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HOW TO OVERCOME DEADLOCK IN EU IMMIGRATION POLITICS

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ABSTRACT

Immigration policy is a very unlikely case for EU integration. EU policy making is constraint by member states' sovereignty claims and interest heterogeneity. Still, tentative integration towards EU conditions of entry and residence for some immigrant categories can be observed. By using the example of the skilled labour migration directive the article explains how deadlock in policy making was overcome. It explores the factors that led to agreement in the EU immigration policy area. The policy process is traced from the Commission's first proposal on labour migration in 2001 to its final adoption in 2009. Explanations for integration in the policy area are member states' venue shopping the EU level for changing domestic legislation, their interest in locking-in national standards in EU law and the EU institutions' agenda framing. In addition, strategic partitioning of policy was used by actors in order to overcome deadlock in policy making. The reframing of policies by reducing their scope to few and narrowly defined immigrant categories influenced their adoption. This mechanism was observed studying the eight years of policy making leading to the labour migration directive. The longitudinal analysis helps to identify the key dynamics that define this nascent policy area.

INTRODUCTION: THE UNLKELY CASE FOR EU IMMIGRATION POLICIES

The policy area of immigration is an unlikely case for European integration. Regulating immigration is a core state function for which states claim exclusive authority since it determines admission and exclusion of a state's non-members (Joppke 1999: 17). The establishment of an EU immigration policy would necessarily bring with it the influence of EU institutions in policy areas where the state is used to having autonomy such as the definition of a foreigner's access to the labour market and the welfare system. In terms of policies that affect these policy areas, EU member states strongly rejected the influence of supranational organisations (Leibfried and Pierson 1999).

Nevertheless, in 1999 the Amsterdam Treaty defined Community competence for long-term visas and residence permits (TEC Art. 63 (3) (a)). In the period that followed EU directives on several immigrant categories were adopted. EU rules can apply to

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nationals from third countries who want to enter the territory as a student, researcher, highly skilled worker, or family member. Further, rights of those immigrants who stay legally as workers or have already been living in a member state for some time as long-term residents are commonly defined. These six directives, adopted between 2003 and 2011, define conditions of entry and residence for groups of foreigners, who want to stay in the Community for a year or longer.

This article explores the factors that made the development of immigration policies at the EU level possible. Of interest to the study are actors, their interests, and interactions in EU immigration politics in the first ten years of policy making from 1999 to 2009. Few researchers put their attention on this developing EU policy area (Pastore 2004; Papagianni 2006; Baldaccini, et al. 2007; Geddes 2008; Menz 2009; Boswell and Geddes 2010; Luedtke 2011) and hardly any study could be found that approaches EU immigration politics from a longitudinal perspective (Geddes 2008). Therefore, fairly little is known about actors' changing policy making strategies in this policy area.

The idea that domestic factors such as welfare interests or public opinion motivate some member states to promote EU integration in immigration is most prominent in the literature (Givens and Luedtke 2004; Menz 2010; Luedtke 2011). It is assumed that member states approach the EU level because they aim for restrictive EU legislation that lowers the rights of immigrants in their own country (Luedtke 2011: 4). This argument follows the logic of "two-level games" (Putnam 1988); also called "venue shopping" in the area of EU asylum and migration policies (Guiraudon 2000: 251). It describes the EU level as a policy venue where member state governments can agree on salient policies more easily because they escape domestic constraints of opposition in parliament and critique of organized civil society. Venue shopping for restriction explained EU integration with regard to the family reunification directive (Menz 2010). EU legislation defined a more restrictive standard compared to some member states' national legislation. Since adoption of the family reunification directive in 2003, EU policies on other immigrant categories, such as skilled labour were agreed upon. In light of these developments, it is questionable whether venue shopping for restriction is the only explanation for EU integration in this policy area. Therefore, the article takes the example of the development of an EU policy on migrant labour and puts venue shopping as the dominant explanation for EU integration in this area to a test. A comprehensive

picture of actor interests and policy making dynamics necessitates that other explanations are considered too.

EXPLAINING EU INTEGRATION IN IMMIGRATION POLICY

The institutionalist literature offers more than the strategy of venue shopping in order to explain EU integration in legal migration. Institutional conditions are considered as explanatory factors for policy output (Jupille and Caporaso 1999). Accordingly, the EU polity defined that member states decided unanimously on immigration policy in the European Council. This intergovernmental mode of decision making assured that member states' interests would be safeguarded in the Council. The likely outputs are lowest common denominator decisions that offer the opportunity to harmonise national legislation downward (Héritier 1996). At the same time, unanimity does not preclude that member states approach the EU level in order to "lock-in" their national legislation as an EU standard. A single government or a group of member states can pursue the EU level because they want to maintain their domestic standard and not necessarily change it (Jupille and Caporaso 1999: 438). The member states that succeed in locking-in their national legislation realise an advantage since they do not have to adapt their laws to EU legislation (Héritier 1996: 153). Transferring this model to the analysis of EU immigration politics one would expect member states trying to replicate their regulations in EU legislation. The general trend of a directive or a single provision in EU law can accommodate this preference. Holding the EU presidency offers the opportunity to single member states to advocate for their issues (Tallberg 2003).

Other institutionalist explanations for EU integration in this policy area put emphasis on the agency of supranational actors. Although the policy area under scrutiny was largely determined by an intergovernmental mode of cooperation, authors assume that not only member states' interests defined EU immigration policy but also EU institutions (Geddes 2008). By the treaties, EU institutions, first of all the Commission, are put into the position to pursue the 'European Interest' in market making and equality in rights for all EU residents (Fligstein 2008). The right to initiate policy delegated power in framing common policy to the Commission. The EU institution lays out the combined preference of all EU member states and thus significantly shapes the content of policy (Stetter 2000: 174-177; Pollack 2006). Regarding EU immigration policy and labour migration in particular, access of third-country nationals to free movement in the single market can be considered as a European interest that the Commission advocates. This

study assumes that the Commission used its right to initiate and frame policy and thus contributed to the adoption of an EU labour migration policy. The institutional set up enables a situation in which member states can try to venue shop the EU level or lock-in their policy while the Commission can initiate policy that could depart from member states' preferences. Thus, heterogeneous interests and deadlock in policy and decision making are the likely consequence of these institutional constraints.

In fact, negotiations on EU labour migration policy were gridlocked. Therefore, the study explores how actors were able to overcome such situations by changing their strategy in policy and decision making. Héritier identified a couple of measures subsumed under the term "subterfuge" to explain how deadlock is overcome at the EU level (1999). She observed that "[t]he responsibility for large-scale decisions is split-up over a period of time into a number of small, innocuous decisions, each of which has a lock-in effect and which, in consequence, weakens the opposition of the former" (Héritier 1999: 22). Actors such as the Commission and member states can reframe policies by reducing their scope and thus make their adoption more likely. The study refers to the above described processes in policy and decision making as partitioning. The term partitioning captures select EU policy making on particular immigrant categories more accurately than subterfuge which describes a whole set of different actor strategies for avoiding deadlock (Héritier 1999). In the area of EU immigration politics partioning means that policies for immigrant groups that were initially broadly defined are reduced to few and narrowly defined immigrant categories. In addition, EU rules on these categories are only partially binding to member states. The mechanism can only be identified if the entire policy process and its output are studied.

The single case study explores these research assumptions in order to provide a comprehensive explanation for EU integration in the EU policy area of legal migration. By the means of process tracing actors' interaction as well as their strategies within the EU polity is studied. Data for the policy analysis was retrieved from Council and Commission documents, and 19 semi-structured expert interviews conducted in 2009 (see list in the Appendix).

THE DEVELOPMENT OF EU LABOUR MIGRATION POLICY

EU treaties were rather implicit on the development of EU legislation on labour migration. The Amsterdam Treaty covered labour migration with its broad reference to Community competence for long-term visas and residence permits (TEC Art. 63 (3) (a)). This competence was further specified by the Tampere programme on EU justice and home affairs policies that member states adopted in 1999. It referenced common policies with regard to labour migration by calling for the "[…] approximation of national legislations on the conditions for admission and residence of third country nationals, based on a shared assessment of the economic and demographic developments within the Union […]" (Tampere European Council of October 15 and 16, 1999: para 20). These few notions legitimised the Commission's first initiatives to push for EU legislation. In the beginning, member states obstructed such pro-integrative steps. However, the EU Commission significantly reframed its proposal in order to overcome deadlock on the labour migration policy. Most member states abandoned their principled opposition against such a policy during the years of negotiating labour migration policies at the EU level. The next sections focus on the policy making process that stretches from the proposal of the first labour migration directive in 2001 (CEC 2001, 386) to the adoption of the highly qualified employment directive in 2009 (Council Directive 50/2009/EC).

The comprehensive Commission proposal on labour migration

In July 2001, the Commission presented its first draft proposal for a directive on the conditions of entry and residence of labour migrants. The Commission considered the issue to be a "cornerstone" in establishing a Community immigration policy (CEC 2001, 386: 4). The Commission aimed to regulate many different categories of labour migrants in one piece of legislation. Member states' diverging national provisions and regulatory approaches towards the admission and residence of labour migrants should be harmonised by the directive. According to the proposal, an economic need for hiring foreign labour was only given if EU citizens, legal residents, and citizens of the countries acceding to the EU in 2004 could not be found for a particular job. This obligation translates into the "Community preference principle". A further measure to protect EU labour against competition from migrant labour was the option of imposing salary thresholds. Member states could introduce such thresholds to prevent migrant and local labour from running into wage competition (CEC 2001, 386). Further, the proposed

directive did not intend to establish an EU right for third country nationals to immigrate if all the criteria set out in the directive were fulfilled. Member states could keep their national measures, which restricted the immigration of labour by using quota and ceiling systems or by temporarily suspending the issuance of residence permits. The draft also maintained flexibility by giving states the option of establishing particular programmes for specialists who were needed in certain sectors (CEC 2001, 386). The proposed EU labour migration policy left a lot of discretion to member states and their admission decisions. Still, the proposal was openly rejected by the Council.

The Council's rejection of the proposal

The Council briefly discussed the proposal in two sessions in March and June 2002 under the Spanish Council presidency. The Spanish followed "a most conservative and restrictive orientation" with regard to the justice and home affairs dossier (Sierra 2002: 41). Aznar, the conservative Spanish prime minister at the time, put heavy emphasis on the links between migration and security. Accordingly, measures were placed high on the agenda that aimed to curb illegal immigration (Council 2002, 13468). Yet, the Spanish put the labour migration proposal on the Council's decision agenda even though they could have ignored it. A possible explanation for this agenda setting could be that the Spanish government intended to restrict its immigration policy in 2002. It sought to stop not only illegal immigration, but also legal forms of immigration. Previously, migrants could easily enter the country as labour migrants if they had a job offer in Spain (Eironline 2002). Thus, it can be assumed that the Spanish government picked up the Commission's proposal, because it had hoped to venue shop at the EU level for more restrictive policies. Considering that the family reunification directive turned out to be restrictive, the Spanish might have speculated on a similar output on the labour migration directive. However, proving this assumption is difficult since few interviewees remembered details of the Council negotiations of 2002.

Apparently, Austria, France, and Germany blocked a "one size fits all policy" for labour migration, as suggested by the Commission (Menz 2009: 112-124). The three countries raised the substantive question about whether Article 63 (3) (a) of the Treaty was actually a sufficient legal basis for granting third country nationals access to the member states' labour markets through Community legislation. This criticism was clearly motivated by the countries' interest in safeguarding their national sovereignty in regulating foreigners' labour market access. The Austrian government, in particular,

was not only concerned about losing competence, it feared that a cautiously expansive European approach like the one suggested by the Commission would reverse its rather restrictive national immigration policy (Menz 2009: 120). The French opposition to the proposal was motivated by similar concerns (Menz 2009: 115). At the time the newly elected centre-right government aimed at the reform of immigration towards more restriction. It also faced pressure from the right wing "Front National" which was supported by many voters in the presidential elections that were held in April and May of 2002 (The Herald 2002). This suggests that the comprehensive EU approach on labour migration would not have been supported domestically. Also, the French did not mean to change their national legislation via EU law. However, the French position on EU labour migration policies was not a principled rejection towards EU policy. Then, the EU level did not accommodate French preferences with regard to labour migration, a condition that would change.

The delegations also held different positions with regard to the entry and residence conditions proposed by the draft. Implementing the Community preference principle was viewed as being "utopian and unrealistic", "complicated, bureaucratic and difficult to manage" (Council 2002, 9862: 9). Some delegations criticized that skills and qualifications did not play a central role in the draft. Member states made reference to national "green card" schemes to attract highly qualified migrants. In fact, national green card schemes that privileged third country nationals over Community citizens contradicted the Community preference principle. Considering the many objections raised by member states, one of the national delegates foresaw the future path of the common labour migration legislation and suggested "[…] an approach that would consist of admitting only highly qualified persons to the labour market, but at the same time, giving member states the possibility of extending access to other categories" (Council 2002, 9862: 10). The Council clearly signalled that the approach on labour migration taken by the Commission was too broad. Member states did not agree on a scheme that established so many ways of entry for almost all categories of labour migrants.

The 'sectoral approach': The partitioning of EU labour migration legislation

After the Commission was unsuccessful with its first attempt, it strategically initiated a consultation procedure. The "Green Paper on an approach to managing economic migration" (CEC 2004, 811) allowed the Commission to involve interested parties and

stakeholders into policy making. It also signalled to the member states that legislative action needed to be taken in the issue area (Interview Commission 2009, #2). The document focused the public deliberation on the link between immigration and Europe's demographic and economic challenges (CEC 2004, 811). The Commission presented two possible alternatives for regulating labour migration. The first option was a "horizontal approach" along the lines of the first draft proposal which suggested EU legislation for all categories of migrant workers. The second option was presented as a "sectoral approach" that would draft EU legislation for only specific migrant categories in specific economic sectors. Such an approach would lead to the partitioning of the policy. The policy that initially intended to cover a broad range of migratory categories would be split-up into individual pieces of legislation that only cover narrowly defined migratory categories. More than 120 stakeholders, member states and interest groups, contributed statements to the consultation procedure. Generally, member states remained sceptical to a common labour migration policy and stressed that only minimal standards should be envisaged to leave enough flexibility for national approaches (Council 2005, 8980). Interest groups broadly supported the Commission's renewed attempt to formulate a European-wide labour migration policy. The horizontal approach was favoured over the sectoral approach in most statements; however, many stakeholders acknowledged that special EU schemes for highly skilled or seasonal workers would be an asset (Frattini 2005).

After the public hearing about the consultation the Commission presented the policy plan on legal migration (CEC 2005, 669). The Commission focused on two objectives: developing a framework directive to cover the general rights of all third country nationals employed in the EU and four sectoral directives that focused on entry and residence conditions of four categories of migrant workers: highly skilled workers, seasonal workers, intra-corporate transferees, and remunerated trainees (CEC 2005, 669). The Commission had changed its strategy and proposed partitioned policies, each of which representing a reduced version of the original labour migration draft (Interview Commission, Council, and EPC 2009, #1, #4, #15). For these categories an added value by means of common legislation could be justified more plausibly. Reframing the scope of the initial directive into a couple of small directives and an additional framework directive could accommodate the heterogeneous interests addressed to the EU policy. Thus, the Commission contributed to overcoming deadlock in policy making by partitioning its initial policy.

The draft proposal on highly qualified labour migrants

In October 2007, the Commission presented the draft proposal on "the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment" (CEC 2007, 637). The Commission pursued a "managed" and "balanced" Community immigration policy that opens legal channels for immigration. The Commission pointed out that common rules could improve the ability of the EU "[…] to attract and – where necessary – retain third-country highly qualified workers so as to increase the contribution of legal immigration to enhancing the competitiveness of the EU economy […]" (CEC 2007, 637: 2). Compared to the 2001 proposal where harmonisation was viewed as beneficial for immigrants and businesses, the 2007 proposal put much more emphasis on the added value that Community legislation could have for member states and the single market (Interview French delegation 2009, #8). The so-called "EU Blue Card" was justified by two key dynamics: demographic change triggering labour shortages in the economy and the competition for skilled labour. The Commission considered immigration facilitated by EU legislation as one of a set of possible remedies to the problem of population decline (CEC 2007, 637). The other main argument in support of an EU policy was that such a policy could regulate competition for skilled immigrants. The EU was said to compete externally with countries such as the US and Canada for skilled labour. Member states could become more competitive by a common immigration policy that attracted the globally mobile knowledge elite (CEC 2007, 637). Consequently, the Commission tried to offer incentives for immigrants to choose Europe over other world regions. These incentives included attractive settlement and family reunification conditions as well as the facilitation of intra-EU mobility. The price for these favourable conditions was quite high and presumably only attainable for a relatively small group of people. The admission criteria suggested in the proposal defined a salary threshold, three times the minimum income or three times the minimum gross monthly wage, and required proof of higher qualifications with documents certifying education or experience in a particular profession.

The Council negotiations on the highly qualified workers directive

The Council came to an agreement on the proposal rather quickly during the EU presidencies of Slovenia and France. The proposal was negotiated from January until

September 2008 and officially adopted in May 2009. It was no coincidence that member states came to an agreement on the EU Blue Card directive in September 2008. The French Presidency put extreme pressure on the negotiations, because it had the ambitious plan of presenting the highly qualified workers' directive as one essential achievement reached as part of the "European Pact on Immigration and Asylum" (Interview French delegation and MPG 2009, #8, #16). This pact was a French initiative, which President Sarkozy presented as one of the central objectives of the Council presidency. The French argued that the freedom of movement within the Schengen area and the common visa policy would necessitate further cooperation in terms of immigration policy.[1] The pact called for further developing a European immigration policy, which should acknowledge that demands for "zero immigration [are] both unrealistic and dangerous" (Council 2008, 13440: 2). Member states should "manage" their immigration policies with an eye towards the implications that their policies could have on other member states. With respect to labour migration, the pact emphasised that member states should cooperate with regard to their individual labour market needs and aim to increase the immigration of highly qualified workers (Ibid). The Blue Card was supposed to be the first output of the pact given this objective.

The proposal on migrant workers' rights (CEC 2007, 638), proposed together with the policy on highly skilled labour, had been discussed in the Council since January 2008 and was adopted in 2011 (Directive 2011/98/EU). Under unanimity, an agreement was obstructed by the Czech delegation. At the time, the Czech government did not only have a particular anti-integrative attitude it also wanted to apply the directive only to newly admitted migrants and not to those already residing in the Community (Interview German delegation 2009, #6). The Commission decided to freeze negotiations since accommodating the Czech demand would have meant to discriminate against foreign workers already residing in the Community. In 2009, the Commission and the Council resumed negotiations under the new decision making procedure involving the Parliament and qualified majority vote in the Council. New institutional rules avoided the reoccurrence of deadlock. A majority formed by the European People's Party, Greens, and Liberals voted in favour of the proposal. The member states involved in JHA issues voted on the proposal without a dissenting vote. . Freezing the directive for highly qualified immigrant labour was never considered because it could be partitioned more easily and it was promoted heavily by a key European member state.

French activism in this policy area was seen by observers as an attempt by the French President to establish French policy as an EU standard. The highly qualified employment directive fit nicely into the French policy of "immigration choisie" (select migration), Sarkozy's major immigration reform from 2003 and 2006. The immigration reform emphasises the French government's priority for immigration regulation. It aimed at the limitation of family induced immigration and promoted the immigration of skilled migrants (Withol de Wenden 2008: 6). The objectives that the French pursued with the directive were explained as follows by a member of the French delegation (Interview French delegation 2009, #8): "We think that Europe has to do what we are doing at the national level or that it must reflect. So we want Europe to have a European model for the world." Further, the interviewee considered the relation between French and European politics: "We do not make a distinction between domestic and the European level. For us Europe is domestic level." Accordingly, the French position on the directive looks like an attempt to lock-in the French preference for a select immigration policy at the EU level. The French government tried to establish its national approach as a European standard. However, scholars also presented evidence that points to the assumption that France was not satisfied with the efficiency of its national legislation concerning skilled workers. Apparently, it had hoped to remodel it again as a result of pressure from a European directive (Cerna 2010: 10).

Two possible interests of a member state in EU legislation become visible, venue shopping and lock-in. Whether the French government rather pursued lock-in or venue shopping has to be shown by implementation studies. If changes to national legislation were justified by reference to the EU directive the push for EU legislation can be identified as an incident of venue shopping. Few or no changes would indicate that the member state could have been successful in setting an EU standard by shifting domestic legislation to the EU level. Venue shopping and lock-in do not have to be mutually exclusive although the two strategies have differing implications, change and no-change of national legislation. However, within the general EU standard there could still be enough room for later adjustments of the national standard.

The output of Council negotiations disappointed many stakeholders such as business representatives as well as the Commission (Interview Business Europe and Commission 2009, #13, #1). The first group felt that the directive did not offer sufficient incentives to actually attract highly qualified workers from third countries. The latter criticized that the numerous derogation clauses in the directive gave too much discretion to member states in implementing the provisions. In fact, member states are obliged to implement the EU Blue Card but still have the option of running their own schemes for highly qualified workers parallel to the EU plan.

The analysis of the negotiations shows that most member states opted in favour of a partially binding framework. Members of the Austrian and German delegations confirmed that they were instructed by their national governments not to agree on any provision that would substantially impact existing national legislation (Interview German and Austrian delegation 2009, #5, #6). These two countries displayed a principled hostility towards a European approach in regulating labour migration, fearing their loss of sovereignty on the issue. German politicians from the centre-right, as well as the left, argued that competence on this issue had to remain with member states and that it prioritised training unemployed Germans over admitting foreign labour. This position was reflected by the German media. Germany's main tabloid, Bild Zeitung, drew a bleak picture commenting the Commission's draft: "The plan is frightening. Do we really need massive immigration from Africa and Asia given that we have 3.7 million unemployed?"[2] Involving the Brussels bureaucracy in the regulation of labour migration was viewed critically not only by Austria and Germany but also by the Netherlands (Gümüs 2010: 445), a country that already had successful legislation in place for skilled migrants. Together with the UK and the Czech Republic, the Dutch opposed the Commission's proposal. These countries attracted a good share of qualified migrants and feared that a common European policy would offset their competitive advantage over other member states. In fact, the competition between member states and their mutually envied success in attracting highly qualified workers weighed heavier during the negotiations than the idea of cooperating for the sake of the EU economy (Interview Council 2009, # 4). Overall, four motivations in favour or against a common European regulation can be highlighted: sovereignty claims or successful schemes in place motivated an anti-integrative position. The opportunity to lock-in the national as an EU standard or the possibility to remodel national schemes according to the EU standard led to support an (Interview Commission 2009, #1).

Immigration choisie and the EU directive on labour migration

The analysis of EU policy and politics on labour migration revealed that options for establishing a common policy at the EU level are extremely limited. The policy establishes a loose framework that can be used by member states on a pick and choose basis. This framework pushes the Community closer to the French approach of immigration choisie: Immigrants with particular characteristics are favoured over others. The French Presidency has managed to lock-in its national standard for immigration policy in EU law. Even though the directive might be weak with regard to harmonising member states' labour migration legislation, it exemplifies the first piece of EU policy on labour migration. This is also due to the Commission and its efforts in partitioning its proposals. The implementation of the directive does mean that a few member states, such as Finland, Italy, and some Eastern European countries, have to adopt a special policy for skilled workers for the first time. They did not have particular admission and residence policies for this category of migrants in place. As such, an interviewee from the Council Secretariat notes that judgement on the directive should be made after its implementation in member states (Interview Council 2009, #4). In the same vein, the Churches Committee of Migrants in Europe called the directive "well-intended" (Interview CCME 2010, #19). The directive could promote the admission of people according to skills and encourage the ones that are selected to stay in the Community.

OVERCOMING DEADLOCK IN EU IMMIGRATION POLITICS

The analysis of the skilled labour migration directive brought about findings that confirm instititutionalist explanations. In addition, the longitudinal analysis emphasised the role of partitioning in finding agreement. First of all, member states' interest in EU immigration policy was motivated by venue shopping the EU level for changing national immigration policies (Givens and Luedtke 2004; Luedtke 2011). This change does not necessarily imply restriction but possibly expansion. The analysis of the skilled labour migration directive also indicated that a member state approached the EU level to establish its national policy as an EU standard (Jupille and Caporaso 1999). This strategy of locking-in national standards at the EU level has the advantage that governments can continue on the path that was already invested in (Pierson 2000). An analysis of all immigration directives with the strategy of lock-in in mind could reveal how the emerging EU immigration policy reproduces certain member states' policies.

Further, the longitudinal perspective showed that the Commission's power to initiate and reframe policy was important. The Commission successfully linked immigration to the competitiveness of the single market in order reinvigorate member states interest for common labour migration policy. In addition to supranational agency, final agreement was also possible because the policy was partitioned by the Commission and member states. Partitioning describes a policy mechanism that reduces a policy's scope to narrowly defined categories for which EU rules are partially binding. Also, member states can initiate partitioning during Council negotiations. This mechanism was applied to overcome deadlock in policy and decision making in the EU immigration policy area. The process leading to the first EU labour migration policy reflects partitioning and explains why negotiations were resumed after failure of the first Commission proposal. The policy plan from 2005 can be considered as the script for the partitioning of the initial labour migration directive (CEC 2005, 669). After the skilled worker directive was adopted in 2009, the Commission proposed drafts for EU legislation on intra-corporate transferees (CEC 2010, 378) and seasonal labour (CEC 2010, 379) in 2010.

The first phase of EU integration in the EU immigration policy area ended with the adoption of the skilled labour migration directive. A second phase began with the adoption of the Lisbon Treaty in 2009 when the policy area became completely communitarised (Carrera, et al. 2011). Since then member states decide on policy in the Council according to a qualified majority and the EP is involved by co-decision. Observers expect that this will make it more likely that member states have to compromise some of their positions. The qualified majority increases the pressure for compromise and could bring about EU legislation that further develops the policy area (Interview Commission and Council 2009, #2, #4). The framework directive on migrant workers' rights can be seen as the first result of new rules that do not allow for one member state to bloc decision making entirely. So far, EU immigration directives left room for flexibility in member states' implementation (De Bruycker 2007) and mainly covered narrowly defined immigrant categories. If this account of the policy area will change also depends on the EP and the way it uses its new powers in co-decision. The EP will be instrumental in determining the scope of policies in order to gain majority support for their adoption (Interview EPP 2009, #10). Also, the ECJ becomes more important in defining EU immigration policies (Interview ETUC 2009, #12). Its role was deliberately diminished in the first phase of EU immigration politics. Since 2009 EU jurisdiction can be called by any national court by preliminary rulings. The EU

institution is said to have an "integrationist outlook" (Guiraudon 2000: 262) which it has confirmed in its rulings on member states' implementation of some immigration directives (C-578/08, C-508/08, C-15/11).. The Commission has shown that it is the most important initiator of integration in the policy area (Interview Council 2009, #4). In 2010, it suggested to draft a proposal for an immigration code to extend existing EU legislation to migrant categories that are not yet covered (CEC 2010, 171). Research has to show according to which conditions and motivations actors in EU immigration politics adopt future proposals. Venue shopping, lock-in, agenda framing, and partitioning pointed to actor strategies and a policy making mechanism that are able to explain why an EU immigration policy can be established despite the fact that immigration is such an unlikely case for EU integration.

NOTES

1. President Sarkozy's New Year's address to the Parliament and the Paris Council: www.ambafrance–uk.org/President–Sarkozy–s–New–Year.html, date accessed 2 March 2012
2. For the Bild quote see Spiegel online press review: www.spiegel.de/international/germany/0,1518,505843,00.html, date accessed 2 March 2012.

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APPENDIX

LIST OF UTILIZED INTERVIEWS

1 Commission, DG Justice, Liberty and Security, 24 November 2009
2 Commission, DG Justice, Liberty and Security, 23 November 2009
4 Council, General Secretariat of the Council of the EU, 1 December 2009
5 Austrian delegation, 23 November 2009

6 German delegation, 3 December 2009
8 French delegation, 9 December 2009
#10 EPP, European Peoples' Party, 11 December 2009
#12 ETUC, European Trade Union Confederation, 25 November 2009
#13 Business Europe, 26 November 2009
#15 EPC, European Policy Centre, 24 November 2009
#16 MPG, Migration Policy Group, 27 November 2009
#19 CCME, Churches Commission for Migrants in Europe, 12 February 2010