Interview with Commission official, Directorate-General for Justice, Freedom and Security, Brussels 02/07/2007; phone interview with EU official, 24/04/2008; phone interview with diplomat who prefers to remain anonymous, 30/04/2008.

<sup>17</sup> Interview with Commission official, Directorate-General for Justice, Freedom and Security, Brussels 02/07/2007.

<sup>18</sup> 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. See: Papagianni, G. (2004). Institutional Policy Dynamics of EU Migration Law. Department of Law. Florence, European University Institute. **Ph.D.**

new and clearer legal basis. In addition, it is a common practice in Germany to frame general reservations concerning EU measures in juridical arguments.<sup>19</sup>

While these three main issues certainly played a role in Germany's rejection of the Directive they are not the sole set of causal factors at work here (Ryan 2007: 501) (interviews with Commission official, EU official, diplomat, German civil servant, and trade union representative).<sup>20</sup> This view is supported by Germany's position on the shifting of voting in the Council from unanimity to qualified majority voting, which was debated in 2004 (Agence Europe 2004a; Agence Europe 2004b; Agence Europe 2004c; Agence Europe 2004d). Germany rejected increased Community competence on legal economic migration. This suggests that it were not technical issues alone that led to the Germany being opposed to the Economic Migration Directive.

### *Structural shortfalls of integration*

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 and Ulrich 2003: 30-5). The success (and also the efforts) of integrating these immigrants into Germany's society and labour market has been rather modest. 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. *Figure 3* indicates how much higher the unemployment rate of foreigners is compared to the one of the native population. Turkish nationals and nationals from the former Yugoslavia are the immigrant communities most affected by low education and disadvantaged labour market outcomes (Green 2007). The lack of integration of foreign communities in Germany is a result of the long-lasting reluctance of policy-makers to acknowledge that Germany is a country of immigration, the former guest workers (*Gastarbeiter*) are here to stay, and there is a need to implement official policies with the aim to integrate immigrants systematically (Geddes 2003: 79, 89).<sup>21</sup> It was only in 1999, when the newly elected Red-Green government (coalition government between the Social Democratic Party (SPD) and the Green Party (*die Grünen*)) led by Chancellor Gerhard Schröder passed a new citizenship law (*Staatsangehörigkeitsgesetz*) which entered into force 1 January 2000). This marked the start of the government's efforts to bring under way a new Immigration Act (*Zuwanderungsgesetz*), which after long and controversial negotiations came into force on 1 January 2005. The proposed legislation aimed at creating a coherent entity of immigration legislation out of the scattered legal framework consisting of a number of *ad hoc*

<sup>19</sup> Interview with German civil servant, Berlin, 21/08/2008.

<sup>20</sup> Interview with Commission official, Directorate-General for Justice, Freedom and Security, Brussels, 02/07/2007; phone interview with EU official, 24/04/2008; phone interview with diplomat who prefers to remain anonymous, 30/04/2008; interview with civil servant, permanent representation of Germany to the EU, 05/07/2007; interview with trade union representative, Brussels, 05/07/2007.

<sup>21</sup> However, it has to be noted that already in the early 1970s there were voices arguing that there is a need of integration policies and that labour migration to Germany might indeed be a persistent phenomenon. See: Bundesarbeitsblatt No. 4, 1970, Bundesarbeitsblatt Nos. 7-8, 1971, and Böhning, W. R. (1972). *The Migration of Workers in the United Kingdom and the European Community*. Oxford, Oxford University Press.

measures, which hitherto regulated immigration. One of the initial aims of the *Zuwanderungsgesetz* was also to respond to Germany's labour market needs.

Figure 3: unemployment rate in Germany: German nationals and foreign nationals



Source: Bundesagentur für Arbeit

### *Tense economic climate*

By 2001, unemployment in Germany has been high, both in absolute figures and compared with the EU average. Eurostat indicates German unemployment rate in 2001 as 7.4 percent, compared with an EU15 average of 7.3 percent. Until 2005, Germany's unemployment rate increased to 9.5 percent, while the unemployment rate of the EU15 only climbed to 7.9 percent (see *Figure 2*). After a positive economic climate in 2000, the first half of 2001 saw a couple of economic uncertainties that were followed by a general economic slowdown in Europe. Between 2000 and 2001, GDP growth and labour productivity fell from 3.3 percent to 1.6 percent and from 1.6 percent to 0.3 percent respectively. The economic slowdown was not expected to end before 2003 (European Commission 2002b: 10). Reasons for the slowdown were a decrease in domestic purchasing power due to increased oil and food prices, in addition to a recession in the world economy. This downturn in the business cycle in combination with continuing structural problems made the job prospects offered by the German labour market look rather gloomy (Bundesanstalt für Arbeit 2002a: 13). As *Figure 1* shows, the economic downturn continued during the years 2002 and 2003,

putting further strain on the German labour market and increasing the unemployment rate (Bundesanstalt für Arbeit 2004).

## V. Intervening variables

In Germany, there are a number of institutional filters in the political process as power is widely dispersed, limiting the influence of the federal government (Green 2004: 11). This stands in contrast to powerful societal groups (Katzenstein 1987: 15; Green 2004: 16). Interests are organised in various forms of associations, clubs, and chambers. The most relevant for political issues are employer associations and unions. (Rudzio 2003: 72-77). Germany is a federal republic attributing significant rights of co-determination to its federal states, the *Länder*. The *Länder* are represented by the *Bundesrat*, the house in Germany. Under certain circumstances also the positions of the opposition are important in the preference formation on the federal level, for instance in case its views are gaining popularity before important federal or general elections or if it holds a majority in the *Bundesrat*. The organisation of foreigners in Germany remains fragmented and there is no migrant organisation that is a notable actor in domestic politics (Green 2004: 17-18). The preferences of domestic actors are treated as intervening variable in the causal chain between the independent variables outlined above and the dependent variables (Germany's preferences on legal economic migration).

### *Employer associations*

Four of the biggest German employer associations (*Bundesvereinigung der Deutschen Arbeitgeberverbände (BDA)*, *Bundesverband der Deutschen Industrie (BDI)*, *Deutscher Industrie- und Handelskammertag (DIHK)*, *Zentralverband des Deutschen Handwerks (ZDH)*) issued a joint statement concerning the Economic Migration Directive. The employer associations were broadly welcoming such an initiative on the EU level. There were some reservations, which, however, were principally concerned with technical issues, rather than disagreement with the general objectives of the Directive (see, Bundesvereinigung der Deutschen Arbeitgeberverbände, Bundesverband der Deutschen Industrie et al. 2001). The business associations welcomed the controlled approach of the Directive that attempted to give access to foreign nationals according to labour requirements in the Union. The increased ability to recruit effectively third country workers promised to provide an enhanced opportunity to fill labour shortages. This was in the interest of the German business community.

### *Trade unions*

In a position paper on Immigration policy, the Confederation of German Trade Unions (*Deutscher Gewerkschaftsbund* or DGB), the peak organisation of German trade unions, saw the importance of a managed immigration policy aimed at addressing labour shortages in Germany. Although the wording remained vague, the DGB also acknowledged that immigration can only be effectively managed together with the EU and that there is the need to fill labour market shortages. However, amid high domestic unemployment the policy instruments proposed by the DGB were to fill the labour shortages with the domestic labour force, for instance through training programmes (Deutscher Gewerkschaftsbund 2001; Deutscher Gewerkschaftsbund 2001c; Süddeutsche Zeitung 2001e; Deutscher Gewerkschaftsbund 2002). Only in case this was not possible, the DGB supported filling the vacancies with foreign workers. It is hard to establish the exact position of the DGB. The paper argues that it was difficult for the DGB to take open position in favour of the Directive due to lack of its members support, who to a large extent are workers with lower qualifications who worry about losing their job to foreign nationals who are better qualified or prepared to do the job for a lower wage. This is a reoccurring phenomenon: on the one hand, unions may desire to oppose immigration as it is for the benefit of local workers, on the other hand, they are hesitant to do so as organising the newcomers is in their interest (Castles 2004: 866).

### *Public opinion/debate*

The concept of public opinion is defined here as the opinion of the majority of the population or the points of views that can be articulated publicly without risking isolation. The media are the central carriers of public opinion (Rudzio 2003: 489-490). Hence, media debate is analysed to allow inferences on the substance of public opinion.<sup>22</sup>

It was in 2000, when the debate about immigration and integration gained significant momentum in Germany. This was in the wake of the election of the Red-Green government in Germany that came into power with a mandate of reform. It launched its immigration policy reform agenda with the new citizenship law and the Green Card initiative that sought to provide 20,000 work permits for highly qualified ICT professionals from outside the EU. Moreover, the federal government created an independent Commission for Immigration Reform (*Unabhängige Kommission Zuwanderung*)<sup>23</sup> (Kruse, Orren et al. 2003: 130). In May 2000, in a speech about Germans and immigrants in Germany, the then Federal President Johannes Rau also contributed to the debate. 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; Beauftragte der Bundesregierung für Ausländerfragen 2002: 38). In August 2001, the federal

<sup>22</sup> There are no public opinion polls that examine the preferences of Germans on the specific issue of regulating legal economic migration on the EU level during that time period.

<sup>23</sup> The commission is also referred to as "*Süssmuth-Kommission*", after its chair Rita Süssmuth, a former federal minister of youth, family and health, and president of the *Bundestag*.

government tried to push further ahead with the proposal of a new Immigration Act (*Zuwanderungsgesetz*). It took until January 2005 for the new law to come into force after more than three years of heated debate, significant watering down of the initial proposal, and even a ruling of the Federal Constitutional Court (*Bundesverfassungsgericht*). The eventually adopted text is rather restrictive and not the “controlled opening” of the German labour market for immigrants as it was announced with the initial proposal of the law. The debate about the Immigration Act was one of the defining features of German domestic debate between 2001 and 2005 and overshadowed any discussion of the Economic Migration Directive.

Generally, the debate about immigration was further politicised by the election campaign for the German federal election in September 2002. Edmund Stoiber, the CDU/CSU contender of incumbent chancellor Gerhard Schröder, showed toughness on immigration and attempted to stimulate fears of immigrant extremists (see, for instance, *Süddeutsche Zeitung* 2001b; *Focus Magazin* 2002; Geddes 2003: 89; Green 2004: 4). The debate was also filled with negative articulations with regard to negative consequences of the 2004 EU enlargement on the German labour market and integration of foreigners in general. It might even be appropriate to speak of a German paranoia of a flood of immigrants from the poorer Central and Eastern European countries after EU enlargement. This was voiced frequently in the domestic debate (see, for instance, *BBC News* 2001; *Süddeutsche Zeitung* 2001c; Geddes 2003: 99; *New York Times* 2004). In January 2002, 75 percent of the German population favoured a restriction of immigration (*Associated Press Worldstream* 2001c).

The paper argues that this heated debate with a strong aversion concerning any further intake of immigrants is causally linked to the labour shortages, the structural deficit of integrating Germany’s large foreign communities into the society, and the tense economic climate in Germany. The causal mechanism that caused this public debate are difficult to single out, as the causal chain, seems to resemble more a complex web rather than a straightforward chain. In the need to react to domestic labour shortages, the problems of integration and high unemployment, executives of the federal government and policy-makers saw the need to reform the *status quo* of German law and attitude towards admitting and integrating migrants. Again, the “logic of consequentiality” can account for actions that were brought under way, such as the Green Card initiative, the new Immigration Act, and the *Zuwanderungskommission*. The theory of migration policy-making shows how these measures were received and the public debate became more politicised by populist politics, leading to public resentment against further immigration. This included resentment to any policy measure that was aimed at controlled intake immigration, as the Economic Migration Directive did.

## *Länder*

On 7 April 1999, the then governing Red-Green coalition lost its majority in the *Bundesrat*. On 16 May 2002, the Black-Yellow opposition, consisting of the CDU/CSU and the Liberal Democrats (FDP), attained the majority in Germany's upper house. This gave the opposition significant influence on governmental policy by means of the German federal states (*Länder*). The *Länder* were against the Directive. On 1 March 2002, the *Bundesrat*, the constitutional voice of the *Länder*, adopted a position on the Economic Migration Directive in which it asked the federal government of Germany to oppose the Directive. The position was elaborated by the relevant advisory committees, which rejected the Directive for a number of points.<sup>24</sup> The four main ones are the following. First, the *Länder* did not see an overall Community competence in admitting economic migrants and 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 and argued that an EU wide harmonisation of admitting economic migrants was not justified. Third, it was expressed that immigration to the Union needs to be controlled and restricted and integration problems of Member States with a high proportion of foreigners, in particular Germany, need to be taken into account. Fourth, it was argued that it needs to be guaranteed that immigration does not undermine the national welfare state, and the Directive was not seen as to guarantee that (Bundesrat 2002a; Bundesrat 2002b; Bundesrat 2002c).

This reflected the view of the opposition parties. The Christian Democratic Union (CDU) and the Christian Social Union (CSU), the major forces in the opposition at that time, rejected the idea of Community competence on economic migration (Deutscher Bundestag 2002; Deutscher Bundestag 2003). EU measures that would lead to "uncontrolled immigration" and "increased internal migration" need to be avoided it was argued as this would lead to increased problems of integration and "endanger social peace" and the loss of control over core areas of national competences (CDU-CSU-Arbeitsgruppe "Europäischer Verfassungsvertrag" 2001: 22). These were rather strong words that were used to express the opinion on EU regulation of legal migration (in addition to economic migration the statement also referred to family reunion). The strong wording and the absence of any reference to the benefits of migration suggests that CDU/CSU was acting under political considerations and tried to fuel anti-immigration sentiment in the wider public.

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<sup>24</sup> These were the committees Employment and Social Policy, Interior Affairs, Economic Affairs under the lead of the committee for European Affairs.

## VI. The preferences of the federal government of Germany

The federal German government was not prepared to support the adoption of the Economic Migration Directive. The government embarked on an ambitious programme on making the German immigration law more liberal shortly after it took office in 1998. This stands in contrast to two things. First the kind of immigration legislation that was eventually adopted, which was much more restrictive than the initial proposal. Second, the stance the government was holding towards the Economic Migration Directive, which above all stood for a controlled intake of non-EU workers. The paper argues that this shows the influence of the causal factors and the intervening variables outlined above.

Apart from the business community, the main domestic actors were not supportive of the Directive or having economic migration regulated on the EU level. The *Länder* voiced their disagreement with such an EU-level policy measure in the *Bundesrat* and public opinion and the media debate were not positive about such measures either. The trade union seem to have held an ambivalent position. No clear statements on EU measures on economic migration can be found. The trade unions' general position on economic migration is to fill vacancies with domestic workers. Nevertheless, they acknowledge the need for immigration to fill highly specialised vacancies. They are not expected to have been a key player in the debate about the Economic Migration Directive.

Public debate on the immigration was intensively led by the time the Directive was proposed and immigration was a very salient political issue. This made politics around any issue on immigration to be determined by populist characteristics. Under these conditions, decision-makers on legal economic migration that were essentially politicians had only a very narrow margin of which position to take. Looking at their behaviour with the lens offered by the model of cost and benefits calculations offers valuable insights into the causal mechanisms. On the one hand, the electoral costs of supporting unpopular EU measures on a highly controversial topic were too high, and on the other the benefits of opposing such measures were too tempting, which made the federal German position opposed to the adoption of the Economic Migration Directive. These findings fit nicely in the concept of a "control dilemma" between economics and politics. Given the political environment in Germany at between 2001 and 2003, the formation of preferences on legal economic migration followed the rules of the political game, although economically, supporting the Directive would have been reasonable for German decision-makers on economic migration policy.

## Conclusion

This paper aimed to explain the formation of Germany's preferences on the Economic Migration Directive, which Germany entirely opposed although it seemed beneficial to support the Directive from an economic point of view, i.e. it could have been a step in the direction of more

encompassing policy tools aimed at filling domestic labour shortages. The paper has used the theory of preference formation proposed by liberal intergovernmentalism to provide a broad lens of analysis. The theory of preference formation has been supplemented with concepts developed for immigration policy-making, most notably the “control dilemma” between economics and politics. This and the “logic of consequentiality” are the theoretical tools on which the hypothesis of this paper is built. The hypotheses states that given Germany’s institutional structure, the highly politicised public debate made it not in the interest of the federal government to support the Directive while also the fact that the *Länder* influence through the *Bundesrat* was dominated by the opposition, which opposed EU regulation of economic migration, made it difficult for the government to support the Directive. This was despite the fact that business and economic interests supported EU attempts to regulate economic migration on the EU level. The paper established the causal mechanism between three explanatory variables, content of the Directive, structural deficits of integration, and tense economic climate. In order to do this, the policy preferences of domestic actors have been introduced as intervening variables. These include the preferences of employer associations, trade unions, the *Länder* and public opinion. Economic interests, for instance represented by employer associations, did not have much influence in the formation of Germany’s preferences on the Economic Migration Directive.

The findings show the importance of structural factors to explain preference formation on EU measures on legal economic migration. Certainly also the agency of actors is needed as a concept to explain the emergence of the position of a government on any given issue. But with a regard to a theoretical lens that is generaliseable and hence reasonably parsimonious but also satisfactory in the depth of rigorousness of its explanation, structural factors should be the causal harbour of any theory embarking on explanation the formation of the preference of an EU Member State or any government in general. One step up on the ladder of abstraction, a theory of preference formation needs to be an integral part of any theory of European Integration.

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