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New European Limits of Control?

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-

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Volume 51

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New European Limits of Control?

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Preface

The Series on Population Studies published by the Federal Institute for Population Research comprises new and innovative research in the broad field of population studies and related subjects.

It is our pleasure to publish the dissertation of Andreas Ette in the current volume. In his work the author elaborates on the development of national migration and refugee policies in a politically integrating Europe. The recent 'refugee crisis' in Europe confirms the importance of coordinated action and regulation on the European level.

The interplay of nation-states and the European Union in forming migration and refugee policies is highly relevant and the respective research particularly timely. The current study enhances our understanding of the political struggles the European Union and its member states are facing in handling the 'refugee crisis'. It goes beyond a simplifying generalisation of 'more' or 'less' Europe and provides a differentiated description of the evolving patterns of Europeanisation. The analysis of the observed policy-making patterns discerns several relevant mechanisms of interaction between the European Union and its member states distinguishing four policy fields: asylum, irregular migration, labour migration and the migration-development nexus.

In this work, Germany serves as an in-depth case study for the analysis of migration and refugee policy-making. As Germany is understood as a least likely case for the Europeanisation of migration and refugee policies, results of the study should be applicable to other member states as well. A qualitative approach is used, process tracing, making use of an extended range of empirical data and other sources of information.

This volume addresses researchers, students and practitioners alike, interested in the ongoing debates on international migration in Europe. Thank is owed to Sybille Steinmetz for her thorough work in typesetting and formatting this manuscript. I wish all readers an informative and stimulating read.

Wiesbaden, June 2017
Jasmin Passet-Wittig

Acknowledgments

In the last couple of years, this research project has been an important part of my life and I am pleased that I can thank numerous people who accompanied me on this journey. The first ideas for this project originated within the confines of the Collaborative Research Centre 'Transformations of the State' at the University of Bremen. Interested in the consequences of rule-setting processes beyond national borders and the increasing internationalisation of nation-states, the Centre provided the necessary context for a group of researchers to study the domestic repercussions of Europe's developing immigration agenda. The resulting edited volume was clearly inspired by the – at that time – flourishing top-down conceptualisation of Europeanisation. Unsatisfied with the state of the art and the existing theoretical frameworks, this PhD project expanded in the following years with the aim of developing a more comprehensive framework to describe and explain the reconfigurations of governing refugee and migration policies in today's European Union.

The project of writing this thesis profited enormously from regularly interacting and engaging on this topic with many colleagues and friends. Of greatest importance in this respect has been Thomas Faist. I had the chance to work with him during my first academic position in the Collaborative Research Centre and when the idea for this PhD project later on took shape, he provided necessary guideposts to steer which directions to choose and which dead ends to avoid. I appreciated in particular his support and pragmatic solutions for a research project that regularly had to juggle its own requirements, my professional commitments and family obligations. Similarly, I want to thank Andrew Geddes who I first got to know during a research stay in Sheffield and later regularly met at several academic gatherings. His enthusiasm for Europe's migration policy and his interest in the specific empirical investigations of this PhD study provided additional and long-lasting support.

Next to my supervisors, the research project profited enormously from meeting and working together with a number of colleagues. A summer school at the European University Institute in Florence provided the chance to receive first intensive feedback from Georgia Mavrodi, Peter Scholten, Virginie Guiraudon, Sandra Lavenex and many other participants. During the summer of 2010 and under the welcome supervision of Rainer Bauböck, the EUI and its surroundings in Florence and Fiesole furthermore offered my family and me five intensive and memorable months. Different publication and research projects offered the opportunity to work closely together with Petra Bendel, Margit Fauser, Marianne Haase, Axel Kreienbrink and Roderick Parkes and to learn from their experiences and insights into Europe's refugee and migration policy. Similarly, the Research Colloquium of the Bielefeld Graduate School in History and Sociology provided necessary intellectual and personal inputs from like-minded people. Several presentations particularly during the ECPR Graduate Student Conference in July 2012, as well as the UACES Annual Conference in September 2012 offered helpful criticism of early versions of the empirical case studies of this PhD, including particularly those of Arne Niemann, Christof Roos and Paul Statham.

My professional affiliation with the Federal Institute for Population Research in Wiesbaden offered an in-depth understanding of the administrative logics behind individual policies. As a Federal departmental research institute it offered the necessary familiarity with the ministerial and political processes but also the distance from Berlin – not only geographical – to keep a critical eye on the developments in Germany's refugee and

migration policy. I thank all my recent and former colleagues but in particular Can Aybek, Sabine Diabaté, Jürgen Dorbritz, Robert Naderi, Kerstin Ruckdeschel, Lenore Sauer, Susanne Stedtfeld and Rainer Unger for their regular encouragement. The directors of the Institute and in particular Norbert Schneider provided the necessary flexibility and time off from the institute to concentrate on this additive research project. I also appreciate the support by Martin Bujard and Jasmin Passet-Wittig providing the opportunity for this publication as well as the experienced assistance by Sybille Steinmetz throughout the technical production process.

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Wiesbaden, April 2017
Andreas Ette

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List of Abbreviations

AA	Federal Foreign Office
AFG	Labour Promotion Act (Arbeitsförderungsgesetz)
ArbMigrStG	Labour Migration Control Act (Arbeitsmigrationssteuerungsgesetz)
ASAV	Recruitment Stop Exception Decree (Anwerbestoppausnahmeverordnung)
AT	Republic of Austria
AufenthG	Residence Act (Aufenthaltsgesetz)
AuslG	Aliens Act (Ausländergesetz)
AsylbLG	Act on Benefits for Asylum-Seekers (Asylbewerberleistungsgesetz)
AsylREURLUmsG	Transposition Act (Richtlinienumsetzungsgesetz)
AsylVfG	Asylum Procedure Code (Asylverfahrensgesetz)
BA	Federal Employment Agency (Bundesagentur für Arbeit)
BAFl	Federal Office for the Recognition of Foreign Refugees (Bundesamt für die Anerkennung ausländischer Flüchtlinge)
BAMF	Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge)
BE	Kingdom of Belgium
Bengo	Advice centre for non-governmental organisations working in the field of development cooperation (Förderung entwicklungswichtiger Vorhaben privater deutscher Träger in Entwicklungsländern)
BG	Republic of Bulgaria
BMAS	Federal Ministry of Labour and Social Affairs
BMBF	Federal Ministry of Education and Research
BMFSFJ	Federal Ministry of Family Affairs, Senior Citizens, Women and Youth
BMI	Federal Ministry of Interior
BMWi	Federal Ministry of Economics and Technology
BMZ	Federal Ministry for Economic Cooperation and Development
BPol	Federal Police (Bundespolizei)
BUMF	Federal Association for Unaccompanied Minor Refugees (Bundesfachverband Unbegleitete minderjährige Flüchtlinge)
BVerfG	Federal Constitutional Court (Bundesverfassungsgericht)
BVerwG	Federal Administrative Court (Bundesverwaltungsgericht)
CDU	Christian Democratic Union of Germany
CEAS	Common European Asylum System
CEC	Commission of the European Communities
CEU	Council of the European Union
CIM	Centre for International Migration and Development

CJEU	Court of Justice of the European Union
COE	Council of Europe
Coreper	Committee of Permanent Representatives
CRC	United Nations Convention on the Rights of the Child
CSU	Christian Social Union of Bavaria
CY	Republic of Cyprus
CZ	Czech Republic
DE	Federal Republic of Germany
DED	German Development Service (Deutscher Entwicklungsdienst)
DG	Directorate General
DGB	Confederation of German Trade Unions (Deutscher Gewerkschaftsbund)
DGVN	United Nations Association of Germany (Deutsche Gesellschaft für die Vereinten Nationen)
DIE	German Development Institute (Deutsches Institut für Entwicklungspolitik)
DIMR	German Institute for Human Rights (Deutsches Institut für Menschenrechte)
DK	Kingdom of Denmark
EC	European Communities
ECHR	European Convention on Human Rights
ECRE	European Council on Refugees and Exiles
EE	Republic of Estonia
EhfG	Development Workers Act (Entwicklungshelfer-Gesetz)
EL	Hellenic Republic
EMN	European Migration Network
ENP	European Neighbourhood Policy
EP	European Parliament
EPC	European Policy Centre
ES	Kingdom of Spain
EU	European Union
EURA	European Union Readmission Agreement
EURASIL	European Union Network for Asylum Practitioners
Eurodac	Community-wide information technology system for the comparison of the fingerprints of asylum-seekers
FDP	Free Democratic Party
FI	Republic of Finland
FOSS	Frontex One-Stop-Shop
FR	French Republic
FRA	European Union Agency for Fundamental Rights

FRG	Federal Republic of Germany
Frontex	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
G6	Group of Six (Comprises representatives of the Ministries of Interior of Germany, France, Italy, Poland, Spain and the United Kingdom)
GAMM	Global Approach to Migration and Mobility
GCIM	Global Commission on International Migration
GDISC	General Directors of European Immigration Services Conference
GG	Basic Law (Grundgesetz)
GIZ	German Agency for International Development Cooperation (Deutsche Gesellschaft für Internationale Zusammenarbeit)
GKKE	Joint Conference Church and Development (Gemeinsame Konferenz Kirche und Entwicklung)
GTZ	German Organisation for Technical Cooperation (Deutsche Gesellschaft für Technische Zusammenarbeit)
HLWG	High Level Working Group on Asylum and Migration
HQRLUmsG	European Highly Skilled Directive Transposition Act (Gesetz zur Umsetzung der Hochqualifizierten-Richtlinie der Europäischen Union)
HSchulAbsZugV	Decree Regulating the Admission of University Graduates (Hochschulabsolventen-Zugangsverordnung)
HR	Republic of Croatia
HU	Hungary
ICOnet	Information and Coordination Network
ICT	Information and communications technology
IE	Ireland
ILO	International Labour Organization
IMK	German Federal Conference of the Ministers of Interior (Ständige Konferenz der Innenminister und -senatoren der Länder)
InWEnt	Capacity Building International (Internationale Weiterbildung und Entwicklung)
IOM	International Organization for Migration
IT	Italian Republic
JHA	Justice and Home Affairs
KICK	Child and Youth Services Extension Act (Gesetz zur Weiterentwicklung der Kinder- und Jugendhilfe)
LT	Republic of Lithuania
LU	Grand Duchy of Luxembourg
LV	Republic of Latvia
MP	Mobility Partnership
MT	Republic of Malta

NC	National Coalition for the Implementation of UN Convention on the Rights of the Child in Germany (National Coalition für die Umsetzung der UN-Kinderrechtskonvention in Deutschland)
NGO	Non-governmental organisation
NL	Kingdom of the Netherlands
NO	Norway
OECD	Organisation for Economic Cooperation and Development
OMC	Open Method of Coordination
PDS	Party of Democratic Socialism
PL	Republic of Poland
PT	Portuguese Republic
QMV	Qualified Majority Voting
RO	Romania
SCIFA	Strategic Committee on Immigration, Frontiers and Asylum
SE	Kingdom of Sweden
SEA	Single European Act
SI	Republic of Slovenia
SK	Slovak Republic
SPD	Social Democratic Party of Germany
SVR	Expert Council of German Foundations on Integration and Migration (Sachverständigenrat deutscher Stiftungen für Integration und Migration)
SWP	German Institute for International and Security Affairs (Stiftung Wissenschaft und Politik)
TCN	Third-Country National
TEC	Treaty establishing the European Community
TEU	Treaty on European Union
ToA	Treaty of Amsterdam
ToL	Treaty of Lisbon
ToM	Treaty of Maastricht
UK	United Kingdom of Great Britain and Northern Ireland
UKZU	Independent Commission on Immigration (Unabhängige Kommission 'Zuwanderung')
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
VENRO	Association of German Development and Humanitarian Aid Non-Governmental Organisations (Verband Entwicklungspolitik und Humanitäre Hilfe deutscher Nichtregierungsorganisationen)
ZAV	International Placement Services (Zentrale Auslands- und Fachvermittlung der Bundesagentur für Arbeit)

1 Introduction

1.1 From 'Fortress Europe' to New 'Limits of Control'? The Increasing Diversity of Refugee and Migration Policies in Europe

When the Treaty of Lisbon entered into force on the 1st December 2009, it was the tentative result of an unprecedented career: Within only two decades, refugee and migration policies had moved from the bottom to the top of the European Union (EU) agenda. Asylum policies, border controls and regulations on the admission of foreigners to national territories had been largely absent from the European agenda until the early 1990s. However, Article 3 of the Treaty of Lisbon now attributes refugee and migration policies, and the so-called 'Area of Freedom, Security and Justice', the greatest political attention by listing it second in the fundamental treaty objectives; even before issues like the internal market and the economic and monetary union. Overall, two decades have witnessed a significant "transformation of the state" (cf. Zürn/Leibfried 2005), shifting one of the founding principles of modern nation-states – the sovereign decision about entry and exit to one's territory – to the European Union, a still relatively new supra-national institutional order.

This dynamic incorporation of refugee and migration policies into the general process of European integration, however, hardly qualifies as an indication of the erosion of the nation-state. Instead, scholarly analyses quickly converged on an intergovernmental reading of those developments, arguing that the deliberate decision of European member states to shift sovereignty to Brussels actually aims to strengthen the nation-state. Along these lines, European cooperation provides the institutional and discursive opportunity structures that allow national executives to develop common policies to increase the states' autonomy to control refugee flows and international migration (cf. Guiraudon 2003; Lavenex 2002; Moravcsik 1994).

The story about the European integration of refugee and migration policies generally starts with the global migration crises of the 1980s and 90s which confronted most Western states with an increasing "gap" between restrictive policy intentions and the expansionist reality of immigration (cf. Cornelius, et al. 1994: 3; Weiner 1995). This gap was subsequently explained by different "limits of control" (Hollifield 2004b: 183) confronting liberal states in implementing more effective regulations. These limits included general characteristics of international migration (Faist 2000), national structures of client and federal politics (Freeman 1995; Money 1999), the national legal sphere (Joppke 1999), as well as the global human rights regime (Soysal 1994). In this context, the Europeanisation of this policy area provided a welcome alternative for national executives to regain control. Under the label of "venue-shopping" (Guiraudon 2000) developed a most influential approach explaining member states' strategies in pursuing their control oriented agendas; no longer in the national setting, but by cooperating with fellow neighbouring countries in new institutional settings. Compared to the national political system, the European level with its secretive institutions, opaque procedures and a general lack of democratic control provided a far more favourable context and exempted national governments from greater transparency and stricter parliamentary, legal and public oversight. Following the argument of this venue-shopping

approach, the Europeanisation of refugee and migration policies is a strictly "government-led and controlled process" (Monar 2003: 322). Its outcomes have been policies which closely followed the restrictive agenda of member state executives and were characterised across the board by an imbalance in favour of security and control to the detriment of the rights and freedom of refugees and migrants (e.g. Balzacq / Carrera 2006; Guild 2004).

The metaphor of 'Fortress Europe' was coined during the 1990s to accurately describe this general shift across European member states of dismantling previous achievements of the international system of refugee protection and existing rights of migrants. Even without referring to the everyday practices at the external borders and the tragic losses of human life attempting to enter the European Union (e.g. Hess/Kasparek 2010; Grande 2011; Grenz, et al. 2015), the "hardening of the tools of control" (Guild 2006) has become a general character of this policy area. It includes, for example, the serious limitations on the individual right to a fair examination of their asylum claim by the implementation of the Dublin regime, the flourishing of instruments to control foreigners including the evolution of electronic databases like Eurodac or the Schengen and Visa Information Systems, and also the creation of Frontex as the emerging European agency for border control. Overall, the Europeanisation of refugee and migration policies is regularly criticised for its emphasis on negative integration measures, the high level of discretion guarded by national governments and an obvious weakness in constitutionalising migrants and refugees' rights and standards. Most importantly, scholars argue that cooperation so far is not guided by solidarity but by shifting and shirking the burden, which likely leads to lowest common denominator measures and a race to the bottom between member states resulting in successively lower levels of protection for refugees and migrants in Europe (cf. Barbou des Places/Deffain 2003; Guiraudon 2000; Lavenex/Wagner 2007; Noll 2000; Uçarer 2006).

The hardening of control remains the dominant characteristic of Europe's refugee and migration policy. Nevertheless, the last decade has witnessed some institutional and substantive changes that challenge the dominant intergovernmental explanations – and in particular its venue-shopping variation – of the Europeanisation of refugee and migration policies and asks for theoretical revisions and amendments. Institutionally, the Treaty of Amsterdam (ToA) of 1997 marked a watershed in this respect and initiated a process that successively shifted the institutional framework governing this policy area from "Black Market to Constitution" (Peers 2006b). At the end of the last decade, the Treaty of Lisbon (ToL) codified these transformations, which now provide the European Commission with the right of initiative, introduced qualitative majority voting for most policy areas in the Council of the European Union (CEU), strengthened the European Parliament (EP) as co-decision-maker by introducing the ordinary legislative procedure, and provided the Court of Justice of the European Union (CJEU) with general jurisdiction. These changes now provide for a new institutional "environment in which actors interact" (Trauner/Lavenex 2015: 231) at the European level and certainly shifted the policy area "towards further supranationalism" (Zwaan 2011). Together, they reduce the predominance of national executives, mark an obvious shift towards traditional Community methods of European policy-making and result in greater transparency of the political processes.

Nevertheless, established institutional modes of cooperation have not disappeared. And the remnants of the past are still a basic characteristic of this policy area. The European Pact from 2008 and the most recent national responses to Europe's migration crises are clear indications of the member states' will to keep firm control over the European agenda. Furthermore, the ToL reserves a quarter of all member states a shared right for initiative on

matters of the 'Area of Freedom, Security and Justice'. The introduction of such a "restrained Community Method" (Wolff 2015: 131) is unknown from other policy areas regulated in the Treaties. Considering these developments one is well advised to describe the framework governing this policy area today as a "laboratory of EU governance" (Monar 2006: 19) characterised by a mix of different institutional ideas. No doubt exists, however, that "little is left today of the privacy which governments wanted to maintain in this sensitive field of policy cooperation" (Eder/Trenz 2003: 112-113). Even more, the institutional developments at the European level increasingly mirror the 'limits of control' that were previously representative for the national level only and evidently caused the development of the European dimension of refugee and migration policies in the first place (cf. Favell/Hansen 2002; Lavenex 2006b).

In parallel to these institutional developments substantive policy outcomes have also started to successively change and to challenge the linear propositions of a 'Fortress Europe'. These steps still seem tiny on the journey towards a European refugee policy respecting international human rights norms and a generally more liberal approach to international mobility. Nevertheless, the adoption of a number of asylum directives and the reform process during the second phase of the Common European Asylum System (CEAS) has codified at least some policies for refugees which provide for a better balance between national security and control interests on the one hand and the rights and freedoms of refugees on the other. The Qualification Directive, for example, confers on refugees a subjective right to be granted a protection status, comprising a residence permit as well as a number of socio-economic rights, and its amendment from December 2011 – although providing for modest improvements only – documents the gradually evolving European refugee regime (cf. Peers 2011). Examples of a more balanced European policy approach, however, are not restricted to refugee policies alone but cover all aspects of a comprehensive migration policy. The last few years have witnessed the development of an explicit agenda for the integration of refugees and migrants, an obvious move towards common labour immigration policies and a greater emphasis on the development implications of international migration clarified by the Union's 'Global Approach'.

What is more, the last two decades have seen evidence challenging the predictions of the intergovernmental approach. The logic of the fortress hardly fit the policy dynamics following the terrorist attacks of 9/11 2001 in New York and 3/11 2004 in Madrid which did not materialise the way established theories would have predicted (cf. Boswell 2007; Neal 2009). Furthermore, empirical evidence for the often-summoned race to the bottom failed to appear and at least indications exist for a gradual increase of migrant rights and refugee protection standards (cf. Thielemann/El-Enany 2011; Mavrodi 2010; Zaun 2015). Also, a number of authors have started to test the established intergovernmental predictions with respect to its assumed historical dynamics (Bulmer 2011) and the development of individual policy aspects (Block/Bonjour 2013; Kaunert/Leonard 2012). Finally, the Treaty of Lisbon triggered several studies on the changing role of specific European institutions (Kaunert, et al. 2014; Trauner/Ripoll Servent 2015b; but see also Luedtke 2009) – focusing in particular on specific institutions like the European Parliament (Trauner 2012; Ripoll Servent 2012), the European Commission (Chou/Riddervold 2015; Kostadinova 2013) or the Court of Justice (Acosta/Geddes 2013; Somer/Vink 2015) – and their influence on European refugee and migration policies. Although these developments still do not add up to a more balanced and comprehensive European refugee and

migration policy, "these changes may indicate that the pendulum between security and liberty […] tentatively starts to move back" (Trauner/Lavenex 2015: 220).

Both developments, the transformation of the institutional framework as well as the broadening substantive agenda and changing outcomes of actual policies contribute to a greater diversity of European refugee and migration policies, which increasingly questions the established intergovernmental approach on the Europeanisation of refugee and migration policies. After a decade dominated by academic contributions ingrained into those earlier theoretical approaches it is time to come to grips with these more recent political developments. Consequently, the thesis asks whether the venue-shopping approach can still be seen as the universal explanation or whether the more recent interactions between the EU and its member states should not be better explained by patterns of interactions characteristic for other mechanisms of Europeanisation. Is the European Union moving from an opportunity structure favouring restrictive refugee and migration policies towards a new European 'limit of control' that confine state sovereignty in favour of the rights of refugees and migrants? In answering this question a proper dose of scepticism is required to resist overly optimistic interpretations of these dynamics. Nevertheless, a description of the more recent developments of the Europeanisation of refugee and migration policies, an explicit testing of established theories, as well as developing alternative frameworks to explain the interactions between member states and the European Union in this policy area is the focus of this thesis. Against the background of Europe's most recent migration crises, the study provides a conceptual framework as well as detailed empirical data to better explain the development of common objectives and policies in Europe as well as their chances for effective implementation on the domestic level.

1.2 Research Questions: Multiple Mechanisms of Europeanisation

The general research interest in the Europeanisation of refugee and migration policy boils down into two concrete research questions structuring this thesis. First, the study asks a descriptive question about the outcomes of Europeanisation. Second, the study is interested in explaining the observed variance in the outcomes of Europeanisation.

(1) The first research question focuses on an adequate description of the outcomes of Europeanisation. Do the recent institutional and substantive changes constitute new 'limits of control' for national executives about entry to and residence within territories, potentially providing for a more balanced policy including the codification of rights for refugees and migrants at the European and national level? Alternatively, does the increasing European integration of refugee and migration policy – in line with earlier findings – continue to increase the autonomy of member states' governments to restrict migration and contract refugee rights? By comparing different dimensions of refugee and migration policy, the study analyses not only the extent but also the direction of Europeanisation potentially resulting in differentiated patterns of Europeanisation instead of general statements about 'more' or 'less' Europe, more 'restrictive' or more 'liberal' approaches.

There are at least three reasons why an answer to this first research question is of crucial importance. The first involves methodological concerns, arguing that before

starting any endeavour of theory testing or explanation it is necessary to appropriately measure the dependent variable. Although widespread agreement exists on the point that the Europeanisation of refugee and migration policies results in restrictive national policy outcomes, a review of the literature actually shows contradictory findings that are caused by different ways of operationalising Europeanisation. Refugee and migration policies are still a rather recent and dynamic policy area and there is "little systematic empirical research on how European developments 'hit home' at the national level" (Vink 2010: 40; for an overview see Faist/Ette 2007; Geddes 2003a). The second is concerned with the characteristics of the EU polity. Many studies concentrate only on the legal output of European policies, consequently failing to study the implementation of these policies into national legislation and their execution in practice. Particularly in the case of the EU, which "does not have its own administrative machinery to implement its legislation, but has to rely on the member states to fulfil this task" (Treib 2014: 6), the actual outcome of Europeanisation can therefore not be assessed on the basis of adopted European legislation, but needs to be carefully analysed comparing national legislation and practice before and after European decisions are taken. Finally, the third reason demanding a detailed analysis of the outcome of Europeanisation is related to a specific characteristic of refugee and migration studies. Migration scholars often look on developments from a normatively charged perspective; often either seeing the EU as a threat or as an opportunity to building an inclusive people's Europe (cf. Geddes 2000: 5). On the one hand are those for whom the so-called 'Fortress Europe' has not only become a political target, but also frames their academic analyses. On the other hand, one also finds the opposite perspective with authors stressing the liberal characteristics of a post-national entity like the EU (e.g. Favell 2001: 242; Soysal 1994). Instead of taking the role of Europe for the fate of national refugee and migration policies for granted, the study takes it as an empirical question analysed separately from later theoretical explanations.

(2) The second research question concentrates on the theoretical explanation of the developments in member states' refugee and migration policies. How can the observed patterns of Europeanisation be explained? Is there a single underlying theoretical mechanism structuring the interactions between national and European actors resulting in a particular outcome of Europeanisation? Or do different interests and logics of actions result in multiple mechanisms of Europeanisation? Recent years have witnessed several attempts to adjust the original venue-shopping framework to the changing institutional and substantive context of Europe's refugee and migration policy (e.g. Kaunert/Leonard 2012; Maurer/Parkes 2007b) and to apply it to other aspects of Justice and Home Affairs (JHA) where the framework is still meaningful (e.g. Balzacq, et al. 2006; Lavenex 2006b; Parkes 2010; Reslow/Vink 2015). Instead, the study more fundamentally questions the generalising intergovernmental propositions of the venue-shopping hypothesis.

In order to construct a theoretical framework to account for the timing, shape and substance of the Europeanisation of refugees and migration it concentrates on alternative patterns of interactions between member states and the European Union, which developed as a consequence of the institutional changes of the last two decades and explain the increasing diversity of actual policy outcomes. The thesis systematically constructs a theoretical framework building on recent advances in Europeanisation studies. This subfield of European studies developed only since the mid-1990s and gained currency by its simple but apparently new insight that more attention should be

placed on the national repercussions of the developing European polity (cf. Ladrech 1994; Graziano/Vink 2007). Connected research designs have become rather rigid taking the European Union as an independent variable or a "cause in search of an effect" in member states (Goetz 2000), whereas the previous processes of the development and construction of common European policies have been factored out of these 'top-down' studies. The reality of policy-making processes in the EU, however, are hardly covered by such artificial distinctions and are better understood as systems "of continuous negotiation among nested governments at several territorial tiers" (cf. Hooghe/Marks 2003: 234; Marks/Hooghe 2004; Kohler-Koch/Rittberger 2006). Building on these early endeavours, Europeanisation studies have responded with a reorientation arguing in favour of more encompassing and circular research designs explaining the Europeanisation of national policies only in combination with previous activities of member states at the European level (cf. Börzel 2005; Exadaktylos/Radaelli 2009). The thesis advances existing circular research designs by proposing an explanatory typology of different mechanisms of Europeanisation. It is based on a systematic combination of member states' activities during the two basic dimensions of European policy-making processes – uploading as well as downloading. It results in four ideal-typical mechanisms that go a long way to account for the dynamics and outcomes in Europe's refugee and migration policies.

The development of such a conceptual framework which includes the measurement of the dependent variable as well as the development of an explanatory framework responds to scholarly contributions arguing for lower-level and simpler concepts in the study of the EU. For a long time generations of students of the European Union have chewed through neo-functionalist and intergovernmentalist theoretical frameworks in their PhDs to take a side for either the one or the other for their empirical studies. Recent years, however, have seen intensive communication between those theoretical camps, which resulted in regular calls not to favour one theory over another but to favour bridge building between different frameworks (cf. Scharpf 2001; Jupille, et al. 2003; Zürn/Checkel 2005). These discussions echoed in refugee and migration studies with Guiraudon (2006: 305; see also Boswell 2010: 294 for a similar argument comparing different dimensions of migration policies explained by different theoretical mechanisms) arguing that "studies rarely adopt a comprehensive approach, because of theoretical or methodological bias, while it may be fruitful to trace different mechanisms of change. This in turn requires a better specification of the mechanisms themselves and a need to link them to the change expected". Systematically linking the uploading and downloading dimension of Europeanisation exactly aims at specifying such different mechanisms and different ways of interacting between member states and the European Union.

1.3 Constructing a Systematic Empirical Research Strategy: Comparative Case Studies in a Crucial Member State

For a long time, European studies have not problematised methodological issues at any great depth. The EU was regularly understood as a sui generis case; not profiting from comparative analyses of regional integration processes elsewhere in the world. The

fundamental shift from explaining the European integration processes itself towards an interest in the EU as a governance arrangement underlying Europeanisation studies brought methodological issues to the fore. Scholars quickly realised that the advanced methodological tool box of comparative politics provided a good foundation to study the diverse processes and outcomes of Europeanisation in member states. Nevertheless, studies analysing the Europeanisation of national policies and politics soon developed a rather sterile and uniform research design. The historical-institutionalist assumptions in most of these studies regularly resulted in 'small-N studies' – the term refers to the number of cases or observations in a particular research study – which compared two or three member states and explained the differential results of a particular European policy by the specificities of the given national settings. Quite regularly, however, this research strategy neglected the diversity within individual European policy areas. This is particularly true for the area of refugee and migration policy where early studies regularly failed to differentiate between, for example, policies addressing issues of asylum, labour migration, instruments addressing issues of irregular migration or the international dimension of migration. Instead, they concentrated on the early European initiatives in this policy area – mainly on refugee and border control policies – and their variable impact on different member states. The increasing diversity of European refugee and migration policies, however, calls for comparative case studies focusing on the different aspects of this policy area and providing a theoretical framework that is able to account for the diverse outcomes of Europeanisation within this policy area instead of explaining cross-national variance.

This procedure follows advice by Freeman (1995, 2006; see also Wong 2014), who most convincingly argued that empirical studies of migration policies should be disaggregated into theoretically meaningful components. For the description of the outcomes of Europeanisation as well as to test its theoretical framework this study follows his advice. Instead of collapsing a country's migration policy into an undistinguishable whole issue, it differentiates between the four most important components of any national migration control policy: asylum policy, policies addressing irregular migration, labour migration policies and the foreign and development policy dimension of migration. In doing so, the study complements the usual focus on the cross-national variance of the outcomes of Europeanisation with an analysis of the diversity within this policy area.

In order to end up with empirically sound and theoretically meaningful and generalisable results, the study is based on the least likely case method. It is based on an in-depth study of the case of the Federal Republic of Germany (FRG), constituting the member state which allows a confirmatory testing of the central assumption of this study arguing in favour of an increasing diversity concerning the outcomes of Europeanisation, as well as its underlying theoretical mechanisms. In contrast to the "tamed power" thesis characterising Germany's general foreign policy orientation towards the EU (Katzenstein 1997; Bulmer, et al. 2000), the existing findings about its role in developing common refugee and migration policies show that the country has, from the very beginning, strategically exploited the European level for implementing restrictive policy reforms as well as to circumvent existing national 'limits of control'. Not coincidently the venue-shopping approach was developed on the basis of the German case and the country certainly possesses all the resources to effectively shape European policies along its domestic preferences. As one of the founding members of the Schengen Area, its principal economic and political weight as well as its bargaining power and great political experience in this policy area, has meant successive German governments have been amongst the

principal drivers of increased European cooperation in this area. Although the country's early enthusiasm for the European integration of this policy area might have cooled a little in later years, and Germany developed from "model to average student" (Prümm/Alscher 2007), there is little to suggest that the principal relationship between Germany and the EU in this policy area has changed. Instead, Germany has continued to play a key role in setting the European agenda on refugee and migration policies. Examples include its active participation in the informal Group of Six (G6), which has been in operation since 2003 and includes the largest EU Member States – Germany, the UK, France, Italy, Spain and Poland, as well as the fact that it launched the high-level advisory group on the future of European home affairs policies during its 2007 presidency, strongly shaping today's Stockholm Programme and providing an overview of activities in this policy area until 2014. The economic and financial crises as well as the most recent migration crises have even strengthened the German influence on European integration and European policies (cf. Bulmer 2014; Münkler 2015). Germany therefore has played the venue-shopping game in Europe at its very best. If one successfully demonstrates for the German case that the previously restrictive outcomes of Europeanisation are today showing a greater diversity and that the underlying explanatory theoretical mechanisms are changing as well, the least likely case method would count this as strong evidence to refute existing theories. If the EU does become a new European 'limit of control' for Germany's refugee and migration policy, these findings are easily generalisable to other member states where similar findings would be more likely to be found anyway.

Next to this methodological argument, however, Germany makes an interesting case study for more mundane reasons. The first decade of the new millennium has witnessed far-reaching changes to Germany's refugee and migration policy. The country which for so long stuck to its self-description as being 'not a country of immigration', has witnessed the sudden "death of a national myth" (Schierup 2006). From the late 1990s onwards, Germany's refugee and migration policies have been under constant legislative development. This included the introduction of the Immigration Act in 2005, basic changes to the regulations governing residence of foreigners in Germany, constant readjustments to its refugee policy and in particular the introduction of a highly skilled labour migration policy leading Green (2013: 342) to conclude that the extent of these changes are "nothing short of remarkable". The existing analyses of these policy changes, however, mostly suffer from "methodological nationalism" (Wimmer/Glick Schiller 2002) and fundamentally ignore international and interregional developments. Established theories of migration policy are regularly dominated by ideas of nationally distinct policy models following Brubakers (1994) influential conceptions of nationhood or the differentiation of national models of immigration policy (Castles 1995; Entzinger 2000; Joppke 2007). In particular political scientists regularly continue to stick on the supposed dominant German ethno-cultural national self-understanding to explain the country's refugee and migration policy (e.g. Green 2004; Klusmeyer/Papademetriou 2009; Marshall 2000b). Others have highlighted domestic politics arguments focusing on the "defeat of the CDU/CSU-FDP government at the 1998 Bundestag election which led to a new SPD-Green coalition at federal level with a progressive agenda in this area" (Green 2013: 342), electoral competition of the political parties, legislative bargaining (Triadafilopoulos 2012: 152-157), as well as the potential role of individual political actors like Angela Merkel as the chancellor (Mushaben 2010) or public opinion (Gilligan 2015). Against the assumption of locked national trajectories, the study of Europeanisation instead encourages looking beyond one's

own nose and to search for explanatory variables outside the domestic political system (cf. Geddes 2007: 55-56). Next to its more general theoretical contributions, the study will therefore additionally provide a timely analysis of a dynamic period in Germany's refugee and migration policy and tackle the question of whether Europe has become an important factor in explaining those national policy changes. With Germany having been among the principal drivers of the European integration of this policy area it seems worthwhile to ask whether this leading role during the uploading dimension of Europeanisation has resulted in a similarly extensive Europeanisation during the downloading dimension. The question of whether Europe matters for this policy area in Germany, however, has resulted in largely different assessments. Whereas early studies have attributed the EU a crucial influence (Birsl/Müller 2005; Tomei 2001) and legal scholars already for some time now argue that the increasing influence of the EU fundamentally replaces German refugee and migration legislation "by implementation rules of European Union legislation" (Renner 2005: 274; see also Bergmann 2013), more recent studies are more sceptical in their assessments (cf. Musekamp 2011; Prümm/Alscher 2007; Wassenhoven 2011). Therefore, the research design of this study also allows for a more conclusive answer to the actual influence of the European factor in explaining refugee and migration policy reforms in Germany.

1.4 Chapter Outline

Answering the two major research questions concerning the outcomes of Europeanisation and its underlying theoretical mechanisms, the study starts in Chapter 2 with a stocktake of both the actual developments of European refugee and migration policies and the available scientific analyses of these processes. On the one hand, it describes the institutional developments this policy area experienced during the last two decades and the successively changing substantive outcomes pointing to a greater diversity of Europe's policies in this area. On the other hand, it discusses the available theoretical perspectives on the extent, direction and processes of Europeanisation and their shortcomings in responding to the progressing institutional context. The chapter concludes with an appeal to adapt and diversify our theoretical frameworks aiming at more adequate explanations of the outcomes of Europeanisation.

Chapter 3 builds on this assessment of the recent state of the art and develops a systematic empirical research strategy. Next to some crucial decisions about the operationalisation of the dependent variable of this study – the outcome of Europeanisation – and related methodological considerations concerning case selection and research methods, the chapter presents the explanatory approach. It separately discusses the two basic dimensions of Europeanisation – uploading and downloading – before combining them in an explanatory typology resulting in four ideal-typical mechanisms of Europeanisation.

The following four chapters then continue to apply and test this explanatory framework in individual comparative case studies. The alterations of domestic asylum policies, policies addressing irregular migration, highly skilled labour migration policies, as well as policies addressing the foreign and development links of international migration provide the empirical basis of this study. Each of the four chapters follows a largely similar structure with a separate analysis of the national policy context before the European Union acquired widespread competences in the respective policy area, addressing the national situation

largely at the end of the 1990s. Furthermore, the chapters analyse the uploading processes focusing on the development of European policies and in particular the role of Germany in these processes. Finally, the case studies concentrate on the downloading processes and the transposition of European policies into the national context until the end of 2012 covering an extensive time period and long-term national repercussions.

Chapter 8 concludes this study. Summarising the results of all four case studies, it provides a clear picture of the increasing diversity of the outcomes of Europeanisation and challenges the established venue-shopping approach. Instead, the four mechanisms of Europeanisation provide a more adequate framework for explaining this new diversity and the overall normalisation of this policy area. All four case studies document that the EU has certainly developed into a major explanatory factor to account for national refugee and migration policy-making. The politics of national refugee and migration policy reforms as well as their substantive outcomes are today hardly understood without reference to the EU. This is the obvious finding for the German case and there is little doubt that the European factor is of even greater relevance in the other member states.

2 Stocktaking the Europeanisation of Refugee and Migration Policies

The Europeanisation of refugee and migration policies started comparatively late. In line with a "tacit consensus" (Genschel/Jachtenfuchs 2014: 1) among EU-scholars conceptualising the EU as a multilevel polity with strong powers to regulate economic policies but little power to intervene in the core functions of sovereign governments, however, this integration process came for many as a surprise. Following Hoffmann's (1995) classic distinction, refugee and migration policies are considered as an area of "high politics" where "any transfer of powers to the EU institutions […] takes away from some of the most fundamental functions and reasons of being of the modern state and seems to threaten part of its legitimacy" (Mitsilegas, et al. 2003: 8). Furthermore, the exclusion of all aspects of migration of third-country nationals from the European Founding Treaties together with deeply entrenched national models of refugee and migration policies provided additional obstacles towards harmonisation of this issue area. Nevertheless, today it is unquestionable that the 'Area of Freedom, Security and Justice' "can be regarded as one of the most dynamic policy-making areas in the history of the European construction" (Monar 2015b: 4).

The following chapter provides an overview of both the development of common European policies governing the migration of third-country nationals (TCN) and their underlying institutional framework, and an overview of theoretical approaches applied to explain those dynamics. Although conceptually closely linked, the mobility of European citizens within the EU is excluded from those discussions because the underlying free movement rights are a basic principle of the European treaties and resulted from fundamentally different political dynamics (e.g. Maas 2007). In a first step, Section 2.1 concentrates on the institutional and policy developments. After briefly scrutinising the pre-Amsterdam configurations, it subsequently analyses the institutional (Chapter 2.1.2) and substantive developments (Chapter 2.1.3) after the Treaty of Amsterdam came into effect in May 1999. In a second step, Section 2.2 provides an overview of the most influential theoretical frameworks applied to explain the European integration of this policy area, as well as their national repercussions. The final section (Chapter 2.3) draws together both lines of discussion. The stocktaking exercise argues that the established theoretical frameworks are increasingly questioned by the increasing diversity of the more recent institutional and policy developments in Europe's refugee and migration policies.

2.1 Institutional and Substantive Developments in Europe's Refugee and Migration Policies

2.1.1 Pre-Amsterdam Institutional Configurations and its Policy Outcomes

When the Treaty of Amsterdam was finally signed by heads of states in October 1997, providing for a more comprehensive communitarisation of refugee and migration policies, it had been preceded by more than two decades of intergovernmental cooperation between

European member states. In an effort to provide an overview of the development of this area, Geddes differentiates several periods of the European integration of refugee and migration policies (Geddes 2003a; see also Müller 2003; Kostakopoulou 2006; the following paragraphs draw on Ette/Faist 2007). A first period, describing the developments between the 1970s and the Treaty of Maastricht in 1993, is best characterised by "informal intergovernmentalism" with refugee and migration policies remaining fully under national control. Without any existing treaty basis, national security services and law-enforcement agencies started in the 1970s to set up different groups for informal cooperation including the Pompidou Group in 1972 and the Trevi Group in 1975. Drugs, terrorism and organised criminality constituted the pressing transnational challenges at that time and absorbed the attention of home affairs officials. Nevertheless, those forums are generally seen as the birth of today's European refugee and migration policies because they provided representatives of the administration of member states a context for exchanging ideas, building trust and enabling closer cooperation. When refugee and migration issues finally emerged on the European agenda in the second half of the 1980s, member states could rely on those already existing frameworks (cf. Huysmans 2000: 755; Turnbull/Sandholtz 2001: 197). In a formal sense, most of these groups were not part of the European integration process and when the Council of the European Union[1] was involved agreements had to be reached unanimously. This was particularly obvious during the 1980s, when the number of intergovernmental bodies accelerated including in particular the Schengen Agreement in 1985 as well as more than 20 other intergovernmental bodies dealing with specific issues of refugee and migration and other Justice and Home Affairs issues between 1986 and 1991 alone (Mitsilegas, et al. 2003: 30; see also Geddes 2000: 73-84).

This strong intergovernmental mode of cooperation does not mean that the Court of Justice of the European Union, the European Parliament or the European Commission were fully absent from those debates. The Parliament, for example, was occasionally asked for opinions and the Commission participated in those bodies, but only with observer status. Overall, member states were firmly committed to resisting any moves towards European integration that could impose limits to national sovereignty. Existing regular initiatives by the Commission since the mid-1970s, touching upon issues of refugee and migration policies, for example in the context of an action programme on migrant workers (e.g. EC 1974), were regularly declined by member states. Its greatest success occurred during the preparations of the Single European Act (SEA) in 1985, when it tabled a White Paper containing nearly 300 legislative proposals including detailed proposals on refugees and migration policies. Although the proposals were rejected by the majority of member states, the SEA "marked a key moment in the development of cooperation at EC level on immigration and asylum policy" (Geddes 2000: 84; see also Marshall 2000a: 412). Although it demonstrated the inseparable connection between the single market and refugee and migration policies, any formal transfer of power to the institutions of the European Union failed because of member state opposition.

[1] Always the most recent nomenclature for the different EU institutions is used instead of applying the historically changing titles. The same applies to the European Union itself instead of referring to its historical ancestors. Finally, in the following the term Council of Ministers or just the Council is used to refer to the Council of the European Union whereas the term European Council specifically refers to the institution representing the heads of state or government (cf. Hayes-Renshaw/Wallace 2006).

Despite the institutional dynamic at the end of the 1980s, the sheer number of actual policies has been mediocre. The general legal instrument at that time was the Convention with adopted acts classified as public international law. As a consequence of the complicated intergovernmental procedures only two of ten Conventions agreed before 1993 were ever ratified (Peers 2006a: 10f.). Their actual content, however, has been far-reaching and pre-structured European refugee and migration policies for the following decades. The first Convention concerns the adoption of the Schengen Implementation Agreement in 1990. On the one hand it includes the abolition of internal border controls between signatory states, on the other hand it sets up a broad range of detailed compensatory measures capable of minimising the risk of an "internal security gap" (Boer 1995: 92) by establishing alternative control mechanisms within the territory as well as stricter control at external borders. The second legal instrument of that period was the Dublin Convention, which was also signed in 1990 and introduced a responsibility rule for the examination of asylum claims among the contracting parties. Significantly departing from the traditional system of refugee protection which bound every state to provide protection under the Geneva Convention, the new rule stipulated that only the country which asylum-seekers reach first shall be responsible for processing an application.

The second period, "formal intergovernmental cooperation" (Geddes 2003a), was shaped by the Treaty of Maastricht (ToM), which entered into force in November 1993 and was finally replaced in May 1999 by the Treaty of Amsterdam (ToA). The ambitious Treaty basically created the European Union, a European citizenship and recognised refugee and migration policies as areas of common interest providing them a basis in the European Treaties. Although this was of great symbolic importance and resulted for the first time in public debates about the European integration of refugee and migration policies, its actual institutional changes have been less dramatic. The political compromise between member states in the ToM resulted in the popular Greek temple analogy – the three-pillar structure of the EU. The first and largest pillar was the Community pillar providing for significant supranationalisation with direct effect of European law, greater powers for the Court of Justice of the European Union (CJEU),[2] expansion of qualified majority voting (QMV) to new policy areas and an increasing influence of the Commission and the Parliament on policy developments. Instead, the second pillar on the Common Foreign and Security Policy and the third pillar on Justice and Home Affairs including refugee and migration issues remained strictly intergovernmental and formalised only already existing structures of cooperation.

Similar to the previous period, the Treaty of Maastricht assigned that decisions – with the exception of the common visa policy that was already transferred to the supranational first pillar – had to be taken unanimously. However, the Council now had a formal role to play and it was not anymore the member states solely cooperating outside European institutions (see Table 2.1). The role of the Commission was formally upgraded including a shared right of initiative to make proposals. Nevertheless, this formal improvement was seriously hampered by the fact that only a task force with very few staff was responsible for all issues of Justice and Home Affairs. This resulted in very few proposals by the Commission until 1997 including some visa policy measures, Conventions on external borders and some Joint Actions establishing funding programmes (cf. Uçarer 2001). The Court of Justice and the Parliament maintained their restricted roles with the CJEU having no mandatory jurisdiction

[2] The Court of Justice of the European Union is constituted by three courts, the Court of Justice, the Court of First Instance and the European Union Civil Service Tribunal. In the following, the Court of Justice is used to refer to the Court of Justice of the European Union (cf. Kennedy 2006).

and the Parliament was only provided with the right to be regularly informed of discussions, to ask questions and to make recommendations. Actual practice was even worse because most measures were sent to the Parliament for consultation only after adoption. As a result, the national governments and in particular the member state holding the Council Presidency remained the key drivers of the European refugee and migration policy (cf. Peers 2006a: 11-20; Lavenex/Wallace 2005: 461f.; Müller-Graff 1996). In conclusion, the ToM resulted in an "institutionalization of the existing intergovernmental provisions [rather] than a new supranational competence" (Hix/Hoyland 2011: 283) because it delegated authority to the EU level while at the same time codifying the predominance of the Council and meticulously preventing any dynamic of "creeping competence" (Pollack 2000: 521).

Table 2.1: Institutional developments and policy outcomes of the refugee and migration policies of the European Union

	Pre-ToM (before 1993)	Post-ToM (1993-1999)	Post-ToA I (1999-2004)	Post-ToA II (2004-2009)	Post-ToL (after 2009)
Treaty Basis	No Treaty basis	Title VI, Article K	Title IV, Articles 61-64 TEC	Title IV, Articles 61-64 TEC	Title V, Articles 67-80 TFEU
Voting Rules in the Council	Unanimity	Unanimity	Unanimity	QMV in asylum and irregular migration issues	QMV in legal immigration issues
European Commission	Observer status	Shared right of initiative	Shared right of initiative	Exclusive right of initiative	Exclusive right of initiative
European Parliament	Occasionally asked for opinions	Limited role	Consultation role	Co-decision	Co-decision
Court of Justice of the European Union	No jurisdiction	No jurisdiction	Preliminary rulings only after referral from last instance national courts	Preliminary rulings only after referral from last instance national courts	Preliminary rulings
Legal Instruments	International Conventions	International Conventions, joint actions, joint positions	Directives, regulations, decisions	Directives, regulations, decisions	Directives, regulations, decisions
Policy Outcomes	Schengen Agreement, Dublin Convention	Eurodac	Asylum, Irregular	Blue Card, Global Approach, Frontex	Legal migration, EASO, Smart borders

Source: Own compilation based on Guiraudon (2004: 166).

Nevertheless, the inclusion of refugee and migration policies into the pillar structure of the EU provided the Council with new legal instruments. Whereas before member states could rely on Conventions only, these were now complemented by Protocols, Joint Actions and Positions, Decisions, Resolutions, Conclusions and Recommendations. During the period of the ToM, the Council adopted more than 70 refugee and migration measures. Although most of them made use of soft law instruments like Resolutions and Recommendations, quantitatively alone it shows the increasing dynamic in this issue area. Substantially, they mainly concentrated on refugee and irregular migration aspects and are best characterised as "ad hoc measures […] inspired by a concept of 'crises'" (Boer 1995: 93). This second period experienced a broadening of the policy agenda and included next to refugee and irregular migration policies a number of decisions on legal migration. Following the 'Report from the Ministers responsible for immigration to the European Council meeting in Maastricht on immigration and asylum policy' in 1991 listing harmonisation of admission policies and labour migration policies as one of the main topics which require priority treatment by the Union, the Council adopted a number of resolutions. In practice, however, these decisions did not offer much added value compared with policies already applied at national level and set very strict rules for labour migration and lawful employment for third-country nationals (cf. Guild/Niessen 1996: 321-328; Papagianni 2006: 127). Instead, with respect to refugees, policies during the second period adjusted earlier decisions and aimed primarily at the implementation of the Dublin Convention. This included in particular the preparation of Eurodac, as an automated fingerprint identification system for recording and comparing fingerprints of asylum-seekers and irregular migrants. These measures were very restrictive, abolished the individual right for asylum and aimed at elaborating a deterrence regime. Early on, Hathaway (1993: 719) argued that "[u]nder the guise of 'harmonization', European governments have effectively renounced their commitment to an inter-regional system of asylum".

In conclusion, the first two decades of European cooperation on refugee and migration policies provided member states with an institutional framework of intergovernmental decision-making bodies dominated by national executives and the absence of effective structures of supranational scrutiny and accountability. Despite more liberal and open political attitudes represented by the Commission and in particular by the Parliament, it is of little surprise that given these institutional frameworks "the logic of exclusion predominate[d]" (Thränhardt/Miles 1995: 3) and that the outcomes of substantive policies have been overwhelmingly restrictive in their orientation.

2.1.2 Post-Amsterdam Institutional Developments

In comparison to the Treaty of Maastricht, the Treaty of Amsterdam (ToA) – signed in October 1997 and in force since May 1999 – did not provide for the same level of political inspiration. Most commentators were frustrated about the political results "because of their insignificance when held up against the benchmark of federalist ambitions" (Moravcsik/ Nicolaidis 1999: 60). Despite this general disappointment, the Treaty marked an important step forwards with respect to refugee and migration policies. In particular it responded to widespread dissatisfaction with the workings of the intergovernmental procedures in the Third Pillar under the ToM including diverse legal ambiguities, the insufficient transparency towards parliaments and the public as well as the absence of any mechanisms ensuring national compliance with European policies (Lavenex/Wallace 2005: 464; Hix

2005: 365-366). In response, the ToA included fundamental reforms and established a coherent and comprehensive institutional framework for these policy areas best described as "communitarisation" (Geddes 2003a). Although the results did not go unchallenged and have been described as a "Pyrrhic victory" (Papagianni 2006: 26) and a "false dawn" (Parkes 2010: 11), the new Treaty created hopes that "EU decision-making on JHA matters would be more open, that judicial control in this area would be improved, and that the substantive EU measures to be adopted would strike an acceptable balance between the protection of human rights and civil liberties and the interests of migration control and ensuring public security" (Peers 2006a: 3).

In detail, the Treaty of Amsterdam de-pillarised the former institutional framework by incorporating refugee and migration policies into the first pillar via a new Title IV and created an 'Area of Freedom, Security and Justice' covering the whole range of refugee and migration issues. Additionally, it incorporated the complete Schengen *acquis* – which existed outside the general Community framework before – into the institutional framework of the EU. Despite those important institutional developments, the ToA was a carefully negotiated compromise best characterised by its "hybrid" mixture (Stetter 2000: 95; Moravcsik/ Nicolaidis 1999: 79) of intergovernmental and supranational instruments. Member states strictly controlled the passage from intergovernmental procedures to the general Community method by introducing a series of safeguard clauses (Papagianni 2006). These included a transitional period of five years lasting from 1999 until 2004 during which the right of initiative was shared between the Commission and the member states and unanimity was prescribed as the dominant voting rule in the Council. Furthermore, the role of the Parliament was limited to simple consultation rights and the role of the Court within the framework of Title IV TEC was seriously restricted. Although the CJEU was provided with the right to provide preliminary rulings, those where constrained to referrals from last instance national courts only (cf. Lenaerts 2010; Garlick 2010). Additionally, Article 63 TEC made concessions to member states being reluctant to give up part of their sovereignty on refugee and migration policies and allowed maintaining or introducing national provisions regarding migration. Finally, the Treaty allowed for flexibility with Denmark, Ireland and the United Kingdom (UK) opting out of these provisions, enabling them to participate on a selective basis instead (Kuijper 2000).

Those safeguard clauses made sure that the break between the Maastricht and the Amsterdam framework was less dramatic then it first appeared. Nevertheless, the last decade has seen additional developments which continuously shifted European refugee and migration policies towards the supranational end of the institutional spectrum (cf. Maurer/Parkes 2007a: 107). Certainly of minor importance has been the Treaty of Nice signed in 2001, which included few and only extremely complicated compromise solutions with respect to this issue area. Similarly, the proposal of the Commission from 2001 on the introduction of the 'open method of coordination' for refugee and migration policies did not introduce far-reaching institutional changes for the overall developments in this policy area (CEC 2001a). Originally invented by the Treaty of Maastricht, this new mode of governance was particularly promoted within the context of the Lisbon Strategy adopted in March 2000 and provided for a consultation and peer review process for policy areas where member states remained reluctant to transfer sovereignty to the EU. Although an informal consultative committee on asylum and immigration was created by the Commission, whose work has been referred to as 'OMC minus', its overall institutional influence remained mediocre (cf. Caviedes 2004). Of greater importance instead was the

publication of the Commissions' assessment of the first five years following the ToA in June 2004, stating that because of the intergovernmental decision-making procedures based on unanimity in the Council of Ministers "it was not always possible to reach agreement at the European level for the adoption of certain sensitive measures relating to policies which remain at the core of national sovereignty" (CEC 2004a: 3-4). In response, the Council decided in December 2004 that from January 2005 onwards decision-making on EU refugee and migration policies (with the exception of legal immigration) was to change to qualified majority voting in the Council and introduced the co-decision procedure with the Parliament. Additionally, the CJEU received its usual jurisdiction with the one exception that only final national courts were allowed to send questions to the Court regarding the interpretation or validity of European legislation in these policy areas (Peers 2006a: 4-5; cf. Peers 2006b).

Finally, the Constitutional Treaty first passed in June 2004, signed as the Treaty of Lisbon (ToL) in December 2007 and in force since December 2009, introduced additional steps towards greater supranationalisation and again redefined the "structural environment in which actors interact" (Trauner/Ripoll Servent 2015a: 19). Although it shaped the Europeanisation of refugee and migration policies only during the last few years of the overall time period analysed in this study, the ToL now provides guidance for the institutional long-term perspectives of this policy area. Overall, it highlighted the increasing importance of European refugee and migration policies because it is here where one can find the highest number of treaty changes. The new Article 3 TEU moves this policy area to the second position of fundamental treaty objectives even before fundamental objectives such as the economic and monetary union, the internal market or the common foreign and security policy (Monar 2008: 123). Renaming Title IV finally ended the distinction between the first and the third pillar of the old institutional framework created in the ToM and clarified the legal bases regarding refugee and migration policies (see Table 2.1). Institutionally, the ToL completely integrated these policy areas into the Community method of decision-making. That means that the Commission now exercises the exclusive right of initiative, the Council decides by QMV even legal immigration issues and the Parliament acts as co-decision-maker, substantially strengthened through the creation of a single legislative procedure. Regulations, directives and decisions are now used as regular legal instruments. Finally, the role of the Court was enhanced, by providing it with the general jurisdiction to interpret and review the validity of acts adopted. Particularly, the former limits on preliminary rulings have disappeared allowing all inferior courts in member states to directly refer an urgent question to the CJEU leading to an overall judicialisation of this policy area (cf. Lenaerts 2010; Zwaan 2011). Overall, the new institutional framework reduced the predominance of national executives in EU policy-making. Although unanimity has been maintained in Council negotiations for the most sensible areas, particularly those concerning any decisions on the admission of legal migrant workers, the Treaty of Lisbon should be seen as the latest step in a process, "which has gradually brought about a degree of supranational governance in the EU internal security policy domain" (Kaunert, et al. 2014: 41).

Despite those substantial Treaty revisions increasingly transferring national decision-making authority on refugee and migration policies to the EU, the last decade has also witnessed a number of diametrical developments making Wallace speak about "intensive transgovernmentalism" (Wallace 2005b: 87f.) instead of communitarisation or supra-nationalisation when referring to the developments of the institutional framework of

European refugee and migration policies during the last decade. A first aspect concerns the Council, which continued to play an increasingly influential role as agenda setter in recent years despite its relative decline of influence compared to the other EU institutions. This influence was particularly obvious in the context of the 'European Pact' in 2008, in the 'Future Group' preparing the Stockholm programme for the period 2010-2014 as well as in the context of the European Council's 2014 'Strategic Guidelines for Legislative and Operational Planning for the Coming Years for the Area of Freedom, Security and Justice'. These opportunities have been used effectively to shape the European refugee and migration agenda along the Councils' preferences (cf. Parkes/Angenendt 2009; Carrera/ Guild 2014). A second aspect concerns the increased power of the Parliament and the higher level of transparency of policy-making processes. Both aspects are circumscribed by the fact that the European Parliament is coming under considerable pressure to take a realistic attitude towards refugee and migration policies, highlighted, for example, during the negotiations on the Return Directive (Ripoll Servent 2011). Furthermore, informal procedures – such as the trilogue discussions between Council, Commission and relevant parliamentary committees – have been established, favouring opaque package-deals involving both policy outcomes and decision-making procedures (Bendel 2008b: 19). A third aspect concerns the unbroken tendency to make use of external intergovernmental cooperation arrangements outside the general Community framework as well as searching for policy solutions beyond the territory of the EU. Examples include the creation of the so-called G5-group in May 2003, an intergovernmental forum bringing together the interior ministries from France, Italy, Spain, Germany, and the UK as well as the more general approach of shifting venues of decision-making into foreign policy domains (cf. Lavenex 2006b; Maurer/Parkes 2007a).

The analysis of the institutional developments during the last decade – from the Treaty of Amsterdam in 1999 to the Treaty of Lisbon in 2009 – documents, despite those diametrical processes, obvious progress towards supranational procedures governing European refugee and migration policies. Although a number of qualifying exceptions apply, there is no doubt that "the Amsterdam Treaty constitutes the turning point, the beginning of the end, a sort of Rubicon line for intergovernmentalism in JHA and the birth of a Community migration policy" (Papagianni 2006: 101). In successive, incremental steps the two decades following the Treaty of Amsterdam have witnessed the shift of almost all refugee and migration policies towards the Community method of qualified majority voting in the Council of Ministers, the introduction of co-decision powers for the European Parliament, the granting of the sole right of initiative to the European Commission and the transfer of jurisdiction to the Court of Justice. Today, European refugee and migration policies are tightly integrated into the European constitutional framework and exhibit a widely similar institutional framework like any other European policy area.

2.1.3 Post-Amsterdam Substantive Policy Developments

The preceding section documented the fundamental institutional transformations in the area of refugee and migration policies following the Treaty of Amsterdam. Comparing all three Treaty frameworks – ToM, ToA and ToL – it is more than obvious that the policy area today is increasingly governed by supranational procedures. In the aftermath of the Treaty of Amsterdam, scholars shared a certain degree of optimism that the empowerment of EU institutions and in particular the Commission, the Parliament and the Court of Justice would

result in a more comprehensive and balanced European approach to refugee and migration. Those hopes, however, were soon dashed by actual policy outcomes, which illustrate the path dependence with developments during the 1990s. Kostakopoulou (2000: 514-515) was about the first who argued that the institutional shift from the intergovernmental pattern of cooperation to the Community method "has not been accompanied by a cognitive shift which challenges the securitisation of immigration and reflects critically on the meaning and terms of membership in the EU". The continuity of the control-orientation already dominating policies during the intergovernmental period of cooperation throughout the 1980s and 90s – "the remnants of the previous regime" (Guild 2004: 206) – is the dominating finding in most analyses.

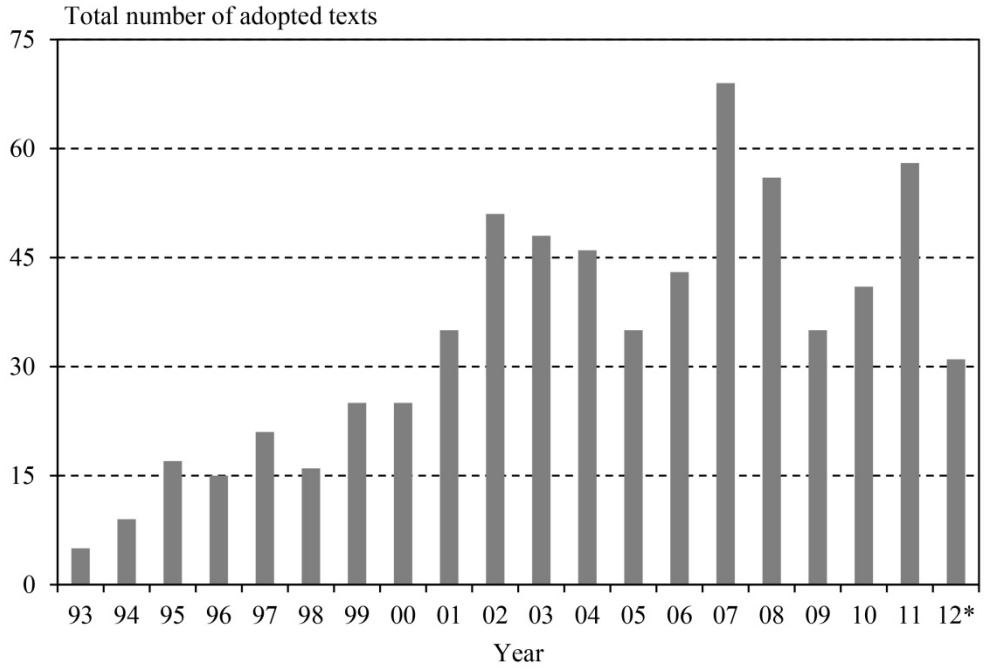
There exist a remarkable number of examples to illustrate this path-dependency of substantive policy outcomes including all measures transferring the original Dublin system into a more effective and more regularly applied system. It comprises the Dublin Regulation (2003/343/EC) from 2003 (subsequently reformed in 2013) replacing the former Convention from 1990 as well as the Eurodac Regulation (2000/2725/EC) from 2000, the redrafted version of which became applicable in July 2015.[3] Similarly, the difficulties in reaching any policies aiming at the harmonisation of national refugee policies and the generally low level of refugee protection are often used as a complementary example of the continuity of restrictive policies. Particularly the Procedures Directive (2005/85/EC) as well as the Reception Conditions Directive (2003/9/EC) have been seriously criticised by the European Parliament, which called for approximately 100 amendments, and non-governmental organisations (NGOs) that argued that some of the proposed regulations set standards fundamentally breaching international refugee and human rights law. Finally, the small number of measures addressing legal migration and the dominance of policies on irregular migration and border controls are regularly cited as indications of the continuity of policies favouring security and control to the detriment of the rights of refugees and migrants. Here, examples include the low standards introduced with the Return Directive (2008/115/EC), as well as the almost complete absence of fundamental rights protection in the Regulation (2007/2004/EC) from 2004 establishing Frontex as a European border agency (e.g. Bendel 2007; Bigo/Guild 2005; Maurer/Parkes 2007a).

The obvious path-dependency from the Treaty of Maastricht to the Treaty of Amsterdam with respect to the substantive outcomes of policies hides important departures from the already chosen path. One obvious difference between both periods exists with respect to the dynamic of this policy area. From a quantitative perspective alone, the decade after the ToA came into force has seen impressive legislative activity unimaginable under the previous intergovernmental period of the ToM. Figure 2.1 provides an analysis of total texts adopted by the Council of Justice and Home Affairs between 1993 and 2012 including not only legislative initiatives, but also communications or internal documents. It shows that whereas the yearly average number of adopted texts in the period 1993 to 1998 was only about 14, it increased to 38 for the period 1999 to 2004 and experienced an additional boost to 48 in the years between 2005 and 2009. During the first term of the Stockholm Programme – between

[3] The recast regulations concern: Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, OJ L 180; Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac', OJ L 180.

2010 and 2012 – it slightly decreased and stood at a yearly average of 43 adopted texts. Those calculations have to be interpreted cautiously, because they demonstrate not only the greater dynamic and efficiency of this policy area after the Treaty of Amsterdam and in preparation of successive rounds of EU enlargements since 2004 (Geddes/Taylor 2013), but also the underlying task expansion. Nevertheless, the developments show the substantial increase in legislative productivity after the Treaty of Amsterdam resulting in an overall density of European legislation on refugee and migration issues. Additionally, this trend is supported by the legal quality of those adopted texts, which also differentiates the last decade from the previous Maastricht regime. Whereas the 1980s and 90s have been characterised by soft law measures only based on international conventions and joint actions, the last decade has seen an evolution towards legal instruments with greater enforcement rights like directives and regulations (cf. Monar 2006).

Figure 2.1: Development of Council of the European Union activities on refugee and migration issues based on yearly number of texts adopted, 1993-2012



Source: Own calculations; Data for 2012 include only texts adopted before November 2012.

Note: The analysis is based on the publication 'List of texts adopted by the Council in the JHA area', which was published until 2011 on a yearly basis by the European Council (last accessed 2 February 2012). Whereas previous analyses of the same data generally refer to all texts adopted in Justice and Home Affairs the analysis presented excludes all measures not related to aspects of borders and visas, irregular migration, legal migration and refugees (e.g. Trauner/Kruse 2008). Data for 2012 was published in the context of the mid-term review of the Stockholm Programme (CEU 2012d).

This far greater level of legislative efficiency is mainly explained by the development of the Commission and its DG Justice and Home Affairs into a fully-fledged institution capable of overseeing the complete policy area and the necessary administrative resources and experience of developing this policy area. One important instrument in this respect is the regular five-year action plans accompanying the three programmes structuring the policy area. This already started in the months following the adoption of the ToA when in October 1999 the Council agreed on the Tampere Action Plan defining a five-year programme on the central measures of a common European immigration policy (European Council 1999). Its implementation was strictly followed by a regular Scoreboard documenting progress and achievements in this policy area as a continuing review instrument. In 2004, the Tampere Action Plan was succeeded by the Hague Programme accompanied by the 'Scoreboard Plus' (cf. CEU 2004a) and the period since 2010 was finally structured by the Stockholm Programme and its accompanying Action Plan (cf. Commission 2010b).

Of certainly greater importance than the increasing number and overall density of European refugee and migration policy instruments, as well as their changing legal quality are the changes to the actual content of these policies. On a general level this concerns the substantial changes introduced by the ToL with respect to the basic legal framework for the protection of human rights in the EU legal order. This includes, first of all, the Charter of Fundamental Rights of the European Union. Although the Charter was already adopted in 2000 it was only the Treaty of Lisbon that finally provided it with the same legal status as the treaties. Additionally, the ToL sets out in Article 6 (TEU) that the EU "shall accede" to the European Convention on Human Rights. Although this process is in deadlock after a negative opinion by the Court of Justice in December 2014 its potential adoption will likely increase the protection of refugees and migrants in the future (cf. Gil-Bazo 2008; Peers 2015). On a more specific level, the actual content of European refugee and migration policies also started to change. Although the majority of policy instruments remain aligned with the control-orientation characterising previous periods, the last two decades have also witnessed policies strengthening the rights of refugees and migrants.

This concerns in particular the adoption of a number of asylum regulations with the Qualification Directive (2004/83/EC), for example, conferring refugees a subjective right to be granted a protection status, comprising a residence permit as well as a number of socio-economic rights and codified some of the individual entitlements on persecution from non-state actors, the recognition of child-specific and gender-specific forms of persecution, and provisions focusing on the needs of unaccompanied minors into European law. Furthermore, the establishment of the European Refugee Fund (2000/596/EC) in 2000 and its subsequent renewals during the last decade[4] constitutes one of the very few international institutions that explicitly involve redistributive objectives (Thielemann 2005: 807-808). Although the financial resources of the Fund are certainly restricted it demonstrates solidarity between the member states, with their efforts with the reception, integration and repatriation of asylum-seekers, refugees and displaced persons at the national, regional and local level. Finally, the reform process during the second phase of the Common European Asylum System (CEAS) – although providing for modest improvements only – documents

[4] The European Refugee Fund has seen several reforms since its first implementation in 2000 including the Council Decision in December 2004 (2004/904/EC), the Decision (573/2007/EC) of the European Parliament and of the Council in May 2007 and finally Regulation (516/2014) from April 2014 establishing the Asylum, Migration and Integration Fund for the period 2014-2020.

the gradually evolving European refugee regime providing for a better balance between national security and control interests on the one hand and the rights and freedom of refugees on the other (cf. Monar 2014: 142-145; Peers 2012).

Examples of a more balanced European policy approach are not restricted to refugee policies alone but cover all aspects of a comprehensive migration policy. In recent years the EU developed a progressive role for the development of an explicit agenda for the integration of refugees and migrants (e.g. Rosenow 2008; Geddes/Scholten 2015). Next, legal migration traditionally concerns the area where member states have been least likely to shift sovereignty to the European level. The existence of the European Blue Card Directive (2009/50/EC) together with the Single Permit Directive (2011/98/EU), the Seasonal Workers Directive (2014/36/EU) and the Directive on intra-corporate transfers (2014/66/EU) therefore provide additional examples of a changing substantive agenda. Although member states remain in the driving seat to define admission of labour migrants, the rights of workers from third countries are increasingly regulated at the European level (Roos 2015). Also with respect to foreign policy aspects, the establishment of the 'Global Approach' comprising a more comprehensive and multidimensional vision of immigration at the European level – what some have called "a real shift of paradigms in immigration issues" (Bendel 2007) – signifies a potentially broader and more balanced approach on refugee and migration issues taking into account not only the interests of the countries of destination but also of the countries of origin and the migrants themselves.

What is more, the last two decades have seen evidence challenging the predictions of the intergovernmental approach. The logic of the fortress hardly fit the policy dynamics following the terrorist attacks of 9/11 2001 in New York and 3/11 2004 in Madrid, which did not materialise the way established theories would have predicted (cf. Boswell 2007; Neal 2009). Furthermore, empirical evidence for the often-summoned race to the bottom failed to appear and there exist at least indications of a gradual increase of migrant rights and refugee protection standards (cf. Thielemann/El-Enany 2011; Mavrodi 2010; Zaun 2015). Finally, a number of authors have started to test the established intergovernmental predictions with respect to its assumed historical dynamics (Bulmer 2011) and the development of individual policy aspects (Block/Bonjour 2013; Kaunert/Leonard 2012). The Treaty of Lisbon, most recently, triggered several studies on the changing role of specific European institutions (Kaunert, et al. 2014; Trauner/Ripoll Servent 2015b; but see also Luedtke 2009) – focusing in particular on specific institutions like the European Parliament (Trauner 2012; Ripoll Servent 2012), the European Commission (Chou/Riddervold 2015; Kostadinova 2013) or the Court of Justice of the European Union (Acosta/Geddes 2013; Somer/Vink 2015) – and their influence in developing European refugee and migration policies.

In a nutshell, the analysis of institutional and substantive developments during the decade following the ToA showed an obvious transformation. Although the previously dominating character of one sided refugee and migration policies strictly following an internal security agenda with a focus on more effective control continued in recent years, "the pendulum between security and liberty […] tentatively starts to move back" (Trauner/Lavenex 2015: 220). The political agenda today covers all aspects of migration management and an incremental trend towards greater protection of refugees and the rights of migrants has taken place. Policies today certainly continue to favour security aspects, but it is fair to say that Europe has started some first processes of supranational constitutional-isation where basic rights of refugees and migrants are becoming embedded in the legal order of the European Union (cf. Rittberger/Schimmelfennig 2006).

2.2 Theoretical Frameworks Approaching the Europeanisation of Refugee and Migration Policies

Europe's refugee and migration policies for a long time have been dominated by an obsession of security and control aspects. Scholars have constructed their theoretical approaches to explain these processes of European integration, as well as the subsequent processes concerning the Europeanisation of national refugee and migration policies in response to these biased European policies. The previous section, however, documented that the last decade has witnessed a slowly shifting situation with an institutional framework now providing major European institutions greater influence in this policy area and a more balanced outcome of substantive policies. Overall, these developments at the European level increasingly mirror the political and legal 'limits of control' that already characterise the national level.

The following sections analyse the available theoretical approaches and discuss how they account for the increasingly diverse outcomes of European refugee and migration policies. Did the recent institutional changes at the European level, increasingly mirroring the political and legal 'limits of control' that already characterise the national level, result in changing theoretical approaches? And how do these approaches account for the increasingly diverse outcomes of European refugee and migration policies? Providing an overview of the different theoretical approaches, however, is not an easy task because its intellectual evolution has been untidy (Bulmer 2007: 49).

Without explicitly using the term Europeanisation there existed a first phase of studies which considered the consequences of European integration at the domestic level rather broadly. During this first phase, Europeanisation was discussed as a side-effect of more general theories on European integration. Only during a second phase more explicit theorisation and more fine-grained analyses have developed. Only those second phase studies apply the Europeanisation concept explicitly and focus directly on the question of the influence of the European Union on national refugee and migration policies. Nevertheless, it would be short-sighted to concentrate on this school of work only, because its character as an "attention directing device" (Olsen 2002: 943) and its constrained theoretical underpinnings would miss major theoretical contributions to explain the increasing diversity in Europe's refugee and migration policy.

Four theoretical perspectives are regularly found in the literature, which largely reflect the more general debates on European integration: neo-functional, intergovernmental, constructivist and Europeanisation approaches (for an overview see, for example, Pollack 2005; Bieling/Lerch 2006; Wiener/Diez 2009). In order to evaluate their respective assumptions, the following sections discuss each school of thought and their application to the area of refugee and migration policies. Next to a general overview of the approach and its application on the early days of European refugee and migration cooperation, each section discusses the respective predictions for potential national repercussions as well as the responses to the more recent institutional and substantive developments (for similar approaches to structure this field see, for example, Hix 2005: 359; Geddes 2003b; Givens/Luedtke 2004; the following paragraphs draw on Ette et al. 2011).

2.2.1 Neo-Functionalism: The Weakness of Supranational Organisations

The first major theoretical approach concerned with the project of European regional integration developed during the 1950s. It sought to explain the establishment of the European Coal and Steel Community and the European Economic Community by reference to increased transnational interdependencies and the resultant political constraints. In the original conception of the theory, governments started to adopt strategies of common action in a certain sector resulting in the establishment of more permanent regional institutions subsequently creating further functional pressures to cooperate. It is such unintended consequences, which in turn extend the authority of the institutions into neighbouring policy areas. In the case of the EU, this process resulted in sectoral integration becoming self-sustaining, leading to the creation of a new political entity with its centre in Brussels. It is this 'spill-over hypothesis' which marks the cornerstone of early neo-functionalist explanations of European integration (cf. Schmitter 2004; Wolf 2006).

Although Haas as one of the founding fathers of this approach declared neo-functionalist theory obsolete in the mid-1970s, the resurgence of the European integration process in the 1980s resulted in a substantial comeback of the approach. Most influential was the development of the concept of 'supranational governance', which not only gives an up-to-date formulation of neo-functionalism, but also provides more precise and testable hypotheses about the European integration process (Stone Sweet/Sandholtz 1997; Stone Sweet 2004). The concept focuses in particular on the question of the varying progress in different policy sectors, highlighting three sets of variables to explain the emergence of supranationalist integration: (1) the expansion of transnational exchange; (2) the role of supranational rules in shaping subsequent integration; and (3) the capacities of supranational organisations to respond to the needs of those who exchange. It remains the basis of even the most recent neo-functionalist accounts.

Applying the concept of supranational governance to European refugee and migration policies, the question of the degree of transnational exchange between European states (the first set of variables) has so far received greatest attention. Increased transnational exchange has most usually been deemed to have causes arising outside the individual member states. Geddes (2003a: 127) termed those approaches the "losing control" school. For analysts of this bent, supranational cooperation is caused by the decreasing capacity of states to control refugee flows and international migration because of the constraints of international legal norms (Soysal 1994), the emergence of new privatised transnational regimes for cross-border business transactions affecting labour migration (Sassen 2008) and the self-perpetuating nature of migration (Faist 2000).

Other studies similarly point to transnational challenges related to international terrorism during the 1970s, the end of the Cold War and its consequences for migration and criminality or the Kosovo refugee crises in the late 1990s (e.g. Turnbull/Sandholtz 2001). In political and public perception these developments were perceived as a "global migration crises" where migration and refugee issues are no longer the sole concern of ministries of labour or of immigration but "are now matters of high international politics, engaging the attention of heads of states, cabinets, and key ministries involved in defence, internal security, and external relations" (Weiner 1993: 91). In their analysis of internal-security cooperation, Glaessner and Lorenz (2005a) identify the existence of challenges such as human trafficking and cross-border criminality as providing the single

most important factor accounting for supranational activities. These pressures were compounded by events such as the terrorist attacks of 9/11 2001 and 3/11 March 2004 (cf. Baukloh, et al. 2005; Bendel 2007).

Other transaction pressures are specific to the regional milieu. Increased European economic cooperation led to the Schengen Agreement, which from 1985 removed border controls in response to calls from transport companies frustrated with delays at borders. This removal of border controls left the participating states more vulnerable to transnational security threats and bereft of a tool for controlling migration. Member states, for example, were confronted with the growth of asylum applications and responded with the adoption of increasingly restrictive regulations, which were unsuccessful because restrictions in one country only led to more asylum-seekers in other countries until those countries adopted the same or even stricter rules. As a result, it was recognised that single-handed activities did not help and that more intensive cooperation was needed. In this situation, hard and soft security concerns merged into a security continuum in which transnational migration and crime across Europe's eastern and southern borders increasingly preoccupied politicians, press, and public opinion. As a consequence, the pressure for an EU response was rooted in "a mixture of the perception of a common threat and the related inability of individual nation-states to cope with these problems single-handedly" (Niemann 2008: 569; cf. Lavenex/Wallace 2005; Monar 2001; Achermann 1995; Butt Philip 1994).

The second explanatory factor highlighted by Stone Sweet and Sandholtz refers to internal developments and the role of supranational rules in shaping subsequent integration. In line with the original 'spill-over' hypothesis they stress the importance of functional pressures resulting from former integration steps, whilst also pointing to the 'stickiness' and path-dependent effects of existing institutions. They argue that institutions can take on an independent existence and escape the oversight of their founders, regularly resulting in unintended consequences (Pierson 1998; Niemann/Schmitter 2009). The concepts of functional pressures and path dependent effects have become influential during recent years in refugee and migration studies and have been applied, for example, to the development of national migration (Hansen 2000) and citizenship policies (Faist 2007). As for the European integration of this policy area, scholars have stressed two aspects: the spill-over from the Single Market project and the necessity for compensatory measures in response to the dismantling of border controls.

Concerning the first point, Turnbull and Sandholtz (2001; see also Geddes 2000) argue that the endogenous development of the EU – and in particular the Single Market – linked the mobility of third-country nationals to the free movement provisions of the 1986 Single European Act, which subsequently caused political integration in this policy area. The removal of internal frontier controls as envisaged in the Single Market clearly generated functional pressures with other policy areas and with the basic definition of the territorial state. Consequently, from this perspective cooperation among member states in migration policies is a reaction to the economic logic of the single market development. Concerning the second point, it has been argued that once member states abolished the frontiers between them, the functional need arose to harmonise external frontier controls. The removal of physical controls on the movement of goods, services and persons provides additional functional pressure to cooperate. Open borders within the EU means that one government's immigration policy has a potential to affect the number of migrants to other EU states and makes it increasingly difficult for national governments to pursue independent policies to control migration. Consequently, member states have a

common interest in compensatory measures on the supranational level by way of cooperation on refugee and migration policies as well as border controls (cf. Hix 2005: 364; Stetter 2000).

Despite those applications of neo-functionalism on refugee and migration cooperation, the approach is today widely regarded as having offered an unsatisfactory account of European integration because it lacks a sufficient, coherent and comprehensive specification of the conditions under which further European integration will occur and because it appeared to have failed to predict both the trajectory and the process of the evolution of the European Union. Rival scholars have been quick to write off these accounts as largely descriptive. Although they identify important factors for explaining why refugee and migration policies emerged on the European agenda in the first place they do not provide precise explanations of the substantive policy outcomes and institutional developments. This first explanatory weakness – the capacity to explain substantive policy outcomes – is common to neo-functionalism as a whole, and is not simply a problem of refugee and migration studies. After all, neo-functionalism limits its definition of integration almost exclusively to the institutional characteristics of the EU and therefore discourages attention to substantive measures (Moravcsik 1993: 476f.).

As for the second point, neo-functionalist approaches seem ill suited to explain the reasons for the establishment of specific institutions and procedures. In particular, the Commission, which is key to supranationalisation from the perspective of neo-functionalism, for long time took a back seat in refugee and migration cooperation providing a particular challenge to those approaches. However, it is particularly this third factor – the role of supranational institutions as promoters of intensified integration – that received greater attention in recent years. The European institutional developments of the last decade re-established neo-functional causal imageries as well as explicit theoretical explanations as an important school of thought to explain European refugee and migration cooperation (e.g. Niemann 2008; Kaunert 2009). There have been a number of studies on the role of the European Commission, the Court of Justice of the European Union as well as European NGOs and their influence on the development and outcomes of this policy area. One of the first contributions was provided by Uçarer (2001) who shows that the institutional structure of the Treaty of Maastricht established the Commission as a potentially awkward actor in the then third pillar. Focusing on its constitutional (mandate, decision-making rules, right of initiative) and institutional (financial and human resources) capacities to act, he argued that the ToM put serious constraints on the Commission's ability to act. During the last decade, however, the Commission's formal role was upgraded. In the case of immigrant integration policy, several analyses highlight the importance of supranational institutions for integrating this policy area at the European level. Rosenow (2008: 126), for example, analysed the role of the Commission, the Parliament, the Council of Europe and European NGOs and argued that without their initiative the establishment of migrant rights at the supranational level would seriously lag behind the situation we see today (see also Geddes/Guiraudon 2004). With the increasing competences of the Court in this policy area, recent years have also seen more attention for this institution highlighting its importance for both substantive and institutional developments (Acosta/Geddes 2013; Somer/Vink 2015). Finally, Hix and Noury (2007) point to the institutional self-interest of the Parliament independent of its principal-agent relationship with national governments and constituents. Although their ideas are in line with neo-functionalist predictions, the overall influence of supranational actors so far has certainly been restricted and even the Treaty of Lisbon did not easily result in a fundamental change of the institutional environment (Trauner/Ripoll Servent 2015b).

Detailed analyses of the role of supranational organisations in the European integration process are certainly regarded as the greatest contribution of neo-functionalism to the recent developments of Europe's refugee and migration policy. Concerning the subsequent processes of Europeanisation, however, neo-functionalism provides very little help. This is not to say that neo-functionalists do not deal with national repercussions at all. For example, Scheingold (1970: 978) suggested in an early article "that the perspective of scholars studying regional integration be broadened to include research expressly concerned with the consequences of integration". Nevertheless, neo-functionalism does not provide detailed insights into the relationship between the EU and its member states. In particular its apolitical approach, which focuses on functional external and internal pressures, does not enable any understanding of this relationship. As a consequence, Risse et al. (2001: 14) argue that practitioners of this approach do not "carefully assess the feedback effects of institutional integration on domestic structures". Instead, neo-functionalism involves a rather naïve and optimistic perspective assuming that decisions once decided at the European level become transposed into national practice subsequently, which would lead one to expect that policy areas most integrated at the European level have the greatest impact on member states. Termed in the most influential account of Europeanisation – which will be discussed later – one could argue that neo-functionalists would expect that with growing integration of 'level' and 'scope' the adaptation pressures on member states grow and will subsequently result in Europeanised domestic policies. More detailed predictions about the processes and outcomes of Europeanisation, however, are not available, because neo-functionalists have virtually no theory of political processes and governmental bargaining.

2.2.2 Intergovernmentalism: Executive Preferences at the Centre

The original intergovernmentalist explanations for European refugee and migration policies emerged from the weaknesses of neo-functionalism. The intergovernmentalist school of thought reaches back to the work of Hoffmann, who – inspired by realist theories of international relations – developed an alternative framework of European integration during the 1960s, placing national executives and their preferences at the heart of his explanation. His core assumption was that shifts of sovereignty from the national to the supranational level necessarily differ between policy areas. Whereas policies on economic integration belong to the sphere of 'low politics' that largely follow neo-functionalist expectations of increasing integration, in policies characterised as 'high politics' – such as refugee and migration policies – member states are reluctant to pool their competences (cf. Hoffmann 1995; see also Bieling 2006; Rosamond 2000).

The early intergovernmentalist approaches have been substituted with a more recent liberal intergovernmentalist framework developed mainly by Moravcsik (cf. Moravcsik 1993, 1998; Schimmelfennig 2004). Comparable to neo-functionalism, liberal intergovern-mentalism seeks to explain the major developments towards European integration. Its fundamental claim argues that European integration is similar enough to general international politics and the EU is sufficiently like other international institutions that it can be profitably studied and explained from an international relations perspective. Moravcsik conceptualises European integration as a sequence of developments. The first involves the emergence of domestic actors' preferences for common action; the second collective outcomes as a result of aggregated individual actions based on these preferences;

and the third the establishment and design of international institutions as a collective outcome of states' strategic rational choices and intergovernmental negotiations in an anarchical international context.

Moravcsik argues that the first phase – national governments' decision to engage in international cooperation – can rest on two different motivations. The first resembles neo-functionalist assumptions; viewing increased transnational phenomena as incentives for policy coordination because this permits national governments to achieve goals that would otherwise not be possible. The second motivation, however, is specific to intergovern-mentalist theories conceptualising European integration as part of "two-level games" (Putnam 1988). Furthermore, one would expect that the establishment of governance functions at the supranational level would subsequently lead to a weakening of the traditional nation-state. This perspective of the hollowing out of the state has been supported by neo-functionalist scholars as well as more recent work on multi-level governance (cf. Zürn/Leibfried 2005; Hooghe/Marks 2003). Instead, intergovernmentalists have always argued that the nation-state does profit from regional integration. Hoffmann (1995: 211) argued, for example, that "the relations between the Community and its members are not a zero sum game; the Community helps preserve the nation-states far more than it forces them to wither away" and Moravcsik has provided a rigorous theoretical underpinning for this assumption. He argues that European integration redistributes power resources and generally results at an empowerment of national executives. From this perspective, regional integration loses domestic constraints including national parliaments or interest groups. In extreme cases, he argues, that the redistribution of power feeds back into international bargaining and leads executives to "welcome multilateral restrictions on national sovereignty in place of unilateral action, even in the absence of a direct international *quid pro quo*, as long as it increases their autonomy at home" (Moravcsik 1994: 2). For him these two-level strategies generally empower "national executives, permitting them to loosen domestic constraints imposed by legislatures, interest groups, and other societal actors." In particular, Moravcsik (1994: 1) highlights four ways how the European Union potentially fulfils this function: (1) control over domestic agendas (initiative); (2) changing decision-making procedures (institutions); (3) increasing infor-mational asymmetries (information); and (4) alternative justifications for policies (ideas).

In particular in opposition to the currency of globalist ideas and analyses during the 1990s, such intergovernmental analyses have experienced a revival in migration studies since the late 1990s. Their central starting point is that the nation-state has indeed the power to manage international migration and does control the national territory according to its preferences (cf. Cornelius, et al. 1994; Zolberg 1999). It is therefore of little surprise that intergovernmentalist approaches have received a prominent place in the study of the developing European migration policy. Described as "the escape to Europe" school (Geddes 2003a), intergovernmentalist analyses of cooperation on refugee and migration policies generally focus on the autonomy-generating effects of European integration. They show how participating in European cooperation can strengthen certain domestic actors. Most prominent in this respect has been the "venue-shopping" approach developed by Guiraudon to explain the dynamics and outcomes of European integration in this policy area (Guiraudon 2000, 2003; see also Lavenex 2001; Eder/Trenz 2003; Maurer/Parkes 2007a).

Guiraudon drew on analyses showing how, during the 1980s, it became increasingly clear that governments – constrained by the contradictory interests of economic actors, other ministries, political parties, extreme right-wing parties, migrant aid groups, public

opinion and the judiciary – lost control of the political agenda and the regulation of refugees and international migration (e.g. Freeman 1998; Joppke 1997; Lahav 2004; Thränhardt 1993; Castles 2004). These 'limits of control' were experienced particularly by interior ministries with their restrictive, security-oriented priorities. Shifting policy-making to European forums provided these actors with extra political resources with which to trump their domestic political rivals and regain control of migration. Consequently, the resulting European refugee and migration policies closely mirror the restrictive policy preferences of national executives.

Whether working within the venue-shopping framework or not, several analysts confirm that the European integration of refugee and migration policies has strengthened national executives within the domestic sphere. They point to the four mechanisms also identified by Moravcsik:

(1) The *initiative* towards European cooperation provided governments with control over the agenda and freed them from domestic political pressures and judicial constraints. At the European level national executives contend with less opposition from political parties, or pro-migrant NGOs than arises in the national framework (Guiraudon 2000). They did not, however, necessarily gain as unitary actors. Within governments themselves, the use of the "European loop" (Parkes 2010) was interpreted as a strategy of ministries of interior to regain initiative in the power distributions between ministries.

(2) A second aspect concerns the more favourable *institutions* found at the European level. The 'transgovernmental' Trevi and Schengen forums and later the intergovernmental third pillar under the Maastricht framework freed ministries of the interior from the political, parliamentary or public control that they might have faced at the national level. European cooperation enabled governments to sign up to European arrangements, bargain in secret sessions of the Council or even outside the EU institutions, which closely reflected their own narrow preferences and afterwards return home to their domestic rivals, who had little or no input into these agreements, and present these as facts. This form of European cooperation fundamentally changed the balance of power between particular governmental actors and other parts of the political system aptly described as a new *raison d'état* (Lavenex/Wagner 2007; see also Wolf 1999).

(3) Policy-making at the international level brought national ministries together with like-minded counterparts in other countries increasing *information* asymmetries in favour of the executives. Interior ministries shared a common desire to bring in restrictive domestic migration laws. These officials can thus be shown to have successfully venue-shopped: policy-making venues originally erected to deal with trans-border security and crime issues have been used to deal with questions of refugee flows and international migration; actors have legitimised the move by shifting the policy-image of asylum in order to highlight its security implications. The direction of asylum policies in the EU has subsequently altered, taking on a strong security and control orientation (Maurer/Parkes 2007a: 93-94).

(4) Finally, governments can lend normative acceptance to their own policy *ideas* in the domestic sphere by pointing to support from a wide range of other governments. Further, controversial policy ideas picked up by governments via international cooperation can be promoted, not by reference to their substantive content, but rather by referring to their positive impact on maintaining international cooperation. There is evidence that governments were consciously seeking the European integration of those formerly purely domestic issues as a way of diffusing voters' concerns (Monar 2001: 756f.).

Overall, the preceding review showed that intergovernmentalist approaches provide a convincing explanation of the original motivation and the timing of the integration of this policy area. Focusing in particular on the developments of the 1980s and 90s, scholars working in this tradition showed that the benefits of policy cooperation at the European level exceeded the costs in terms of governmental autonomy. By pooling sovereignty at the European level, member states were able to pursue their domestic migration policy objectives by other channels, and the EU reinforced the state's hand in "monopolising the control of immigration questions" (Favell 2001: 245).

When it comes to the question of the Europeanisation of refugee and migration policies, intergovernmentalism has two major advantages compared to the neo-functionalist approach. First, it includes the domestic level directly into its theoretical framework. Whereas neo-functionalism focuses on the developments at the supranational level only, intergovernmentalism starts at the domestic level to understand the motivations and processes by which member states shift sovereignty to a new political centre in Brussels – although one has to admit that most empirical analyses draw insufficient attention to the respective domestic processes. Second, intergovernmentalism is a much more political explanation compared to neo-functionalism; particularly its focus on two-level games highlighting the individual processes leading to certain policy outcomes. Venue-shopping is therefore helpfully understood as a particular process of Europeanisation leading from a particular domestic situation to a particular European policy and respective national policy changes.

Despite those obvious strengths of the intergovernmental approach, the recent institutional and substantive developments in Europe's refugee and migration policy obviously challenge this approach. On a formal level, the introduction of qualitative majority voting hinders a successful venue-shopping strategy because it reduces the chances for member states to arrive at the preferred outcomes by using the European loop. Furthermore the ability to shape European policies along its own national interests may diminish with an increasing number of member states in the EU. Empirically, the last decade has seen an increasing number of European decisions which are in contradiction to the position of member states when negotiations started and resulted in adaptation pressure for certain member states. It is not surprising, therefore, that scholars applying this theoretical framework have shifted their focus during recent years to such aspects of refugee and migration policies where the conditions still meet the original assumptions, e.g. the Prüm Convention or cooperation with third countries (e.g. Balzacq, et al. 2006; Lavenex 2006b; Parkes 2010; Reslow/Vink 2015; for a more fundamental critique of the venue-shopping approach see Bulmer 2011).

2.2.3 Constructivism: The Power of Policy Ideas

In parallel to neo-functionalism and intergovernmentalism, a third major school of thought – constructivism – has entered the field of EU studies mainly as a spill-over from international relations. Its most general foundation concerns its social ontology "which insists that human agents do not exist independently from their social environment and its collectively shared systems of meanings" (Risse 2004: 160). It is the social and institutional context in which individuals live and act, instead, which shapes their identities and interests. In contrast to the other two theories of European integration, social constructivism makes no substantive claims about European integration and respective processes of Europeanisation. It easily fits an intergovernmental perspective on international negotiations as

well as neo-functionalist theories emphasising the role of supranational institutions. What differentiates constructivism from the other two is its emphasise on the feedback effects of previous decisions in the process of European integration on identities and interests of member states (Christiansen, et al. 1999: 529; cf. Schwellnus 2006). In their constitutive contribution on building a constructivist research programme on European integration, Christiansen et al. (1999) differentiate two main research dimensions that have been important in analyses on the Europeanisation of refugee and migration policies: (1) identity formation in the EU polity; and (2) discourses and the role of ideas and norms.

A first contribution by scholars adhering to a constructivist research programme concerns in-depth analyses of different identity formation processes in the context of Europe's refugee and migration policy. On the one hand this includes analyses about learning processes within European cooperation. Checkel (2001a), for example, studied the interactions in the Council of Europe working groups on citizenship where he found indications of elite learning processes subsequently influencing domestic citizenship reforms. Similar processes of identity formation and trust building have been highlighted by several scholars analysing the diverse groupings of early refugee and migration cooperation. For example, Stetter (2000) highlights the acclimatisation between member states and responsible Community institutions as a necessary precondition for the subsequent authority delegation to the Commission and Monar (2001: 748) points to the "laboratories" outside the treaties like TREVI and Schengen, which helped to develop trust between national interior ministries and to gradually create a more favourable climate for deeper cooperation. Finally, a number of different authors have started to examine the various agencies and institutions of European refugee and migration policy and their different organisational identity processes (cf. Leonard 2010; Hess/Kasparek 2010).

The second research dimension where constructivist scholars insistently influenced the study of the Europeanisation of refugee and migration policies has been their focus on discourses and the role of ideas and norms in changing the substance of this policy area. Closely linked to the Copenhagen School of security studies, scholars in this realm argue that discursive practices make us understand certain problems in certain ways and construct meaning legitimising specific interpretations while at the same time excluding others (Waever 2004). Discursive approaches have generally developed towards an important approach in migration studies more generally (Koser/Lutz 1998; Cohen 1994; Dijk 1997; Jung 1997), but in the context of Europeanisation its focus is particularly directed towards explaining the restrictive turn in Europe's refugee and migration policies. This literature analyses the processes of securitisation that is the dynamics by which refugee policy and immigration more generally have been reframed from a humanitarian or economic issue into a potential threat to receiving states (Lavenex 2006a: 312). Although this literature does not generally deny the real existence of threats and security dilemmas, its major focus has been on the social processes by which issues become perceived and handled as security matters. The different approaches in this field share the general idea "that security practice is a specific strategy or technique of (de)politicizing and governing migration" (Huysmans/ Squire 2009: 174). Empirically, these studies demonstrated how the creation of the internal market resulted in the securitisation of migration. The justice and home affairs administrations of European member states at that time were successful in establishing a close link between the abolition of internal border controls and the necessity to strengthen the control of refugees and migrants as well as the external borders of the EU to guarantee a sufficient level of control. This link has become so strong that it sounded almost commonsensical and

has been subsequently used to justify those migration control policies that otherwise were not considered legitimate (Huysmans 2000: 758; Bigo 2002; Munster 2009). Particularly Lavenex (2002) has shown how a securitarian framing enabled the circumvention of political constraints in reforming traditionally liberal domestic asylum regimes. Additionally, the events on 9/11 have reinforced the security-migration nexus, dramatising a publicly convenient link between international migration and security (Faist 2002; Guild 2003), although not all agree with this (cf. Boswell 2007; Messina 2014).

In conclusion, constructivism has become an important theoretical school in the analysis of the developing European refugee and migration policy with its major focus on the discursive shift of the European project from an economic project of the internal market into an internal security project. Its emphasis on processes of securitisation highlights important processes in European cooperation that have to be taken into account in subsequent analyses as well. Nevertheless, the approach does not go unchallenged. Those scholars principally sharing the critical stance of the approach argue that the sole focus on discourse misses decisive processes "above and beneath the discursive 'level'" (Balzacq 2008: 76) and demand more attention for the particular policies and practices. Furthermore, the approach does not provide a precise explanation of the timing for European integration in this field and shares a simplistic understanding of the national repercussions. From their point of view, the establishment of a securitised discourse at the European level will – in the short or medium run – lead to policy shifts to the detriment of refugees and migrants in the European member states. Particularly with respect to the more recent institutional and substantive changes in Europe's refugee and migration policy, the approach has little to add. Based on an established securitarian discourse, for example, policy decisions supporting refugee rights are hardly understood. Although individual scholars have broadened the original approach framing national interests more generally in terms of security (cf. Rudolph 2006), the increasing diversity of the outcomes of European refugee and migration policies are hardly explained by this framework.

2.2.4 Europeanisation: The Legacy of Historical Institutionalism

Each of the previous three sections has discussed important aspects of Europeanisation. However, all three theoretical approaches originally concentrated on the explanation of the "European integration, the process whereby national sovereignty is transferred from the domestic to the European level" (Kohler-Koch/Rittberger 2006: 31). Accounting for processes and outcomes of Europeanisation, therefore, has been more a side-effect of their more general theoretical interest. During the last two decades a second phase of studies developed that more explicitly tried to theorise processes and outcomes of Europeanisation. In this second phase, scholars explicitly turned former research interests on their head. While EU research before took the EU polity as the dependent variable, Europeanisation studies takes the EU polity as a given and "look[s] at the impact of the Europolity on national and European policies and politics" (Jachtenfuchs 2001: 250). Europeanisation, therefore, studies "the consequences of continual empowerment of the EU [that] have begun to be visible within domestic political systems" (Ladrech 2010: 1). It aims at understanding how national policies are shaped and changed due to European integration.

In the early days of Europeanisation studies during the late 1990s, authors drew theoretical inspiration from a diverse body of literature. Those trained with an international relations background, for example, applied concepts of already well-established studies on

compliance (e.g. Haas 1998; Tallberg 2002). On the other hand, those with an interest in domestic public policies and experiences with national policy-making drew inspiration from existing scholarship on implementation (e.g. Treib 2014; Mastenbroek 2005). Finally, comparative politics has been of major importance for early Europeanisation studies (e.g. Hix 1994; Mair 2004). After the first excitement with this new research area, a research approach emerged that has become very influential for Europeanisation studies in general and certainly helped in the consolidation of this research area. This "three-step-research-approach" (Caporaso 2007) focused on the fit or misfit between the national and the EU-levels to analyse the domestic transformations based on EU influence. It originates from articles by Héritier (1996, 1995) who argued that member states try to minimise the costs of subsequent adaptation by actively uploading their national policies to the EU level in the first place. The underlying reasoning argues that member states who do not succeed in uploading their policies will face implementation difficulties because of the high costs of adaptation (Mastenbroek 2005: 1109; Mastenbroek/Kaeding 2006: 333).

In the developing field of Europeanisation studies, this basic argument has been taken up by several scholars (see for example Duina 1999), but its most elaborated and conceptualised form has been presented in an edited volume by Green Cowles et al. (2001). The editors differentiate between three basic steps to account for the European impact on the policies, politics and polity of the member states. In a first step, they focus on different aspects of European integration including policy outcomes like EU directives, rulings of the Court of Justice, as well as more informal understandings and meanings of EU norms that prescribe certain adjustments and consequences for the domestic level of the member states. In the second step, the authors argue that Europe will affect member states only if European policies, institutions, and political processes differ significantly from those found at the domestic level. For an understanding why and where Europeanisation takes place they refer to the 'goodness of fit' between the European and national level: the greater the fit between European rules and existing national institutional and regulatory traditions the smaller the adaptation pressures on member states for change. In reverse, the greater the misfit between European rules and existing national structures and policies, the greater the adaptation pressures with consequently a greater likelihood for domestic national change. The differential effects of the EU on different member states, different areas of policies, different structures of the polity, or the political processes is therefore explained by the adaptation pressures emanating from the 'goodness of fit' between the policies and structures at the European level on the one hand and national institutional settings rules and practices on the other. Finally, the third step of this approach argues that adaptation pressure alone is only a necessary, but not a sufficient condition for Europeanisation. A set of national mediating factors including multiple veto points or the political culture helps to explain why Europeanisation follows from adaptation pressure in some cases but not in others (cf. Risse, et al. 2001; Bulmer 2007: 51).

Despite a number of critical evaluations highlighting its poor empirical explanatory record (see for example Mastenbroek 2005; Treib 2014), the simplicity and intuitive plausibility of the 'goodness of fit' approach has become an important approach for refugee and migration studies as well. In the beginning this resulted in a number of cross-national comparative volumes with single-country studies on refugee and migration policies in different European member states. Their main focus, however, is aimed at national developments and not at the role of the EU in the multi-level governance of immigration (see, for example, Angenendt 1999; Brochmann 1999). From there developed an increasing

interest in the study of European influences on domestic immigration policies and the compliance of member states with European norms in this policy area. Most available studies, however, are overly descriptive and provide only few insights about the underlying driving forces of the European impact on its member states. For example, a number of juridical studies offer detailed information concerning the legislative absorption of Europe (Carlier/De Bruycker 2005; Higgins 2004) and several case studies of single member states exist (e.g. Fischer, et al. 2002; Geddes 2005; Tomei 2001). Studies with a more theoretical interest applying the Europeanisation concept more directly have also developed. In line with studies on other policy areas and strongly shaped by the basic historical institutionalist approach, these studies share a rather similar research design. The volume by Faist and Ette (2007), for example, provides a shared research design in an introductory chapter followed by single country studies applying this framework. Working in the context of the 'goodness of fit' approach they result in obvious differences between old and new member states, as well as potential future member states arguing that Europeanisation has been more influential for new member states than old ones with the existing national approaches explaining the different outcomes of Europeanisation. This is not to say that all studies fall into this category. There are excellent single country or small-N comparative studies applying the Europeanisation framework (e.g. Lavenex 2002; Grabbe 2005; Vink 2005), but the majority apply such cross-national comparative research designs providing analyses about the different extent of Europeanisation in different national settings (cf. Geddes 2003a; Glaeßner/Lorenz 2005b; Hansen/Weil 2001; Lavenex/Uçarer 2002).

These available studies applying the goodness of fit approach on refugee and migration policies have been important to provide an overview about the role of the EU in this research area across the range of European member states. Nevertheless, similar to the other approaches discussed they have difficulties in explaining the actual diversity in this policy area. A first shortcoming of this approach concerns the claim of the general applicability of the approach across all European policy areas. Knill and Lehmkuhl (1999), in an early contribution, already convincingly argued that the relevance of misfit is limited to policies where a clear European policy template or model is present. It assumes a clear vertical chain-of-command in which EU policy is transposed from Brussels into the member states with domestic institutions only channelling the impact of Europe. A second line of critique questions the strong reliance of the approach on the historical institutionalist logic. The goodness of fit approach makes strong claims about the 'stickiness' of existing institutional paths that are inscribed into national policies and pose great obstacles to reforms aiming to alter these arrangements. On this basis the different cross-national comparative studies emerged to explain the differences between member states with the existing national policy arrangements. Instead, the increasing diversity within Europe's refugee and migration policies is hardly explained on the basis of such general national policy arrangements.

2.3 Approaching the Increasing Diversity of Europe's Refugee and Migration Policies

The preceding sections provided an in-depth stocktaking about the Europeanisation of refugee and migration policies. In a first step, the chapter compared the institutional setup and the substantive policy developments of the 1980s and 90s with the situation during the

last two decades. With respect to the institutional developments the results showed that today's institutional framework clearly "constitute[s] a new stage in the trajectory of European integration" (Lavenex/Wallace 2005: 458). The Treaty of Amsterdam was carved out as the single most important event which gave way to a more transparent and democratic institutional framework providing the major European institutions – the European Commission, the European Parliament and the Court of Justice of the European Union – with greater influence to the policy-making process. Although this new institutional order which characterised the last decade still allows for a good deal of member state control, the Treaty of Lisbon meanwhile documents the extensive institutional similarities between European refugee and migration policies and other European policy areas. Obviously, incremental integration, half-baked compromises and endless reservations by member governments certainly remain daily occurrences. However, this is not a unique feature of refugee and migration policies, but a more general characteristic of European cooperation.

Similarly, the analysis of substantive policy outcomes of the last decade documented a generally high degree of consistency with European policies adopted under the previous Maastricht regime. Nevertheless, the sheer number of legislative instruments, the increasing legal quality of instruments adopted and in particular the incremental shift towards more comprehensive and balanced policies questions the exclusive focus in academic analyses on the 'Fortress Europe'. Whereas decisions during the Maastricht regime obviously followed an overall and coherent policy idea focused on restricting international migration of all kinds, this consensus diminished over time. Today's policy developments are instead best described as a "policy patchwork" (Héritier 1996: 149) with increasingly diverse outcomes. Together, the last decades' institutional and substantive policy developments in Europe's refugee and migration policies are best described as a process of normalisation gradually shifting refugees and migration into the mainstream of European policies.

The second step of this chapter analysed the existing theoretical approaches on the Europeanisation of refugee and migration policies. The short answer of this stocktaking exercise is that the institutional and substantive changes in Europe's refugee and migration policy have resulted in few responses from scholars so far. It demonstrated that recent scholarly debates are still dominated by constructivist and in particular intergovernmental frameworks along the line of the venue-shopping thesis, arguing that the European level remains a favourable forum providing national protagonists with institutional and discursive opportunity structures to introduce their restrictive and control-oriented policies. Although Guiraudon herself states that venue-shopping does not preclude "change over time, as excluded actors become aware of international venues and/or seek to change the rules of the game" (Guiraudon 2000: 258), the approach does not provide conceptual tools to analyse such changing institutional contexts. The more recent developments in Europe's refugee and migration policy, therefore, constitute a formidable challenge to those existing approaches. Particularly, the available approaches find it difficult to explain the greater diversity of refugee and migration policy. On the basis of an established policy frame continuously securitising refugees and migrants it is hard to see how decisions establishing more favourable rights for migrants and refugees at the European level would be understood. Similarly, an intergovernmental framework focusing on member states rationally shopping for the venue most attractive to their restrictive policy preferences has obvious difficulties in explaining European policy outcomes that increasingly go against previous national interests. Compared to these first phase studies, the more recent scholarship applying the Europeanisation concept to the area of refugee and migration policy corrects

for the underexposure of national downloading processes. In response, recent years have seen more detailed studies concentrating on the European sources for national refugee and migration policy reforms. With respect to the greater diversity of Europe's refugee and migration policies, however, the Europeanisation approach is also of little help. Two aspects, at least, reduce the explanatory value of this approach. First, it provides a rather static understanding of European policy processes. Particularly the 'three-step-research approach' concentrating on the goodness of fit between European demands and the national *status quo* has difficulties accounting for the diverse paths of interaction between member states and the European Union. Second, the approach's historical institutionalist legacy makes it particularly suitable for explaining cross-national differences. It is therefore of little surprise that most available studies applied the concept to account for differences between groups of member states with respect to the influence of Europe on their national refugee and migration policies. The increasing diversity in this issue area, however, with a continuity of domestic restrictive and control oriented policies on the one hand, but a gradual shift towards more liberal domestic outcomes on the other, is less easily accounted for by this approach.

In conclusion, the stocktaking exercise has shown that there already exists a broad – but largely segmented (Boswell 2010: 288f.) – basis of empirical and theoretical studies, each highlighting particular institutions, processes and outcomes deemed to be crucial factors in explaining Europe's refugee and migration policy. Today, there exists a great need to adapt the available theoretical approaches to the changing institutional framework of Europe's refugee and migration policy and its more diverse substantive policy outcomes. Most recent scholarship, however, is currently trying to adapt existing grand theories to the changing circumstances making their claims either for adapted versions of intergovernmentalism (Parkes 2010; Reslow 2012), constructivism (Munster 2009) or neo-functionalism (Kaunert 2009; Kaunert/Leonard 2012). Instead of favouring one of those already established accounts over the other, however, this study argues that the diversity in this policy area demands lower level theoretical concepts able to explain the increasingly diverse paths and outcomes of Europeanisation.

3 The Political Sociology of European Refugee and Migration Policies

The preceding chapter analysed the state of the art of the Europeanisation of refugee and migration policies and identified two crucial shortcomings. First, existing studies overwhelmingly apply intergovernmental approaches focusing first and foremost on the construction of common European legislation – the uploading process – of this policy area. Correspondingly, those studies provide little systematic research on the downloading processes of Europeanisation and its impact on domestic regulations and practices. With respect to their explanatory frameworks, studies building upon such approaches regularly construct rather one-dimensional stories, highlighting how the European multi-level polity provides new institutional and discursive opportunity structures regularly used by national executives to realise their restrictive policy preferences. The institutional and substantive changes in the EU refugee and migration policies after the Treaty of Amsterdam and particularly in recent years found weak reverberations in those accounts so far.

A second shortcoming concerns the few available studies focusing explicitly on the downloading process. In line with the dominant 'goodness of fit' explanatory framework and its inherent historical institutionalist assumptions about the stickiness and path dependency of national policy arrangements, these studies overwhelmingly concentrate on cross-national differences in the outcomes of Europeanisation. As a consequence, those studies usually highlight the diverse experiences of older vs. newer member states in adapting their national policy models to European requirements as the key explanatory variable. Little emphasis, again, is spent on explaining the increasing diversity within Europe's refugee and migration policies.

Both shortcomings add up to a situation where today largely inadequate conceptual tools exist to account for the diverse outcomes of Europeanisation comparing different aspects of this policy area. Recent scholarship is searching "for the elusive causal mechanism" (Menz 2015: 4) driving European refugee and migration policies and the following sections explicitly contribute to this quest by aiming to provide an alternative conceptual framework. In a first step, Section 3.1 discusses the 'dependent variable problem' in Europeanisation studies. Aiming at an appropriate measure of national policy changes – the outcomes of Europeanisation – the chapter puts special emphasis on an assessment of the direction and extent of policy changes. Whereas most studies refrain from any normative assessments and concentrate only on the principal compliance with European prescriptions, analyses of refugee and migration policies with their direct human rights implications should also concentrate on the consequences of Europe for the expansion or contraction of refugee and migrant rights in member states.

In a second step, Section 3.2 develops an explanatory framework accounting for the different extents and directions of the European influence on national policies. In contrast to the analytical separation in many existing studies concentrating only on national adaptation processes, this study takes both dimensions of Europeanisation – uploading and downloading – into account. It responds to those scholars calling for circular approaches, systematically combining both dimensions of European policy-making processes into a typology of four ideal-typical mechanisms of Europeanisation. Each of those four mechanisms provides a causal path linking specific initial conditions with particular policy outcomes in member states.

Finally, Section 3.3 discusses the methodological foundations of this study. It argues that process tracing is the only methodological approach that allows for the establishment of such causal explanations of the interactions between member states and the European Union. These qualitative descriptions enable the concurrent testing of the explanatory account against rival approaches concentrating, for example, on international factors, the influence of domestic politics or the political economy. Finally, the chapter discusses why Germany, already strongly shaping earlier cooperation in this policy area, constitutes a particularly crucial case to assess the impact of recent institutional changes on corresponding national policy outcomes. Additionally, the chapter separates four main aspects of refugee and migration policies, each characterised by different policy trajectories and different constellations of European and national actors allowing for comparative testing of the four mechanisms of Europeanisation.

3.1 Outcomes of Europeanisation: Approaching the 'Dependent Variable Problem'

When the growth industry of Europeanisation studies seriously started in the late 1990s, hardly any publication existed that did not engage in an intensive definition exercise soon resulting in a plethora of divergent understandings of what the term Europeanisation actually describes or explains. This is of little surprise because all new research areas in the making are generally confronted with defining the boundaries of its object of study. Nevertheless, Olsen (2002: 944) soon saw the need to caution the research community that the challenge for scholars of Europeanisation "is not primarily one of inventing definitions", but about empirically modelling and explaining the actual dynamics of change. Existing reviews of the literature show rather different understandings of Europeanisation. Featherstone (2003: 5ff.) and Olsen (2002: 923ff.), for example, argue that there exist at least five broad categories of this term: as an historical process of exporting European forms of political organisation, authority and practice; as a matter of transnational cultural diffusion of norms and values; as processes of changing institutions at the European level or as a political unification project; as a process of adaptation from institutions and actors emanating from EU membership; and finally as the adaptation of national policy and national systems of governance. Despite the existing confusion and varying meanings of even the most basic understandings, meanwhile a more common usage of the term concentrating on this last category has been established. From this perspective Europeanisation describes changes of national policies, politics and polity in response to developments at the level of the European Union, which can include the introduction of new legislation, the setup of new or changing policy ideas or the development of new institutional opportunity structures (see also Eising 2003; Bulmer/Radaelli 2005).

The development of such a shared intellectual agenda (Dyson/Goetz 2003: 12) marks a decisive step in the maturing of this research area. Nevertheless, diverse questions about the conceptualisation of the concept remain contested in empirical research. One of the most basic aspects concerns the proper operationalisation of the dependent variable with differences already obvious on the level of definitions. Even among scholars sharing an interest in the Europeanisation of national policies, a variety of different understandings exists. Whereas Töller (2010: 434) proposes to concentrate on the extent national laws are

shaped by European law, Héritier (2001a: 3) focuses on the impact on national policies more generally, and Risse et al. (2001: 4) argue in favour of "policy structures", which imply more than just changes in the setting of particular policy instruments. Next to these definitional disputes, there exist plenty of methodological hurdles that make it difficult to measure whether a particular policy of a member state is Europeanised or not (Radaelli/ Pasquier 2007: 39) and it is therefore of little surprise that Hartlapp and Falkner (2009: 282) argue in their review article that "a clear definition of the dependent variable is frequently missing".

Such difficulties are nothing novel in European studies. Already Haas's original conceptualisation of integration has been seriously criticised for its lack of a proper measurement of the development of integration. Correspondingly, new theories of European integration regularly include changing conceptualisations of the dependent variable, focusing on the measurement of the scope and level of decision-making, setting up more complex indicators of integration including several dimensions or measuring the functions delegated to the European Union (cf. Lindberg 1970; Pollack 2003: 61ff.; Wessels 1997; Stone Sweet/Sandholtz 1997: 304ff.). In conclusion, the study of the Europeanisation of national policies, similar to most other areas of policy studies, is confronted with its own particular "dependent variable problem" (Green-Pedersen 2004; see also Siegel/Clasen 2007).

The first challenge therefore consists in conceptualising national policy changes caused or influenced by the European Union as the dependent variable of this study, which could be aptly described as the outcomes of Europeanisation. Recent years have witnessed some methodological discussions in Europeanisation studies, which came up with at least four different aspects that need to be considered for an appropriate conceptualisation. There exist crucial differences between output and outcome measures, between quantitative and qualitative indicators, as well as ways of measuring the direction and extent of Europeanisation. Each of those four aspects are discussed in the remainder of this section with respect to the different proposals developed in Europeanisation studies more generally as well as particularly in the context of refugee and migration studies. In conclusion, the chapter ends with the presentation of an appropriate operationalisation allowing the comparative measurement of the dependent variable across different policy areas.

3.1.1 Outcome and Output Indicators

A first decision concerns the difference between outcome and output indicators measuring national policy changes. In the words of Tsebelis (2002: 162) one has to decide whether we are going "to focus on the act of legislating and see whether new laws differ from the previous ones even if the outcomes do not, or are we going to focus on outcomes regardless of whether they were produced by legislation or by exogenous shocks?" This differentiation between a legislative perspective on policy change and a more sociological – interested in the final effects of policy changes – figures prominently in all policy analyses. In social policy studies, for example, this discussion has most vehemently engaged many scholars, with early studies concentrating solely on transfer payments or government expenditure on welfare service provision, whereas later most authors shifted to more detailed measures including indicators on individual entitlements and eligibility regulations (e.g. Esping-Andersen 1990; Kitschelt 2001; Pierson 1996). The same discussion is obvious in European studies with influential contributors focusing, for example, on the welfare supporting

function of particular European policies based on outcome measures (Scharpf 1999), whereas others concentrate on legislative changes only (Moravcsik 1998). And also studies of refugee and migration policies have followed those different tracks. The increasing politicisation of international migration resulted in several comparative projects analysing national policies referring to quantitative outcome measures of migration policies, e.g. the volume of migration, generally measured as the annual per capita gross flow of legal resident aliens or the volume of refugee flows measured by numbers of asylum applications (cf. Czaika 2009; Meyers 2004; Money 1999; Thielemann 2004; Toshkov 2014).

The difficulty of studies based on outcomes, however, concerns the fact that these are usually affected by numerous intervening variables, and hence can be only indirectly related to European factors at best. In the case of refugee and migration studies, in particular, such outcome indicators are not without problems. These are related to the quality of the necessary statistics as well as to the multiple factors affecting actual migration. The volume of migration is caused and substantiated, next to national policies, for example, by push-factors in sending states, existing migrant networks and transnational social spaces. The existing "gap" (Cornelius, et al. 2004) between official policies and actual outcomes is even a particular characteristic of this policy area and much theorising concentrated on the discrepancy between officially stated restrictive policy goals and resulting high levels of immigration (cf. Hollifield 1999; Joppke 1997; Massey, et al. 1993; Sassen 1999). As a consequence, the study largely restricts itself to the analysis of policy outputs referring to aspects of national legislative reform as the main indicator of policy change (Holzinger/Knill 2004: 30). However, refugee and migration policies grant extraordinary levels of discretion to the administration, which explains why minimal legislative changes sometimes result in remarkable new patterns in the implementation of those policies.[5] The empirical analyses will therefore selectively make use of statistical indicators to assess the actual outcomes of a particular legislative change. For example, successive rounds of highly skilled labour migration reforms are not only analysed on the basis of the extension of legal rights to migrate, but also by making use of the available information on how immigration of this particular group developed during the period of investigation illustrating the actual impact of these reforms (cf. Chapter 6).

3.1.2 Quantitative and Qualitative Indicators

A second decision for conceptualising the dependent variable concerns the differentiation between quantitative and qualitative indicators measuring national policy change. There exists an increasing number of studies making use of quantitative measures of the dependent variable applying statistical methods (e.g. Franchino 2005; Giuliani 2003). Such quantitative measures, however, are restricted to a small set of available databases each including serious distortions for measuring the outcomes of Europeanisation. Treib (2014: 15-16; for a similar argument see Hartlapp/Falkner 2009), for example, argues that studies using transposition information reported by the European Commission in their annual

[5] Although concentrating on legislative changes largely excludes the implementation phase of the European policy process, existing studies have shown that no systematic differences in the application of European or national law exists because national implementing actors are usually unaware of the origins (European or national) of a particular piece of legislation (Treib 2014: 8).

reports suffer from their exclusive focus on the legal act of transposition and the fact that these data rely on official notifications by member states and their own assessments about the correctness of transposition. An alternative source of quantitative data is used by studies on infringement procedures, which are based on cases where the Commission has already started the non-compliance procedure. These data provide some information about the quality of transposition, but are distorted with respect to their case selection. Infringement proceedings are regularly started in cases of late notification, which is easily monitored by the Commission. Cases of inaccurate transposition or implementation, however, are seriously underrepresented because the Commission does not regularly detect them. Caused by their particular selection of data, such studies ultimately concentrate on aspects of compliance that do not necessarily provide any information about the extent and direction of Europeanisation and therefore reveal little about the actual meaning of European cooperation in the respective policy area (cf. Downs, et al. 1996; Tallberg 2002).

Both, European studies in general as well as refugee and migration studies in particular, have seen more recent efforts of quantifying legislative changes. Töller (2010), for example, proposed conceptual ideas for quantitative measures of the extent of Europeanisation. In migration studies, recent years witnessed important improvements in quantitative measurements of legislative frameworks. Koopmans et al. (2005), for example, measured the changes in citizenship rights for migrants in several European countries along two dimensions of citizenship each including a number of more specific indicators to measure the "configuration of citizenship". Similarly, but with more normative grounding the "Index of Legal Obstacles to Integration" quantified the liberality or restrictiveness of legal systems governing the integration of immigrants, again on a number of basic dimensions and several indicators (Waldrauch 2001). Most recently, different comparative projects took off developing comparable indices on immigration policies (cf. Beine, et al. 2015; Helbling, et al. 2017). Despite those recent advances, case study research with a focus on qualitative assessments of the outcomes of Europeanisation clearly dominates this research area until today (see for an overview Exadaktylos/Radaelli 2009). In particular with respect to the expected extent of Europeanisation, which rarely results in major national reforms and is therefore difficult to map on the basis of quantitative indices, carefully crafted case studies still provide the most promising way forward for an appropriate measurement of the outcomes of Europeanisation.

3.1.3 Direction of Europeanisation

A third aspect of importance in operationalising the dependent variable concerns the direction of Europeanisation. Whereas policy oriented studies are regularly interested in evaluating the impact of a particular policy, European studies generally apply a more formal approach. Theories of European integration are therefore criticised for the fact that they are often only interested in the mode of intergovernmental or supranational governance whereas they overlook the content of European governance and the substantive changes of policies (Nölke 2006: 163). In studies about Europeanisation the same difficulty exists. From the perspective of Radaelli and Pasquier (2007: 40), for example, the difficulty to specify objective indicators led some researchers to redefine the dependent variable in line with classical implementation or compliance studies with generally little interest in the substantive meaning of a particular policy. But even for those authors with a broader conception of Europeanisation, the direction of change regularly concentrates only on the question of whether a particular domestic policy

change is leading to convergence of domestic policies or whether it drives member states further apart. Although these studies often contend that measuring convergence or divergence may be of limited use for assessing the domestic impact of the EU, particularly since answers vary according to the level at which one looks for convergence or divergence (Börzel 2005: 61), few alternative operationalisations developed. Even more, much Europeanisation scholarship explicitly rejects such judgments arguing that, "we apply a 'positive' rather than normative approach to assessing policy change. We measure changes in the breadth and intensity of state involvement rather than judging the normative consequences of these changes" (Knill, et al. 2009: 522; but see Bauer/Knill 2014).

If interested in the effectiveness of multi-level systems of governance only, such a perspective might by justifiable. In the case of refugee and migration policies, with its direct human rights implications, refraining from normative judgments is difficult to justify. It is therefore of little surprise that in this particular context this critique has become most pronounced with Lavenex (2006a: 317) lamenting the "value-blindness" of European studies. The difficulty with such normative evaluations of policy change, however, is the available standards. From a legal perspective, particular refugee and migration policies are regularly assessed on a rather universal normative scale based on existing international conventions, which could be used to assess the rights and regulations of the European discussions and legislation, as well as the national policies or to compare them with already established European basic rights. However, because no general scale for the liberalness or restrictiveness of migration policies exists, any such universal scale would quickly run into difficulties. Consequently, the study analyses the direction of Europeanisation by comparing the status of a policy at two points in time. In a first step, it analyses the existence and settings of particular policies at the beginning of the decade – roughly around 1999 at a time before the EU defined common European policies. In a second step, the same policy is measured approximately one decade later – at the end of 2012 – several years after the EU has adopted its proposals. Each policy is therefore assessed on a continuum ranging from illiberal or restrictive approaches on the one side to more liberal or open on the other. Comparing both measures results in a relative assessment of the direction of Europeanisation, which does not compare the actual refugee and migration policies with some normative standard but with the actual variation between the two periods.

3.1.4 Extent of Europeanisation

A final discussion about the conceptualisation of the dependent variable concerns the measurement of the extent of Europeanisation. Does the European interaction lead to incremental changes in the settings of particular policy instruments only or do we see more fundamental changes by introducing completely new policies or overturning previous national convictions? Compared to the previous aspects, the measurement of the extent or degree of Europeanisation has been less controversial and is closely in line with developments in comparative policy analysis. There, Sabatier and Jenkins-Smith (1999: 147) differentiate between "major change [which] is change in the policy core aspects of a governmental program, whereas minor change is change in the secondary aspects".

Europeanisation studies largely followed this model and constructed typologies of different levels of policy change. Although differences in detail exist, three levels concerning the extent of Europeanisation are generally differentiated: inertia, absorption and transformation (e.g. Bulmer/Padgett 2004; Knill, et al. 2009): (1) Inertia describes a

situation of a low level or even complete absence of change. It is first-order change, which refers to the particular settings of policy instruments. Inertia may take different forms: these can include delayed transposition of directives, resistance to European policies, or minimal policy changes caused by lowest-common denominator directives. (2) Absorption describes a type of change in which the domestic policies or politics adapt to European requirements. It is second-order change including modifications with respect to the basic types of policy instruments, for example, the introduction of new refugee status definitions or basic changes to deportation procedures. Although essential structures of national policy frameworks remain largely unmodified, such cases of Europeanisation do provide real changes in the levels of rights granted to refugees and migrants. (3) Finally, transformation is similar to what Hall (1993) labels 'third order' or paradigmatic change. Studies of Europeanisation regularly reveal that such fundamental change takes place only in exceptional cases. It refers to the introduction of a new policy or a basic change to the logic of the domestic policy.

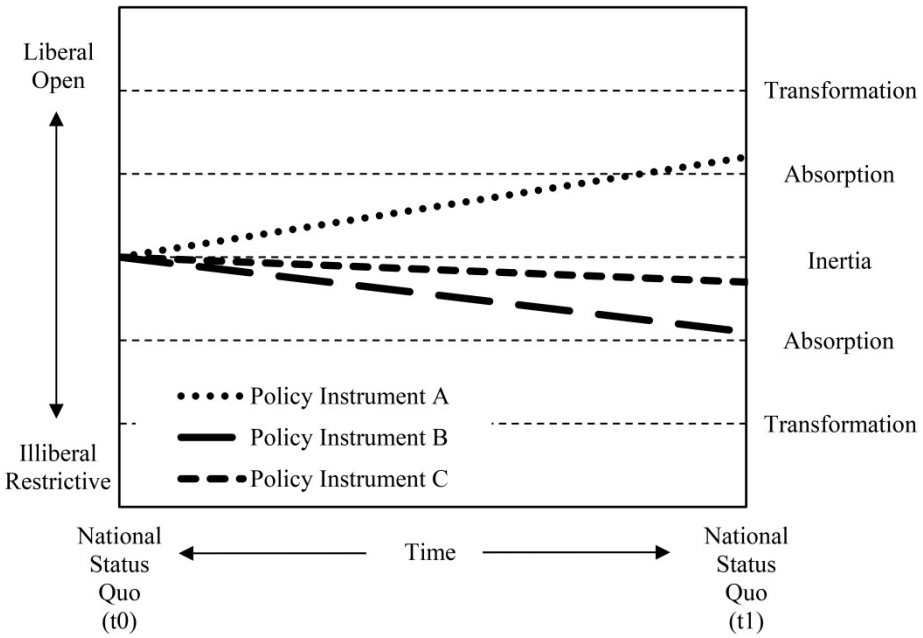
In conclusion of the preceding discussions about the operationalisation of the dependent variable measuring the outcomes of Europeanisation, this study proposes a largely qualitative assessment of the direction and extent of legislative changes of refugee and migration policies. On the basis of three exemplary policy instruments, Figure 3.1 summarises this proposal. The figure represents the measurement of the direction of Europeanisation on a scale ranging from liberal/open to illiberal/restrictive as well as the extent of Europeanisation differentiating between three different levels – inertia, absorption and transformation. Furthermore it assesses national policy changes not on a rather abstract level covering a policy area in total, but differentiates between specific policy instruments providing more precise indicators about the fate of a policy. Finally, it represents the importance of a longitudinal approach for measuring outcomes of Europeanisation. In assessing the extent and direction of Europeanisation the figure compares the status of a policy at two points in time. In a first step, it analyses the existence and settings of particular policy instruments roughly around the year 1999 (t_0) at a time before the EU defined common European policies. In a second step, the figure includes a measure of the status of the particular policy instruments for the year 2012 (t_1), several years after the EU has adopted its proposals. Comparing both measures results in a relative assessment of the extent and direction of national policy changes. It does not compare the actual refugee and migration policies with some normative standard, but with the actual variation between the two periods. It allows for a precise measurement of the dependent variable and constitutes a good basis for the inter-temporal comparative approach.[6]

More complicated than theoretically setting up such a conceptualisation, however, is to actually apply it in practice. Radaelli and Pasquier (2007: 40) argue, for example, that "it is difficult to specify objective indicators of what makes adaptation different from transformation. More often than not, we have to rely on the intuition and the interpretative skills of the researcher". In response, each case study will provide the necessary information to

[6] In addition to these methodological arguments in favour of such a comparatively long time-frame, theoretical arguments also have to be mentioned. The theoretical framework of this study concentrates on different mechanisms of Europeanisation largely based upon different variants of new institutionalism. In order to be open to both variants of rational choice and sociological institutionalism a longer time-frame is important because doing otherwise would largely exclude any sociological explanations (see, for example, Schneider/Aspinwall 2001: 5).

assess the *status quo* t_0 as well as the substantive changes in the subsequent decade to assess the direction and extent of Europeanisation. Compared to many other studies, the empirical analyses of this thesis devotes more time for the actual measurement of the underlying policy changes and qualifies the usually rather general statements about the Europeanisation of national policies with particular emphasis on potential consequences for the expansion or contraction of refugee and migrants' rights. Without such detailed measures of the dependent variable, specific theoretical mechanisms are hardly tested in a subsequent step or would doubtlessly result in biased outcomes.[7]

Figure 3.1: Conceptualisation for measuring national policy changes



Source: Own presentation.

[7] Empirical analyses in political science regularly draw little attention to aspects of the precise measurement of its theoretical constructs, often resulting in flawed theoretical explanations. A recent example with respect to the subject of this study concern the studies by Parkes (2010) as well as Kaunert and Leonard (2012). Both studies share a similar research interest, trying to apply the original venue-shopping hypothesis to more recent developments in Europe's refugee policy. Their final results are almost diametrically opposed, however, because their measurement of actual policy changes comes to opposite conclusions. Whereas Parkes highlights the continuity of the restrictive trend of policies in the last decade, Kaunert and Leonard posit a clear turn towards more liberal policies.

3.2 Mechanisms of Europeanisation: Theoretical Links between Europe and its Member States

3.2.1 Separating Two Dimensions of Europeanisation

The theoretical explanation of diverse outcomes of Europeanisation has advanced along two lines in recent years. A first step was achieved by a greater emphasis on the institutional frameworks structuring the interactions between the EU and its member states. Particularly the governance approach in European studies highlighted the importance of the different institutional contexts of the EU polity in explaining its subsequent policy outputs (cf. Jachtenfuchs/Kohler-Koch 2004). From this perspective, Europeanisation follows no single logic but is based on different modes or patterns of governance, "modes of policy", "modes of institutionalised interaction" or "steering instruments", which link member states and the EU (cf. Bulmer/Radaelli 2005: 345; Knill/Lenschow 2005: 584; Scharpf 2001: 6; Wallace 2005b: 89; Windhoff-Héritier 1987). This perspective gained ground particularly in the debate about the "new modes of governance" in Europe and the effectiveness of the Open Method of Coordination (cf. Borrás/Radaelli 2011; Caporaso/Wittenbrinck 2006; Treib, et al. 2007; Zeitlin, et al. 2005).

In empirical investigations, the governance approach regularly results in rather deterministic conceptualisations of the interactions between member states and the European Union. Instead, the second line of inquiry focused on the specific mechanisms linking individual initial conditions with subsequent outcomes. The institutional context is not the centre of attention here, but the focus is directed on the different processes of adaptation, which explain how particular European policies result in specific national outcomes. Compared to static models based on the 'goodness of fit', mechanism-centred explanations focus on the trajectories of European policies and ideas. Their more explicit reference to specific actors and agency results in obviously more political explanations of the outcomes of Europeanisation. A first attempt was already provided by Knill and Lehmkuhl (1999), who differentiated three mechanisms – institutional models for domestic compliance, changing domestic opportunity structures and changing beliefs of domestic actors to explain diverse outcomes of Europeanisation. More recently, this line of inquiry received more widespread currency and developed into an active research strategy in European studies (e.g. Alecu de Flers/Müller 2012; Diez, et al. 2006; Panke 2012; Schimmelfennig/Sedelmeier 2005).

The major drawback of these mechanism-centred approaches, however, is their consequent focus on the downloading dimension of Europeanisation only. Already the discussion about the state of the art in Chapter 2 revealed that the existing 'either or' logic characterising most studies prevents a more accurate explanation of the outcomes of Europeanisation. This is a discussion mirrored in the more general theoretical debate. In one of the early comprehensive Europeanisation projects, Héritier et al. (2001a: 2) argued that to understand the processes generating the diversity of Europe-induced domestic changes "one must bear in mind first and foremost that the transformation sparked off by Europe is an interactive process and not a one-way street in which European institutions impose their policy decisions upon member states". Similarly, Bulmer and Radaelli (2005: 343) argue that the necessity to take member states seriously, for any explanation of outcomes of Europeanisation is shown by the fact that "the process of agreeing EU policy is inextricably linked with

the prospect, later in the policy process, that a change in policy will ensue at the national level". Also from a methodological perspective, the explanation of the impact of the EU on its member states has to take the developing multi-level architecture of the European polity into account. Citi and Rhodes (2007: 6) argue that the outcomes of Europeanisation are determined both by supranational and by national factors resulting in "two different variables [which] need to be taken into account – one from a 'top-down' perspective, the other from a 'bottom-up' perspective". Finally, even scholars with strong links to compliance research have started to include variables into their models accounting for the two separate dimensions of European policy-making. Mastenbroek and Kaeding (2006), for example, argue for greater attention for domestic politics and König and Mäder (2007: 37ff.), explicitly test for several competing hypotheses on how the activities of national players at the European level subsequently affect how the policy is later received in the respective member state. Such circular understandings of Europeanisation that focus on both uploading and downloading processes allow us to "investigate the actual causal links of the overall process. Studying the possibilities for such strategies highlights the profoundly political nature of interventions that might otherwise appear as a simple court case, a bureaucratic judgement or the implementation of a European directive" (Woll/Jacquot 2010: 120). In response to this critique, even the strongest advocates of the original 'goodness of fit' approach have adapted their earlier statements. Börzel (2002: 193) herself started questioning the bracketing of European level processes to analyse their effects at the member state level and subsequently argued that "future research should systematically explore the links and feedback loops between the bottom-up and top-down dimension of the relationship between the EU and its member states" (Börzel 2005: 64; see also the discussions in Carter, et al. 2007; Bache 2008).

Following these theoretical debates, the study proposes a mechanism-centred approach systematically addressing both the uploading as well as the downloading dimension of Europeanisation. Explicitly addressing the uploading dimension certainly advances the explanation of all policy areas where intergovernmental cooperation prevails, but also supports analyses of more traditional European policies with a strong supranational core where the artificial separation of the European policy-making process also aroused regular criticism. The mechanism-centred approach of this study is a direct response to this critique and provides a more dynamic understanding of Europeanisation with a focus on its interactive features where member states adapt to Europe, but simultaneously shape developments at the EU level (see also Beichelt 2008; Mendez, et al. 2006). The differentiation between the uploading and downloading dimension, however, has not been without criticism. The main argument has been that the reality of multi-level policy-making in Europe is certainly far more complex than the differentiation in these two chronological dimensions suggests (cf. Saurugger/Radaelli 2008: 213ff.). Both dimensions certainly follow their own rules and dynamics and the continuous feedback processes between them questions any neat separation (Kassim 2001: 1). Menz (2011: 438) even allows this differentiation only heuristic value because "they rather infelicitously imply a degree of automaticity that is rarely present and denies the reality of protracted political battles".

Despite these critical pleas, the analytical separation of both dimensions – based on the "life-cycle of public policy" (Saurugger/Radaelli 2008: 213) in Europe – seems the most promising way forward. They structure otherwise to complex processes, which would hardly allow any systematic empirical analyses. The separation of both dimensions seems of particular merit in studies that focus on the vertical interactions of European policy-

making processes. Although horizontal processes of Europeanisation describing processes where member states copy policies from other member states that have proved to be successful are a regular finding in a close Community of nation-states being in constant interaction with each other (Börzel/Risse 2007: 497), they certainly do not constitute the major focus of this study. In the following, both dimensions are discussed separately with the aim of identifying the dominating political actors and factors for the respective policy outcomes.

Uploading

The analysis of the uploading dimension of Europeanisation already has a long tradition and closely corresponds to the first generation of EU research that focused on European integration and the development of a new political centre in Brussels. Although the focus of most of these studies concentrated on the factors explaining the transfer of authority to the European Union, the question of who is shaping this process and how effectively individual member states represent their national interests has always aroused particular interest (e.g. Hayes-Renshaw/Wallace 1996; Kassim 2000; Westlake/Galloway 2004).

The explanations for the uploading processes of member states need an understanding of the European policy process that involves multiple levels of government and is confronted with a large range of actors all actively involved in shaping the final common European policies. Actors interested in shaping EU policies along its preferences are confronted with a number of difficulties. Kassim (2001: 12f.) provides a whole list of such difficulties pointing in general to the great complexity of the political system of the EU and particularly to the multiplicity of actors in decision-making; the absence of a constitutionally defined separation of powers; the difficult legislative procedures; the high degree of institutional fragmentation; the sectoralisation of European policy areas; and the unusual openness of the EU policy process.

Concerning the official institutions of the EU codified in the Treaties, it is the Council of the European Union and the governments of the member states that are of greatest importance in understanding policy development in Justice and Home Affairs. That does certainly not exclude the European Commission, the European Parliament and the CJEU completely. In contrast, the previous chapter has already clarified that during the last decade, the Court has started to establish itself as an important actor particularly with respect to the downloading phase and is increasingly asked by national Courts for the right interpretation of directives, which now provides the Court with more power during the uploading dimension. Similarly, the European Parliament has now transitioned to a co-legislature and has been successful in increasing its impact in this policy area. Finally, the Commission has developed into an important institution shaping the fate of Europe's refugee and migration policies to an important degree. While the Commission is generally seen as having little influence over history-making decisions, its influence on the everyday political life in Brussels is widely recognised.[8]

Despite those more recent institutional changes, the Council is the place in which the member states are most explicitly present and represented in the EU institutional system (Naurin/Wallace 2008; Hayes-Renshaw/Wallace 2006) and has been of greatest importance for shaping policy outcomes in refugee and migration policies even after the Treaty of

[8] The Treaties also include the European Court of Auditors and the European Central Bank as EU institutions. They are not mentioned here because of their minimal role in JHA (cf. McNamara 2006; Laffan 2006).

Amsterdam. Although all member states are generally interested in uploading their national preferences to the European level, there exist clear differences across countries and across time among member governments in the extent to which they influence the outcomes of EU bargaining. Understanding who are the "Winners and Losers in the European Union" (Stokman/Thomson 2004) therefore falls back on an understanding of decision-making in the Council. Such a perspective is in obvious contrast to sociological institutionalist theories that emphasise the high degree of consensus in the Council. From this perspective the impact of shared norms and collective identities that arise from negotiating in the Council as a result of repeated interaction are gradually internalised by national officials negotiating at the European level, and result in a general willingness to compromise a particular national position in order to promote the collective interests of the EU as a whole (cf. Hix 2005; see also Beyers/Trondal 2003; Haas 1961; Kassim 2001). These informal consensus norms have been shown empirically, for example, by Lewis (2005, 2006) in his studies of the Committee of Permanent Representatives (Coreper), but also by Aus (2008) in his analyses of the Council negotiations on the Dublin II Regulation which was not adopted by self-interested and rational actors.

Despite the importance of these consensus norms shaping negotiations in the Council, the understanding of member states' success in uploading their national preferences falls mainly on rational choice institutionalist theories conceiving EU policies as the outcome of strategic actors and their bargaining between states in the Council (cf. Hoffmann 1966; Moravcsik 1998). More particularly, theories concentrating on the success of member states in permeating their interests in Council negotiations have come up with a number of factors accounting for the actual power distribution or power resources in the Council, which are necessary in order to achieve one's bargaining goals (cf. Bailer 2010, 2004: 101; Kassim 2001: 37; 2005a; Thomson, et al. 2006). Comparative and quantitative studies regularly consider the economic power of an EU member state or the voting power index, which calculates the expected power of a member state by the number of votes it holds in majority voting situations indicating a member state's chances to turn a losing coalition into a winning one, as central explanatory factors.

The crucial influence of such factors is indisputable, but for the context of this study three additional factors are regularly found to be important predictors for negotiation outcomes in the Council. A first factor that is prominent within the bargaining power literature is the institutional power and particularly the administrative efficiency, which is likely to influence negotiation outcomes. This involves the organisation of the member state representation in Brussels, as well as the quality of internal coordination processes with the government at home. But it might also include more individual characteristics of the member states' staff in Brussels including their networking and bargaining skills, as well as the closeness of its relations with central coordinators of the Commission or Council machinery. A second factor concerns the experience and credibility of a particular member state. A general argument in this respect points to the political organisation of a member state, where federal states might be more successful because they are more familiar with the working methods of European negotiations. What is probably more important, however, are different historical resources at the disposal of member states in Brussels including the familiarity with European negotiations, as well as a good knowledge of potential conflict lines between member states and European institutions. Finally, a third factor concerns persuasive ideas and domestic constraints that have been shown to yield important power at European negotiations. Constructing persuasive ideas and policy frames

certainly provide an important resource for negotiations in the Council. But with respect to negotiations at more technical levels including the discussion of particular legislative proposals in Council working groups the reference to existing domestic constraints allowing national representatives to lodge reservations is also a regularly found resource.

Member states are not only present in all the institutional processes of the EU but also have access at all phases of European policy-making (cf. Kassim 2001: 15-25; 2005a: 29ff.). Although the formal right of initiative in JHA now rests with the Commission, a large number of Commission activities still originate from a suggestion put forward by one or another national government trying to shape the Commission's working plan. Although these early phases of agenda setting are sometimes of crucial importance for accounting for final policy results, the phase of policy negotiation is still the most important for the exercise of power and influence by member governments. It is around this phase, mostly played out through the Council, including the many working groups and high level groups of national officials, "that member governments make their most explicit investment of effort to influence the outcomes" (Wallace 2005a: 31). During the policy negotiation phase, the meetings of the Committee of Permanent Representatives (Coreper) as well as all involved working groups preparing the ministerial level of the Council provide the forum for most of the negotiations among officials from member governments on EU policies (Lewis 2005). After the Commission transfers its proposal to the Council, the draft is first discussed in relevant working group at the lowest level of the hierarchy. When they already reach agreement, the proposal is directly placed on the agenda of a forthcoming ministerial meeting for adoption. In cases when the working group does not reach agreement, the proposal is referred to Coreper II as the responsible body preparing the ministerial meetings of the Justice and Home Affairs Council. Only in cases where neither the working group nor Coreper II reaches complete agreement is the proposal discussed by the ministers themselves in order to find political compromises (Häge 2008: 535f.; Hayes-Renshaw/Wallace 2006; Westlake/Galloway 2004). Although Häge (2008) qualifies earlier research findings, it is obvious that by far the greatest proportion of legislative decisions is already taken by working parties and it is this phase of policy negotiation that needs specific attention during the analysis of the uploading dimension.

Downloading

The downloading processes of Europeanisation refer to the national adaptation of European policies. Similar to the previous discussion on the uploading processes, also during the downloading processes member state governments are the central actors shaping the national adaptation process to common European norms and ideas. Again, this is not to say that supranational or subnational institutions as well as actors outside the core political system as highlighted by multi-level governance approaches are irrelevant in this dimension (Hooghe/Marks 2003). Nevertheless, national governments hold a key position as gatekeepers during the implementation dimension of European policies as well (Bache 1999).

From a theoretical perspective, the downloading dimension of Europeanisation is mainly explained by the two separate schools of thought – rational choice institutionalism and sociological institutionalism – which had their first appearance already in the discussion of the processes of the uploading dimension. Whereas new institutionalist theories became popular in political science generally during the 1990s (March/Olsen 1998: 949-951; Hall/Taylor 1996), in European studies they have long been eclipsed by the

debate between neo-functionalism and intergovernmentalism. Only more recently have they become particularly prominent at the level of member states, helping to explain the diversity of Europeanisation outcomes (Pollack 2004: 154). Even more, Bulmer (2007: 51) claims that "an awareness of the new institutionalisms is indispensable for understanding how Europeanization is theorized".[9]

Rational choice institutionalism closely follows economic theories of human action. From this perspective actors are making choices on the basis of constant cost-benefit calculations evaluating their likely consequences. For March and Olsen (1998: 949) such rational and strategic political action follows a "logic of consequences" with the aim to reach preferred outcomes. The individual decisions are generally seen as based on relatively fixed and previously existing preferences expecting that actors know what they want to achieve as well as know the potential consequences of their activities (cf. Schneider/ Aspinwall 2001: 7). Transferred to the situation in the EU, European institutions are conceptualised as external opportunity structures offering some national actors like governments, individual ministries, political parties or interest groups additional legal or political resources they can use instrumentally to increase their influence. At the same time these institutions constrain other actors in their attempts to follow their goals explaining how national structures of power change as a consequence of European cooperation (cf. Risse 2004: 162f.; Börzel 2005: 52f.).

At the other end of the spectrum of new institutionalist approaches one finds sociological institutionalism. Here, it is not the outcome of cost-benefit calculations forming the basis of actors' decisions, but the fulfilment of duties and obligations with political actors following a "logic of appropriateness" (March/Olsen 1984: 741). Instead of strictly following their own goals, the sociological institutionalist perspective argues that actors aim to do the right thing. The approach's analytical focus therefore starts earlier than a rational choice framework and questions the member states preferences. From this perspective, national preferences are not seen as fixed and previously existing but as constituted in the actual process of cooperation. The results are shared systems of understanding that influence the way actors define their goals and crucially simplify an otherwise complex world. Action is therefore "based more on discovering the normatively appropriate behaviour than on calculating the return expected from alternative choices" (March/Olsen 1984: 744). All of that does not mean that these actors are not purposive and rational actors. However, sociological institutionalism emphasises that "what an individual will see as 'rational action' is itself socially constituted" (Hall/Taylor 1996: 949). From this perspective, the European Union is consequently more than only a new political opportunity structure. Instead, Europe provides new rules, norms as well as basic ideas and frames, which increasingly influence domestic actors. As a consequence member states might redefine their interests as well as their actual policies according to those European norms (cf. Risse 2004: 162f.; Börzel 2005: 54f.; Schmidt 2009).

The domestic adoption of new European rules or ideas following either a rational choice or a sociological institutionalist logic generally depends on a number of mediating factors. Börzel and Risse (2007: 492f.) have differentiated four of those factors – two for both logics of action. Multiple veto players or alternatively facilitating formal institutions

[9] Historical institutionalism is generally seen as a third variant of the new institutionalisms (cf. Hall/Taylor 1996) sharing central characteristics with both, rational choice institutionalism and sociological institutionalism. For the ease of argument it is therefore integrated into the other two variants (Schneider/Aspinwall 2001: 2).

are regularly found as the two factors affecting the resulting national outcomes when the transposition process closely follows the logic of consequences. In cases with multiple veto players in the domestic arena the national government might be constrained to effectively transpose European policies. This follows the classic argument that with increasing numbers of actors involved in political decision-making it becomes more difficult to actually introduce national policy changes. Whereas most studies applying this framework work on the assumption that national resistance to change originates primarily from negatively affected societal interests (e.g. Hartlapp 2009; Steunenberg 2007) it could be equally applied to turf wars between individual governmental ministries and administrations. The opposite of multiple veto players opposing change can be seen in the existence of facilitating formal institutions. Without such institutions certain domestic actors could not exploit European opportunities and thus promote domestic adaptation because, for example, they do not have access to the domestic political agenda.

In the case of processes of Europeanisation, following a logic of appropriateness, again two supporting factors can be differentiated: national norm entrepreneurs and cooperative informal institutions. With respect to the first factor, norm entrepreneurs are critical for the national adoption of new European ideas. The transposition of European ideas does not follow automatically, but has to be understood as a highly political process (cf. Finnemore/ Sikkink 1998). Similar to the fact that these new norms have to be actively built by actors at the European level, the existence of national norm entrepreneurs is a crucial precondition for new ideas travelling from Brussels to the member states. These actors have to mobilise at the domestic level for changing member states' interests by referring to new European norms and ideas. Examples might include cases where national parties formerly holding a minority position within the political system now draw on new common European norms to socialise other domestic actors into their direction. Similarly, cases might exist where the participation of particular national ministries in European policy-making processes successively result in learning processes at the level of the national government. Finally, the existence of a cooperative political culture constitutes a second mediating factor for transposition processes following the logic of appropriateness. Most forcefully, Schmidt (cf. 2008, 2010) has described the importance of informal institutions with her analysis of discourses enhancing the capacity of domestic actors to adapt to European requirements. These discourses can range from rather specific policy ideas to programmatic ideas or paradigms and even to deeper philosophical ideas. In any case, favourable domestic discourses entailing collective understandings of appropriate behaviour are of great importance for consensus building and have received increasing attention in migration studies lately (e.g. Boswell, et al. 2011; Cerna/Chou 2014; Menz 2015; Roos/Zaun 2014). Here, examples include the changing public perception of international migration. Traditionally migrants were regularly seen as a financial burden or a security issue for member states. The more recent discursive shift representing migrants as a potential solution to a country's economic problem has certainly contributed to the change of labour migration policies during the last decade.

3.2.2 A Typology of Mechanisms of Europeanisation

The preceding section has discussed the two dimensions of Europeanisation separately. It discussed major theoretical approaches accounting for successful interest representation of member states during the uploading dimension, as well as the successful domestic adoption of European policies during the downloading dimension. The neat separation of both dimensions as well as the clear differentiation of rational choice institutionalism and sociological institutionalism stressing different explanatory factors aimed to reduce the actual complexity of multi-level policy-making in Europe. With the same intention, both dimensions can be conceptualised as continuums along their respective outcomes. Seen from this perspective, the uploading dimension runs from successful to unsuccessful interest representation activities of particular member states. At one end of the continuum are member states that are actively involved in the European policy-making process and successfully shape common policies along their national preferences. On the other end are member states that have been largely inactive during the uploading process or have been outvoted by other member states and whose domestic policies are in conflict with final EU policies. Similarly, the downloading dimension runs from successful to unsuccessful transposition activities of particular member states. Here, a successful transposition results in the adoption of European policies whereas non-adoption describes situations where member states have not been successful in finding domestic majorities to transpose common European policies.

The previous discussion has shown that a theoretical framework capable of explaining diverse outcomes of Europeanisation has to refer to a circular research design including both uploading and downloading processes. Building on previous attempts to combine both dimensions in a single explanatory framework (cf. Börzel 2002; for a first application of the conceptual ideas by Börzel on refugee and migration policies see Menz 2011), both separate dimensions are systematically linked resulting in a two-dimensional space (see Table 3.1). It highlights four ideal-type mechanisms of Europeanisation – venue shopping, backdoor opposition, policy learning and role playing – providing different causal narratives about the processes linking initial conditions with particular outcomes of the EU policy process.

Table 3.1: Explanatory typology of four ideal-typical causal mechanisms of Europeanisation

		Member states' transposition activities during the downloading dimension	
		Successful	Unsuccessful
Member states' interest representation activities during the uploading dimension	Successful	Venue shopping	Role playing
	Unsuccessful	Policy learning	Backdoor opposition

Source: Own presentation.

Instead of engaging in a new great debate between rational choice and sociological institutionalism (e.g. Katzenstein, et al. 1998; Christiansen, et al. 1999) this typology directly engages questions that cut across this divide and views them "pragmatically as analytical

tools" (Fearon/Wendt 2002: 52). Overall, the boundaries between rational choice institutionalism and sociological institutionalism softening. Although the two approaches emphasise analytically distinct factors, "these are – at least partly – complementary, and not necessarily mutually exclusive" (Sedelmeier 2011: 11f.) and at least empirically it is particularly problematic to clearly separate between the logic of appropriateness and the logic of consequentialism (Radaelli/Exadaktylos 2011: 198). All four mechanisms are principally compatible with the two different institutionalist theories and aim at integrating the various logics of action by formulating propositions about the complex interactions between the EU and its member states and their likely outcomes (for similar arguments see Pollack 2007; Schmidt 2010; Woll/Jacquot 2010). The approach therefore follows the trend towards synthetic developments of theory (Schwellnus 2006: 341) and attempts to build bridges between both theoretical camps (cf. Schneider/Aspinwall 2001; Jupille, et al. 2003; Zürn/Checkel 2005).

The adopted focus on mechanisms in this study follows a popular trend in social science methodologies more generally. During the last decade the social sciences have witnessed a substantial reorientation towards causal explanations, which have to be distinguished from analyses focusing only on variable-based correlation, with a broad conceptual literature developing, as well as large research consortiums focusing on mechanisms as a specific means of explanation (e.g. Diewald/Faist 2011; Elster 1989: 5; Gross 2009). Such mechanism-based explanations are closely related to Merton's early call for middle-range theories that also aimed at more fine-grained approaches than the usual explanations by existing grand theories (Pickel 2004: 177). The understanding of what a mechanism actually is differs widely. Hedstroem and Swedberg (1998: 25; see also Tilly 2001: 24), for example, define mechanisms as "a set of hypotheses that could be the explanation for some social phenomenon, the explanation being in terms of interactions between individuals and other individuals, or between individuals and some social aggregate". More precisely, George and Bennett (2005: 137) define causal mechanisms "as ultimately unobservable physical, social, or psychological processes through which agents with causal capacities operate, but only in specific contexts or conditions, to transfer energy, information, or matter to other entities. In so doing, the causal agent changes the affected entity's characteristics, capacities or propensities in ways that persist until subsequent causal mechanisms act upon it".

These broad definitions demonstrate the great variety of ways in which these mechanisms are potentially used in practical social science research. In a broad review, Gerring (2008) differentiates nine different meanings of a mechanism which refer, for example, to a difficult-to-observe causal factor, to a highly general explanation, or to a micro-level explanation for a causal phenomenon. In order to achieve some common ground, he proposes that "the pathway or process by which an effect is produced or a purpose is accomplished" provides a minimal definition of mechanisms (Gerring 2008: 178; see also Mayntz 2004: 241). In line with this definition, the four ideal-typical mechanisms of Europeanisation identified in this study refer to processes linking initial configurations with specific outcomes of Europeanisation. They include causal propositions about the particular interaction between the EU and its member states, as well as about the concrete policy outcomes at the domestic level. Each of the following empirical case studies therefore aims at the construction of a causal narrative explaining how a particular input is connected with a respective outcome. However, aiming at the detection of specific mechanisms implies a scope that is greater than a single case because the overall interest is to generalise about social reality as much as possible instead of focusing only on factors and outcomes rather specific to individual cases (Gerring 2010).

Venue Shopping

The discussion of the four mechanisms of Europeanisation starts with the most well-known. The 'venue shopping' mechanism was first described by Guiraudon (2000) as an explanation to account for the timing and substance of the Europeanisation of refugee and migration policies. Largely in line with her original conceptualisation, the mechanisms' causal narrative starts at the domestic level where national executives or individual ministries or agencies of it are confronted with constraints to adequately react to a given situation. These constraints can be of different quality including institutional as well as substantive aspects. From an institutional perspective, constitutional principles, which are defended by national courts, political parties, non-governmental organisations or the public might be experienced by the government as an enforcement constraint. Substantive constraints are related to practical problems of implementing a specific policy because of logistical difficulties or material costs, but might also cover cases where the EU provides solutions to problems that cannot be dealt with effectively at the domestic level alone anymore.

These domestic constraints prompt national governments or individual parts of it to "escape to Europe" (Geddes 2003a). The rationale behind the venue shopping mechanism sees these actors actively seeking alternative venues to pursue strict migration control policies solving the perceived control dilemma of refugee and migration policies. Again, the decision either follows an institutional rationale, seeking the decision-making forum that provides them with the greatest number of political resources to influence decisions and to out-manoeuvre their political opponents. Alternatively, the decision for a specific venue follows a substantive reasoning, providing them with greater problem-solving capacities than available at the national level alone (cf. Guiraudon 2000: 258; Parkes 2010: 33; Maurer/Parkes 2007b). As a result member states' governments become actively involved in the uploading process of Europeanisation, trying to shape a particular new European rule or idea aligned closely with its national preferences. The mechanism presupposes the capacity to push national preferences through the European negotiation process by making use of its administrative efficiency, its historical resources or other factors considered to be important in shaping European policy-making processes. Compared to intergovernmental cooperation before the Treaty of Amsterdam these forms of vertical policy-making have become more complicated during the last decade because of a growing number of member states and in particular because of the growing competence of European institutions. Nevertheless, the member states' experience with those earlier modes of cooperation provided ample opportunities for the continuity of intergovernmental forums favouring such venue shopping processes. Although this active uploading is an extremely arduous game to play, as other governments need to be successfully persuaded (Menz 2009: 6-7), the institutional framework remains to offer national governments possibilities to upload their policy blueprints and to shape EU policies in line with their preferences. Overall, the venue shopping mechanism is largely in agreement with basic intergovernmentalist assumptions (Moravcsik 1993: 507) and the "new raison d'Etat" (Wolf 1999: 333) arguing that such forms of international cooperation strengthens the autonomy and influence of national governments.

Finally, the mechanism assumes that the resulting common European policies are subsequently quickly and comprehensively transposed into domestic legislation during the downloading process and that new policy instruments are regularly and actively used by domestic actors (cf. Börzel 2002: 197; Héritier 1996). Based on the fact that national governments are able to take European initiatives and reach bargains in Council negotiations with relatively little constraint, the European policies are largely in favour of

the member state and should be easy to incorporate into existing arrangements. Furthermore, signing up European agreements first undermines potential opposition because domestic groups are left with an up or down choice (Moravcsik 1993: 515).

With respect to the direction of Europeanisation the mechanism clearly assumes an illiberal and restrictive impact on national refugee and migration policy that closely follows the preferences of the national executive or individual parts of it. The extent of Europeanisation is expected to be comparatively large and most likely falls into the category of absorption including substantive policy changes, because the new European dimension of the policy provides a far more effective framework for implementing certain policies than the previously existing national framework. In conclusion, the venue shopping mechanism is an effective strategy from the perspective of the national government because the particular member state can largely influence the European policy according to its own preferences and therefore maximises the benefits of the European escape route. It is a particularly apt example of how the EU provides distinctive strategic opportunities to government leaders "to do what they privately wish to do, but are powerless to do domestically" (Putnam 1988: 457).

The venue shopping mechanism was developed in the context of European refugee and migration policies first, but its underlying causal narrative and assumptions have been regularly used to explain the Europeanisation of other policy areas, although often using different terminology. For example, Bruno et al. (2006) and Büchs (2008) have focused on the instrumentation of the EU in the context of the European employment and social policies, whereas Princen (2010) applied it in the case of Europe's economic policy and Mazey and Richardson (2001) concentrated on similar narratives to account for interest group politics. What they share is a focus on the logic of consequences with venue shopping being the result of a rational decision by political actors in their search for the most attractive venue. Jacquot and Woll who provide a recent overview of the usages of the European Union by member states would also characterise the venue shopping mechanism as a "strategic usage", which refers "to the pursuit of clearly defined goals by trying to influence policy decision or one's room for manoeuvre, helping to aggregate interests and to build coalition [sic] of heterogeneous actors – be it by increasing one's access to the policy process or the number of political tools available" (Woll/Jacquot 2010: 117; see already Jacquot/Woll 2003). This close connection to rational choice institutionalism has been sparked off by Guiraudon (2000: 268) herself, claiming that it is a strategic reaction to institutional and substantive policy constraints. Parkes (2010: 41) applying the same concept depicted the interior ministries as the major actors in this policy area as "arch-rationalists" seeking out those political spaces where they enjoy the most clout. Nevertheless, the venue shopping mechanism has some sociological institutionalist aspects. Guiraudon (2000: 258; but see in particular Guiraudon 2003) pointed to them in her earliest contribution when she argued that the concept "takes into account the rule-bound context to which actors respond" indicating the necessary framing processes of underlying policy images. Although the underlying political decisions following a venue shopping narrative are often strategic and aim at some sort of institutional or substantive change, the participating actors are not able to oversee and control their long-term consequences. The reduction of venue shopping to basic rational choice assumptions would therefore largely miss the point (see also Parkes 2010: 41f.).

Backdoor Opposition

At the opposite end of the typology one finds 'backdoor opposition', as a second mechanism of Europeanisation. The causal narrative underlying this mechanism starts this time not at the domestic level, but can be found in the policy initiatives of other member states or the supranational European institutions – most likely the Commission or the Court of Justice. With the substance of these initiatives being in opposition to other member states' preferences, their national governments will most likely adopt an active attitude during the uploading dimension mobilising against the specific proposals and ideas during the negotiations in the Council with the aim of stopping this instrument altogether or bringing individual provisions into line with national conceptions. Nevertheless, at the end of the process not all of the existing national objections might have been successfully represented and a gap between domestic policy preferences and the contents of final European policies remains. This gap might be caused by different factors. It can involve cases where a particular member state has been outvoted during the Council negotiations or cases where national executives miscalculated any significant consequences of the European policies or did not give much importance to the issue during the uploading phase. Furthermore it can also include cases where the member state decided to give in, in order to appease other member states or alternatively it gave in at some point during the process because it was more appropriate in the specific situation. Such member state opposition does not necessarily involve a European policy or a specific directive as a whole, but can also include specific provisions. As a result, this overturns member states' calculations determining the downloading processes.

During the downloading dimension, national governments must transpose these European policies into national legislation. Now, they are in a position to decide whether their preferences that are not represented in the final negotiation outcomes affect their behaviour during the transposition stage. National governments who are unsuccessful in representing their interests during the uploading dimension might now resist and protest against this policy. Whereas the venue shopping mechanism posited that member states have little incentive not to adopt European policies they pursued before, now non-compliance may become a preferred option simply because the costs of compliance outweigh the benefits. Whereas the outcome of the uploading dimension might be equally explained by rational choice or sociological logics of action, the downloading dimension of this mechanism is clearly based on rational actors making strategic cost/benefit calculations. From this perspective, a "party will comply with an international agreement if, and only as long as, its expected marginal costs of compliance are lower than (or at most equal to) the marginal benefits it expects to receive from fulfilling its obligations" (Underdal 1998: 8).

The described pathway of this mechanism is an observed pattern of state behaviour in all international regimes and was prominently introduced into European studies during the last decade. In a study about the Europeanisation of environmental policies, Börzel (2002: 207) described member state activities in European policy-making processes as "foot-dragging", characterising cases where a member state is unsuccessful in uploading its own preferences to the EU level and subsequently tries to resist these policies during the downloading process. Similarly, Falkner et al. (2004) have observed this form of state behaviour coining the term "opposition through the backdoor" in their analysis of member states' compliance with European social policies (for additional studies testing this mechanism both qualitatively and quantitatively see, for example, Aus 2008; Thomson

2010). Concerning the expected outcome of Europeanisation, the mechanism predicts a rather low extent of national policy change in the direction of inertia. Although backdoor opposition might seldom be able to prevent European policies altogether, member states try to block or delay them which is likely to result in marginal policy change (Börzel 2002: 205). Consequently, policy cases that are explained by this mechanism will result in upholding the mainly restrictive national *status quo*.

Of particular interest in this respect is the question of whether this mechanism is a viable strategy in the long run. The European Union has set up an exceedingly effective enforcement system to combat detected violations with the aim of reducing non-compliance to a temporal phenomenon (Tallberg 2002: 610). Two principal instruments have developed in Europe: first, a centralised system based on the infringement procedure consisting of six subsequent stages; and second, a decentralised compliance system where individuals and companies are engaged in monitoring state behaviour (cf. Börzel 2001; Börzel, et al. 2010; Tallberg 2002). This might result in a situation where backdoor opposition only provides member state governments with more time to slowly change their national policies or, alternatively, it might be of a longer term effect because particularly in cases of European policies that do not delineate very clear legal guidance, infringement proceedings may not begin because non-implementation is less obvious.

Policy Learning

The third mechanism, 'policy learning' shares some elements with the previous mechanism in that the causal narrative usually starts at the EU level, where supranational institutions like the European Commission or other member states make the case for new policies. In line with the backdoor opposition mechanism, the initiation of this process is placed outside the member state, which becomes confronted with legislative proposals or new policy ideas that diverge from the national *status quo*. However, it fundamentally differs with respect to the downloading dimension. Here, the member state complies with new European rules or ideas despite being in clear contrast to previously held national preferences.

This specific form of interaction between a member state and the European Union can again be compatible with both logics of action. From a rational choice perspective the new European policy proposals offer external opportunities for some national actors like individual ministries, political parties or interest groups, which will use these European proposals instrumentally to increase their influence in the domestic setting. From this perspective, national policy change is due to changes in the national distribution of power. The alternative sociological logic instead stresses cognitive processes focusing in particular on the influence of policy ideas, norms and discourses on national policy change, as well as socialisation processes focusing on actual individual level outcomes of changing preferences (cf. Checkel 2001b; Christiansen, et al. 1999; Risse 2004). Although the two different logics structuring the downloading dimension of Europeanisation are regularly strictly separated (e.g. Börzel/Risse 2007; Bulmer/Radaelli 2005; Knill/Lehmkuhl 1999), the mechanism again focuses more on their commonalities in initiating national policy changes. This is in line with more recent scholarship under the label of a "strategic constructivism", which has a more explicit interest for the carriers of ideas and norms. It therefore links rational choice and sociological approaches by analysing in particular the

usage the actor makes of these ideas and to understand the power games that take place between actors in public policy (cf. Saurugger 2013).[10]

Irrespective of whether the interactions show more properties of the logic of appropriateness or of the logic of consequences, the policy learning mechanism addresses the European Union as an institution that finally causes member states to change their policies. These reforms might be the consequences of rule-based behaviour or because of changes in the domestic distribution of power resources, which results in a more technical adaptation of domestic policies to EU requirements. Alternatively, these reforms can also be based on the internalisation of new policy ideas and understandings by domestic actors in order to address existing national policy problems. In any case, the outcome of national policy change following the policy learning mechanism depends on the availability of a number of supporting factors. Of particular importance in this respect is the existence of national norm entrepreneurs. These may include NGOs, the churches, the public discourse determined by the press or individual ministries of the executive. In any case, the formal or informal institutional actors are certainly more successful in lobbying for their political interests when a window of opportunity opens which allows a new framing of the structure of the problem. In addition, Checkel (2001b: 562f.) adds to these preconditions a number of more specific assumptions when Europeanisation following the policy learning mechanism is more likely to take place. This includes situations where a member state is in an unknown environment including cases of policy crises or a generally new situation and therefore is more motivated to address new information as well as new solutions. This links to a second aspect arguing that policy learning is more likely in policy areas where the member state has few prior and deeply embedded beliefs. Finally, policy learning is more likely to be effective when the environment between the member states and the EU occurs in less politicised settings. If such favourable conditions exist, political processes following the policy learning mechanism can result in far-reaching policy changes potentially even changing established path-dependent processes (cf. Faist, et al. 2004). In conclusion, the predicted outcome of Europeanisation of this mechanism might be substantial and likely to result in policy changes best described as absorption. Because the mechanism accounts for cases where the final outcomes are in opposition to previously held beliefs, the direction of Europeanisation is likely to point in the liberal and open end of the political spectrum.

Role Playing

Finally, the fourth mechanism – 'role playing' – accounts for the remaining constellation between the uploading and downloading dimension of Europeanisation. Similar to the venue shopping mechanism the causal narrative starts at the level of the member state where a national government decides to go to Brussels with a particular national policy proposal. Again, this decision might be caused by national opposition and a hope that the European level would provide more amenable venues to pursue a restrictive national preference.

[10] In particular in the context of the Open Method of Coordination policy learning has received widespread attention during the last decade as a mechanism of Europeanisation. Quite regularly, however, the EU only serves as an arena or a transfer platform and horizontal processes of Europeanisation are stressed (cf. Bulmer, et al. 2007; Bennett/Howlett 1992). Although differentiating between horizontal and vertical processes of Europeanisation is empirically challenging and causes methodological issues, the obvious focus of this study is on the vertical interactions between the EU and its member states.

Alternatively this decision might also be borne by the consideration that pursuing this policy proposal might be more effective by implementing it at the European level and executing it in cooperation with other member states. The processes and outcomes of the downloading dimension, however, clearly differentiate the 'role playing' from the 'venue shopping' mechanism. Although the particular member state was actively involved during the uploading processes and the final European policies are closely in line with previous national policy preferences, the member state does not comply with new European legislation or policy ideas resulting in non-transposition. Consequently, the extent of Europeanisation is expected to be closer to the inertia end of the spectrum. These minimal national policy changes, however, are expected to be directed towards the restrictive/illiberal end of the direction of Europeanisation because the European policies have been shaped along restrictive national policy preferences beforehand.

Whereas the strategies of actors during the uploading dimension show a greater proximity to rational choice logics, the specific processes during the downloading dimension easily fit into both forms of new institutionalism. From a rational choice perspective, non-compliance which does not fall into intentional opposition against European policies arises in cases where the "government lacks the ability to ensure that public and private actors meet international commitments" (Tallberg 2002: 613) because of missing administrative capacity, economic and financial constraints. Of greater importance than referring to such a management approach of compliance, however, are different domestic politics aspects, which greatly influence the national adaptation to European policies. From this perspective, non-transposition might be caused by the fact that a change of government took place between the time of the decision-making at the European level and latter implementation in the domestic context, with the new government following new policy objectives in this particular issue area than the previous. Recent years have seen numerous studies documenting the influence of party politics as well as the preferences of crucial national actors in accounting for outcomes of Europeanisation (e.g. Mastenbroek/van Keulen 2006; Mastenbroek/Kaeding 2006; Treib 2003; Falkner, et al. 2005). On the other hand, there exists plenty of evidence that the composition of national governments has a negligible influence on member states' preferences on European issues (Hayes-Renshaw/Wallace 1996). An alternative explanation following the same logic would therefore stress the different actors involved during both dimensions of Europeanisation. Whereas ministries of interior dominate the uploading dimension, during the downloading dimension they are dependent on the support of other ministries less favourable to a particular policy proposal. Similarly, sociological institutionalism provides plausible propositions about the unsuccessful transposition process, which might be caused by a non-responsive national policy community. From this perspective, norm entrepreneurs are missing who would support the national transposition of European policy proposals and ideas. Furthermore, the new policy ideas might not resonate with the larger policy community necessary for a successful implementation process.

The propositions of all four mechanisms about the extent and direction of Europeanisation outcomes are summarised in Table 3.2. It rests on the original assumption already formulated by Guiraudon (2000) that it is member state governments and here in particular the ministries of interior and their related agencies, who – in comparison to EU institutions – seek to pursue restrictive refugee and migration policies. The first column shows that the extent of Europeanisation is evenly distributed across the four mechanisms with the venue shopping and the policy learning mechanisms expecting a higher degree of Europeanisation

whereas backdoor opposition and role playing likely to result in a lower level in the extent of Europeanisation. A more imbalanced pattern, however, is obvious with respect to the direction of Europeanisation. Here, the table clearly shows that three mechanisms are likely to result in Europeanisation outcomes, which largely correspond to the preferences of member states in furthering their autonomy in controlling migration. Instead, there exists only one mechanism – policy learning – that is likely to more fundamentally introduce a shift away from previous policy frameworks. The table shows, that already from a conceptual point of view, the European Union is not in a forceful position to provide 'limits of control' for the dominance of national executives in the control of refugees and migrants. The ideal-typical interactions between the EU and member states show that European policies and their domestic repercussions are still largely under governmental control and that only few configurations exist where outcomes of Europeanisation are in opposition to the previously held preferences of the national executives.

Table 3.2: Propositions about the extent and direction of Europeanisation outcomes by different mechanisms of Europeanisation

Mechanisms	Extent of Europeanisation	Direction of Europeanisation
Venue shopping	Absorption	Illiberal / restrictive
Backdoor opposition	Inertia	Illiberal / restrictive
Policy learning	Absorption	Liberal / open
Role playing	Inertia	Illiberal / restrictive

Source: Own presentation.

The four ideal-typical causal mechanisms of Europeanisation – venue shopping, backdoor opposition, policy learning and role playing – certainly constitute analytical categories rather than adequate descriptions of reality. Applying those mechanisms in concrete empirical analyses will likely uncover in-between types as well as cases where different mechanisms operate at the same time or consecutively in one policy area (cf. Töller 2010: 431). Nevertheless, the systematic link between both dimensions of Europeanisation opens a "property space" (Elman 2005) of different possible configurations and helps to generalise from the configuration in one case to similar settings in other areas.

The presented typology is not the first endeavour to explain Europeanisation by different strategies of interaction between member states and the EU. Instead the list of theoretical concepts employed in the literature to account for particular cases of Europeanisation has multiplied in recent years. Previous conceptualisations, however, do not offer a clear distinction between the dimensions of Europeanisation, the mechanisms that drive Europeanisation and their respective outcomes. Furthermore, the typology advances previously existing attempts at constructing different mechanisms of Europeanisation (cf. Börzel 2002; Menz 2011) by its more systematic approach. Whereas venue shopping and backdoor opposition have been described in these previous studies, they failed to focus on the other two possible configurations. Although the four mechanisms still do not result in a full-blown theory about the simultaneous interactions of domestic and European factors – demanded by Putnam (1988: 430) – they provide an explanatory typology of the universe of different two-level games potentially played out in Europe's multi-level polity.

3.3 Analysing Europeanisation: Process Tracing in Comparative Case Studies

The preceding two sections have provided a proposal to measure the dependent variable – the outcomes of Europeanisation – and developed a theoretical framework to account for the increasing diversity of those outcomes on the basis of a mechanism-centred approach. This final section discusses the methodological foundations of this study responding to some pressing issues that have been discussed in European studies about appropriate research designs to adequately describe and analyse Europeanisation. This discussion highlighted in particular the importance of alternative international and domestic factors, providing competing accounts against one-dimensional explanations focusing solely on the European factor. Here, the debate about the "net impact" (Levi-Faur 2004) of Europeanisation compared to globalisation has received greatest prominence. Some authors claim that Europeanisation dominates globalisation and acts as an "antidote" (Graziano 2003) to counter the negative impacts of globalisation or functions as an efficient filter for the "management of globalization" (Jacoby/Meunier 2010; see also Fligstein/Merand 2002). Others instead argue that globalisation should be regarded as the actual driver of national policy changes (e.g. Verdier/Breen 2001; Levi-Faur 2004).

Refugee and migration studies have not been unaffected by this discussion. In an influential comparative study about immigration policies in Western countries, Cornelius et al. (2004; for a review see Kivisto/Faist 2010: 195-223) posited a general convergence of immigration policies of liberal democratic countries. European scholars have taken up this line of thinking by questioning "the extent to which the kinds of responses that have developed in Europe to migration and asylum differ from those that we see in similar states confronting similar dilemmas" (Geddes 2007: 63). This debate has highlighted the importance of methodological considerations for Europeanisation studies and resulted in more explicit reasoning about research design and methods as well as case selection aiming at greater reliability and validity of the respective studies. The next two sections argue that an outcome-centric and bottom-up research design together with process tracing as an accompanying research method enables differentiation between potential explanatory factors and the ability to specify which particular causal mechanism explains certain outcomes of Europeanisation. Finally, the third section discusses the case selection. It argues that the disaggregation of refugees and migration into theoretically meaningful components is a central precondition for this cross-sectional comparison. Furthermore it shows why the focus on one crucial member state – Germany – does suffice to demonstrate the explanatory power of the developed typology of Europeanisation mechanisms.

3.3.1 Turn the Tables: Analysing Europeanisation from the Bottom-Up

Based on the previous discussion, the first methodological issue that has to be resolved concerns the inclusion of potential alternative explanatory factors. How does this research study have to be designed to avoid prejudging the role of the EU for national policy changes? The recent methodological debates in European studies came up with a number of alternative proposals to address this question (for an overview see Haverland 2006; Radaelli 2012).

A first solution starts from greater emphasis on case selection and proposes sampling not only cases which are obviously influenced by the EU, but also to include a control group where the cause – the European level factor – is absent (e.g. Haverland 2005; Levi-Faur 2004; Lynggaard 2011). The logic behind this sampling strategy follows the classic Rubin-Holland concept of causal effects arguing that in cases where both groups result in similar national changes the EU was obviously not the decisive factor. Such research designs follow the logic of a laboratory experiment, but come with a number of problems in tackling real world issues. First of all, it is difficult to sample countries that fulfil the double criteria of being on the one hand reasonably similar to European member states holding as many variables constant as possible and on the other making sure that the European factor is really absent. Neighbouring states in Europe, for example Norway or Switzerland, which would fulfil the first criteria, most likely fail on the second because they are not independent of European developments. Without being sure that these cases are fully independent of the European factor they do not qualify as evidence that the EU does not matter. Second, the resulting increase of the sample size might be outside the bounds of the available time resources for the particular research study. The data intensity of most Europeanisation studies makes it hardly feasible to provide an additional in depth case study because it would multiply the necessary efforts. Finally, a research design including a control group hardly fits the theoretical framework of this study, which concentrates not only on the explanation of the final policy outcome but also on the particular mechanism of Europeanisation.

Confronted with the shortcomings of cross-national comparative designs the study adopts a bottom-up approach, which also aims at the precise analysis of the role of the European factor for national developments but without increasing the sample size. The most condensed definition of this approach has been provided by Radaelli and Pasquier who argue that, "the idea is to start from actors, problems, resources, policy style, and discourses at the domestic level. By using time and temporal causal sequences, a bottom-up approach checks if, when, and how the EU provides a change in any of the main components of the system of interaction" (Radaelli/Pasquier 2007: 41). The points of departure in this research design are the domestic policy changes and the researcher effectively starts with a descriptive analysis of these changes over a certain period of time. Only then he/she proceeds to ask the question of what may be the sources of the identified changes and begins to chart the real extent to which policies on the ground have become Europeanised (Lynggaard 2011; Mair 2004: 346; Beyers/Trondal 2003). Instead of constructing laboratory-like experimental settings the bottom-up approach is based on a longitudinal, inter-temporal comparative study, which accounts for the European factor by analysing alternative factors potentially operating before Brussels entered the scene. It has therefore certainly profited from the recent interest in the temporal dimension of EU politics (Goetz/Meyer-Sahling 2009). Its inter-temporal comparative approach directs specific attention in the empirical analyses to the differentiation between time, timing and tempo. Whereas time concerns the specific point in time when an event occurs, timing describes the sequence of events and tempo focuses on the speed at which an event occurs. Together they support the researcher in analysing whether a particular national policy change was related to the European factor or whether alternative explanatory factors have to be included (Schmitter/Santiso 1998; Haverland 2006: 62f.).

Compared to the top-down perspective inherent in the 'goodness of fit' approach that focuses first on the European level and subsequently searches for national changes caused by those European developments, this research design turns the tables and analyses Europeanisation from the bottom-up. It developed in explicit opposition to the "managerial,

'chain-of-command' logic" (Radaelli 2002: 131) where national policy-makers are conceptualised as actors passively reacting to EU policy only sorting out how to put it into practice (Wessels, et al. 2003: 7) and puts an end to the one-dimensional top-down research strategies (Citi/Rhodes 2007: 6; see also Héritier 2001a for an early contribution arguing in favour of such a multi-perspective framework).[11]

The downside of this approach is its conceptual complexity and lack of a coherent and well-developed theoretical basis that makes the operationalisation more cumbersome than a top-down approach focusing on structural determinants and institutional mediating factors only (for a discussion see Beichelt 2008). Furthermore, the bottom-up approach has not resulted in many empirical applications (but see Pasquier 2005) and those available have done so more by chance than on purpose. On the other hand, the bottom-up approach has a number of methodological advantages compared to the top-down strategy. First of all, it conceptualises policy-making in the EU as an interactive and highly contextualised process instead of a "simple black-box design in which one correlates the input 'EU independent variables' to the output 'domestic impact'" (Radaelli 2004: 5). Second, its procedural perspective enables the analysis of national adaptation processes, which only materialise over a longer period of time. Whereas from a snapshot perspective characterising most top-down studies, domestic adaptations to European policies are regularly considered to have failed, this approach also includes national transposition processes that occur in the medium- to long-term (Kohler-Koch/Rittberger 2006: 38-39; Lang 2003: 171-172; for a similar argument see also Schmidt 2003). Third, the bottom-up approach fits the theoretical framework of this study, which also focuses on both dimensions of Europeanisation. In line with this framework, the bottom-up approach conceptualises domestic actors not only as passive receivers of European policies, but also as active users of the European level. Only in this way can the EU be analysed "as an opportunity structure that domestic actors may […] be able to exploit to further their own interests" (Kohler-Koch/Rittberger 2006: 38-39; see also Kohler-Koch 2000: 20-24; Radaelli/Pasquier 2007: 38).

The longitudinal design needs the specific definition of a starting point with t_0 being the time before a European policy came into existence and an endpoint t_1 being a sufficiently long period of time after the adoption of the policy. In this study, the empirical analysis largely concentrates on European policies adopted during the decade following the Treaty of Amsterdam. More concretely it lasts from 1999 until 2009 and covers the first two existing multi-annual programmes for Justice and Home Affairs – the Tampere Action Plan as well as the Hague Programme. This "episode" (Tilly 2001: 26) is clearly delineated from the former episode that was governed by the rules set in the Treaty of Maastricht as well as cooperation under the Treaty of Lisbon regime, which came into effect in 2009. Such a precise definition of the starting and end point of the study period is important because the particular processes explaining the outcomes of Europeanisation "do not come as discernable, 'given' units; they have no naturally given beginning and end" (Mayntz 2004: 244). Instead, convincing start and end points have to be provided that do not easily

[11] A third research design proposed to tackle this problem makes the case for applying counterfactual reasoning. In principle, this strategy is a thought experiment that compares a real case with an alternative reality. The design enables the posing of questions about whether a particular domestic change would have taken place even in the absence of a European influence. Convincing counterfactual explanations, however, are difficult to construct and should be developed closely along specific theoretical constructs allowing the researcher to formulate specific alternative hypotheses (cf. Blatter/Haverland 2012; Lynggaard 2011).

raise doubts about potential unobserved explanatory factors. The empirical case studies therefore start with an analysis of the national *status quo* at the end of the 1990s. However, they do not stop in 2009, but include national developments at least until the end of 2012 to also cover long-term national repercussions.

3.3.2 Process Tracing: Constructing Causal Inferences

The theoretical approach of this study linking both dimensions of Europeanisation together with the bottom-up research design provides a necessary framework for a more complex understanding of Europeanisation characterised by strategic interactions, vertical policy-making and learning processes. Although quantitative approaches have become increasingly important in Europeanisation studies in recent years (cf. Exadaktylos/Radaelli 2009; Müller, et al. 2010; Toshkov/Haan 2013), their 'effects-of-causes' approach, analysing on the basis of statistical models how much a specific variable explains on average the variance of the dependent variable, hardly fits this complex understanding of Europeanisation. Qualitative methods instead focus on the 'causes-of-effects' and explain their dependent variable on the basis of a small number of cases with a specific interest for the interaction of different factors – the specific mechanism – producing an outcome (cf. Mahoney/Goertz 2006). Based on the specific research design of this study, the following section discusses process tracing as the appropriate method to construct causal inferences on the basis of an inter-temporal comparative small-N study.

The publication of "Designing Social Inquiry" (King, et al. 1994) forcefully promoting its quantitative world view in the early 1990s triggered widespread discussions between qualitative methodologists in order to clarify their own methods. In the meantime these discussions resulted in a "new qualitative methods canon" (Bennett/Elman 2006: 455) in political science on which one can now draw. In the context of this study it is particularly the "process tracing" method that fits most closely the theoretical approach and its respective research design. Irrespective of the specific terminology – "systematic process analysis" (Hall 2006), "causal reconstruction" (Mayntz 2002), "causal process observations" (Collier, et al. 2004) or most widely used "process tracing" (George/Bennett 2005) – what they share is an interest in the analysis of causal relationships on the basis of single or small-N case studies. Instead of statistically testing for correlations between groups of variables always requiring a large number of observations, the method focuses on the specific process through which an outcome can be explained. Similar to other methods of within-case analyses it does not measure the existence of a theoretically derived variable, but analyses on a finer level of detail whether the specific variable played a crucial role during the process. Principally, the method perfectly fits this study because first of all it is the appropriate method for "helping to bring mechanisms back in" (Checkel 2008: 121). Second, the method does not cling to a specific theory. Similar to the theoretical approach of this study, the method is open to a sociological institutionalist understanding with its interest in discourses, ideas and policy learning processes. On the other hand, the variable-oriented language of process-tracing also fits rational choice institutionalist approaches with their focus on institutions and strategic interactions. Finally, process tracing is purportedly suited for studies where the underlying theories and propositions are in an early stage of development and where the researcher is more interested in understanding the underlying causal mechanisms than testing them on a broader selection of cases (Bennett/Elman 2006).

The process tracing method does not come without its own problems. Checkel (2008: 120ff.), one of the most forceful defenders of this method in European studies, self-critically lists a number of problems. First, he argues that the in-depth study of a particular process in one or a small number of cases easily results in a situation where the researcher gets lost in its specific case and loses sight of the overall structural context. Second, and related to the first point, is the method's liability for over-determined research designs where too many potentially explanatory variables are taken into account. However, 'process tracing' is always longing for some kind of historical causal narrative assumptions about the underlying mechanism to be specified beforehand. Finally, the method is very time intensive because the researcher has to be very familiar with the particular case and needs to work through an enormous amount of information.

Despite those inherent difficulties, Gerring (2007a: 181ff.) as well as Bennett and Elman (2006: 459-460) developed some indicators to evaluate the quality of process tracing studies. Their main indicator concentrates on the major characteristic of this within-case method, which consists of the specification of a series of mini-steps that together explain how a specific input is connected to the final outcome. A plausible process tracing study therefore aims at convincingly explaining each of those mini-steps, whereas breaks in the causal narrative raise doubts about the underlying argument. Overall, the application of the process tracing method is "closely analogous to a detective attempting to solve a crime by looking at clues and suspects and attempting to piece together a convincing explanation based on the detailed evidence that bears on means, motives, and opportunity" (Bennett 2008: 705). From these explanations it becomes clear that the quality of a process tracing argument rests on the quality of evidence supporting the expected theoretical mechanism. The available literature on process tracing, however, does not specify which information is necessary for a good process tracing explanation but obviously the data is "overwhelmingly qualitative in nature" (Checkel 2008: 116). Generally, data sources could include all sorts of documents accumulated during the political process by the different actors involved but also press accounts, participant observations as well as expert interviews. Analyses that make use of diverse sources are to be preferred over studies that include potential biases in their data sources.

The empirical analysis will therefore collect evidence to affirm one's expected explanation as well as data casting doubt on rival explanations. The particular data used needs to take the theoretical framework of the study as well as its research design into account to define the most appropriate data sources. The study's longitudinal design, covering more than a decade, together with its argument for contextualised analyses focusing on the development of different policy areas, instead of concentrating on the transposition of single directives, certainly reduces the generally great reliance on expert interviews. Although interview partners are a rich source for information about recent policy processes, information about occurrences that reach back into the late 1990s are barely recalled and would certainly include great bias, because past events are interpreted on the basis of today's political rationalities. Furthermore, identifying individuals involved during these processes at that time can prove problematic due to great personnel turnover in most institutions and organisations involved. Finally, expert interviews are not the first choice because of the enormous amount of interviews necessary to cover the different policy areas as well as the diverse policy communities operating in these different areas.

Instead of basing the analyses heavily on expert interviews, documentary analyses are at the centre of this study, fitting particularly well the inter-temporal comparative approach. With respect to the uploading dimension of Europeanisation concentrating on the establishment of common European legislation and policy ideas this research strategy is easily applicable. Today, all major policy initiatives on JHA are covered by a large volume of secondary literature. Together with primary documents produced by the relevant European institutions it is relatively easy to trace the individual political processes. Most of this literature, however, has its roots in legal studies, providing in-depth detail on individual legislative proposals but missing information on the political process as well as policy positions of individual actors and member states. Therefore, the documentary analysis also includes public statements, press releases, background studies and contributions to policy hearings by major stakeholders on the respective policy initiative. This is a particularly feasible strategy to study the involved interest groups. Instead, member state executives rarely publish their negotiation positions in an easily accessible form. Member states' activities are therefore analysed on the basis of a so far widely under-used data resource that has been found in the written records of Council negotiations. As soon as a legislative act has been approved the records of the negotiations at the working group level must be made available. Although these protocols are not detailed transcripts of the discussions they nevertheless contain precise summaries of the positions of participating actors and the subsequent decisions on each single provision of the specific legislation. The data can be used for qualitative as well as quantitative assessments of a member state's activities during the uploading process and has proven to be a reliable source to uncover national governments' negotiating positions (more recently scholars started to make more systematic use of this source Aus 2008; Bailer 2010; Sullivan/Selck 2007; Thomson 2010).

The data analysis strategy of the downloading dimension follows a similar mix of qualitative methods. Again, most national policy changes are well documented in secondary literature with a legal background. Information on the domestic political process as well as policy positions of individual actors are again included by referring to documentary analysis of public statements, press releases or contributions to policy hearings by the respective actor. Additionally, the political positions of the government on single European legislative proposals are documented in detailed statements by the Bundesrat – the German Upper House – allowing additionally detailed insights into the perspectives of the subnational level. Furthermore, the political positions of the major political parties as well as the government are documented in available protocols of the Bundestag – the German Parliament – alongside the available minor and major interpellations, written questions, debates on matters of topical interest or questions addressed to the government. Finally, available documents from the relevant ministries as well as newspaper reports are taken into account for those processes that received the necessary level of public attention. Nevertheless, the domestic political processes and the specific role of the European Union are hardly understood without reference to the actual practitioners. Particularly with respect to the downloading dimension the study therefore relies on participant observation methods including participation in a number of political conferences and hearings in the parliament that provided insights into the political processes and the

political positions of different actors.[12] With a similar intention a number of expert interviews were conducted to gather additional first-hand information concerning the most recent policy processes, but also those where alternative information were not available.[13]

3.3.3 Disaggregation: Comparative Case Studies in a Crucial Member State

The previous decisions for a bottom-up research approach and a process tracing method make a small-N comparative study the most appropriate research design. Particularly, it fits the case of refugee and migration policies where little quantitative data on the outcomes of Europeanisation exist. However, most methodologists view case studies with extreme scepticism. As Gerring (2007a: 6) argues a "work that focuses its attention on a single example of a broader phenomenon is apt to be described as a 'mere' case study, and is often identified with loosely framed and nongeneralizable theories, biased case selection, informal and undisciplined research designs, weak empirical leverage […], subjective conclusions, nonreplicability, and causal determinism". Seen from the quantitative methodological perspective, the difficulty of case studies consists in the inherent problem of selection bias. Whereas large-N studies try to eliminate this problem by a random rule, small-N studies always rely on intentional selection where the most common method of selecting cases is on the basis of the value of the dependent variable, which regularly leads to an underestimation of the effects of the independent variable (King, et al. 1994: 130).

The "new qualitative methods canon" developed during the last two decades, however, resulted in a new appreciation of case study research. Although case studies do not allow for statistical generalisation, they do have a certain potential for theoretical progress. Most generally, a case study can be defined as an in-depth study of a single case aiming for information about a larger class of cases (Gerring 2007a: 20). A well designed case study – and here it meets with the bottom-up research design and the process tracing method – allows the researcher to study the intermediate factors and mechanisms linking some structural

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12 "Zirkuläre Migration – Eine neue 'Gastarbeiterpolitik' oder Entwicklungszusammenarbeit", 2 December 2008, Deutsche Gesellschaft für die Vereinten Nationen, Berlin; Belgium Presidency, "Nürnberger Tage zum Asyl- und Ausländerrecht", 23-24 September 2010, Bundesamt für Migration und Flüchtlinge, Nürnberg; "Migration weltweit – Impulse für Entwicklung", Stuttgarter Forum für Entwicklung, 22 October 2010, Stiftung Entwicklungszusammenarbeit Baden-Württemberg, Stuttgart; "Which Policy for Legal Migration for the European Union", 26 November 2010, European Economic and Social Committee, Brussels; "Triple Win oder Nullsummenspiel? Chancen und Grenzen von Programmen zirkulärer Migration", 21 September 2011, Sachverständigenrat deutscher Stiftungen für Integration und Migration, Berlin; "Informationsveranstaltung zu demografischen Trends in Deutschland", Bundesministerium des Innern, 27 October 2011, Berlin; "Wechselwirkungen: Über das Spannungsverhältnis zwischen Entwicklungspolitik und europäischer Einwanderungspolitik", Fachgespräch der Bundestagsfraktion Bündnis 90/Die Grünen, 28 November 2011, Berlin; "Roundtable Perspektivwechsel Einwanderung – Deutschlands Wettbewerbsfähigkeit sichern, Transatlantic Council on Migration/Bertelsmann Stiftung, 2 December 2011.

13 Senior Representative, Federal Ministry for Economic Cooperation and Development (BMZ); Senior Representative, Federal Foreign Office (AA); Junior Representative, Federal Office for Migration and Refugees (BAMF); Senior Representative, Federal Police (BPol); Senior Representative and Junior Representative, Centre for International Migration and Development (CIM); Senior Representative, Federal Office for Migration and Refugees (BAMF); Senior Representative, European Migration Network (EMN); Senior Representative, Engagement Global/Bengo; Senior Representative 1, Federal Ministry of Interior (BMI); Senior Representative, Bread for the World / Association of German Development NGOs (VENRO); Senior Representative 2, Federal Ministry of Interior (BMI).

cause and its final outcomes. Particularly it allows to test different explanatory factors in a "rough-and-ready way" (Gerring 2007a: 41) and therefore fits the exploratory character of this research study characterised by a situation where the available theoretical approaches have difficulties explaining the more recent developments.

In European studies, case study research has a long tradition with the pioneering analyses by Haas already applying the classical case study design to analyse the development of the dependent and independent variables and the causal relations between them (Wolf 2006: 69). With respect to the more recent interest for sorting out different mechanisms of Europeanisation it is hardly surprising that European scholars have relied on case studies as the preferred mode of causal investigation (Gerring 2007a: 5; see also Exadaktylos/Radaelli 2009 for a quantitative analysis of research designs in Europeanisation studies). In contrast to this general trend, migration scholars have "tended to discard such case studies in favour of international comparison. […] However, in order to ascertain that our knowledge of policy making processes is meticulous and complete, and that we avoid biases related to a particular time and place, historical single case studies must have their place among our methodological tools" (Bonjour 2011: 118). The following two sections consequently discuss the case selection on which the following empirical analysis rests. This includes the selection of different dimensions of refugee and migration policies that show largely different outcomes of Europeanisation as well as the selection of Germany, constituting a least likely case for the Europeanisation of refugee and migration policies.

Four Dimensions of Refugee and Migration Policy

The previously discussed truncation problem caused by intentional selection in small-N case studies has also affected Europeanisation scholars. Particularly those applying the 'goodness of fit' approach are regularly criticised for missing cases where the fit is *a priori* good. This causes a selection bias on the dependent variable subsequently focusing only on cases that have led to national policy changes (see Guiraudon 2006: 303; Haverland 2005). To reduce this problem as much as possible, the traditional advice would be to select cases on the explanatory variables. In cases where the values of the explanatory variables are hardly known beforehand, however, this strategy provides limited assistance. Alternatively, the study can concentrate its selection on the dependent variable where more knowledge exists before the actual empirical analysis starts. In order to control for potential selection bias, however, the study should concentrate not only on policy areas where the EU has been most active or where an obvious misfit exists. Instead, the case selection should be based on a general differentiation of refugee and migration policies covering the most different aspects of this policy area with the aim of increasing variance on the dependent variable. This comparative approach follows a recent development in migration studies that argues for disaggregating refugee and migration policies into theoretically meaningful parts. Instead of making rather general assumptions about the policy area in total, Freeman (1995, 2006) has argued that migration policies are made up of several parts. In each of these parts, different actors and interests interact, resulting in largely different preferences of member states in the Europeanisation of the respective policy. Along this line, refugee and migration policies can then be analysed in "relation to types of migration rather than to an undifferentiated notion of 'immigration'" (Geddes 2003a: 4).

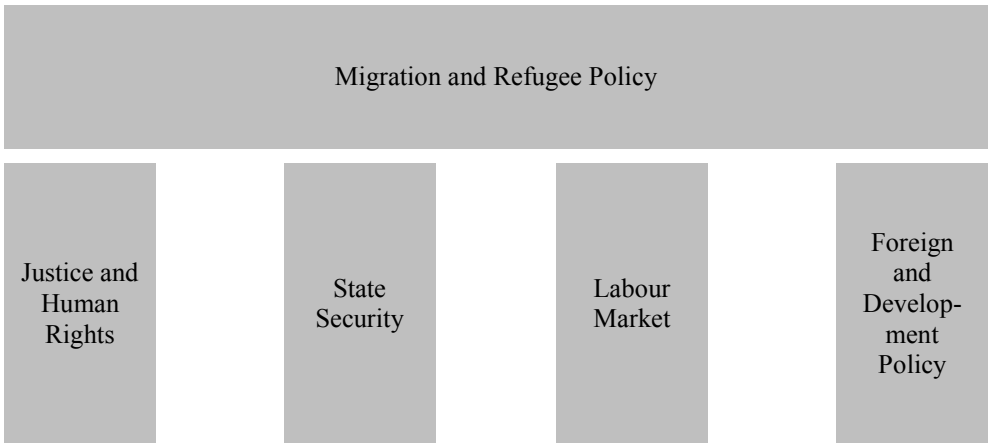
In a first step to define and disaggregate the different dimensions of this policy area, the study adopts Hammar's popular definition by which the term immigration control policy refers to a country's "rules and procedures governing the selection, admission and deportation of foreign citizens. It also includes such regulations which control foreign citizens (aliens) once they visit or take residence in the immigration country, including control of their employment" (Hammar 1985: 7). Concentrating on what Hammar called immigration control policies, the study excludes most aspects of integration, anti-discrimination and citizenship policies that are regularly confused when people talk about refugee and migration policy. One has to admit though, that this differentiation is not clear-cut. Instead, integration policies influence the situation for immigrants in a receiving country and are regularly applied as instruments of immigration control. Examples include cuts in social benefits or restrictive residence rights aiming at less attractive conditions which are regularly used in the context of refugee policies to make the migration decision of potential refugees less likely (Brochmann 1999: 10-11). Consequently, integration policy measures that are introduced to control third-country nationals once they take up residence in EU member states are necessarily included in this study.

Second, one has to take into account that immigration control policies are not homogenous but constitute a multi-dimensional policy area. This includes the "protective wall" nation-states have erected to restrict migration as well as the "small doors" states have provided to attract the migrants necessary for their economies (Zolberg 1989: 406). In conclusion, refugee and migration issues are best conceptualised as a policy area that cross-cuts several other policies. It intersects with at least four different policy dimensions that are based on different motives of migration and administratively set up categories: justice and human rights, state security, labour market and foreign and development policies, which all influence policy-making on refugees and migration (for similar conceptual-isations of this policy area see, for example, Boswell/Geddes 2011; Brochmann 1999; Niessen 2004).

Based on this principal differentiation of four dimensions of refugee and migration policies, four specific policies are selected (cf. Figure 3.2). A first case study covers the Europeanisation of asylum policies marking the area where the European integration of this policy area originally started in the late 1980s. Early initiatives and in particular the Dublin Convention and the Eurodac Regulation concentrated on restrictive measures which helped to dismantle previously liberal domestic asylum systems. The years after the Treaty of Amsterdam, however, have seen the adoption of a number of directives defining common European refugee norms. Compared with the turbulences of the early 1990s, the asylum issues vanished from the political agenda in many member states and the European policy developments started to find some repercussions on the domestic level.

A second case study focuses on policies addressing irregular migration. It is a diverse policy area covering different aspects ranging from border controls to counter-trafficking policies. A crucial element, however, is the return and deportation of irregularly staying persons to their countries of origin or transit. Confronted with legal and practical difficulties, member states developed this policy area dynamically during the 1990s and continue to do so today. Particularly with respect to international and operational cooper-ation, the European institutions have become important new structures making national policy approaches more effective.

Figure 3.2: Four dimensions of migration and refugee policy



Source: Own presentation.

The third case study covers the admission of highly skilled immigrants. Labour migration certainly constitutes the most contentious aspect in the developing European refugee and migration policy, and member states are hesitant to transfer sovereignty to the European Union in an area they perceive as being of crucial importance for the functioning of their national labour markets. Nevertheless, the EU successfully developed a skill selective European migration policy governing the immigration of different groups of highly skilled migrants including students, researchers and highly skilled migrants more generally. These developments at the European level have occurred in parallel to policy changes at the domestic level where traditional European non-immigration countries have started to roll up their previous admission systems.

Finally, the fourth case study concentrates on the foreign and development policy dimension of the refugee and migration issue. Under the label of the 'Global Approach' a number of diverse policy proposals aim to make development policy work for migration control, but also strive to make migration work for development objectives. Despite the dynamic of this policy area at the European level and the obvious interests of member states to include foreign and development policies into migration control, at the domestic level few tangible results have been noticed.

Germany: The Crucial Case

Finally, the analysis and explanation of the outcomes of Europeanisation are based on the German case. Today, the European Union has 28 member states and there exists now a trend in studying the national repercussions of Europe in new or potential future member states. This is true for the policy area at hand (e.g. Icduygu 2007; Kicinger, et al. 2007; Kruse 2007) as well as for European studies more generally (e.g. Schimmelfennig/ Sedelmeier 2005; Vural 2011; Börzel/Risse 2012). Nevertheless, purely methodological reasons make Germany an ideal case to study the potentially changing influence of the European factor on national policy changes as well as to test competing theoretical mechanisms. The case selection strictly follows the 'least likely' case method which

provides a confirmatory test for those cases where "the dimension of theoretical interest, is predicted not to achieve a certain outcome and yet does so" (Gerring 2007b: 232; Lauth, et al. 2009). If one can successfully demonstrate that the outcomes of Europeanisation are changing and that alternative theoretical mechanisms are operative in the German case these findings are then easily conferred to other member states as well.

The definition of a case as 'least likely' is always one of degrees but in the German case this is easily justifiable. Nevertheless, the student of German-EU relations might disagree first with this classification because of the generally close relationship between Germany and the European Union making the country particularly amenable to the European factor. Already during the 1950s, a fundamental consensus emerged in Germany among political elites and generally shared by public opinion defining European integration as a fundamental "raison d'état" (cf. Marcussen, et al. 1999; Wittlinger 2010: 4; Müller-Brandeck-Bocquet 2006). The mirror image of the "semi-sovereign state" (Katzenstein 1997) and the "joint-decision trap" (Scharpf 1988) both characterising the politics within Germany was on the level of foreign policy the almost "symbiotic relationship between Germany and the European Union" (Bulmer, et al. 2010: 1).

This generally uncontested relationship with Europe structuring general foreign policy orientations, however, does not easily translate into all policy areas and a similarly uncontested adoption of European policies into national legislation. With respect to refugee and migration policy available research findings confirm that the opposite might even be true. Instead of a passive receiver of European policies, Germany played a key role in triggering the integration of Europe's refugee and migration policies. The country was one of the founding members of the Schengen Treaty and without Germany's insistence during the Intergovernmental Conference preceding the Treaty of Maastricht the dynamic development of this policy area would hardly have been possible. Furthermore, Germany has a huge potential for actively shaping European policies along its national preferences. This includes its economic and political weight as well as its bargaining capital and high level of reputation among the European member states as one of the founding members of the integration process. The last years shaped by the economic and financial as well as the most recent migration crises even strengthened the role of Berlin in Europe with talk of a "constant German EU Presidency" (Möller/Parkes 2012: 1) and the obviously changing role for Germany in the EU (Bulmer 2014; for an overview see also Lippert 2015). Finally, the fact that the original venue-shopping explanation was developed on the basis of the German case already demonstrates that the country shaped European policies closely along its restrictive national preferences and made sure that common regulations take the existing national *status quo* into account (cf. Guiraudon 2000; Lavenex 2002; Monar 2003). Although the country's early enthusiasm for European integration of this policy area might have cooled a little and Germany developed from "model to average student" (Prümm/ Alscher 2007) there is little to suggest that the principal relationship between Germany and the EU in this policy area has changed.

Finally, imagine one would find procedural or substantive shifts in the Europeanisation of refugee and migration policies in newer or smaller member states or in countries that have not participated in the developments during the 1990s as intensively as Germany. In such cases, most readers would doubt whether the more diverse outcomes of Europeanisation, for example in Greece or Poland, could be taken as evidence that European refugee and migration policy has developed a more balanced approach – not only focusing on 'Fortress Europe'. A focus on newer member states with a less developed national refugee

and migration policy and less negotiating power in EU policy-making processes would certainly not yield unambiguous results. As Vink (2005: 20) argues, the fact that "we can indeed see a stronger process of Europeanisation in those countries, this is largely to be explained by the 'conditionality' factor, and thus a process of domestic change that is principally different from the 'normal' politics of Europeanization". As a consequence, showing that the outcomes of Europeanisation as well as the operative theoretical mechanisms have changed in the German case – where such a change is least likely to take place – provides a far more resilient test for the underlying assumptions of this study.

3.4 Conclusion

The aim of this chapter was to provide the conceptual and theoretical tool-box of this study. Based on a precise definition of the dependent variable – the outcomes of Europeanisation – the explanatory framework broadens the most common approach in this field, which usually concentrates on the 'goodness of fit'. Particularly, it systematically links the two central dimensions of Europeanisation – uploading and downloading – within a single theoretical framework. The discussion focused on a number of crucial factors explaining the outcomes within both dimensions separately before combining them in a fourfold table and describing four individual ideal-typical mechanisms of Europeanisation. Each of them has been individually described in the literature before, but for the first time they are combined in a comprehensive theoretical framework. The study claims that applying this framework helps to explain the increasingly diverse outcomes of Europeanisation in the field of refugee and migration policy. Instead of inventing new *sui generis* explanations to account for different outcomes of Europeanisation the approach provides the opportunity to "normalise" (Radaelli/Pasquier 2007: 41) European Studies. The study, therefore, follows the plea by Olsen (2002: 944) who argues that the way ahead "lies in integrating perspectives on institutional dynamics, rather than choosing among them". Instead of advancing the original 'goodness of fit' approach aiming at a single grand theory of Europeanisation, the framework makes explicit recourse to already established theoretical approaches. In the following four chapters, the study tests this framework and applies it to the national developments of Germany's refugee and migration policies of the last decade.

4 Opposing Europe Through the Backdoor? Refugees between National Control Imperatives and the Supranationalisation of Rights

4.1 Introduction

Internationally, the development of refugee protection in Germany is certainly the country's most intensively studied aspect of its migration and asylum policy and therefore provides a good starting point into the empirical case studies applying and testing the theoretical framework of this thesis. Within the second half of the 20th century, Germany fundamentally dismantled its originally most liberal asylum policy. Depending on the perspective of the individual scholar, this development is either told as a story of a state regaining sovereignty over a policy which previously has exhausted national control or, alternatively, as a stepwise development towards an increasingly restrictive refugee policy. Both perspectives have their roots in the German legacy of World War II and the fate of millions of refugees fleeing Nazi Germany not being able to find protection in another country. As a consequence, Germany decided in 1949 to include the individual right of asylum in Article 16 (2) in its Basic Law (GG), providing refugees a legally enforceable claim against the sovereignty of the state (cf. Gibney 2004: 88; Sontheimer/Bleek 2004). Particularly, it offers those suffering from political persecution a generally high level of protection against the danger of being refused entry into the country and the first decades after the World War II were generally presented as the "golden age" of asylum policy in Germany (Poutrus 2014: 116). Following the end of labour recruitment in 1973 and the escalation of political conflicts in the global south, asylum applications increased in Germany as well as in many other Western countries (cf. Loescher 1992). In response, successive German governments curtailed this basic right by narrowing the definition of who qualifies as a refugee, restricting access to the asylum procedure and providing asylum-seekers with less favourable reception conditions. Between the late 1970s and the end of the 1990s, altogether three rounds of asylum conflict can be differentiated describing a linear trend towards an increasingly restrictive system of refugee protection.

After the reforms in 1993 and some additional legislative amendments throughout the 1990s, dismantling the previously guaranteed Constitutional asylum right, recognition as a refugee in Germany became far more difficult and the numbers of asylum applications declined drastically. Nevertheless, the development of Germany's asylum policy did not come to an end and although the topic started to vanish from public attention, the decade after the turn of the millennium has seen some remarkable reforms. On the one hand, successive German governments adhered to the already established *status quo*, continued the previously developed restrictive policy approach and even introduced some additional restrictive measures. On the other hand, however, the years after the turn of the millenium witnessed the beginning of a fourth round of asylum conflict with reforms deviating from the previously adopted agenda. First, these include reforms of its restrictive jurisdiction on refugee status determination, particularly with respect to its previously narrow understanding of religious persecution. Second, it includes steps towards abandoning some of the most restrictive aspects of Germany's deterrence regime. Here, examples refer to the incremental watering down of its system of residence obligations for asylum-seekers as

well as the withdrawal of Germany's reservation on the United Nations Convention on the Rights of the Child previously legitimising its restrictive approach towards unaccompanied minor refugees. Finally, these reforms include the incorporation of an explicit reference to the Geneva Refugee Convention in German legislation, as well as the recognition of non-state and gender-specific forms of persecution resulting in an overall far higher protection rate for persons in need of protection (UNHCR 2012: 5).

Before those recent reforms, two different refugee statuses existed in Germany – one based on the Basic Law and the other based on the Refugee Convention – both providing a very restrictive definition of 'refugee'. Since then, however, it has become easier for asylum-seekers to fulfil the requirements of the Refugee Convention. Although absolute numbers of recognised refugees obviously decreased during the last two decades, the respective recognition rates have witnessed an increase (see Figure 4.1). Recognition rates on the basis of the Basic Law have always been on a very low level with an average of 4% for the period 1995-2012. Instead, the rates for refugee status granted on the basis of the Refugee Convention witnessed an opposite trend. Whereas the late 1990s saw comparable figures with an average protection rate of 6% for the period 1995-99, these numbers increased to 35% for the period 2008-2012. What is more, around two-thirds of all refugees granted protection on the basis of the Refugee Convention relate to cases of gender-specific or non-state persecution.[14] These developments resulted in an intensive debate between German legal scholars now predominantly agreeing that the Sonderweg in Germany's asylum policy has come to an end and that the Constitutional asylum right which structured this policy area for many decades has now lost any practical relevance and has become an almost obsolete concept (cf. Hailbronner 2008; Hund 2009; Tiedemann 2009).

The majority of existing scholarly analyses of Germany's asylum policy apply different variants of "domestic politics" (Meyers 2004) frameworks. They focus either on the influence of the judiciary, party competition, the specific role of right-wing parties and the politics of xenophobia, as well as regional cleavage structures between the Federal government and individual municipalities successfully mobilising for more restrictive policies to explain the specific timing and outcomes of the developments in this policy area. Determined by this particular theoretical focus, these studies concentrate solely on national explanatory variables, and completely factor out all potential international and European factors. In contrast to these studies, the following chapter argues that the developments during the last decade have been fundamentally shaped by developments at the European level. Following the Treaty of Amsterdam in 1999, the EU has started to develop the Common European Asylum System (CEAS) consisting of a number of directives regulating all major aspects of national asylum systems – the definition of refugee status, asylum procedures and reception conditions. The chapter argues that the development of Germany's asylum policy during the period of investigation can only be understood in this European context and closely follows the propositions of two different mechanisms of Europeanisation – backdoor opposition and policy learning.

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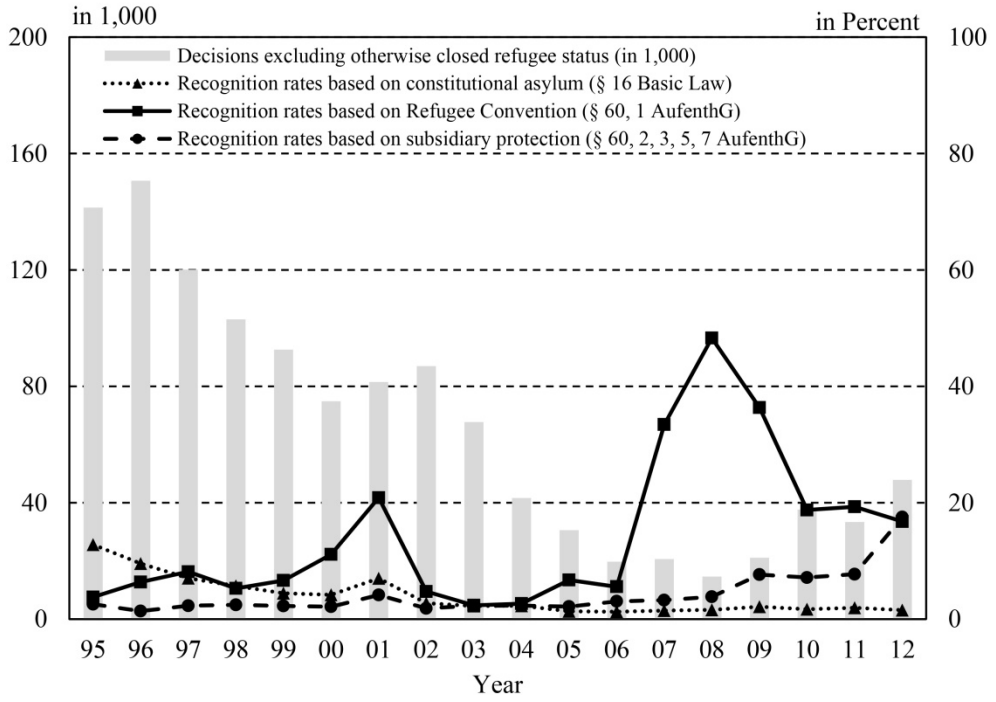
[14] All data is based on recognition rates excluding otherwise-closed refugee status (BAMF 2012b, 2010a, 2009, 2008). Gender-specific and non-state persecution data are publicly available only from 2007. Next to those two refugee statuses – based on the Basic Law and on the Refugee Convention – subsidiary protection applies in cases where the other two statuses do not apply, but there are nonetheless grave risks to an individual's liberty, life or limb, such as from political persecution. Subsidiary protection is granted if a deportation ban applies, but provides only for temporary protection with a lower set of associated rights.

Figure 4.1: Development of refugee recognition rates in Germany, 1995-2012



Source: Own calculations based on BAMF (2015b).

The political and legal regulation of providing asylum for refugees in nation-states has developed into a highly complex and diverse policy area during recent decades. In order to provide a more thorough analysis of the developments in this policy area, three main dimensions of asylum policy with corresponding policy objectives and major policy measures are differentiated, concentrating in particular on those aspects that have been regularly used to restrict asylum by different countries (see Table 4.1 for an overview).

The most fundamental dimension of asylum policy concerns refugee status and the question of who actually qualifies as a refugee. Here, two policy objectives exist that are regularly applied by different countries in an attempt to regain control over asylum. The first starts at the definition of refugees that is generally provided by the 1951 approved Convention relating to the status of refugees and its 1967 appended Protocol. Despite the common legal basis, signatory states differ significantly in its interpretation because the application of a more narrow understanding of a refugee effectively excludes certain groups of asylum-seekers from the benefit of a secure refugee status (cf. Goodwin-Gill/McAdam 2007; Hathaway 1991). A second objective concerns the permanency of the residence status granted to refugees. Traditionally, the granting of refugee status has been an equivalent to long-term residence or even citizenship status in Western states. This connection, however, has weakened and states increasingly link the acceptance of refugee flows with an obligation of return in cases when the situation in the country of origin improve (cf. Gibney/Hansen 2003a: 11).

Table 4.1: Analytical dimensions of national asylum policies

Dimension	Objective	Individual instruments
Refugee Status	Restricting definition of refugees	Non-state persecution
	Restricting permanent residence	Cessation of refugee status
Asylum Procedure	Speeding determination procedure	Appeals and legal assistance
	Exclusion from asylum procedure	Safe country regulations
Reception Conditions	Limiting employment and welfare	Unaccompanied minor refugees
	Restricting free movement rights	Requirements for residence

Source: Own compilation.

The second dimension of asylum policies concerns the asylum procedure. It directly affects the duration of the asylum determination procedure as well as the principal access to the asylum procedure. Again, in responding to increasing numbers of asylum applications states have followed two different objectives here, which both aim at the streamlining the asylum procedure. The first attempts to speed up the procedure of determination by boosting the efficiency of asylum processing. On the one hand, this includes measures to improve the quality of asylum decisions, for example, by employing more staff, providing better training and simplifying administrative procedures. On the other hand, the asylum procedure is streamlined by decreasing levels of legal protection, e.g. reduction of legal assistance provided for refugees, reduction of avenues for legal appeals, as well as the introduction of fast-track procedures for unfounded applications. The second objective is more radical and tries to totally exclude refugees from access to the national asylum system. This includes on the one hand individuals being excluded from the asylum procedure because of lack of cooperation of the applicant (e.g. delayed submission of application forms). On the other hand it also includes the determination of safe countries of origin or safe third countries. Such regulations exclude asylum-seekers from particular countries of origin or who have passed through particular countries *en route* from applying for asylum (cf. Gibney/Hansen 2003a: 11).

Finally, the third dimension of asylum policies addresses the issue of increasing numbers of asylum-seekers more indirectly by focusing on reception conditions. There is a dual rationality in such policies. On the one hand they are based on the belief that less attractive living conditions and a reduced set of rights available to asylum-seekers will divert refugees into other states. On the other hand the exclusion of asylum-seekers from participation in normal life in the host society attempts to ensure that law enforcement against rejected asylum-seekers is not impaired by the development of strong social ties (cf. Bank 2000: 149). Again, states generally follow two different objectives to impede integration and deter immigration. The first strategy concentrates on restrictions on residency. Whereas asylum-seekers often desire to live close to migrants from the same country of origin, these kinds of policy attempt to regulate where asylum-seekers reside. This includes the restriction of free movement rights of asylum-seekers to certain areas of a state as well as the requirement to live in special accommodation centres. Those measures are generally legitimated with reference to deterrence as well as financial motives (see, for example, Robinson, et al. 2003). Second, a different objective concentrates on several limitations on employment and welfare, aiming in particular at discouraging economic migrants from applying for asylum

and to reduce potential pull factors of welfare entitlements. As a consequence, social benefits for asylum-seekers are regularly offered on reduced levels and are regularly provided as benefits in kind. Furthermore, these deterrent measures regularly also affect refugees with special needs, including unaccompanied minors or refugees with special health issues. Again, states are hesitant to provide even these especially deserving groups with more favourable treatment because they fear that this would be counter-productive to their general aim of deterring potential refugees (cf. Gibney/Hansen 2003a).

The chapter proceeds in three steps: The first step analyses the *status quo* of Germany's asylum policy in the late 1990s, before the remarkable task expansion of the EU in the Treaty of Amsterdam exerted any influence on member states' refugee policies. It provides an overview of this policy area by differentiating between three rounds of asylum conflict – 1970s to early 1990s, the substantial asylum reform in 1992/93 and the final period lasting from 1994 until the end of the 1990s. Furthermore, it concentrates on three dimensions of asylum policy – refugee status, asylum procedure and reception conditions. It argues that Germany's asylum policy was characterised by a linear trend towards an increasingly restrictive and illiberal system of refugee protection. Based on this analysis of the *status quo* in the late 1990s, the second step concentrates on the development of the Common European Asylum System in the following decade. It argues that the political initiative was clearly captured by the European Commission tabling individual draft legislation on all three dimensions of asylum policy. Those proposals included, at least in some respects, an ambitious system of refugee protection in Europe. However, the subsequent negotiations in the Council provided Germany with the opportunity to bring many European proposals into line with its national policy approach. Furthermore, member states' influence on actual outcomes of Europeanisation are not restricted to the uploading processes. Instead, the third step of this analysis focuses on the national implementation of European legislation. It argues that in contrast to the first three rounds of asylum conflict up until the late 1990s, which were constituted first and foremost by national contentions, this fourth round of asylum conflict is fundamentally shaped by European processes. The analysis shows that, on the one hand, the German administration used the transposition process to regain control of the agenda and to block many of the remaining European policies that should have been implemented into national legislation. On the other hand, it also shows that the European level has developed into an important opportunity structure for national actors now able to introduce policies that previously did not find a majority. Process tracing the development of Germany's asylum policy during this decade, therefore provides an obvious case that not venue shopping but other mechanisms of Europeanisation – here, backdoor opposition and policy learning – are necessary to explain the increasing diversity in this policy area.

4.2 Regaining Control: Three Rounds of Asylum Conflict in National Contexts

In Germany, as in many other Western countries the end of labour recruitment in 1973 and the escalation of political conflicts in the global south resulted in a marked increase in refugees (cf. Loescher 1992). In the following years, asylum policy developed into one of the most contentious issues dominating the political agenda for the decades to come. The reasons are manifold but surely not only linked to increasing numbers. Instead, asylum-

seekers became a political scapegoat for economic difficulties; they could be held responsible for putting additional strain on the welfare state and marked a convenient political cleavage structure for party political mobilisation (see, for example, Schuster 2001). In Germany this development has been particularly problematic. With an average yearly number of 4,000 asylum-seekers during the 1950s and the 1960s, the 1970s saw a yearly average of 16,000 applications, 70,000 during the 1980s and finally 188,000 asylum-seekers during the 1990s.[15] With its Constitutional asylum right, Germany has been more vulnerable to international refugees than other states. When neighbouring countries started to become more restrictive towards refugees, Germany's reputation as a liberal asylum destination increased. Gibney (2004: 98) concludes that an international context developed in which Germany had the least room to manoeuvre in dealing with asylum-seekers and was consequently "likely to bear the biggest burden". In response, successive German governments have curtailed this basic right in three rounds of asylum conflict by narrowing refugee status, restricting access to the asylum procedure and providing for less favourable reception conditions.[16]

4.2.1 The First Round: Attempting to Restrict, Streamline and Deter

The first round of asylum policy conflict took shape in the mid-1970s and lasted until the early 1990s. It was particularly characterised by legal hurdles set by the Constitutional asylum right severely constraining the government. This is not to say, however, that those early reforms have not fundamentally altered the German system of refugee protection. Instead, those first two decades of continuous asylum reform set the political parameters for the decades that followed.

The first dimension of national asylum policy constitutes the legislative framework defining who qualifies as a refugee. The development of an increasingly restrictive refugee status in Germany has its point of origin in the 1950s and concentrated in particular on the definition of refugees.[17] Any understanding of this process, crucially influenced by the judiciary and in particular by the Federal Constitutional Court (BVerfG), has to differentiate between two separate refugee statuses in Germany – the Constitutional asylum right originating from Article 16 (2) of the Basic Law and Convention refugee status based on the Refugee Convention. During the 1950s, at the beginning of asylum policy in Germany, there was a liberal legal and administrative practice of granting refugee status irrespective of the principal difference between both statuses. At the end of the first round of reforms, however, the refugee definition of Constitutional asylum in Germany had become highly exclusionary with a uniquely low recognition rate of asylum-seekers and no determination procedure for Convention refugees whatsoever.

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15 All statistical information on asylum applications in Germany is based on yearly publications by the Federal Office for Migration and Refugees (BAMF 2010a). Up until 1994, calculations of asylum applications included first as well as follow-up applications.

16 Due to the federal structure of the FRG, asylum policy is shaped by all levels of the political system – local, regional and national (for a recent analysis see Schammann 2015). With respect to the complexity of the material, as well as the fact that the basic legal foundations are determined at the federal level alone, the analysis concentrates on the developments at the federal level.

17 The other objective – restricting permanent residence of refugees – started to play a more important role in the last decade and is therefore only discussed in Chapter 4.4.1.

This process of gradually altering the definition of refugee status started in 1959 when the Federal Constitutional Court stated – in accordance with the prevailing academic opinion of the time – that Germany's constitutional right of asylum exceeded the obligations deriving from international law and the Refugee Convention. In principal, this decision started the gradual development of a purely national scheme of refugee protection based on Germany's Constitutional asylum right and separate from the developments of refugee law standards based on the Refugee Convention. At that time, however, this decision resulted in a refugee protection system that was more liberal compared to systems that were based on the Refugee Convention. In the following years, the dominance of the Constitutional asylum right as opposed to the Convention refugee status was further strengthened. This was certainly the case with the introduction of the Aliens Act (AuslG) in 1965, and in particular in 1980 when the Federal Constitutional Court confirmed its earlier decision that the Refugee Convention compared to Germany's Constitutional asylum right remains deficient. In line with these decisions, the new Asylum Procedure Code (AsylVfG) from 1982 included a determination procedure for Constitutional asylum referring to Article 16 (2) Basic Law only. In contrast, procedures for the determination of refugees under the Refugee Convention were dropped assuming that they are already included in the Constitutional norm (cf. Lambert, et al. 2008: 27; Lavenex 2002: 41ff.; Tiedemann 2009: 164).

From a human rights perspective, this development of separating both refugee statuses was unproblematic as long as domestic German constitutional law provided a far broader and more liberal approach in the protection of asylum rights compared to most other Western states. In the mid-1980s, however, this foundation started to vanish. Although the Constitutional asylum right was always based on the narrow definition of political persecution only, this concentration on the Basic Law and the complete disregard of the Refugee Convention became particularly problematic with the emergence of a more restrictive approach by the Federal Constitutional Court. Lambert et al. (2008: 29f.) list at least four decisions resulting in an increasingly narrower understanding of a refugee based on the Basic Law compared to the Refugee Convention. A first example refers to a Court decision in 1986 that refuses to grant protection because of post flight reasons, applying to asylum-seekers who "retrospectively and actively changed their religion or political orientation after leaving their home country". A second decision originates from 1987, creating the so-called 'religious subsistence level' doctrine. From then onwards, religious believers were only recognised as refugees within the meaning of the Basic Law, if they have been persecuted for practising their religion privately. In contrast, oppressive measures against the public practice of religion were not considered as political persecution anymore. A third example also stems from 1987 when the Federal Constitutional Court developed the doctrine of 'predominant probability'. It argued that asylum-seekers who were not suffering from persecution at the time of the decision, or who had not previously suffered persecution, could claim asylum only if they could demonstrate a greater than 50% chance of being persecuted if removed to their country of origin. A final decision of the Federal Constitutional Court originates from 1989, which decided that political persecution within the meaning of Constitutional asylum in Germany only related to acts of a State. In contrast, those who are persecuted by non-state actors or in situations where no government is in force like in many civil war situations no longer qualify for the Constitutional asylum right.

Those exemplary decisions resulted in an asylum practice out of line with the situation in other Western states and manoeuvred Germany in an "autistic Sonderweg" (Tiedemann 2009: 165)[18]. The originally liberal Constitutional asylum status in Germany fundamentally altered during this first round of asylum conflict. At the end of the 1980s, the definition of a refugee based on the asylum right of the Basic Law had become far narrower than the refugee status based on the Refugee Convention. Each of those court decisions increasingly enlarged the difference between Constitutional asylum and protection under the Refugee Convention. By the end, the situation in Germany was oddly out of line with refugee protection in other Western states and excluded a significant group of refugees from a secure refugee status in Germany.[19]

The legislative framework defining the asylum procedure marks the second dimension of national asylum systems. In this respect, the first round of asylum conflict started in 1977 with a series of administrative reforms concentrating in particular on accelerating the determination procedure. Before those reforms, the asylum procedure was characterised by an independent jury of one chairman qualified in law and two lay jury members giving a decision on recognition after a hearing. Potential appeals were judged first by a committee of three adjudicators at the Federal Office for the Recognition of Foreign Refugees (BAFl)[20] with potential additional legal action at the local administrative court and up to three further administrative levels of jurisdiction ending up in the Federal Constitutional Court. Finally, asylum-seekers whose application has been turned down and who were threatened by deportation had potential access to an additional two administrative levels of appeal and three levels of jurisdiction (Münch 1992: 58).

A first reform of this original procedure introduced a sort of pre-screening strategy. Border authorities and the foreigner offices of the federal states (Bundesländer) now examined any asylum application and unfounded cases were not transferred to the BAFl. Confronted with increasing numbers of asylum-seekers and the rejection of this administrative practice by the Federal Constitutional Court – caused by the incompatibility of this new procedure with the core of the asylum right in Article 16 (2) Basic Law – the following years saw a number of alternative asylum reforms. In 1978, a law for the acceleration of asylum proceedings came into effect. It aimed at the acceleration of domestic asylum procedures by abolishing the administrative review of negative decisions by the Federal Office for the Recognition of Foreign Refugees and the decentralisation of the judicial review procedure. In 1980 a second reform was introduced. It replaced the recognition juries at the Federal Office by single adjudicators and limited the mobility of rejected asylum-seekers to a specific federal state. In 1982 the new Asylum Procedure Code included further restrictions on legal remedies with appeals to administrative courts being judged by a single judge, and a second appeal only being possible under certain circumstances. Furthermore,

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18 This and all subsequent quotations from German texts have been translated by the author, except where otherwise indicated.

19 Although some of these refugees were nevertheless allowed to stay in Germany – based on different subsidiary protection statuses – their legal and procedural rights as well as their reception conditions were far lower compared to refugees recognised on the basis of the Constitutional asylum right. Furthermore, such subsidiary protection statuses were not conceived as enforceable rights comparable to Article 16 (2) of the Basic Law, but as acts of autonomous state sovereignty offering the executive a very high degree of discretionary power (Lavenex 2002: 43; Hailbronner 1993).

20 The Immigration Act in 2005 changed the name of this agency into Federal Office for Migration and Refugees (BAMF).

the 1982 reform limited the right of access to the asylum procedure by introducing the concept of 'manifestly unfounded' asylum applications. A next attempt started in 1986 to widen the category of 'manifestly unfounded' claims and curtail the appeal rights of applicants fleeing countries involved in armed conflict or experiencing a general state of emergency. Some minor changes in administrative regulations in December 1988 and the Aliens Act from 1991 reduced the time allowed in which to utilise appeal procedures and were declared a last resort to cope with the problem of the fast-growing numbers of asylum-seekers. In combination with a substantial expansion of employees working at the BAFl – from 1,100 employees in 1992 to almost 4,000 in 1994 - these regulations aimed at reducing processing time from an average of nine months to an average of six weeks by streamlining and centralising procedures (cf. Bosswick 2000: 48; Gibney 2004: 101).

Finally, the third dimension of national asylum systems refers to the reception conditions for asylum-seekers. Here, the reforms of the first round of asylum conflict have introduced far-reaching restrictions concerning both, restricting free movement rights as well as restricting access to employment and welfare. Restrictions on residence and particular residence obligations (Residenzpflicht) were introduced in 1974 when the Conference of Home Office Ministers of the Federal States (IMK) agreed on the basis of necessary burden-sharing that after a short stay at the camp of the BAFl, asylum-seekers should be distributed between the federal states. However, the increasing numbers of asylum applications continued to create problems for the particular district in Bavaria where the Federal Office was located and by 1977 such provisions on the distribution of asylum-seekers had been extended, with asylum applicants now registering applications in any Federal State. Furthermore, the form of accommodation for asylum-seekers was also regulated in subsequent legislative reforms, with the obligation to stay in reception centres during the first three months and autonomy for the federal states to decide the forms of housing after this initial period (cf. Boswell 2001). In the years to come this led to an array of complex regulations imposing the obligation to live in a reception centre for a certain period and allowing the authorities to impose an obligation to reside in collective accommodation after that period. This included a decision from the early 1980s, when the government imposed severe limitations on the movements of asylum-seekers, with stay permits being limited to the district of the Local Foreigner Authority (Ausländerbehörde). Since then, asylum-seekers have been entitled to leave the district only by specific permission of the authorities with violations being prosecuted and penalised with monetary fines or deprivation of liberty (Bank 2000: 154). With respect to political reforms on access to employment and welfare, these started in 1980 when the Federal Labour Office decided to deny asylum-seekers work permits during their first year of stay. In 1982, the Procedural Asylum Law included new regulations designed to make staying in Germany more unattractive for asylum-seekers and in 1987 a five-year work ban for asylum-seekers was implemented (Bank 2000: 158).[21]

[21] The decisions to exclude asylum-seekers from the labour market during the first years of the determination procedure placed an increasing burden on the local infrastructure. As a result, Germany reduced the periods banning asylum-seekers from work in 1991, now only covering the period asylum-seekers were obliged to live in a reception centre. Nevertheless, after that period it was at the discretion of the authorities to impose an additional employment ban on the basis of individual orders based on general immigration-related considerations.

Compared to the activities regulating access to the labour market, the activities with respect to access to welfare subsidies and regulations aiming at particular social groups this first period of asylum reforms witnessed comparatively little governmental engagement. In the early 1990s, however, the topic received widespread coverage when Germany as one of the first countries to sign the United Nations Convention on the Rights of the Child submitted reservations to what is known as the declaration on aliens (Ausländervorbehalt). As a consequence, this reservation legitimated the continuity of policies excluding refugee children and unaccompanied minor refugees from access to basic rights such as the right to 'protection from discrimination' and 'the best interests of the child' (cf. Bundesregierung 1992). Although the particular needs of unaccompanied minor refugees played only a marginal role in the context of increasing numbers of asylum-seekers in the early 1990s, the Minister of Interior argued in 1992 that the particular costs of unaccompanied minor refugees curtailed Germany's national interests and early countermeasures like those of 1991 – which introduced obligation to possess a visa for children under 16 years of age and the prohibitions for airlines to carry such children without valid visa – have not solved this issue (cf. Apitzsch 2010).

4.2.2 The Second Round: Dismantling the Constitutional Asylum Right

The preceding analysis has shown that consecutive German governments have implemented wide-ranging policy measures to regain control over the immigration of refugees. Whereas other Western states were able to swiftly adapt their national asylum policies to their national interests, the German government saw "their hands (were) tied by the Basic Law" (Münch 1992: 13) and the strict Constitutional asylum norm precluded the introduction of more far-reaching policy measures. With fast increasing numbers of asylum-seekers during the 1980s, an amendment of the Basic Law became the major focus of the second round of asylum conflict.

The election campaign in 1987 provided the first platform to publicly debate an amendment, but because of the close link to the historical burden of its national socialist past, Article 16 of the Basic Law had obtained the status of a "quasi-sacred taboo" (Joppke 1999: 86). Together with the mandatory two-thirds majority in the German Parliament and the German Upper House necessary to secure an amendment and a party politics dominated by "acrimonious disputes, near-hysterical rhetoric and hostile condemnations of respective policy proposals" (Henson/Malhan 1995), an insurmountable constraint to a domestic solution to the developing "migration crises" (Weiner 1995) existed. A European solution, however, was also not within reach. Although Germany was successful in establishing asylum and immigration as problems of common interest at the European level during the preparations of the Treaty of Maastricht (cf. Chapter 2), more far-reaching demands for a common Community asylum policy remained unheard (Marshall 2000a: 411; Schwarze 2001). In the end a national solution was agreed between the governing coalition, composed of the Conservative parties (CDU/CSU) as well as the Liberals (FDP) and the Social Democrats (SPD) as the biggest opposition party in December 1992. As numbers of asylum-seekers peaked in 1992 at a total of 440,000 and the government and the public discourse adopted an image of emergency, an 'asylum compromise' was found including an amendment of the Constitutional asylum right alongside a whole package of other regulations in the area of policy towards foreigners (on the importance of the asylum compromise for Germany's overall immigration policy see Angenendt 1999). Although the

European level developments and in particular the Schengen and Dublin agreements from 1990 as well as the London Resolutions from 1992 played a supporting role as an alibi for justifying certain policy measures within the previously hesitant FDP and SPD (Bosswick 2000: 54) and altered the previously existing ideological framework of discussing asylum issues (Lauter, et al. 2011; Lavenex 2002; Schwarze 2001), the changes to the German constitution, which were finally implemented in summer 1993, were brought about in a predominantly domestic context.

The actual content of the so-called 'asylum-compromise' avoided completely dropping Article 16 of the Basic Law, but included the amendment of new clauses now enabling the state to reject apparently bogus asylum-seekers at the border. Technically this was facilitated by the extension of the original Article 16 by numerous specifications and restrictions, "changing the character of its wording from the style of a constitutional rule into an administrative regulation" (Bosswick 2000: 50). In particular the package extended to three different aspects, all concerned with particular reforms of the asylum procedure.

First, the amendment to Article 16 removed the right to asylum from those "who enters the federal territory from a member state of the European Communities or from another third state in which application of the Convention Relating to the Status of Refugees and of the Convention for the Protection of Human Rights and Fundamental Freedoms is assured" (GG Article 16a(2), translation by Bundestag 2012f: 23). Those asylum-seekers arriving through such a safe third state were by definition excluded from the asylum procedure and subjected to deportation.[22]

Second, Paragraph 3 allowed for the creation of a list of safe countries of origin "in which, on the basis of their laws, enforcement practices and general political conditions, it can be safely concluded that neither political persecution nor inhuman or degrading punishment or treatment exists" (GG Article 16a(3), translation by Bundestag 2012f: 23). Asylum-seekers from those countries were not considered politically persecuted and faced an accelerated asylum procedure. Unless they were able to give particular reasons for their claim to have been politically persecuted the process generally ended in a rejection of their claims as 'obviously unfounded'; these refugees could be deported even during appeals if there were no serious doubts about the lawfulness of their deportation.

Third, in plainly unfounded cases, it was now possible for the government to implement measures to terminate the residence of an applicant that could hardly be suspended by a court. As a consequence, this final provision allowed the implementation of the 'airport regulation' with the new Asylum Procedure Code accompanying the constitutional amendment. It declared parts of Germany's airports as international zones in which officials were not obliged to provide asylum-seekers or foreign individuals with some or all of the protections available in order to enable speedy removal from the country (cf. Gibney 2004; Joppke 1999; Knopp 1994).

22 Already in 1987 the extension of the Asylum Procedure Code included a safe third-country regulation. From then on, the recognition of an asylum-seeker as a refugee was impossible if the person had previously stayed in a safe third state for at least three months (Lavenex 2002: 47).

4.2.3 The Third Round: Policy Continuity After the Asylum Compromise

The 'asylum compromise' came into effect in July 1993 and was received with fierce criticism. Legal experts criticised in particular the accelerated asylum procedures introduced by the airport regulation maintaining the fiction of not having entered German territory (Marx 1993). Others criticised that appeals against manifestly unfounded decisions had to be processed within one week, which was considered unacceptable (Bosswick 2000). Despite those widespread critiques, the government described the constitutional reform of the asylum right as a success for two reasons. First, the constitutional amendments were considered to be overall in compliance with the Basic Law. Although the Federal Constitutional Court demanded in its 1996 rulings modifications with respect to specific regulations – in particular concerning the airport procedure – the main building blocks of the asylum compromise concerning the safe third-country and safe country of origin regulations were validated. Second, the government argued that the constitutional reforms of 1993 had a profound effect on the development of asylum applications in Germany (BMI 1994). Within months, applications had fallen by almost a third compared to the previous year and in 1994 asylum applications were down to 130,000 applications.

Despite the fact that Germany was obviously able to keep asylum applications tightly under control after the 1993 reform, this third round of asylum conflict during the 1990s witnessed a continuity of restrictive reforms. Policy continuity is obvious in all three dimensions of asylum policies. In 1996, for example, the asylum procedures were tightened, fixing the amount payable for legal work on asylum at a very low level resulting in payments to lawyers that did not cover the costs of adequate legal advice. Similarly, the definition of refugee status went along well-trodden paths during the 1990s as well. The preceding analyses have shown that successive decisions by the Federal Constitutional Court curtailed the interpretation of persecution within the Constitutional asylum right. During the 1990s it was the Federal Administrative Court (BVerwG) – the last legal instance for non-constitutional public law cases, including Refugee Convention cases – that continued this trend and extended in a number of decisions the application of the already restrictive requirements of Constitutional asylum to Refugee Convention cases. For example, in 1991, the BVerwG decided to follow the 'predominant probability' test adopted by the Constitutional Court, embraced the 'religious subsistence level' in 1992 and the 'persecution only by State' doctrine from 1995 onwards (cf. Tiedemann 2009: 166; but see Zimmer 1998).

The greatest legislative activity was seen throughout the 1990s on lowering reception conditions where German asylum policy developed a real "dynamic of restrictionism" (Bosswick 2000: 51). Overall, these developments in the labour market and social policy during the 1990s aimed at social exclusion of asylum-seekers by only providing basic support to secure their survival (Bank 2000: 159). This trend started in November 1993 when the Act on Benefits for Asylum-Seekers (AsylbLG) came into effect, separating welfare provisions for asylum-seekers from general welfare. Whereas before, asylum-seekers were part of the same welfare system as the general population, the new legislation created an independent public assistance system for asylum-seekers for the duration of the asylum process. Furthermore, the level of transfer payments to asylum-seekers was set 20% below that of other recipients during the first year and most benefits – foodstuff, accommodation, clothing, as well as general consumer items – were paid in kind at a minimum level only. Reducing costs was not the most important goal because substituting

vouchers or goods in kind for cash benefits is more expensive and less efficient. The actual policy objective was more to dissuade potential asylum-seekers from making their claim (Schuster 2001: 113). Finally, medical treatment and hospital care, including supply of pharmaceutical products was only awarded for treatment of acute diseases.

Already in 1997, a first amendment to the Act on Benefits for Asylum-Seekers came into force including further restrictions on the benefits in kind rule, the extension of the coverage of the legislation now also including temporary civil war refugees and an extension to a period of three years. From then on, an asylum-seeker was entitled to the same social assistance afforded in cash as accorded to all foreigners only after 36 months (Thränhardt 1999: 51; Bank 2000: 164). After additional restrictions in early 1998, a second amendment was enacted in September 1998, which excluded all persons with subsidiary protection status found to be abusing the system from receiving any benefits from the state. This included persons who were found responsible for practical obstacles to expulsion as well as those refusing to leave voluntarily or migrants who came for welfare benefits only (cf. Streit/Hübschmann 1998; Beauftragte 2000). Also with respect to access to the labour market, the 1990s saw additional restrictive turns with an order from the Federal Ministry of Labour and Social Affairs (BMAS) in 1997 denying work permits to refugees, asylum-seekers and persons with subsidiary protection. Again, the order largely lacked labour market policy justifications, because even prior to the order permissions were only given after a labour market test to attest that no German, EU national or other foreigner was available. In fact, the order served to secure and enhance the effects of deterrence and of exclusion of asylum-seekers from social integration. Finally, the 1990s also witnessed restrictions concerning unaccompanied minors. These included regulations introduced already in 1994 extending the airport regulation to this particularly vulnerable group. Furthermore, the federal states decided to exclude unaccompanied minors from access to education (Apitzsch 1997, 2010).

4.3 Power of Supranationalisation: Constitutionalising Refugee Rights in Europe

The previous section argued that on the basis of three rounds of asylum conflict Germany experienced a linear trend towards an increasingly restrictive and illiberal system of refugee protection. Already during the early 1980s – in the middle of the first round – there was a curious divergence between a uniquely liberal right for asylum, still present at that time, and a deterrence regime, which was harshly criticised by a 1983 UNHCR report as "unique in Europe" and a "dangerous precedent" (Milzow 2008: 74). Dismantling the Constitutional asylum right marked the main focus of the second round of asylum conflict, which previously restricted any far-reaching policy reforms of the asylum procedure. Finally, the third round of asylum conflict was characterised by the advancement of Germany's deterrence regime and a continuity of delimiting the refugee status. At the end of the 1990s a far more illiberal system of refugee protection existed, with restrictive reforms along all three dimensions of asylum policy. With respect to both the existing legal instruments as well as the processing of actual asylum applications the state had regained control over a policy area that had got out of control, or at least has been presented as such, in the early 1990s. These reforms took place in strictly national contexts and the majority of existing

analyses apply domestic politics frameworks to explain those developments focusing on the influence of the judiciary (cf. Joppke 1999), party competition (cf. 1994; Angenendt 1997; Thränhardt 1993), the specific role of right-wing parties and the politics of xenophobia (Chapin 1997; but see Koopmans 1996), as well as regional cleavage structures between the federal government and federal states or rather individual municipalities successfully mobilising for more restrictive policies (cf. Karapin 1999; Ellermann 2005; Money 1999; but see Lavenex 2002).

Compared to the developments until the late 1990s, the fourth round of asylum conflict in Germany has been settled in an increasingly European context. Its starting point was the Treaty of Amsterdam from May 1999 providing the EU with a Treaty basis for developing the Common European Asylum System (CEAS). The following sections analyse the uploading dimension of Europeanisation focusing on the definition of refugee status, procedural standards and reception conditions. Whereas in a first step the original policy proposals by the European Commission are scrutinised, a second step concentrates on the subsequent negotiations in the Council and the final substantive policy outcomes.

4.3.1 Ambitious Policy Proposals by the European Commission

Closely in line with the propositions of the backdoor opposition mechanism of Europeanisation, the Commission employed its new right for initiative shortly after the adoption of the Treaty of Amsterdam and the successive Tampere Action Plan. In the following two years it tabled three draft directives covering the central aspects governing national asylum systems – the definition of refugee status, asylum procedures and reception conditions. The Commission published the most ambitious of those proposals in September 2001, concentrating on refugee status. In the explanatory memorandum to the 'Draft Directive on the qualification and status of third-country nationals and stateless persons as refugees or as persons who otherwise need international protection', the Commission argued that this piece of legislation constitutes "the heart of the common European asylum system" (CEC 2001c: 2). The Qualification Directive, as it is commonly called, built upon earlier decisions of the Council like the Joint Position from 1996 on the harmonisation of the definition on who qualifies as a refugee, as well as on the Refugee Convention and aimed at the approximation of rules on the recognition of refugees. It defined who should qualify as a refugee and who should qualify for subsidiary forms of protection and ensures that a minimum level of protection is available in all Member States for those genuinely in need. Its major aim is to reduce "the current great variances in recognition rates between Member States" (CEC 2006c: 1) causing secondary movements of refugees between European Member States and end what some have called the EU's "asylum lottery" (ECRE 2004: 1). Although the proposal has been criticised by the European Parliament and International Organisations on several grounds (e.g. EP 2002; UNHCR 2002), it was nevertheless widely welcomed because it suggested harmonisation of the definition and content of refugee and subsidiary protection status on a relatively high level. Peers (2002: 352) argued, for example, that "the Commission has obviously set itself an ambitious goal of encouraging Member States to agree a proposal which is above the standards set by some of them". In particular, the proposal set out basic principles common to both forms of status including the concept of post flight reasons of protection, the sources of persecution including gender-specific forms as well as non-state actors and the close adoption of reasons for persecution along the Refugee Convention.

The second draft directive concentrated on the harmonisation of asylum procedures. Similar to the Qualification Directive, the Commission was able to base its draft directive 'on minimum standards on procedures in Member States for granting and withdrawing refugee status' on already existing resolutions by the Council,[23] this time, however, the proposal set comparatively low standards (CEC 2000e). When presented in September 2000 it included detailed rules on the standards that would apply during consideration of the asylum application, covering such matters as information rights, interviews, interpretation, legal assistance and aid as well as the training of personnel. Additionally, the draft contained rules on admissibility of applications, setting out cases in which an application need not be considered because another member state or a third state is considered responsible for examining the application, and contains detailed proposals on two separate levels of appeals. Taking into account the great differences between existing national administrative frameworks and the fact that previous resolutions on asylum procedures did not compel member states to make any changes to their national practices (Ackers 2005: 2), the Commission adopted a more defensive strategy. From the very start the Commission argued that the Directive would not require member states to apply uniform procedures and allowed member states to derogate from certain rules if they wished. The proposal was limited to the minimum standards necessary for granting and withdrawing refugee status and did not include minimum standards for determining whether persons qualify for subsidiary forms of protection. Finally, the proposed directive included minimum standards relating, for example, to the definition of manifestly unfounded cases and the suspensive effect of appeals. These minimum standards were set on a very low level and prompted Peers (2001: 240) to argue that certain aspects of the proposal "fall below the level of obligations incumbent upon Member States" and received an altogether far less positive resonance in the European Parliament, and with NGOs and academic experts (cf. EP 2001; 2003; ECRE, et al. 2004).

The third piece of legislation rounds up the codification of refugee rights at the European level focusing on shared reception conditions. In contrast to the other two draft directives, the Commission was confronted with the fact that no meaningful human rights or other legal doctrines defining particular standards with respect of reception conditions existed and that no EU Council Decisions had been taken on this subject before (Bank 2000).[24] Furthermore the Commission had to juggle the difficulty that although member states were held responsible for providing asylum-seekers with human living conditions, most had implemented in the previous decades deterrent measures as a welcomed strategy to regain control on immigration of refugees (Gerber 2004: 26). Despite these difficulties, the draft directive 'laying down the minimum standards on the reception of applicants for asylum in Member States' was published in April 2001 and was generally welcomed by NGOs and academic experts alike (ECRE 2001; CCME 2001). Although Rogers (2002: 229f.) argued that, "the standards set in the Commission's proposal are not universally high nor do they leave behind the dangers of Member State discretion […] the proposal is

23 These include the 1995 Council Resolution on minimum guarantees for asylum procedures, the 1992 London Council Resolutions on manifestly unfounded applications, and the 1997 Council Resolution on unaccompanied minors who are nationals of third countries.

24 Although a joint action on conditions for reception of asylum-seekers was tabled by the Spanish Presidency in 1995, it was never adopted and no measures relating specifically to reception conditions were adopted prior to the Tampere European Council.

valuable in specifying a number of rights and conditions to be enjoyed by asylum seekers to be protected during consideration of claims. In some respects it demands of all Member States an acceptable minimum standard of reception". In particular, the draft covered different dimensions of reception conditions including, for example, immediate information for refugees of the rights and benefits to which they are entitled as well as access to NGOs and legal advisors for asylum applicants after lodging their application. Additionally, the proposal included the principle of freedom of movement for asylum applicants in the territory of a member state and provisions regulating access to employment and welfare covers much room in the draft. It argued for example that access to the labour market and vocational training cannot be delayed for more than six months after an asylum application has been lodged and material reception conditions should "ensure a standard of living adequate for the health and the well being of applicants and their accompanying family members […]. Member States shall ensure, in providing material reception conditions, the protection of the applicants and their accompanying family members' fundamental rights" (CEC 2001b: 15). Furthermore, the proposed directive was particularly receptive to the special needs of certain vulnerable groups including, for example, unaccompanied minors, disabled people, elderly people, pregnant women, single parents and victims of sexual abuse. With respect to unaccompanied minors the draft required member states to take into account the best interests of the child, to appoint a guardian to ensure that the minor's needs are met and that the child is placed with adult family members or a foster family.

4.3.2 Negotiating Refugee Rights within the Council

The European Commission expected from the very beginning that the harmonisation of those three core aspects of national asylum policies would likely lead to difficult negotiations between member states and put considerable resources into the preparation of the draft directives including bilateral and multilateral consultations with member states and the circulation of working papers, as well as consultations with NGOs and academic experts. Nevertheless, most member states did not welcome these initiatives and Germany in particular has been very critical. The following process closely fits the causal narrative of the backdoor opposition mechanism, arguing that national governments adopt an active attitude during the uploading dimension mobilising against the specific policy proposals during the negotiations in the Council when member states' preferences are at risk.

The obvious discrepancies between the Commission proposals and Germany's preferences are most obvious in the detailed statements by the Upper House on each of those instruments. With respect to the draft Qualification Directive, for example, Germany's federal states generally rejected the introduction of new legal titles exceeding existing legislation in Germany and disagreed with the Commissions approach of "harmonisation on a maximum level" (Bundesrat 2002b: 2). They rejected all proposals questioning the temporary nature and potential cessation of refugee status as well as all approaches in the proposal questioning the only temporary nature of subsidiary protection because from their point of view subsidiary status should only comprise protection against deportation (cf. Bundesrat 2002a). Even more sceptical, the Upper House discussed the draft Procedure Directive, which was seen as fundamentally calling into question the regulations based on the asylum compromise from 1992, and argued that, "[a]ny increase in efficiency and speeding of asylum procedure in comparison to the presently effective asylum procedure legislation is not to be expected in case of transposing the Draft Directive" (Bundesrat

2001a: 2). In particular it lists a number of most obvious discrepancies between the Commission proposal and the *status quo* in Germany, including the lack of regulations providing for the exclusion of persons travelling through safe third countries from the asylum procedure, provisions questioning the continuity of the German airport procedure allowing fast processing of obviously unfounded applications and the prescription of an obligatory three tier asylum processing that no longer existed in the German asylum procedure. Finally, the draft Reception Directive was not viewed in a more positive light. The Committee's statement argued that all "regulations introducing additional incentives to file asylum applications or aim at the integration of asylum seekers before a positive decision of the determination procedure has been reached cannot be approved" (Bundesrat 2001b: 1). Again, they point to a number of discrepancies between the Commission proposal and the *status quo* in Germany including regulations on access to the labour market and to vocational education, community housing and benefits in-kind, restrictions on free movement rights and provisions for persons with special needs.

Confronted with the serious discrepancies, the German government was particularly active during the uploading process. Equipped with its "historical resources" (Parkes 2010), its experience and familiarity with European negotiations on asylum policy and a good knowledge of potential lines of conflict, even the Commission regarded Germany as a trove of expertise (Niemann/Lauter 2011). Additionally, the German delegation was well aware of the importance of building and cultivating support through informal groupings or what others have called "satellite cooperation" (Parkes 2010: 71) for successful negotiations. Together with its generally high administrative efficiency, Germany developed into the most active player during the negotiations in the different Council working groups.

The national contributions during the meetings of the working groups of the Council provide a good quantitative indicator of the capacity and resources a particular national delegation devotes to those issues. Table 4.2 provides the results of this analysis. It shows that with respect to the draft Qualification Directive, for example, overall 137 comments – including scrutiny reservations as well as general comments and concrete proposals for modification – to the draft text were submitted by one or several member state delegations during first reading in the Asylum working group meetings on 8 April 2002 and 4-5 June 2002. Of those, the German delegation put forward 66 comments either alone or with other delegations, resulting in the single country with by far the most reservations to the draft text. Other countries like France (26 comments) or the United Kingdom (18 comments) were far less critical of the proposal and less enthusiastic in uploading their national preferences. An analysis of all three legislative procedures shows that Germany participated in 202 of all 438 remarks resulting in almost a half of all comments. The Netherlands with 30% before Austria and Spain (29%) follow in the ranks, but with substantially fewer Council activities compared to Germany. Finally, in none of the three directives has any other national delegation put forward more comments and remarks than Germany.

The most obvious impact of the negotiations on the Commission's draft directives is discernible with respect to asylum procedures where the Procedure Directive certainly suffered most from negotiations in the Council. Despite some improvements or clarification on specific aspects, the standards of protection are significantly lower in the final directive as compared to the Commission's original proposal, particularly as regards appeals, exceptions from core procedural safeguards and the definition of the different safe country regulations and the inclusion of many possibilities for member states to retain their already existing national policy. Adopted after considerable delays in December 2005, the Directive

was seen by UNHCR and the European Parliament as being in breach of international refugee law and downgrading established standards because it inviteds a race to the bottom. Overall, the original proposal has been seriously redrafted including several initiatives by the German delegation, leading Duchrow (2008: 148) to the conclusion that the "German government had negotiated 'well' during the drafting process of the Asylum Procedures Directive, ensuring that many provisions of the Directive were modelled upon existing German law".

Table 4.2: National preferences in Council of the European Union negotiations: Numbers and quotas of scrutiny reservations and proposals for modification introduced by member states on the original draft legislation

		AT	BE	DE	ES	EL	FR	FI	IT	IE	LU	NL	PT	SE	UK	Tot
Qualification Directive[1]	N	34	0	66	34	17	26	31	9	27	7	43	23	14	18	137
	%	25	0	48	25	12	19	23	7	20	5	31	17	10	13	
Procedure Directive[2]	N	47	16	58	44	17	57	33	10	18	12	41	20	26	36	143
	%	33	11	41	31	12	40	23	7	13	8	29	14	18	25	
Reception Directive[3]	N	48	11	78	49	34	37	14	22	28	20	47	22	42	44	158
	%	30	7	49	31	22	23	9	14	18	13	30	14	27	28	
Total	N	129	27	202	127	68	120	78	41	73	39	131	65	82	98	438
	%	29	6	46	29	16	27	18	9	17	9	30	15	19	22	

Source: Own calculations, based on the first reading of Commission proposals of the respective draft directives in the Asylum working group. Many scrutiny reservations and proposals for modification are introduced and supported by several member states. Therefore, percentage figures do not add up to 100% but provide a measure of the participation of each member state in the negotiations.

Notes: [1] CEU (2002b, c); [2] CEU (2000c, 2001a, b, c, d, g) The negotiations of the Procedure Directive in the Asylum working group have only related to Articles 1-31, 41-46 and the Annex. Chapter V on the Appeals Procedure including Articles 32-40 has not been discussed before the Commission published a redrafted version of the directive in July 2002; [3] CEU (2001e, f).

The most important example concerns the safe third-country concept where the German government insisted in explicitly recognising its 1993 constitutional asylum compromise in the Directive. Although the idea of sending asylum applicants back to a safe third-country had spread throughout Europe during the 1990s and the Commission's draft directive already included a safe third-country regulation, differences to the relevant German Asylum Procedures Act continued to exist. Whereas in Germany a person coming from a safe third-country shall immediately be returned to it without any consideration of the case and irrespective of any remedy sought by the person, the Commission's first proposal foresaw an individual assessment of the safety of a third-country for a particular applicant and did not allow for border guards to immediately return an applicant to his or her country-of-transit or -origin (CEC 2000e). Even though the Commission allowed for member states to uphold national lists of safe third countries and would not necessarily or even probably require domestic constitutional changes, Germany expressed its unhappiness with the

situation because they were unsure whether such a provision would in turn annul the German list-based safe third-country concept. Constrained by the Christian Democrats in opposition, which have been strictly against any regulation derogating from the asylum compromise of 1993, they publicly flagged the European negotiations and constrained the government's room for manoeuvre (Bundestag 2003a; see also Niemann/Lauter 2011). As a consequence, Germany informally put forward its own proposal concerning safe third countries during a G5 meeting in October 2003 (cf. CEC 2003a). This satellite cooperation together with its domestic constraints put forward by the strong opposition from the opposition parties helped the German delegation build support in a smaller forum subsequently fostering agreement along such lines in the Council framework (cf. Niemann/Lauter 2011). When comparing the outcome in the Council (2005/85/EC) to the original proposal of the Commission it can be noted that the final directive has been closely modelled on the German *status quo*. It allows member states to consider an application inadmissible if the asylum-seeker can be granted protection in a safe third country. Although the question of an obligation for individual examinations is legally disputed (Strik 2007: 16) in practice it did not oblige Germany to introduce individual assessments (see also Ackers 2005).

A second example with respect to asylum procedures concerns regulations on legal appeals and legal assistance provided for applicants throughout the asylum procedure with the objective of streamlining the procedure. The Commission's draft directive from 2000 included the principle that all applicants should have the opportunity to present their case in a personal interview and have the right to a legal adviser or counsellor to assist them after an adverse decision by a determining authority. According to Article 9 this assistance must be given free of charge if the applicant has no adequate means to pay for it himself/herself. Germany proposed additional conditions for providing free legal assistance including insufficient resources of the applicant as well as a legal merits tests, as was the practice in Germany (Ackers 2005). Although member states disagreed with the principle of a legal merits test in asylum procedures and underlined that they would not make use of such a provision, the redrafted versions of the Directive headed straight for the lowest common denominator. Comparing the outcome in the Council to the original proposal of the Commission it can be noted that the right to access a legal adviser throughout the procedure has been retained but only at their own expense. They have the right to free legal assistance only if a negative decision has been made. This right is also limited to procedures at first instance that are likely to succeed and to asylum-seekers who lack sufficient resources. Free legal assistance has therefore certainly been "hampered by a catalogue of exceptions, not all of which appear reasonable, taking into consideration the enhanced vulnerability of the persons in question and the complexity of the legal issues and proceedings" (Ackers 2005).[25]

Similar to the fundamental changes on asylum procedures, policies on reception conditions also saw a difficult time during the negotiation phase. Although the danger of arriving at a rather tough European solution applying the lowest common denominator approach had been successfully confronted, this does not mean that member states were unsuccessful in leaving their mark on the Reception Directive, which "has a narrower scope than the original proposal […]. Nearly every clause sets lower standards than the Commission initially proposed" (Peers 2003: 116; see also Craig 2002; Maurer/Parkes

[25] An additional example concerns the concentration of the directive on asylum-seekers and the exclusion of persons with subsidiary protection strongly supported by the German executive (Meyer 2004: 549).

2007b: 194). With respect to Germany's role, the provisions in the draft directive on freedom of movement are of greatest importance because here Germany's restrictive policies constitute a notable exception in Europe. NGOs have argued in this respect that it is inappropriate to allow member states to prohibit asylum-seekers from entering particular parts of the territory. Although they acknowledge that efficient processing of asylum applications is in the interests of member states and asylum-seekers, a prohibition on free movement is an unnecessary measure leading to the stigmatisation of asylum applicants. Nevertheless, Germany was determined to ensure that asylum applicants were not granted rights of free movement and was "particularly active in seeking to reduce applicants' freedom of movement, pushing for a restriction of the relevant provisions in the Commission proposal" (Maurer/Parkes 2007b: 191). In particular they held the view that freedom of movement should be restricted during the legal process and without the possibility for applicants to appeal. In the final version of the Directive, Article 7 allows member states to introduce different forms of restrictions of free movement for asylum-seekers; a regulation which fully conforms with German legislation (Gerber 2004: 185f.; Groß 2004). A second example concerns the special needs of certain vulnerable groups, for example, pregnant women, unaccompanied minors, disabled and elderly people as well as victims of sexual abuse in providing reception conditions. Here, the Commission was largely successful in sustaining its original proposal with Article 18 requiring that the best interests of the child is made a primary consideration. In the case of unaccompanied minors, they have to be appointed with a guardian and the member states are required to trace family members if it is deemed to be in the best interests of the child.

Finally, the European negotiations on the definition of the refugee status did not differ much from the experience of the first two legislative instruments. Again, national delegations were very successful in bringing the originally ambitious draft Qualification Directive closely into line with the existing national *status quo* and the final directive generally represents a much more restrictive document than the initial draft (Teitgen-Colly 2006: 1520; cf. Menz 2009). This is most obvious with respect to the debate about the permanency of refugee status, which incited considerable controversy including a number of reservations on the level of procedural guarantees for withdrawal and cancellation of refugee status as well as with respect to the permanence of residence rights. The Commission principally argued that the Directive should regulate the cessation of refugee status, as well as subsidiary protection status and that those decisions should be subject to basic guarantees. Nevertheless, member states and in particular Germany argued that these should not be as extensive and that the guarantees for subsidiary protection status should be substantially lower than for refugees. Consequently, the duration of residence permits were manifestly reduced from five to three years in the case of refugee status and to renewable one year permits for persons with subsidiary protection status during the negotiations. Additionally, the legal guarantees were reduced by deleting the original provision which placed the burden of proof with the member state and by enabling revoking or ending refugee status for individuals that can be regarded as a 'danger to the security of the Member States' without this term being clearly defined.

With respect to the second example, however, Germany made more far-reaching concessions to the Commission proposals. Although the German government has successfully delayed stringent European regulations (Menz 2009: 110), it finally agreed that gender-specific as well as non-state persecution qualify for refugee status. Following the analysis by Craig (2002: 5), most countries implemented the 1951 Refugee Convention as

"encompassing persecution by non-state agents in situations where the State is unwilling or unable to provide effective protection from non-state agents". Some European member states, including Germany, applied a more restrictive interpretation. They only accepted persecution by non-state actors "where the persecution was instigated, condoned or tolerated by the State, i.e. the State could be shown to be complicit in the persecution and/or unwilling to provide protection" (UNHCR 2007a: 41). In this situation, the final Qualification Directive now provides a common legal concept across all European member states potentially raising the level of refugee protection.

In conclusion, the preceding analysis has shown that the originally ambitious draft directives were seriously watered down in negotiations within the Council. This has caused many scholars to criticise the European Union along already established lines of critique. Whereas the Commission itself explained those outcomes by the fact that "Member States were not willing to trade in known national certainties for unknown policy tools in the name of a vague ideal of harmonisation" (Ackers 2005: 2), others have been more critical. Gilbert (2004: 969f.), for example, argued that "harmonization […] inevitably leads to equalizing down at the expense of the refugee when it is attempted to attune those independent approaches". And Teitgen-Colly (2006: 1512) criticised the negotiations and their final outcomes for the many "loophole techniques" including the technique of harmonisation *a la carte*, the reference to national law, the ambiguity and contradictory nature of certain provisions and the possibilities of exceptions including discretionary competence often left to the member states. Guild (2004: 218) concluded from her impressions of the negotiations that "the Member States are seeking to draw up a whole new acquis unencumbered by their international commitments. […] They thereby give the impression that they wish to re-write the rules to get rid of inconvenient human rights issues. Some Member States appear to be seeking the right to crush protection seekers like soft drink cans which are no longer wanted" (see also Maurer/Parkes 2007b: 195, 2007a). Notwithstanding the harsh criticism, the preceding analysis provided clear evidence that despite the success of member states and particularly the German delegation in bringing the original draft directives into line with national policy approaches, a certain level of constitutionalisation of refugee rights at the European level has actually taken place. These standards remained at a very low level in the Asylum Procedures Directive, which closely resembled the German policy framework after the negotiations with respect to provisions on appeals, legal assistance and safe third-countries. Concerning reception conditions and refugee status the results have been more nuanced. Here we find examples – requirements for residence and cessation of refugee status – where the original Commission proposals were also seriously watered down, but also other examples – treatment of unaccompanied minor refugees and non-state persecution – where the original proposals were largely upheld. In particular the Qualification Directive certainly marks the most far-reaching European legislation with respect to the supranationalisation of refugee rights being a "successful case of codification because it translates basic asylum norms into European law" (Lavenex 2006c: 1293; see also Storey 2008: 49).

4.4 Opposition and Learning: The Fourth Round in Germany's Asylum Conflict in European Contexts

Germany has been a particularly active member state during the uploading dimension of Europeanisation making active use of its historical resources and administrative capacity to shape European asylum legislation along national preferences. The following sections concentrate on the downloading process and argue that the last decade constitutes a fourth round of asylum conflict in Germany. Whereas the previous three rounds have taken place almost completely within national confines, this final round has been fundamentally shaped by the development of the Common European Asylum System.

Whereas the uploading dimension was characterised by a rather linear process showing the Commission tabling reasonably ambitious policy proposals on the one hand and Germany together with other member states trying to block these drafts or bringing them into line with the domestic *status quo* on the other, the downloading dimension has been a more complicated process driven by two different mechanisms of Europeanisation. The first and most obvious process of Europeanisation has taken place within the legislative procedure of the Transposition Act 2007 (AsylREURLUmsG) designed as a purely technical undertaking implementing several European directives on asylum and migration into German law. It provided the German administration with an opportunity to oppose Europe through the backdoor by late, incomplete, restrictive and incorrect transposition. Moreover, it employed this opportunity to introduce new restrictive legislation under the guise of European legislation resulting in an overall limited European influence on German asylum policy. Next to this legalistic process of Europeanisation, however, a more subtle transposition process has taken place closely following the propositions of the policy learning mechanisms. Here, the European context provided opportunity structures for national norm entrepreneurs to implement their political preferences resulting in more liberal reforms. Three venues seem of importance. First, the legislative process in the context of the Immigration Act and in particular the negotiations within the Coalition Committee (Koalitionsausschuss),[26] as well as the Mediation Committee (Vermittlungsausschuss),[27] between the Parliament and Upper House. Second, the influence of the Court of Justice of the European Union which is increasingly asked for decisions with a substantial influence on Germany's refugee policy. Finally, the more recent successful mobilisation by NGOs exploiting the new opportunity structures provided at the European level.

4.4.1 Opposing Europe: The Dominance of the Administration

The Europeanisation of Germany's asylum policy is most obvious with respect to the Transposition Act (AsylREURLUmsG) in 2007, implementing altogether 11 directives adopted by the European Union between 2002 and 2005. In the years before a complicated

[26] It is a board including representatives of the political parties forming a coalition government with the aim of coordinating the cooperation within the government as well as with the Parliament and the Upper House (the translation of legal terms related to the German parliamentary structure follows Linn/Sobolewski 2010).

[27] The Mediation Committee is an institution placed between the Parliament and the Upper House seeking compromise solutions in cases of legislative conflict.

legislative process of the Immigration Act had dominated the political debates in Germany from 2001 until the end of 2004. During this time, the political parties dominated policy-making and the administration within the Federal Ministry of Interior (BMI) had been unusually absent from this process. Neither the new legislative proposals of the Immigration Act nor the different European asylum directives were received enthusiastically by most of the ministries' staff who worked there during the 1990s, as previously they had been heavily involved in developing a more restrictive asylum policy in Germany. As Kruse et al. (2003: 131) argued, "it was unlikely that those who were responsible for German migration policy during the Kohl era would now be enthusiastic about a major reform, calling into question the work of their entire careers". In addition to the substance of these directives, the administration also criticised the process of European policy-making. Maaßen, head of the unit on immigration legislation in the BMI, for example, argued that, "instead of these ad hoc arrangements, it would be very desirable if the European Union would present a comprehensive immigration legislation that is coherent and standardises the entire immigration and asylum law. Instead of such a comprehensive approach, member states are continually confronted with specific Draft Directives, initially negotiated individually and not adequately coordinated" (Maaßen 2006: 162).

Although the European asylum directives were not welcomed by the administration, their transposition provided the BMI with a chance to regain its policy-making initiative. Representing the whole process as a largely technical undertaking, the ministry dominated the whole process and was successful in keeping party political cleavages out. In particular, it dispersed the interest of the broader public arguing that legislation in Germany already complied with the three European asylum directives and only minor changes would be necessary (Maaßen 2006: 167). The successful negotiation of Germany during the uploading process certainly reduced the adaptation pressure to a low level (see, for example, Bank 2007; Gerber 2004; Groß 2004). Nevertheless, European legislation still included a number of important provisions potentially expanding refugee rights in Germany. This is particularly the case with respect to a number of regulations on reception conditions. But also the asylum procedures and the refugee status needed additional revision. Corresponding to the backdoor opposition mechanism of Europeanisation, member state governments were now during the downloading dimension in a situation to decide whether to resist and protest against those policies not in line with their preferences. Interested in its own agenda of maintaining the established German deterrence regime, the BMI followed five different strategies to oppose Europe through the backdoor: (1) late transposition; (2) incorrect transposition; (3) restrictive transposition; (4) incomplete transposition; and (5) using transposition to introduce new legislation under the European smoke screen. Those strategies go a long way to explaining how the restrictive national *status quo* was retained and Europeanisation outcomes were close to the inertia end of the spectrum.

Late Transposition

The most common form of member states in opposing European regulations is the delay of its implementation into national legislation (cf. Falkner, et al. 2004). But except in cases with excessive delays, late transposition constitutes the most moderate form of backdoor opposition. With transposition deadlines of the three directives in February 2005 (Reception Directive), October 2006 (Qualification Directive) and December 2007 (Procedures Directive, except Article 15 where member states were given until the end of 2008 to

transpose the respective provisions), the Transposition Act coming into force in August 2007 constituted, at least for two of those directives, considerable delay. As a consequence, the Commission sent letters of formal notice, but with the adoption of the Transposition Act all infringement proceedings were closed. Most commentators explained Germany's late transposition with the late adoption of the Immigration Act in 2004, the advanced federal elections in 2005 and the evaluation process of the Immigration Act in 2006 resulting in administrative overload. Late transposition, therefore, certainly provides initial indications of backdoor opposition, but it does not constitute definite evidence.

Incorrect Transposition

The second strategy to oppose European demands is incorrect transposition. Bank (2007: 112), for example, argued that the particular technique of implementation applied in the Transposition Act results in incorrect transposition. With respect to the Qualification Directive he shows that its definitions of refugee status and subsidiary protection are not woven into existing German legislation, but include only a reference to the Directive. As a consequence, the selective reference to European legislation will complicate its application and increases the likelihood for uneven application of the law. Furthermore, he argued that this technique results in complementary application of European legislation only allowing for a continued application of original restrictive German provisions. From the perspective of European law these techniques are simply not correct and even the Federal Government Commissioner for Migration, Refugees and Integration picked up this critique and argued in her regular report on the situation of foreigners in Germany that the additional application of the Directive would potentially "lead to problems in practice which have to be monitored. Full implementation of a policy is generally not satisfied if the provisions of the Directive are only applied as an additional tool for the interpretation of domestic legislation" (Beauftragte 2007: 174f.).

Restrictive Transposition

Compared to the two strategies so far, restrictive transposition has a more direct bearing on refugee protection in Germany. In its recent reports on the application of the first generation measures of CEAS, the Commission documents in great detail the national transposition of the different asylum directives with the reports providing several instances of restrictive transposition in Germany. A first example concerns access to employment, where most member states provide access not only for refugees but also for beneficiaries of subsidiary protection. Only Germany, together with Cyprus and Luxembourg, exclude those people from access to employment. Similarly, with respect to social welfare it is only Germany that imposes an additional criterion of three-year legal residence before support grants for children and for education are awarded to beneficiaries of subsidiary protection (Commission 2010e: 14). Finally, the reports point out that the rather restrictive wording of the Directive on free legal assistance is only applied in Germany, France and Italy as well as the new accession countries whereas most other countries provide more favourable standards (cf. Commission 2010f).

The most problematic aspect of restrictive transposition in Germany applies, however, to cessation of refugee status. Generally, the Refugee Convention conceives of refugee status as a transitory phenomenon, which can expire under certain circumstances. These

circumstances which potentially cause the termination of refugee status include, for example, voluntary acts of the individual indicating that a well-founded fear of persecution no longer exists, e.g. by re-acquisition of her/his nationality or the regular return of the refugee to the country of origin. Furthermore, the authorities in the country of destination may determine that human rights conditions in the country of origin have improved to such an extent that the once-present genuine risk of persecution is no longer a reality, thus opening the way for the return of the refugees (Goodwin-Gill/McAdam 2007: 135-149; Hathaway 1991: 199-205).

In Germany, the possibility of the cessation of refugee status was not provided for in the 1953 statutory order, but already the Aliens Act from 1965 included in § 37 provisions regulating the withdrawal of refugee status. Largely in line with the Refugee Convention it argued that refugee status shall cease to apply if the circumstances in connection with which the refugee was recognised have ceased to exist. With only few modifications this regulation was later integrated into § 16 of the Asylum Procedure Code in 1982. Despite the early appearance of the regulation in the respective legal foundations, in administrative practice they played only a minor role. In response to a written question the government argued in 1991 in Parliament that because of administrative overload with new asylum applications no capacities have been available for cessation procedures and the withdrawal of refugee status was only rarely used (cf. Bundestag 1991). The Immigration Act in 2005 continued these earlier regulations but introduced an additional obligation for a regular review at the end of the first three years of the temporary residence permit in § 73, 2a Asylum Procedure Code, stating that only in those cases where the conditions of cessation of refugee status do not apply, the local authorities have to issue permanent residence permits. Already since the beginning of the millennium, the review of refugee status has become a more regular practice in Germany with approximately 2,000 procedures a year. In 2004 this led to a first peak with 18,000 procedures, but after the Immigration Act and in particular after the Transposition Act it peaked at 37,000 in 2008. From 2001 until 2012, overall 158,000 procedures have been carried out resulting in more than 60,000 cessations of refugee status.

The Commission accused Germany of introducing additional and overly wide grounds for cessation, standing in sharp contrast to developments in other member states where France with 220 cases, Austria with 105 and Italy with 95 cases in 2008 and 2009 come closest to the German experience. In all other member states the numbers do not even exceed 25 cases per year (Commission 2010e, f).[28] Although the German authorities argue that cessation of refugee status does not automatically include the deprivation of residence status or the return of those persons to their country of origin and provides local foreigner authorities with large discretion (87% of persons whose refugee status has been withdrawn between 2004 and 2008 still held a permanent or temporary residence permit at the end of 2008), it indicates how restrictively Germany implemented the Directive and made use of its provisions in practice to restrict permanent residence (BAMF 2012b: 104).

[28] Additional examples of restrictive transposition include protection needs, which arise because of changing circumstances in the country of origin during the absence of a migrant ('sur place'). Here, Article 5(3) allows member states to determine that an applicant who files a subsequent application shall normally not be granted refugee status if the risk of persecution is based on circumstances which he/she created by his own decision since leaving the country of origin. This optional provision has been transposed by several member states with Germany next to Luxembourg, Greece, Portugal and Austria being the only traditional EU-15 country doing so (Commission 2010e: 5).

Incomplete Transposition

The fourth technique of backdoor opposition regularly applied within the Transposition Act is incomplete transposition including instances where Germany only partially implemented the substance of European directives. Here, a first example concerns the provisions for persons with special needs including in particular disabled and elderly people, pregnant women, victims of torture and organised violence as well as unaccompanied minor refugees. Whereas provisions for unaccompanied minors receive great attention within European legislation, the Transposition Act disregards them completely. It does not include any specific referral to the special needs concerning the protection of a child and no specific support, like a representative, is provided for them. Additionally, European legislation defines unaccompanied minors as persons below the age of 18, but Germany – together with Greece – does not fulfil this obligation, by treating 16 years old children already like adult refugees (cf. Commission 2010f; Duchrow 2008). This caused widespread opposition from human rights and refugee organisations during the legislative process, as they regularly demanded that the promotion of the best interest of the child needs greater attention (Amnesty International, et al. 2007; BUMF 2007).

A second example providing evidence for incomplete transposition concerns European legislation on the provision of health care where the reform of the Act on Benefits for Asylum-Seekers included in the Transposition Act does not fulfil its obligations. Whereas the implementation in Germany only provides health care for acute diseases the Directive does not allow for such restrictions. Instead it particularly includes chronic diseases and refuses to allow member states to exclude particular diseases from health care demands (Schreiber 2010: 110f.; Haedrich 2010). Already during the legislative process, UNHCR had criticised the restrictive implementation of regulations covering access to welfare. Furthermore, they argued that the Transposition Act does not include sufficient proposals to implement the Reception Directive and pointed out the shortcomings of German legislation for those cases where a particular need for regulating access to medical care of asylum-seekers was manifested (UNHCR 2007b). Finally, certain deficiencies were also identified by the Commission report on the application of the Reception Directive. In particular, the report criticised Germany, next to a few other countries, for having no procedure in place to identify persons with special needs. Although this is not a legal obligation, the Commission seriously questioned how such people are supported with special procedures and reception conditions if no such tool is implemented (CEC 2007f).[29]

Introduction of new Legislation under the European Smoke Screen

Probably the most obvious evidence for the strategy of the Ministry of the Interior to oppose Europe through the backdoor is its practice of introducing new legislation under the guise of European demands. This aspect has been criticised by many organisations. For example, the representative of the UNHCR argued in a public hearing of the Committee on Internal Affairs (Bundestagsinnenausschuss) of the Parliament that the draft of the Transposition Act missed the chance to anchor important improvements in Germany's

[29] Bank (2007: 113) lists a number of additional instances of incomplete transposition with respect to the Qualification Directive and its inclusion provisions of Article 12 (1) as well as with reference to subsidiary protection and the definition of the term 'indiscriminate violence' of Art. 15.

refugee protection, "Whereas the positive aspects of EU Directives have unfortunately not been used, at many points the draft sets priorities at introducing new restrictive aspects (UNHCR 2007b: 2). Similarly, numerous German NGOs have criticised this aspect, but were largely unsuccessful in mobilising politically due to the technical and complex set up of the whole process. For example, the German Institute for Human Rights (DIMR) argued that "the legislative process is to be utilised for a variety of restrictions of national law which are risky from a humanitarian perspective and that are not prescribed by EU law" (DIMR 2007a: 4; see also DAV 2007; Amnesty International, et al. 2007; Interkultureller Rat, et al. 2007). This argument was also shared by academics pointing to the obvious abuse of European legislation and arguing that, "the technocratic title of the Draft Act suggests that it is a project for simple transposition of European directives. In practice, however, the draft law is planning a further tightening of German immigration law and includes in important parts further restrictions of German legislation for which Europe offers no reason" (Fischer-Lescano 2006: 236; see also Marx 2007). Representative examples include the introduction of new restrictive provisions on deportation concerning persons committing breaches of public order and security, persons who act as hate preachers and persons who have been convicted in series of criminal offences (Huber 2007). Additionally, the Transposition Act further reduced legal remedies dropping the suspensive effect of complaints in procedures where the cessation of refugee status was based on breaches of public order and security or if the person has participated in war crimes and crimes against humanity, both of which has been widely criticised as being against international and European law (Duchrow 2008: 153).

4.4.2 Learning from Europe: Legislative Negotiations, Court Rooms and in the Streets

National opposition through the backdoor is an important mechanism of Europeanisation providing member states with additional influence to bring European policies into line with the existing national *status quo*. This fourth round of asylum conflict, however, was not only characterised by strong national opposition against European legislation. Instead, less direct influences of the EU on Germany's asylum policy have taken place. A number of national reforms have been introduced during the period of investigation, which ended some of Germany's most restrictive aspects of its system of refugee protection. This includes the inclusion of gender-specific and non-state persecution as reasons to qualify for refugee status, the termination of the 'religious subsistence level' doctrine, the partial termination of restrictions on the free movement of refugees as well as a greater consideration of persons with special needs and in particular unaccompanied minor refugees. These policy reforms largely follow the policy learning mechanism of Europeanisation, where the European Union offers national norm entrepreneurs external opportunities to increase their influence in the domestic setting. National policy change therefore is the outcome of changes in the national distribution of power because specific political preferences now receive more credibility, new institutional venues open up which were not available in previous rounds of conflict or the established *status quo* becomes untenable in the European context. The mechanism helps to account for those cases where the final outcomes are in opposition to earlier preferences and where the direction of Europeanisation points to the liberal end of the political spectrum expanding refugee rights.

Learning during the Legislative Procedure

A first example of this mechanism has taken place in the context of the Immigration Act. Although the Transposition Act 2007 has been the policy reform most directly linked to the developing CEAS, during the first half of the last decade the national debate about asylum and migration has been dominated by the discussion about a new Immigration Act. Following the announcement of a new labour immigration scheme for highly skilled computer experts in February 2000, a public debate about the need for new and comprehensive immigration legislation arose. As a consequence, the government enlisted the help of a team of experts – the Independent Commission on Immigration (UKZU) – to advise the government on asylum and migration reform (on those events see, for example, Angenendt 2002; Bade/Münz 2002 as well as Chapter 6 of this study). Although the final report of the Independent Commission was welcomed by all parts of society, its recommendations were not particularly conducive for refugees' rights in Germany.

Whereas the main interest of UKZU was directed towards a fundamental reform of labour migration, asylum policy only constituted an also-ran. Even more, their work focused particularly on additional steps towards more effective asylum procedures with little emphasis on increased rights for refugees. The final report discussed on more than 30 pages and in great detail the tightening up of asylum procedures, in particular with respect to issues like follow-up applications, fictitious asylum applications filed for minors under the age of 16, measures against illegal stay of asylum-seekers and the abuse of the right for asylum, and proposed on each of those aspects detailed legislative and administrative reforms. This emphasis on greater efficiency of Germany's system of refugee protection was not outweighed by a similar focus on enhancing the affording of protection. Although the Independent Commission proposed a reform to the subsidiary protection statuses in Germany, including equal rights for those granted Constitutional asylum and those provided protection on the basis of the Refugee Convention, on other aspects they were "unable to achieve any consensus" (UKZU 2001: 158). This included in particular proposals to increase protection for victims of non-state or gender-specific persecution where they directly asked for higher standards set in respective European asylum directives.

With respect to even more far-reaching reforms concerning the potential reinstatement of the original version of the fundamental right of asylum in its version before the asylum compromise in 1993, UKZU argued that this "could only be considered if it could be asserted that, since 1993, access to Germany has been unreasonably obstructed, or that access has been refused illegally in cases of asylum seekers who are genuinely in need of protection. The Commission did not come to the conclusion that these conditions applied" (UKZU 2001: 121; see also Linden/Thaa 2010).

Compared to the work of UKZU, two processes taking place largely outside of greater public interference have been more supportive of the protection and expansion of refugee rights in Germany. The first process took place within the Coalition Committee during autumn 2001 between the presentation of the report of the Independent Commission and the publication of the draft legislation for a new Immigration Act in November 2001 (cf. Bundestag 2001c). The second process took place between 2003 and 2004 within the Mediation Committee of the Parliament and the Upper House.[30] This Committee aimed at a

[30] Already in 2002 the Immigration Act passed both chambers of the German Parliament. Before the law was finally implemented in January 2003 it was declined by the Federal Constitutional Court for procedural reasons.

political compromise about the Immigration Act between the coalition parties and the opposition. In both processes the European negotiations about the draft asylum directives provided additional support in particular for the Green Party, acting here as an important norm entrepreneur to increase refugee protection in Germany.

Before the landslide victory of the Social Democratic Party (SPD) and the Green Party in the federal elections in autumn 1998 that ended the period of 16 years uninterrupted coalition government between the Christian Democratic Parties (CDU/CSU) and the Liberal Party (FDP), the Green Party in particular had published many precise proposals for a reform of Germany's asylum policy. They argued that they "dismiss the applicable asylum law asking particularly for the travel route of refugees and not for actual reasons of flight" (Bündnis 90/Die Grünen 1998: 118), demanded the reconstruction of the constitutional right for asylum, the discarding of accelerated airport procedures and of the Act on Benefits for Asylum-Seekers as well as the recognition of non-state persecution. When the coalition contract between both parties was finally signed in October 1998, however, most of the previously existing expectations had been discarded. Although the Coalition Contract included a fundamental reform of Germany's citizenship policy, it remained largely silent on refugee and asylum policy. Next to a general commitment to the Refugee Convention and towards developing a common European asylum policy it only included the disposition towards a general review of the asylum procedures and the recognition of gender specific reasons of persecution by way of an administrative decree (cf. SPD/ Bündnis 90/Die Grünen 1998).

During the first process – in the Coalition Committee – the Green Party was not successful in introducing non-state persecution as a reason for granting refugee status. However, they were able to establish it as an obstacle against deportation providing for persons concerned at least subsidiary protection. During the second process in the Mediation Committee, the Green Party was even more successful, establishing non-state and gender-specific persecution as new reasons to qualify as a refugee. When the Immigration Act was finally passed in summer 2004 it included substantial improvements for refugee protection in Germany. Although the Immigration Act did maintain the *status quo* with respect to follow-up applications and extended its regulations on post flight reasons from Constitutional asylum to Convention refugees (Bank 2007: 109), the explicit reference to the Refugee Convention, the approximation of the status of Constitutional asylum-seekers and the status of refugees on the basis of the Refugee Convention now entitled both to the same set of residence rights. Furthermore it included non-state and gender-specific persecution and ended the previously restrictive interpretation of the Refugee Convention in Germany, providing an important impulse towards bringing German refugee law better in line with international standards (Bank 2007: 110).

In public debate, these processes are usually represented as horse-trading between government and opposition parties. Regularly the domestic politics of these processes take the most prominent role in existing analyses; citing tenacious negotiations between the Green Party and the social democratic Minister of Interior including the termination of the coalition government, as well as the concessions made between the government and opposition parties playing regulations on labour migration off against refugee rights (Linden/ Thaa 2010: 64f.). In actual fact, however, the European context played a far more important role. The negotiations at the European level clarified that Germany was widely isolated with its practice of refugee protection. This became startlingly clear when the British House of Lords in December 2000 reached the decision that a refugee must not be returned to

Germany because – in not accepting the principle of non-state persecution – Germany provides no effective protection (Guild 2004).[31] As a consequence, this helped particularly the Green Party in convincing the opposition parties – originally strongly opposed – to accept the inclusion of non-state persecution, which had isolated the German government within the negotiations at the European level because no other country followed Germany's narrow definition of refugee status. The strong European influence on this particular provision is obvious by the exact wording of the Immigration Act along the lines of the Qualification Directive. It is therefore no surprise that legal scholars give credit to the European Union arguing that central improvements of refugee rights "have their foundation in the passage of the Qualification Directive at the European level" (Duchrow 2004: 346) and that it was "only the negotiations for the Refugee Qualification Directive at the EU level [that] tipped the scales for the inclusion of non-state persecution" (Schmid-Drüner 2006: 195).

Learning in the Court Room

National policy changes occurred not only by way of legislative procedure. Instead, the judicial venue – already a traditionally important factor accounting for national refugee and migration policy (cf. Guiraudon 1997; Joppke 1999) – had gained a new dynamic. Two different pathways of Europeanisation should be differentiated. The first concerns the fact that the pure existence of the European asylum directives was changing the national asylum determination procedure. They provided new norms that were taken into account by national administrations, even in cases where they have not resulted in any changes of the wording of existing national legislation. At the end of the transposition deadlines, all three directives are directly applicable and different legal aspects that previously appeared resolved are potentially challenged again by the introduction of those new norms. In a series of articles, Hoppe (2010, 2011, 2012) provides an overview of recent court cases where the BVerwG and the BVerfG have provided several decisions interpreting the Qualification Directive. Examples of this pathway include the decision of the Court from February 2009 where it defines the loss of ones nationality as a potential persecution qualifying for refugee status, or a decision from April 2010 interpreting Article 4 of the Directive which enables – in contrast to existing German procedures – the alleviation of the burden of proof in cases when an applicant has already been subject to persecution.

The second pathway, which is of greater importance, has been the extension of the competences to the Court of Justice of the European Union in this policy area (cf. Acosta/Geddes 2013). In recent years, the Court has been increasingly asked to rule on asylum-related cases. The number of references from national courts increased from one reference in 2007, to 10 in 2008, five in 2009, 12 in 2010 and 31 in 2011 (Peers 2012: 203). These first rulings provide clear evidence for learning processes at the judicial venue. Although these judgments had only limited impact on the harmonisation of national asylum practices, with none of them generating legislative amendments in the member states, they had an obvious impact on legal practice in Germany (Gyulai 2012). A first example concerns the B and D cases where the CJEU provided an interpretation of the Qualification Directive with respect to the potential consequences of links to terrorist organisations for the exclusion

[31] With respect to gender-based persecution, the last two decades have witnessed a general international trend towards the recognition of this particular social group (cf. Copeland 2003).

from refugee status. The judgment resulted in "significant change in administrative and judicial policies in Germany" (Gyulai 2012: 39). Whereas before the German Federal Office for Migration and Refugees (BAMF) regularly ruled for the principal exclusion of members of terrorist organisations from refugee status, the BVerwG ruled in July 2011 in response to the decision by the CJEU that membership in a terrorist organisation not automatically results at the exclusion from refugee status. Instead, an evaluation of the precise circumstances in each individual case is necessary (Hoppe 2012: 405f.).

Whereas this first example touches a relatively marginal issue of asylum practice, the second example referring to the Abdulla decision from March 2010 is of greater quantitative importance – at least for Germany, which had regularly applied the cessation clause in the last decade (cf. Chapter 4.4.1). In the decision the Court addressed the circumstances potentially leading to the withdrawal of refugee status. Although the judgement did not introduce any fundamental changes into the existing legal system (Hoppe 2010: 168), it nevertheless entailed some changes for the administrative practice in Germany. The court increased the standards of proof: the BAMF now has to demonstrate that the circumstances which originally justified the recognition as a refugee have ceased to exist. Following the related decision of the BVerwG transposing the CJEU decision into national legal practice the numbers of withdrawn refugee status dropped significantly (cf. BAMF 2011; Bundestag 2012d; Gyulai 2012).

Of greatest importance for Germany's asylum policy has been the decision by the CJEU from September 2012 (CJEU 2012). Here the Court had to decide when the violation of the right to religious freedom is to be regarded as persecution. So far, German asylum policy differentiated between private and public religious expressions known as the 'religious subsistence level' doctrine introduced by a decision of the BVerfG in 1987 (cf. Chapter 4.2.1). On this basis German administrative practice suggested potential refugees express their belief only in private contexts to circumvent persecution. The judgement ended this narrow interpretation of religious freedom and was consequently widely welcomed by NGOs arguing that it "ends a quarter century of restrictive German jurisprudence" (Pro Asyl 2012). This decision by the CJEU affected other issues as well. In late 2012, the BAMF (2012a: 5) declared that they had changed their previous practice with respect to persecution due to sexual orientation, previously they had argued that those affected could avoid persecution by hiding their sexual orientation.

Learning on the Streets

Next to the legislative process and the courtroom, civil society actors also constitute an important factor to understand the development of refugee and migration policies. Similar to greater access provided for these organisations at the European level (Favell/Geddes 1999; Friedrich/Nanz 2007), human rights and pro-migrant groups, the churches and other non-governmental organisations have developed into important norm entrepreneurs at the national level, increasingly making use of the new opportunity structures provided by the EU. Compared to the legislative and judicial policy processes, access to political systems for NGOs is more difficult. It often follows public contestation and protest 'on the streets', but is also based on more hidden lobbying efforts as well as cooperative pathways when individual groups are in constant exchange with relevant government agencies or even work together with these agencies in the implementation of certain policies. Causal effects between European and national developments in these contexts are far more difficult to

uncover. Nevertheless, recent years have seen several instances where norm entrepreneurs outside the parliament profited from the parallel developments at the European level. In particular with respect to reception conditions – the dimension where new European demands were largely circumvented by the government during the Transposition Act in 2007 – the EU has developed into an important resource for these actors or at least helped to soften previously deadlocked positions.

A first example relating to such processes of policy learning on the streets concerns recent developments towards a withdrawal of the very restrictive provisions on the right of free movement and residence of refugees in Germany. The so-called residence obligation prohibits asylum-seekers under penalty of a fine or imprisonment, to leave the sphere of the relevant local foreigner authorities without written permission. Already during the 1970s those measures had been introduced and developed into an important building-block of Germany's deterrence regime. From early on, these policies received widespread criticism – domestically as well as at the European level. Nevertheless, successive governments maintained this policy and did not show any departure from earlier positions. At the beginning of the last decade – between 2000 and 2002 – a broad protest movement mobilised against the restrictive residence requirements. At that time the Federal Commissioner for Foreigners aligned with this broad alliance and recommended that the federal government should revise corresponding legislation. Actual policy, however, moved in a different direction with federal states in 2000 proposing to even extend the system to cover those persons with subsidiary protection as well (cf. Beauftragte 2002; Boswell 2001). The mobilisation of NGOs focused at that time on the refusal of refugees to pay fines that were due to violations of the residence obligations. What followed were innumerable judicial proceedings with one finally resulting in a decision by the European Court of Human Rights (cf. The Voice 2007). Its decision from November 2007, however, declared the German legislation on restrictions on free movement rights compatible with the European Convention on Human Rights largely following a similar decision by the Federal Constitutional Court in 1997 (cf. ECHR 2007 see also BVerfGE 96, 10).

These ultimate decisions by the Courts closed the judicial venue to pursue any changes to Germany's restrictions on the free movement rights of asylum-seekers. In this situation, the evaluation of the first generation instruments of the Common European Asylum System and the beginning discussions about second generation instruments provided NGOs with an alternative access point to the political agenda. Of particular importance was the report of the European Commission on the application of the Reception Directive published in November 2007. There the Commission argued that given the broad discretion of member states in limiting the right to free movement and residence, no substantial problems in application of the provisions were reported. However, the report clarified Germany's isolated position with respect to these deterrence measures. Whereas the majority of member states grants the right to free movement for their entire territory only two – Germany and Austria – regularly restrict the free movement of asylum-seekers to one district and do not allow asylum-seekers to choose their place of residence (CEC 2007f). This argument concentrating on the uniqueness of Germany's restrictions on free movement rights combined with the fact that the Reception Directive now provided for a principally new legal basis were subsequently taken up by several NGOs in Germany. Particularly in early 2009, the Humanist Union (Humanistische Union) together with the Refugee Council of Brandenburg (Flüchtlingsrat Brandenburg) published a voluminous report on residence obligations pointing at Germany's Sonderweg in comparison to other European member

states (Selders 2009: 13f.). This resulted in new and enhanced mobilisation efforts by many organisations culminating in a petition that was presented at the Bundestag arguing in favour of abolishing all residence obligations in March 2010 and succeeding in gaining constant attention in the political and public discourse.

At the federal level, the public contestation by civil society organisations left a mark on the coalition contract of the new German federal government formed by the CDU/CSU and FDP, stating in autumn 2009 that "residence obligation[s] should be dealt with in a way that allows for sufficient mobility to enable authorised employment; residence restrictions remain unaffected" (CDU/CSU/FDP 2009: 111). Any far-reaching legislative initiatives fully terminating residence obligations in Germany failed in the following years (cf. Bundestag 2010b, 2011g). Continuing mobilisation by NGOs as well as asylum-seekers themselves (Refugee Tent Action 2012), have resulted at numerous smaller reforms which have led to a substantial liberalisation. In the course of legislation passed in summer 2011 two new provisions were introduced. First, residence obligations can be waived if this is necessary for schooling, vocational training or studying, relaxing access to the labour market and educational institutions. Second, the new legislation provided federal states with the possibility of enlarging the formerly existing restrictions from the administrative district (Landkreis) to the level of the federal state and to agree with neighbouring states reciprocal freedom of travel for asylum-seekers (cf. Bundestag 2011e). Of even greater importance have been the developments at the level of the federal states themselves. Although no generally accepted approach was found between them (IMK 2010), successive states have introduced substantial liberalisations of the residence obligations. Beginning in 2009 in Brandenburg, in late 2012 overall 13 out of 16 federal states have enlarged the area of freedom of travel to the size of its territory and have started to negotiate agreements between federal states (cf. Wendel 2012). Together these reforms provide clear evidence of a liberal turn, removing some of the most criticised aspects of this restrictive policy instrument and the asylum compromise from September 2014 included the almost complete withdrawal of the residence obligations (Rosenstein 2015).

A second example of Europeanisation largely following the policy learning mechanism concerns policies for asylum-seekers with special needs and here in particular unaccompanied minor refugees. Already during the 1980s and early 1990s the German government implemented a restrictive policy against this vulnerable group. At the ratification of the United Nations Convention on the Rights of the Child (CRC) in 1992, the federal states represented in the Upper House objected, afraid that the Convention would curtail their control efforts. This resulted in the submission of reservations restraining the application of the CRC with respect to foreigners living in Germany. From early on, this decision – symbolising Germany's restrictive policy stances towards minor refugees – received widespread domestic and international criticism. It resulted in regular parliamentary initiatives throughout the coalition government between the SPD and the Green Party from 1998 to 2005, as well as during the Grand Coalition between the CDU/CSU and SPD from 2005 to 2009 (e.g. Bundestag 2000a, 2005, 2008a). Nevertheless, they all fell through because of opposition either from the Upper House or from legal sophistries on the side of the BMI, irrespective of the party political affiliations of the respective minister.

Of probably more sustainable impact than those legislative initiatives has been an increasingly vibrant civil society mobilising for more supportive policies for unaccompanied minor refugees. Next to many local associations providing guardianship the established children rights organisations like Deutscher Kinderschutzbund, Deutsches Kinderhilfswerk

or Terre des Homes have been particularly active. Furthermore, a number of organisations were founded specifically focusing on unaccompanied minor refugees including the National Coalition for the Implementation of the UN Convention on the Rights of the Child in Germany (NC) founded in 1995, as well as the Federal Association for unaccompanied minor refugees (BumF) from 1998 (cf. Angenendt 2000). However, neither those national initiatives nor regular harsh criticism by the UN Children's Committee (UN 1995, 2004) resulted at any far-reaching reforms in this policy area. Only some small reform steps were taken in 2005 within the Child and Youth Services Extension Act (KICK), including new rules on the taking into care of unaccompanied children and young people entering the country as well as encompassing the appointment of a guardian or caregiver (cf. AA 2008; Apitzsch 2010). However, the government points out that those new rules provide "no exception to asylum and residence regulations" and allow, for example, the continuity of deportation of minor refugees at the border (Bundestag 2006: 2). Furthermore, the government declared with respect to the reservation in the CRC that, "[…] the withdrawal of the reservation […] would be politically suspect, as it could lead to an increase in the entry of unaccompanied minor foreigners into Germany. Such a 'pull effect' would entail additional costs whose amount cannot be overlooked and thus cannot be quantified" (Bundestag 2007b: 9; see also BMFSFJ 2005; National Coalition 2006).

During the period of investigation this situation changed with the European level developments playing an important role by increasingly isolating the control-oriented actors in Germany. At the European level unaccompanied minor refugees have been a topic for common activities since the 1990s, resulting in 1997 in a Council Resolution and the Reception Directive from 2003 took the issue on board as well. Nevertheless, both instruments left a wide margin of discretion for member states in confining the rights of this group of asylum-seekers. In the context of the evaluation of the Reception Directive in 2007, however, European pressure to establish higher standards for unaccompanied minor refugees became more widespread. Here, the Commission pointed out that although unaccompanied minors are guaranteed legal representation by virtually all member states and that they are generally hosted with foster families or in special centres, Germany along with only two other member states continues to host unaccompanied minors aged over 16 in accommodation for adults and points to serious problems with the detention of unaccompanied minors (CEC 2007f: 9; see on this point also Schlung-Muntau 2009). This is a criticism reiterated in the evaluation of the Procedures Directive clarifying that only Greece and Germany apply exceptions to the duty to appoint a representative by having an age limit of 16 years when asylum-seekers are thought to be capable of pursuing the application by themselves (Commission 2010f: 8).

During the following years several initiatives were launched at the European level addressing this topic including the 6th Annual Conference of the General Directors of European Immigration Services (GDISC) in October 2009 that focused on unaccompanied minors, as well as an additional expert meeting on the same topic in May 2010 and a workshop by EURASIL – an informal but permanent group of experts aiming to facilitate the exchange of information between practitioners of administrations of member states – on unaccompanied minor asylum-seekers in May 2009. On a more formal level, the European Union Agency for Fundamental Rights (FRA) started a project on separated asylum-seeking children in 2008 and the European Migration Network (EMN) worked in parallel on its study on reception, return and integration policies for unaccompanied minor refugees (EMN 2010). Those continuing European efforts aiming at better management also found

their footprint in the Stockholm Programme where the European Council argued in December 2009 that "unaccompanied minors arriving in the Member States from third countries represent a particularly vulnerable group which requires special attention and dedicated responses […]. A comprehensive response at EU level should combine prevention, protection and assisted return measures while taking into account the best interests of the child" (CEU 2009c: 68). Finally, the Commission (2010a) published its Action Plan on Unaccompanied Minors (2010-2014) in May 2010 with an interim report published in September 2012 (Commission 2012b). In response the Council at its meeting in June 2010 adopted a broad programme including measures of information gathering, prevention, reception and procedural guarantees as well as return in dealing with the issue (CEU 2010).

Following those widespread initiatives at the European level the new federal government in autumn 2009 announced it would withdraw the reservation from the CRC (CDU/CSU/FDP 2009), resulting in an agreement by the Upper House in March 2010 (Bundesrat 2009) and the actual withdrawal in July 2010. A domestic politics framework would explain this policy change with reference to the constant lobbying initiatives by national NGOs together with the commitment of the members of the Committee on Children Affairs of the Parliament and the change of government probably highlighting party political factors. The explanation advanced here, instead, makes the case for taking the multi-level dynamics more seriously. Europeanisation in this case, however, did not so much result in new opportunity structures for national norm entrepreneurs. Those national actors mobilising for better conditions for unaccompanied minor refugees only referred to the European developments in a few instances. The direct link to the United Nations Convention on the Rights of the Child already provided the necessary normative legitimacy and appeal for their political claims and those actors felt little necessity to bolster their claims with reference to the European Union. Instead, the parallel European developments helped to reduce the opposition of the BMI and all other national actors who previously unambiguously opposed any changes to the restrictive *status quo* in Germany. The intensive formal and informal exchange at the European level between 2007 and 2010 increasingly isolated the German preferences in this policy area. Whereas the first generation instruments of the CEAS still approved the German legal and administrative procedures on unaccompanied minor refugees, the proposals for the recasts of the Reception and Procedure Directives published in 2008 and 2009 (cf. UNHCR 2010; CEU 2012a) set obviously higher – and in most member states non-controversial – standards. Retaining the *status quo* from the perspective of Germany's isolated negotiation position would result in high political cost.

The changing context within the EU therefore helped to soften the previously deadlocked national political positions and provided a necessary opportunity for the new government to withdraw the reservation in 2010 and to praise itself for its policy "placing the best interest for the child at the heart of its policy" (BMJ 2010: 1). However, the policy learning mechanism does not only explain the reconfiguration of power in the domestic sphere but also the chronology of events following the withdrawal. The full applicability of the CRC clearly demands legislative activities ending the practice in asylum and residence law of treating 16- and 17-year-old unaccompanied minor refugees as adults concerning procedural issues as well as their care and accommodation (cf. BUMF 2010; DIMR 2012; Forum Menschenrechte 2011). Nevertheless, the government has remained completely inactive in recent years (Bundestag 2012g) in order to increase its room for manoeuvre in European negotiations. Although legislative reforms towards the status of unaccompanied

minor refugees are advised, the European negotiations about the second generation instruments of CEAS, provided the government with a welcome justification to play out this issue on this most vulnerable group of refugees (Bundestag 2012e: 12).[32]

4.5 Conclusion

The aim of this first case study was to describe and explain national policy changes in Germany's asylum policy in the first decade after the turn of the millennium. Its main finding characterises this period as a fourth round of asylum conflict. Until the late 1990s Germany's asylum policy already passed through three such rounds of conflict, all overwhelmingly waged within national contexts. They contributed to a linear trend towards more restrictive policies seriously contracting refugee rights along all dimensions of national refugee protection systems – refugee status, asylum procedures and reception conditions. In contrast, comparing the *status quo* of national asylum policies at the end of the 1990s (t_0) with the status quo in 2012 (t_1), this final round was heavily circumscribed by its European context and the development of the Common European Asylum System. It largely acknowledged the former *status quo* with respect to most instruments related to asylum procedures and continued the safe third-country regulations resulting in a marginal extent of Europeanisation in this dimension. However, it also witnessed obvious changes with respect to the definition of refugee status and reception conditions. Compared to the established standards in the late 1990s, in those two policy dimensions the final outcomes of Europeanisation during the last decade contributed to a reversal of this previous trend. Germany has now absorbed European-wide accepted norms and started to incrementally improve refugee rights. This includes the explicit reference to the Geneva Refugee Convention in German legislation, the recognition of non-state and gender-specific forms of persecution, as well as the termination of the 'religious subsistence level' doctrine, together obviously increasing the protection rate. Furthermore it included steps towards slighting some of the most restrictive aspects of Germany's deterrence regime. Here, examples refer to the incremental liberalisation of residence restrictions as well as the withdrawal of Germany's reservation to the United Nations Convention on the Rights of the Child previously legitimising its restrictive approach towards unaccompanied minor refugees.

The case study explains those developments during Germany's fourth round of asylum conflict with close reference to the European context. Taking the European factor seriously, however, does not exclude all other potential explanatory variables. Following a logic which trades "numbers vs. rights" (Ruhs/Martin 2008; for an application on asylum policy see Thielemann/Hobolth 2015), the reversal of the previous restrictive trend certainly gained from the pure fact that actual levels of asylum applications dropped to very low levels compared to only one decade earlier. Also the dominant European context closely shaping national political processes does not rule out completely the option for member

[32] Although the reformed Reception Directive (2013/33/EU) had to be implemented into national legislation in July 2015, it marked again a case of late transposition and necessary legal changes concerning unaccompanied minor refugees will potentially be implemented in the context of later reform processes (cf. Bundestag 2015: 3f.).

states to introduce reforms largely within national confines. Process tracing individual policy instruments within the different dimensions of national refugee protection systems demonstrates, however, that without the European context the direction and extent of national policy changes are hardly explained. Furthermore, the analysis enhances existing studies on the Europeanisation of asylum policy, which commonly apply venue shopping as their explanatory approach. Already the analysis of the uploading dimension of Europeanisation illustrated that the specific political processes do not fit the propositions of the original venue shopping approach. The initiative for the concrete outline of developments in this issue area originated not from member states but from the European Commission tabling individual draft legislation on all three dimensions of asylum policy. In these cases national governments did not shop for more amenable venues to pursue their national preferences. Instead, member states and Germany in particular were actively involved in watering down the draft directives to bring them into line with national preferences, which clearly differed from the Commission proposals.

The specific dynamics of the uploading dimension principally follow the propositions of two mechanisms of Europeanisation – backdoor opposition and policy learning. During the downloading dimension both mechanisms provided important theoretical tools to explain the respective political processes. On the one hand the implementation process provided the German government and here in particular the BMI with the opportunity to oppose Europe through the backdoor. Those European policies that remained in conflict with German preferences were distorted through late, restrictive, partial and incorrect transposition. Even more, the administration introduced new restrictive concepts under the guise of European implementation demands. On the other hand, the downloading process in several instances resulted in the absorption of new European norms into German legislation and practice, largely following the propositions of the policy learning mechanism. These specific processes played out in different institutional venues including the legislative process dominated by party politics, the judicial venue with the increasing importance of the CJEU as well as national norm entrepreneurs outside the inner political systems where the European context now helped to tip political forces to their interests. Similar to the findings on the uploading dimension, the downloading processes also provided abundant empirical evidence showing that both, the institutional interactions between the national and the European level as well as their substantive policy outcomes, were clearly contradicting the assumptions of the venue shopping approach. Alternative mechanisms of Europeanisation – here, backdoor opposition and policy learning – are necessary to explain today's multi-level dynamics in this policy area. Do these findings rule out venue shopping completely from our theoretical toolbox? The following chapter focuses on the dynamically developing operational cooperation between member states within the EU arguing that it is here where venue shopping today has most explanatory power.

5 Circumventing National Enforcement Constraints? Shopping for Effective Return Policies in European Venues

5.1 Introduction

Venue shopping is the mechanism traditionally applied to account for the Europeanisation of refugee and migration policies. The previous case study on Germany's asylum policy, however, challenged this perspective and put forward two alternative mechanisms – backdoor opposition and policy learning – more accurately describing the processes and outcomes of Europeanisation in this policy area. Because of the diversity within refugee and migration policies, mechanisms fitting the situation in one case are not necessarily transferable to other issue areas. The focus of the following analysis will be policies addressing irregular migration in Germany and Europe. In this case, the political processes and outcomes continue to closely match the original venue-shopping assumptions, demonstrating that this approach still has its field of application and has only lost its universal applicability.

Until the late 1980s, irregular migration played a negligible role in political and public discourses in Germany. Only the asylum crises of the late 1980s and early 1990s fundamentally changed this situation when increasing numbers of refugees whose claims for asylum were declined subsequently became irregular after their residence status lapsed. In response, political attention quickly shifted to the "method and speed of return" (Marshall 2000b: 105) of those failed asylum-seekers. Within few years, deportation[33] and removal of irregular migrants developed into a serious aspect of Germany's migration control policy. Although the forced return of migrants was certainly not invented in those years, deportation was dominated by security considerations only focusing on the removal of a comparatively small number of non-citizens. It was primarily an instrument to sanction foreigners who violated criminal laws and enabled the state to remove those migrants whose residence permission has been withdrawn (cf. Anderson, et al. 2011: 549f.; Schwarz 2010). Consequently, numbers of deportations in Germany massively increased during the 1990s resulting in 1994 in more than 53,000 deportations and an overall figure of more than half a million deportations carried out during the last two decades.

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[33] The involuntary return of irregular migrants is rarely described as 'deportation' in the German context because of its associations with the deportation of Jews during the Nazi era. The precise legal terms in Germany differentiate between several forms of involuntary return depending on the whereabouts of the foreigner concerned and whether measures were related to status or enforcement (Hailbronner/Häußler 2001: 244). First, a rejection (Zurückweisung) refers to an administrative act by the border police apprehending a foreigner who intends to enter the country illegally resulting in immediate implementation of the refusal of entry. Second, the removal (Zurückschiebung) defines a measure terminating the residence of a foreigner who has already entered the country and should be implemented to take the foreigner to the country from which the foreigner entered German territory. Finally, deportation (Abschiebung) means forcibly carrying out the obligation to leave the country, if voluntary compliance with this obligation is not guaranteed (cf. Kreienbrink 2007: 14f.). In the international context, deportation is the most common term and preferred over the politically more neutral term 'return migration' (cf. Gibney/Hansen 2003b: 6). In the context of this study, it principally applies to all forms of forced removal and not only to the more narrow legal definition within Germany's migration legislation.

These developments in Germany were not isolated events and the forced removal of irregular migrants became a policy priority in most EU member states during the last two decades (cf. Düvell 2006; Triandafyllidou 2010). Generally, nation states aim to prevent irregular migrants whose presence is regularly interpreted as a partial failure of migration control policies because they pose a threat to national security and the labour market (cf. Koser 2005; Schönwälder, et al. 2004: 7f.). Nation states address irregular migration with the whole spectrum of migration control instruments (cf. Brochmann 1999; Vogel 2000) and although post-migration controls and the forced removal of foreigners remain a "solution of last resort" (Broeders 2009: 112) they have developed into an essential element of any serious migration policy. Consequently, not only Germany but most European countries have witnessed a "deportation turn" (cf. Anderson, et al. 2013; De Genova 2010; Gibney 2008) in the last two decades and have rapidly set up the necessary legislative and infrastructural ability to deport increasing numbers of irregular migrants.

The integration of the forced removal of foreigners into an overall migration control strategy of a country soon highlighted a huge difference between the number of principally deportable migrants and actual deportations carried out. This "deportation gap" (Ellermann 2006: 294) was caused by three groups of national enforcement constraints: (1) missing cooperation of countries of origin or transit; (2) administrative hurdles; as well as (3) democratic constraints originating from political and public opposition. As a response to these difficulties to implement an effective return policy on a unilateral basis, the German executive together with governments from other European member states confronted with similar national enforcement constraints, already during the 1990s converged on the perception that irregular migration in general and their forced removal in particular were issues of common concern. From their perspective, the European level provided more favourable venues to address some of the existing national enforcement constraints underlying the deportation gap. However, early initiatives during the Maastricht regime – although important for building trust between the participating national administrations and constructing a shared understanding of the problem – resulted in marginal legislative initiatives and only minor efforts towards operational of cooperation. With the coming into force of the Treaty of Amsterdam in 1999, the new institutional framework provided a far better context to establish a common European deportation policy by addressing missing cooperation with countries of origin, establishing practical procedures and European agencies supporting operational cooperation between member states as well as harmonising the basic legislative foundations.

The European policies that have been put in place since the turn of the millenium are certainly no unrestrained success stories and member states as well as academic observers regularly lament the inefficiency of these new European structures. Nevertheless, they have started to profoundly influence the developments of Germany's deportation policy. From a quantitative perspective, Germany's return policy was during the period of investigation obviously less turbulent compared to the period before, with decreasing numbers of deportations since the mid-1990s. Nevertheless, the administrative practices in this policy area have changed considerably by absorbing the new European policies. In particular, the European instruments towards countries of origin and towards practical cooperation between member states have changed the day-to-day routines of the responsible administration in Germany. What exists today is a dualist system combining older national with new European structures together reducing some of the existing enforcement constraints, increasing the executives' room for manoeuvre and reducing the political, diplomatic and financial costs of this policy. This dualist system is more effective in

organising the forced removal of irregular migrants and consequently more restrictive for the individuals concerned. Already in the late 1990s, Joppke (1999: 278) argued that the whole point of European harmonisation is to make the member states' refugee and migration policies more effective, but it is only today that we can empirically study those effects of Europeanisation on the ground.

The political regulation of forced removal policies constitutes a highly complex policy area. In order to provide a thorough analysis again several dimensions are differentiated. Most generally, return migration refers to the process of going back from a country of destination to a country of origin and existing analyses usually start with pointing out the principal differences between voluntary, assisted, or forced migration policies (cf. Cassarino 2004; IOM 2004; King 2000; Koser 2000b). In the case of irregular migrants, however, return is usually mandatory with no alternative existing. The only available decision that might be left to the migrant is the actual return procedure – whether they return on their own cost, on the basis of an assisted return programme or are actually forced to return. In any case a free decision is not available and any voluntary act in this context at bottom only means the lack of physical violence (on this discussion see Düvell 2005; Kreienbrink 2007: 16). Although the last years have seen additional emphasis on voluntary return migration policies as well, this study concentrates on countries' policies implemented to forcefully remove irregular migrants where three analytical dimensions are separated (cf. Table 5.1).[34]

Table 5.1: Analytical dimensions of national deportation policies

Dimension	Objective	Individual instruments
Legal harmonisation	Establishing common legal rules concerning the procedure and practice of deportations	Detention periods Judicial remedies
International cooperation	Reducing enforcement constraints caused by missing cooperation of countries of origin	Readmission Agreements
Operational cooperation	Reducing administrative enforcement constraints	Recognition, assistance and cooperation on deportation measures

Source: Own compilation.

A first dimension refers to the legal rules specifying the precise causes and procedure of enacting the deportation as well as certain rights of the person concerned. This dimension certainly constitutes the focus of most available scholarly analyses with a legal or historical background. From an administrative perspective, however, these legal foundations form only one part of their everyday routines whereas overcoming practical enforcement constraints are at least of similar importance. The second dimension therefore concentrates on international

[34] The focus on forced removal is solely caused by issues of capacity within this study. In principal it is expected that the European policies on voluntary return follow similar processes and result in comparable outcomes of Europeanisation.

cooperation with the aim to reduce enforcement constraints caused by the lack of cooperation of countries of origin or countries of transit. Here, the negotiation of readmission agreements has developed into the most general instrument seeking to ease the forced removal of irregular migrants. Finally, the third dimension concentrates on operational cooperation with other member states. This operational dimension aims at reducing existing administrative enforcement constraints including financial and political costs of a country's deportation policy.

The chapter proceeds in three steps with the first, focusing on the historical development of Germany's forced return policy. The analysis concentrates in particular on the transformation of this policy area with its increasing integration in Germany's overall migration management strategy of the 1990s and the resulting deportation gap caused by several enforcement constraints. In a second step, the analysis shifts to the uploading dimension of Europeanisation and Germany's far-reaching activities to implement a common European return policy. These activities started during the early 1990s, but continued throughout the last decade. Finally, the last section concentrates on the downloading dimension of Europeanisation. Whereas the harmonisation of legal regulations resulted in minimal changes, the day-to-day practices of the administration in Germany is the place where an obvious adaptation to new European structures has taken place and shows how closely the national and the European levels have become interwoven.

5.2 Gaps between Aims and Outcomes: Establishing a National Deportation Policy

5.2.1 Transforming Deportation into an Instrument of Migration Control

The history of Germany's return policy shows obvious parallels to the approaches followed by other Western countries, which all consider forced return measures to be a standard response to control international migration. Correspondingly, all German migration legislation has included the legislative means to deport people. Without going into historical detail here, it was the 1938 Immigration Police Decree as an administrative guideline that governed this policy area in the first decades after World War II.[35] The wide discretion provided for the administration by this decree was seamlessly continued with the Aliens Act from 1965 largely adopting the already existing legislative deportation procedure. Existing analyses of Germany's deportation policy willingly stress the continuity of this restrictive policy approach following the 1965 legislation down to the present day (e.g. Schwarz 2010: 66f.). Without denying specific historical path dependencies, however, two largely contradictory trends are of crucial importance in understanding the policy developments since the turn of the millennium. The first trend concerns legislative changes curtailing

[35] Similar to Germany's asylum policy, Germany's deportation policy is a competence of the individual federal states. In line with the proceeding chapter, however, the analysis concentrates on the developments at the federal level. This does not deny the fact that individual federal states diverge from this overall policy approach. Nevertheless, the 'AG Rück' as a working group of the Conference of Interior Ministers (IMK) constantly aimed for a uniform implementation of existing legislation between the authorities in different federal states and certainly allows for a major focus on the federal level (Grimm 2004).

previous levels of administrative discretion leading to an increasing legal certainty with regard to the conditions of entry, residence and forced removal of foreigners in Germany. The second trend, instead, practically expanded the existing deportation policy by applying it more stringently and to a far greater group of potential persons. Whereas before, deportation policy was mainly used as a form of sanction, it was now transformed into a general migration control instrument. The following two sections provide an analysis of Germany's deportation policy in the 1990s and show that those two diametric trends increasingly manoeuvred the German executive into a situation where it was hardly able to handle the existing enforcement constraints and to reduce the mounting deportation gap.

The first trend started throughout the 1970s with jurisprudence by administrative courts in Germany. The Aliens Act provided public authorities with far-reaching discretion and regularly resulted in deportations of foreigners convicted of minor crimes and irrespective of the existence of family ties or other civil or social rights. In contrast to this legal basis, successive court decisions increased the rights of foreigners in Germany during this time. In 1990, the Aliens Act codified this trend by regulating deportation more closely, decreasing the executive's discretion towards foreigners and placing the complete policy area more directly in the realm of law (cf. Hailbronner/Häußler 2001: 224f.; Renner 1996).

Whereas this first trend resulted at a certain expansion of rights for migrants by placing previous administrative practice more firmly in the realm of law, the second trend expanded the scope of deportation policy and transformed it into an instrument of migration control. For the British case, Bloch and Schuster (2005) describe the changing role of this policy area arguing that "[d]eportation, detention and dispersal have formed an occasional part of Britain's migration regime throughout the twentieth century, though they tended to be used in response to particular events or crises […]. By the end of the twentieth century, however, deportation, detention and, most recently, dispersal have become 'normalized', 'essential' instruments in the ongoing attempt to control or manage immigration." A similar development took place in Germany, where during the 1980s the government started basing its migration control strategies on an effective deportation policy. This shift in the status of deportation policy began with a number of legislative changes during the 1980s (cf. Rittstieg 1996; Renner 1996), but again of greatest importance were the reforms following the asylum compromise in the early 1990s. Ellermann argued in this respect that although the reforms "targeted the regulation of entry into – rather than departure from – the territory, the reforms had far-reaching implications for the direction of deportation policy. […] in curtailing access to the asylum system, the 1992 reforms not only increased the pool of deportable asylum seekers, but, most importantly, firmly established their removal as a political imperative" (Ellermann 2009: 67).

The importance the German government attached to a stringent and effective deportation policy became particularly pronounced in the context of the political turmoil in the Balkans during the 1990s. The wars in the former Yugoslavia and in particular in Bosnia and Kosovo resulted at additional refugee movements in Europe with Germany admitting the great majority of them. But whereas in most European countries these refugees were provided with a long-term perspective for residence, in Germany efforts to repatriate them became a constituent element of these policies after the wars ended (cf. Koser 2000a; Selm 2000). Overall, the return of illegally-resident foreign nationals as well as temporarily accepted refugees was increasingly regarded as a key element of managing migration with the aim to impose clear limits on immigration (cf. Lehnguth, et al. 1998: 36; Grimm 2004). The governmental position developed during the 1990s was summarised concisely in a

2001 report by the Independent Commission on Immigration (UKZU). There they argued that, "it is absolutely vital that foreigners who are no longer allowed to stay in Germany actually leave the country and return to their homeland or to a third country – even if this is only to control immigration and lend credibility to immigration policy. The only ultimate purpose of all asylum procedures and a large number of proceedings regarding foreigner law is to establish whether the foreigner in question is to be granted the right to stay in the country or is required to leave. The right to stay is inseverably linked to the obligation to leave the country if a negative decision is taken. The entire procedure would be meaningless if foreigners failed to meet this obligation and if it was not enforced – if necessary, using coercive means – proceedings are not an end in themselves" (UKZU 2001: 146).

5.2.2 National Enforcement Constraints

The combination of both trends – greater legal certainty for migrants in Germany but at the same time an increased reliance on deportation as an instrument of migration control – quickly resulted in an increasing deportation gap. Despite an obvious increase of deportations, the number of foreigners under an obligation to leave the country increased rapidly during the 1990s and already comprised 260,000 persons in 1997 (Bundestag 2001a). As a consequence, the Conference of Interior Ministers (IMK) in 1993 set up a 'Removal Working Group' to increase the cooperation between federal and state authorities and to develop solutions and proposals for improving administrative proceedings (cf. Martini-Emden 2000). Whereas the legal framework governing deportation was generally seen as functioning efficiently, the discussions about national enforcement constraints revolved around practical problems of enforcement. At least three groups of constraints are differentiated making deportation a financially and politically very expensive mode of migration control. These include (1) difficulties in the cooperation with countries of origin or transit; (2) administrative constraints arising mainly from a lack of cooperation of foreigners reluctant to return to their home country, and finally (3) difficulties arising from political and public opposition (e.g. Cremer 1998: 85f.; Hailbronner 2005a: 408f.; Schneider 2012: 92f.).

Lack of Cooperation of Countries of Origin or Transit

A first dimension of enforcement constraint refers to lack of cooperation with the countries of origin or transit of irregular migrants. Deportation of a migrant into his/her country of origin necessarily requires cooperation at the bilateral level between the deporting country and the country where the removed person is to be relocated. In principal, international law requires states to admit or re-admit their own nationals when those individuals return. More problematic are those cases where nationals do not want to return because here the existence of a duty to readmit is not as clear (cf. Cassarino 2010: 12; Legomsky 2012). When Germany expanded its deportation activities in the early 1990s, actual experiences showed that the embassies of the respective countries of origin regularly hindered smooth deportation processes, for example, by lengthy processes of identity verifications, slow processing of requests for issuing travel documents, charging high fees or by principally not accepting the return of their national against the migrants individual will (cf. Bundestag 2014: 1; Cremer 1998; Holtschneider 1996).

In response to these practical problems, the Federal Ministry of Interior (BMI) started in the early 1990s to lobby for making more regular use of readmission agreements as a legal instrument which they regarded as an effective solution to facilitate the return and removal of migrants (Lehnguth 1997: 161; Kruse 2005: 90). Generally, these agreements facilitate the deportation of irregular migrants by establishing specific obligations and procedures regarding readmission between the country of destination and the country of origin and therefore fitted the enforcement constraints experienced by the German government. The instrument itself was not new but built on existing practice dating from the early 19th century and developing into a migration policy instrument during the 1950s and 60s (cf. Coleman 2009: 12f.). Germany itself concluded readmission agreements during this period with Denmark, Sweden, Norway and the Benelux countries. Although the practical relevance of those early agreements has been limited, the efforts of the BMI resulted at a renaissance of this instrument in the early 1990s. Within few years Germany concluded an additional 13 agreements covering in particular its new Eastern neighbours (Poland and Czech Republic in 1994, as well as Hungary in 1997 and the Baltic countries in 1998), countries involved in the armed conflicts in former Yugoslavia (e.g. Croatia in 1994, Bosnia and Herzegovina in 1996) as well as countries producing high levels of asylum-seekers or otherwise high numbers of irregular migrants including in particular Romania in 1992, Bulgaria in 1994 and Vietnam in 1995 (cf. Noll 1997: 441; BMI 2015).

The readmission agreements of the 1990s tried to learn from the shortcomings of earlier agreements and included new procedural requirements aiming at greater effectiveness. Although the 1990s witnessed sporadic evidence for the practical effects of these new agreements, as for example in the Romanian case, the initial expectations of the BMI were in most cases "[…] quickly dashed. Readmission agreements rarely succeeded in resolving longstanding diplomatic disputes over repatriation" (Ellermann 2008: 175). In 1999, the Ministry presented data on the application of the agreement with Vietnam showing that although Germany had presented 29,200 applications for readmission only 6,010 persons had actually returned (cf. Bundestag 1999). Similarly, a report for the IMK from May 2000 showed that the basic enforcement constraints had not vanished. The report referred to a group of approximately 30 very problematic states where cooperation remained particularly difficult and major obstacles to more effective deportation continued to exist either because no readmission agreements could be adopted or because of the lack of implementation of those agreements. In order to improve cooperation with these states the report proposed increased cooperation between the Federal Foreign Office (AA) as well as the Ministries of Interior in the federal states and appealed to the federal government to step up efforts with respect to foreign countries to remove remaining obstacles to the return of foreigners under an obligation to leave. In particular they proposed the use of diplomatic contacts more effectively in order to discuss issues of readmission and deportation, to adopt informal procedural agreements with countries of origin as well as to conclude readmission agreements and specifically called for the EU to make more use of readmission clauses (cf. Bundestag 2000b; IMK 2000; Mascolo 2000).

Administrative Constraints

Next to the lack of international cooperation, a second group of problems hindering effective deportation policies can be grouped under the label of administrative constraints. This includes different practical problems the respective administrations have to handle. The

most pressing issue in this respect concerns the identification and procurement of passports or replacement of documents because irregular migrants often destroy or conceal their travel and identification documents and make false statements about their nationality. Non-cooperation from potential deportees also includes even more direct opposition with active resistance during return measures on the way to the aeroplane in order to prompt pilots to refuse transport (cf. Hailbronner 2005a). Additional administrative constraints concern the organisational efforts to organise deportations from apprehending the respective persons to booking the necessary flights for return. Here it becomes particularly problematic if no adequate means of transportation exist or if airports of other member states have to be used due to a lack of direct connections to the country of origin. All this shows that deportation is a financially very costly policy. For the United Kingdom, Gibney (2008) provides some indications on the costs, showing how numbers of responsible staff as well as direct expenditures have risen in the last couple of years. Although no comparable figures are available for Germany – partly caused by its federal structure but in particular because of a lack of interest by the executive to reveal such figures (Schneider 2012: 92f.) – it is obvious that Germany has committed substantial fiscal and manpower resources to provide for the return of irregular migrants.

In response to these administrative constraints, the German executive has developed necessary means to centralise deportation processes. A first example in this respect dates back to new legislation introduced in 1987 (Gesetz zur Änderung asylverfahrensrechtlicher und ausländerrechtlicher Vorschriften). Whereas the main responsibility for forced return measures traditionally rested with local and regional foreigner authorities, now the federal states were provided with the possibility to centralise their decisions about deportation in common administrations with the aim of increasing the effectiveness of deportation. For example, the state of Baden-Württemberg, in 1989, reduced responsibilities for return measures from 120 local foreigner authorities to only four remaining authorities (Kreienbrink 2007: 59). A similar process of centralisation took place with respect to the process of identification, which developed into an increasingly specialised task. In response, under the direction of the Federal Border Guard (Bundesgrenzschutz)[36] in Koblenz a coordination centre was established responsible for the identifying, recognising, and documenting irregular migrants originating from a list of countries who are least interested in cooperation relieving the federal states of the task of trying to obtain documents from these countries (Kreienbrink 2007: 134). Finally, a third example of centralisation concerned the increasing use of charter flights and group deportations. They were a direct response to active resistance by deportees because these forms of removal take place out of public view and without a third party to be mobilised on behalf of the deportees. As a consequence, charter deportations reduce the effectiveness of physical resistance of the deportees and were a preferred method in those cases where the police expected resistance against the deportation (Ellermann 2009: 95).

[36] The organisation originally founded in 1951 was renamed as Federal Police (BPol) in 2005 to express the growth of tasks the organisation meanwhile fulfils irrespective of the federal system organising law enforcement in Germany.

Political and Public Opposition

Finally, a third enforcement constraint refers to political and public opposition to Germany's deportation policy. Although public opinion and both major political parties generally support an effective deportation policy, these attitudes regularly change when confronted with individual deportations and their human rights consequences for the persons concerned (cf. Ellermann 2006: 300f.). Referring to Germany's past, Thränhardt (1999: 31) argued that a "consistent control policy is hampered by the mistrust against anything reminiscent of an authoritarian state. […] Under these circumstances, the government is bound to rely heavily on external and implicit control – not visible to the public and therefore not disturbing it". Rising political and public opposition of the 1990s therefore turned this policy not only financially, but also politically into an increasingly costly issue area.

With respect to political opposition, on the federal as well as on state level, the respective opposition parties increasingly criticised the governments' deportation policy during the 1990s. Responding to regular parliamentary motions, minor and major interpellations, written questions or parliamentary debates the respective government had to justify its policy. The Parliament criticised, for example, specific procedural aspects of the policy, individual outcomes in specific cases of forced removals as well as the lack of legitimacy to force migrants to return to countries of origin not providing a necessary level of stability or security. During the 13th legislative period from 1994 to 1998 for example, almost 200 individual legislative processes took place focusing explicitly on this policy area.[37] Focusing on minor interpellations only and excluding all other forms of parliamentary activities, the governments' deportation policy was on average more than once a month on the agenda with the situation in many of the parliaments of the federal states showing a similar state of affairs (cf. Ellermann 2009: 89f.).

Next to opposition within the political system, also public contestation developed into a constant feature of Germany's deportation policy. Pro-migrant and refugee organisations have developed into important actors in this policy area. Their public protest mainly focused on individual deportation measures and repatriation centres trying to prevent the implementation of deportation orders. In this respect, demonstrations at major German airports attracted considerable public attention, which tried to persuade airline staff or passengers to oppose the deportation measures. Here, the advice of Cockpit – the trade union of pilots and engineers – to their members has been influential arguing that they should only participate if the deportees also agree to take the flight (cf. Kreienbrink 2007: 29f.). On the basis of the 'church asylum' movement, the churches also became involved in this policy issue with individual religious congregations temporarily accommodating migrants whose deportation was imminent. According to the Federal Association Asylum in the Church, approximately 5,000 persons have sought protection and taken refuge in church congregations since the 1980s (Kreienbrink 2007: 35). Finally, the late 1990s witnessed the mobilisation of an increasing number of NGOs particularly following the death of a Sudanese citizen during a deportation, turning political and public opposition into an obvious enforcement constraint for the administration (cf. Ellermann 2009: 93f.; BMI 1999).

37 Based on an analysis of the Parliamentary Material Information System of the German Parliament. The search term 'Abschiebung' results in 34 hits for the 11th (1987-1990), 105 for the 12th (1990-1994) and 198 for the 13th legislative period (1994-1998).

The preceding analysis of the development of Germany's deportation policy until the late 1990s has shown that the transformation of this policy area into an active component of its immigration system came with high economic, political and diplomatic costs. The experiences of the German government as well as those of other member states show that they "face real challenges in constructing efficient and effective deportation policies. The expulsion of individuals from liberal democratic states is not a frictionless process; it is complicated by the actions of those eligible for deportation, the limitations of government enforcement capacity and the existence of important liberal norms" (Gibney 2008: 154). Despite the fact that numbers of deportations increased significantly throughout this time period, the existence of the mounting deportation gap is an obvious sign of the difficulties in delivering its original intentions on the basis of a purely unilateral policy.

5.3 Executive Cooperation in Europe: Shopping for Multilateral Solutions

Germany was the first European country to experience the consequences of the refugee crises of the 1980s and early 1990s. Confronted with rising levels of irregular migrants and difficulties in enforcing its unilateral deportation policy, the German executive was looking for international solutions from early on. One of the first activities, which can be traced back to German initiative, was a number of European ministerial conferences on irregular migration with a first one taking place in Berlin in 1991. The conference launched the Budapest Process as an intergovernmental forum aiming at solutions to the changing patterns of migration and increasing irregular migration at that time. The German Minister of Interior used the occasion of those conferences to establish the German perspective on existing major difficulties impeding an effective return policy, including the lack of effective readmission agreements and the absence of mutual support between destination countries for the transit of return migrants (cf. Walter 1995: 1126).

Despite those initiatives at the international level, the EU and its associated Schengen process provided the most obvious institutional context for the German government to establish multilateral solutions to its existing national enforcement constraints. Whereas the German government successfully included the obligation of member states to deport foreigners without permission to remain in the Schengen *acquis*, it was the Commission Communication on Immigration from 1991 which contained a first call for the development of a common policy on the return of irregular migrants (cf. CEC 1991). Furthermore, in its 1994 Communication the Commission identified the removal of those in irregular situations as a key element and marked the importance of return policies in an overall European immigration strategy (CEC 1994). Nevertheless, the concrete measures adopted during the 1990s suffered from the difficulties of the Maastricht regime with its general reliance on soft law and the complete absence of monitoring arrangements.

The Treaty of Amsterdam (ToA) and the subsequent Tampere Action Plan, again, constituted a major turning point when member states agreed to "establish a coherent EU policy on readmission and return" and to improve "the possibilities for the removal of persons […] through improved EU coordination implementation or readmission clauses" (CEC 1999a: 8-9). During the next years, policies against irregular migration and a return policy developed into the most dynamic areas of European JHA policy. Following a Green

Paper by the Commission from April 2002 (CEC 2002b) and its resulting public consultation process, the Communication on a Community Return Policy on Illegal Residents in October 2002 sketched a concrete programme for further action. Closely in line with the discussions in Germany, the Commission justified an efficient return policy with the argument that "[t]he possibility of forced return is essential to ensure that admission policy is not undermined and to enforce the rule of law, which is a constituent element of the 'Area of Freedom, Security and Justice'. A credible policy on forced returns helps to ensure public acceptance for more openness towards persons who are in real need of protection, and for new legal immigrants against the background of more open admission policies, particularly for labour-driven migration" (CEC 2002a: 8). Based on this Communication, the following Council Return Action Programme from November 2002 finally provided the central document largely structuring the policy developments of the next decade. Next to a number of country specific programmes it included three main components which are analysed separately in the following sections: (1) cooperation with third countries; (2) practical cooperation between member states; and (3) common minimum standards for return (CEU 2002f).

5.3.1 International Cooperation: Weaving the Readmission Net Closer

Increasing the cooperation with countries of origin by concluding readmission agreements constitutes the first dimension of a Community return migration policy, which is today quantitatively "one of the most used instruments of EC external relations in the field of migration" (Billet 2010: 79). From the very beginning – and in clear contrast from, for example, American unilateral activities (cf. Legomsky 2012) – it was the ambition of this policy to create a "safety net" (Bouteillet-Pacquet 2003: 364) at the entry of the EU in order to cope with irregular migrants. The analysis of the development of this policy shows that Germany – closely in line with the predictions of the venue shopping mechanism – strategically and successfully used the European level in those cases where its unilateral strategy was doomed to failure.

The history of a common European readmission policy goes back to the early 1990s when the already mentioned 'Communication on Immigration' affirmed German proposals on the future development of JHA. Specifically it contained a first call for concluding agreements with third countries to support the deportation of irregular migrants to their country of origin (CEC 1991: 22). This early proposal was substantiated in the following years by a Council Declaration in 1992 on principles of governing external aspects of migration policy committing member states to conclude readmission agreements, a recommendation concerning a specimen agreement adopted during the 1994 German Council Presidency and a recommendation on guiding principles for protocols on the implementation of readmission agreements (Lehnguth 1997: 162).[38] These early endeavours concentrated on stimulating the conclusion of bilateral readmission agreements as well as the harmonisation of their content (Coleman 2009: 18). In the following years the network of readmission agreements became closer, but an inventory conducted by the Council in September 1999 revealed that no more than 96 agreements were in force between the 15 EU

[38] The Council also decided that 'readmission clauses' should be incorporated into additional Community agreements (e.g. the Lomé Convention) and adopted a standard text for such clauses as well.

member states and 32 third countries (CEU 1999b). Next to the difficulties of weaving a closer net of agreements, these bilateral policies did not have the expected effectiveness. According to a report carried out by the German government, the hardening of the readmission policy in practice continued to be time consuming, absorbed great human resources and suffered from the fact that the number of readmissions remained relatively low in relation to overall immigration (Bouteillet-Pacquet 2003: 365).

Confronted with these difficulties, member states used the preparations for the Treaty of Amsterdam as an opportunity to provide the Commission with the mandate to negotiate Community readmission agreements and to improve the overall level of harmonisation. This decision followed at least two rationales. On the one hand, member states followed a policy of scale argument expecting the EU to be better able to use its negotiating weight to exert stronger leverage on third countries to cope with their readmission obligations. On the other hand, they expected that common agreements would stop previous experiences where countries of origin or transit played individual European member states off against each other because of differences in their agreements (cf. BMI 2006b: 167; Broeders 2009: 164). Although Germany principally opposed deeper integration of JHA at the negotiations for the Treaty of Amsterdam (Bösche 2006), the representatives of the Federal Ministry of Interior remained strongly in favour of a common return policy and continued to push for their national interests when the Treaty was put into action. During the German Presidency of the Council in May 1999 it published concrete guidelines for a European migration strategy including its own understanding of an effective readmission policy which were finally adopted by the Tampere Conclusions from October 1999 (CEU 1999a: 9).

The following developments are already well known. On the basis of a set of criteria (CEU 2002a), the Council, between September 2000 and November 2002, gave 11 mandates to the Commission to negotiate EU readmission agreements. The Commission followed an agreed standard approach seeking to achieve final texts that have as many common features as possible including procedural provisions regarding return procedures, transit return arrangements, responsibility criteria, standards of proof, time limits and cost distributions but also the readmission of third-country nationals and stateless persons (Trauner/Kruse 2008: 429). Despite initial enthusiasm, the Commission quickly ran into difficult negotiations caused by conflicting interests between the partners. Whereas the countries of destination profit from readmission agreements helping them to facilitate the removal of irregular migrants, there are few congruent motivations on the side of the countries of origin. First, the economy of the countries of origin remains dependent on the remittances of its legal, but also irregular migrants living abroad. Second, this form of international migration might function as a safety valve and reduce the pressure on local labour markets. Finally, readmission agreements might be costly for countries of origin because they are unpopular in their societies and produce additional administrative costs (Cassarino 2010: 23f.). Those fundamental problems had already been identified in the Commission's Green Paper from 2002, which argued that those "agreements are solely in the interest of the Community, [and that] their successful conclusion depends very much on the 'leverage' at the Commission's disposal" (CEC 2002b: 23). Confronted with a situation in which there was little that could be offered to countries of origin in return for readmitting their citizens, the Commission had to find measures that would encourage third countries to accept their readmission obligations (cf. Bouteillet-Pacquet 2003: 370f.; Schieffer 2003).

Table 5.2: State of play in negotiations of EU Readmission Agreements until the end of 2012, by year/month

Country	Mandate received	Agreement signed	Entry into force
Sri Lanka	2000/9	2004/6	2005/5
Russia	2000/9	2006/5	2007/6
Pakistan	2000/9	2009/10	2010/12
Morocco	2000/9		
Hong Kong	2001/4	2002/11	2004/3
Macao	2001/4	2003/10	2004/6
Ukraine	2002/6	2007/6	2008/1
Albania	2002/11	2005/4	2006/5
Turkey	2002/11	2012/6	(2014/10)
China	2002/11		
Algeria	2002/11		
Macedonia	2006/11	2007/9	2008/1
Bosnia and Herzegovina	2006/11	2007/9	2008/1
Montenegro	2006/11	2007/9	2008/1
Serbia	2006/11	2007/9	2008/1
Moldova	2006/12	2007/10	2008/1
Georgia	2008/11	2010/11	2011/3
Cape Verde	2009/6		
Belarus	2011/2		
Armenia	2011/12	2012/12	(2014/1)
Azerbaijan	2011/12	(2014/2)	(2014/9)

Source: Commission (2011c) and the publication of the agreements in the Official Journal of the European Union. Agreements without date for signing the agreement are still under negotiation. Dates in brackets indicate the dates of signed agreements or the entry into force of agreements since 2013.

Unsatisfied with the progress made, in 2002 member states began to call for the speeding-up of on-going readmission negotiations. Traditionally, Germany was one of the countries unwilling to provide the Commission with broader leverage during negotiations. The national debate in Germany – the Council of Experts on Migration and Integration but also several representatives of the administration during the evaluation of the new immigration act (BMI 2006a: 211f.; Sachverständigenrat 2004: 348) – argued for greater European harmonisation. In response, the BMI used its Presidency of the Council in 2006 for a reform, arguing in its agenda for the Presidency that they wanted to improve returns of third-country nationals and that they saw a greater need to work closely together with the respective third countries. Building upon a Commission Communication (CEC 2006b: 6), the German Presidency strengthened the European Neighbourhood Policy (ENP) by making visa facilitation a major means of dispelling the doubts of the ENP countries that

the EU was not willing to make serious concessions (CEU 2007b). These decisions marked "a watershed in the EU approach to negotiations on readmission" (Cassarino 2010: 32) and revealed the growing awareness to strike a compromise with third countries.

These initiatives have not solved all existing problems, however. A recent evaluation of EU readmission agreements demanded by the Stockholm Programme (CEU 2009c) argued that in all but a few countries (e.g. the Western Balkan countries) the negotiations take a very long time, with countries like Morocco or China constituting particularly difficult cases (Commission 2011d: 6). The former problems have not vanished completely and the Commission continues to complain that, "[t]he stiffness of the negotiating directives doesn't help, and some clauses on third-country nationals are controversial" (EPC 2012). Finally, with respect to the lack of incentives from the side of countries of origin, the Commission continues to argue that more attractive coherent packages should be offered, whereas standalone readmission negotiating mandates should no longer be proposed (Commission 2011d: 7). Despite those problems, the evaluation of these Agreements shows that since 2000 the Council has already adopted 21 negotiating mandates resulting in 15 agreements successfully negotiated by the Commission by the end of 2012 (cf. Table 5.2). Of those agreements 13 entered into force between 2004 and 2012, now serving the interests of all member states for more effective removals of irregular migrants.

5.3.2 Operational Cooperation: Assisting Each Other with Deportations

The second dimension of Europe's common return policy concerns all aspects of operational cooperation, referring to those measures designed to circumvent existing practical and administrative enforcement constraints. Again, Germany was very active during the uploading dimension of this policy. This is the case for the Schengen negotiations, which largely pre-structured the developments in this policy, as well as later developments after the Treaty of Amsterdam. The first measures in this policy area were adopted in the context of the 'London Resolutions' from 1992 when member states discussed best practices in expulsion and common rules for transit for the purpose of expulsion,[39] followed by a recommendation from 1994 on a common standard travel document ('laissez-passer') for the expulsion of third-country nationals (CEU 1994), and a recommendation from 1995 on concerted action and cooperation in carrying out expulsion measures (CEU 1995). All of those measures were non-binding recommendations and despite regular calls for more stringent implementation by Germany and other member states (e.g. CEU 1999c, d), they resulted in limited practical effects for the day-to-day routine of administrations in charge of forced removal measures.

With the Treaty of Amsterdam laying down in Article 63(3) b TEC that the Council should adopt measures on irregular migration and return, the Council together with the Commission acted swiftly and transferred those non-binding measures into legally binding ones. Altogether, the EU has adopted three measures since 1999 consisting of five individual legal acts (for the following analysis see also Ette/Kreienbrink 2008). The first measure concerns Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third-country nationals which resulted from a French initiative and the

[39] In November 1992 two recommendations have been passed: a Recommendation regarding practices followed by Member States on expulsion as well as a Recommendation regarding transit for the purposes of expulsion.

connected Council Decision 2004/191/EC correcting for the financial imbalances of the previous decision. The Directive was the first legally binding step towards the improvement of European cooperation in the area of forced removal and aimed at increasing the efficiency of carrying out return measures by facilitating the mutual recognition of an expulsion decision issued in one member state against a third-country national present within the territory of another member state. The connected Decision set out criteria and practical arrangements for the compensation of any financial imbalances which may result from the application of the Directive and followed the intention of encouraging member states to use the mechanism in Directive 2001/40 more frequently (Peers 2004: 83).

The second European measure concerns Council Decision 2004/573/EC on the organisation of joint flights for removals of third-country nationals who are subjects of individual removal orders, following an Italian initiative and Council Decision 2005/267/EC establishing a secure web-based Information and Coordination Network for Member States' Migration Management Services. The purpose of those two Decisions is to coordinate joint removals by air and install a device which allows member states to detect whether other member states are also planning to remove persons to similar countries of transit or origin (Acosta 2009: 22f.).

In all of the measures discussed so far, there is a clear link to already existing recommendations from the 1990s and the overall smooth negotiation process in the respective Council working groups (cf. Table 5.3) provides evidence that Germany had successfully uploaded its national preferences into common European policy instruments. In the case of Council Directive 2003/110/EC on assistance in cases of transit for the purposes of removal by air, the German influence was most obvious. Already in 1998, Germany complained about the difficulties of implementing the 1995 recommendation and argued during the preparations for its Council Presidency that in cases of deportations by air via transit countries experience had shown that regular failure could have been avoided had the accompanying officials been given adequate support at the transit airport by the local security forces. The fact that accompanying officials depend wholly on the active support of those with local jurisdiction is an incentive to those being deported to take advantage of the situation and use violence to break free. As a consequence, the aim of the German Presidency was "to develop smoother and more effective cooperation between accompanying officials and local security forces in EU transit airports and to place such cooperation on a common footing, binding on all Member States" (CEU 1998: 2).

The 2003 Directive followed directly from this initiative and defined measures on assistance between the competent authorities at member states' airports of transit, including the facilitation of short-term transit and the provision of necessary material assistance. The quantitative analysis of the uploading process of these legislative instruments was hampered by incomplete protocols about working group meetings. Nevertheless, Table 5.3 shows that for the two instruments available, only 34 reservations were put forward by national representatives during the first reading, showing the general interest of member states in these forms of operational cooperation. Particularly in comparison with the previous chapter on asylum, Germany has been specifically reluctant with only seven reservations and comments showing that the instruments were clearly in line with its national interests.

Table 5.3: National preferences in Council of the European Union negotiations: Numbers and quotas of scrutiny reservations and proposals for modification introduced by member states on the original draft legislation

		AT	BE	DE	EL	ES	FI	FR	HU	IT	IE
Transit Directive[1]	N	3	3	3	1	5	3	5	-	6	3
	%	20	20	20	7	33	20	33	-	40	20
Decision on financial compensation[2]	N	1	0	4	2	5	2	8	-	4	0
	%	5	0	21	11	26	11	42	-	21	0
Frontex Regulation[3]	N	1	3	3	3	4	4	10	2	0	1
	%	4	11	11	11	15	15	37	7	0	4
Total	N	5	6	10	6	14	9	23	2	10	4
	%	8	10	16	10	23	15	38	3	16	7

		LT	LU	MT	NL	NO	PL	PT	SE	UK	Tot.
Transit Directive[1]	N	-	0	-	4	-	-	6	3	4	15
	%	-	0	-	27	-	-	40	20	27	
Decision on financial compensation[2]	N	-	0	-	5	-	-	1	3	4	19
	%	-	0	-	26	-	-	5	16	21	
Frontex Regulation[3]	N	1	0	1	2	1	1	1	7	5	27
	%	4	0	4	7	4	4	4	26	19	
Total	N	1	0	1	11	1	1	8	13	13	61
	%	2	0	2	18	2	2	13	21	21	100

Sources: [1] CEU (2002e, 2003a, b); [2] CEU (2003c, d, e); [3] CEU (2004b, d). Many scrutiny reservations and proposals for modification are introduced and supported by several member states. Therefore, percentage figures do not add up to 100% but provide a measure of the participation of each member state in the negotiations.

Note: Concerning Council Directive 2001/40/EC as well as Council Directive 2004/573/EC no data is available because no detailed protocols about Working Group meetings have been published which could be used to identify each member states' participation in negotiations. However, the speed of negotiations shows that member states had little difficulties in adopting those measures. Concerning Council Decision 2005/267/EC the protocols are only partially available to the public. Particularly the necessary information linking a specific comment to a specific national delegation has been deleted.

The institutional context of the EU did not provide the only venue where Germany and other member states tried to circumvent existing national enforcement constraints and shopped for more effective return policies. Next to adopting common legislation, inter-governmental activities outside the European treaties continued. A first example in this respect is a multilateral transit agreement from May 2000 with the purpose of returning Yugoslav nationals to their country of origin signed by Germany, Italy, Croatia, Slovenia,

Hungary, Bosnia and Herzegovina, Austria and Switzerland. A second example is the Prüm Convention from May 2005, which is regularly cited as the most obvious instance for the continuity of the venue shopping mechanism during the last decade (e.g. Balzacq, et al. 2006; Kietz/Maurer 2006; Parkes 2010). On the initiative of Germany, the Treaty was finally signed by seven member states of the EU – Belgium, Germany, Spain, France, the Netherlands, Luxembourg, and Austria – and as a purely intergovernmental process closely followed the method of Schengen cooperation. Although the major focus of this Convention was on cross-border police cooperation whose major achievements were later incorporated into the Community *acquis* during the German Council Presidency in 2007 (CEU 2007a), it also included aspects of increased cooperation on deportation measures as well. In this respect, Article 23 outlines the support and cooperation required for removal measures.

Whereas the Prüm Convention included little for a more effective deportation policy that was not already prescribed in existing EU legislation, it nevertheless showed the unbroken interest of the German government in strategically searching for European solutions to domestic problems. The most far-reaching decision with respect to operational cooperation, however, must be seen in the founding of the 'European Agency for the Management of Operational Cooperation at the External Borders' (Frontex). Again, the establishment of this agency goes back to an initiative by the German government. Schily, the then German Minister of Interior argued at that time that, "[w]e are the engine of Europe's Justice and Home Affairs; we can say that with great confidence" (Bundestag 2003b: 4953) and the German "fingerprint" is clearly visible during this uploading process (Baumann 2005: 147).

Next to improving the effectiveness of its deportation policy by centralising certain functions at the supranational level, Germany also had additional motives for establishing such an agency. The imminent enlargement of the EU deprived Germany of all external borders of the EU and the BMI was interested in finding a new use for the staff of the Federal Police (BPol). Additionally, with minimal own external borders the government was concerned that it would lose its influence on European border controls. The establishment of a common agency therefore provided the BMI with continuing influence in this policy area and its implementation in other member states. The origins of this process reach back at least to October 2001 when Germany together with Belgium, France, Italy and Spain commissioned a feasibility study on the idea of a European Border Police (BMI 2002). During first discussions of the idea at the Laeken European Council in December 2001 the UK as well as other member states remained hesitant and a first practical result was the adoption of a 'Plan for the management of the external borders of the Member States of the European Union' in June 2002. Although this plan did not include the idea of a European Border Guard (CEU 2002d: 27), it identified the need for more operational cooperation and coordination and closer integration. In the following months, national pilot projects were set up by the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) resulting in concerted border control activities at the external borders of the EU. After fewer than two years, however, it became obvious that SCIFA was increasingly unable to cope with the increasing workload, resulting in the Council decision of October 2004 to establish Frontex (cf. Baumann 2005: 125f.; Pollak/Slominski 2009: 908; Neal 2009: 340). Similar to the legislative measures discussed before, the fact that Germany has been actively involved during the preparations of this instrument resulted in minimal interventions of the German representatives during negotiations in the working groups. Table 5.3 shows that despite the far-reaching consequences of establishing Frontex only 27 reservations and comments were put forward during the first reading with only three submitted by Germany.

Frontex's stated purpose is listed in Article 2, arguing that the agency "shall perform the following tasks: (a) coordinate operational cooperation between Member States in the field of management of external borders; (b) assist Member States on training of national border guards, including the establishment of common training standards; (c) carry out risk analyses; (d) follow up on the development of research relevant for the control and surveillance of external borders; (e) assist Member States in circumstances requiring increased technical and operational assistance at external borders; (f) provide Member States with the necessary support in organising joint return operations" (Council Regulation 2007/2004/EC). Article 9 of the Regulation mandates that the agency, among other things, supports return measures of EU member states by identifying and exchanging best practices on the acquisition of travel documents and the removal of illegally staying third-country nationals. Frontex is also charged with taking part in joint training measures for officials, aiming at harmonised training levels within Europe.

Although Frontex has a much broader role to fulfil, recent years have shown that its function for a common return policy expanded constantly. In parallel to its remarkable development of its staff figures (cf. Frontex 2006: 3, 2012: 27), Frontex's budget has seen a clear increase since its inception: starting with 19.2 million euros in 2006 rising to 116.1 million euros in 2011. Particularly in comparison to the European Asylum Support Office as the second newly established agency in this policy area, those numbers show an obvious political determination to invest substantial sums into its operational readiness. Return cooperation has shown a disproportionate increase, which started with a share below 1.1 % of operational activities in the first three years and increased to almost 16 % of its financial resources for operational activities pouring into this area in the last three years (cf. Table 5.4).

Table 5.4: Financial resources of Frontex, yearly available appropriations 2005-2012, in 1,000 euros

	2005[0]	2006[1]	2007[1]	2008[2]	2009[3]	2010[4]	2011[5]	2012[6]
Return cooperation	80	100	300	2,560	5,496	9,041	11,671	9,993
Operational activities total	4,024	13,066	27,496	50,535	62,250	47,449	85,596	59,720
Grand total	6,157	19,166	42,150	70,432	88,250	92,847	116,059	89,578

Source: [0] Frontex (2005a: 6); [1] Frontex (2008: 11f.); [2] Frontex (2009: 43); [3] Frontex (2010c: 47); [4] Frontex (2011: 44); [5] Frontex (2010d: 19f.); [6] Frontex (2013a).

Note: Financial resources for return cooperation for the years 2006 and 2007 are based on draft budget figures taken from respective programmes of work (Frontex 2005b: 9, 2007: 9).

Compared to national border management, Frontex's activities are quantitatively – with respect to personal and financial resources as well as actual numbers of operations and return operations carried out – unimpressive and there still exists at a huge discrepancy between its legally prescribed tasks and actual implementation. Nevertheless, Frontex has established itself in recent years as an agency whose existence produces positive interaction effects, by reducing the transaction costs of coordination without compromising member states' sovereignty and "accomplish[ing] a rapprochement in terms of interests, legal traditions and ideas through information sharing and collective learning processes" (Pollak/ Slominski 2009: 913). Furthermore, the German government shows an undiminished interest

in strengthening the agency in its "handmaiden role" (Parkes 2011: 3) by helping member states to help one another. The occasion of Germany's Council Presidency in 2007 provided the BMI with an opportunity when they significantly strengthened Frontex by implementing rapid intervention teams as well as increased support by Frontex for joint return flights (cf. BMI 2006d: 33; CEU 2007c; Parkes 2010: 142). Finally, developments in 2011 and 2012 provide evidence that the agency's role in Europe's return policy is likely to increase in the future. This includes Frontex's expansion of its activities in other areas – including the urgent assistance request from the Greek government, resulting for the first time in the Rapid Border Intervention Team mechanisms to increase control and surveillance levels at the border between Greece and Turkey (Frontex 2010b, a) – which paves the way forward and shows that Frontex is generally likely to take over more responsibility. More specific to its role in return policy, the adoption of the new Regulation governing Frontex in October 2011 signified a gradual strengthening of the agency particularly with regard to its role in joint return operations (CEU 2011b).[40]

5.3.3 Legal Harmonisation: Codifying Coercive State Capacities

Compared to the large number of European measures focusing on international and operational cooperation, only few European provisions exist concentrating on the third dimension of European return policies – legal harmonisation. So far, the member states have been in the driving seat. Closely in line with the predictions of the venue shopping framework they effectively shaped international and operational cooperation measures. Instead, progress in this third dimension was primarily caused by the Commission and for the first time the European Parliament following the co-decision procedure. In line with the developments in asylum policy, it is the backdoor opposition mechanism that successfully accounts for the dynamics in this third dimension. A first step towards legal harmonisation was taken with the adoption of the non-binding Common Guidelines on Security Provisions for Joint removals by Air accompanying the Council Decision on the organisation of joint flights for removals. This followed regular calls by the Commission for the establishment of common legal standards concerning the ending of legal residence, preconditions for expulsion decisions, detention pending removal, removal, the mutual recognition of return decisions and proof of exit and re-entry (CEC 2002b), Of greater importance than those non-binding guidelines has been the Return Directive (2008/115/EC) which was first proposed in October 2005 by the Commission "to provide for clear, transparent and fair common rules concerning return, removal, use of coercive measures, temporary custody and re-entry, which take into full account the respect for human rights and fundamental freedoms of the persons concerned" (CEC 2005e: 2). In order to enable enhanced cooperation among member states, the proposal aimed to develop the legal grounds on all aspects of return migration and to deal with the problems caused by the ability of irregular migrants to move between member states to avoid expulsion. More precisely the proposal included the

[40] Next to the establishment of Frontex and the adoption of the different Directives and Decisions supporting operational cooperation, the EU initiated the European Return Fund in 2007 followed by the more recent Asylum, Migration and Integration Fund from 2014 onwards, which aim at improved return management and encourage the development of co-operation between EU countries. In Germany, the financial support by the Fund is mainly used for supporting voluntary return measures and consequently not discussed in any greater depth in this study (cf. Bundestag 2011b).

principle of voluntary return by establishing a general rule that a 'period for departure' should normally be granted establishing a harmonised two-step procedure which involved a return decision as a first step and, if necessary, the issuing of a removal order as a second step, and finally provided a minimum set of procedural safeguards limiting the use of detention pending removal.

The negotiations about this Directive lasted for more than three years and related to a whole list of highly contentious aspects (cf. Acosta 2009: 26f.). This included, for example, the proposed primacy of voluntary departure and the four-week period attached to it. Further conflicting aspects concerned the re-entry ban, which was planned to normally not exceed five years, the proposal for effective judicial remedies with suspensive effect against a return decision, detention prior removal and its maximum lengths, as well as provisions on the special treatment for unaccompanied minors. Whereas academics and non-governmental organisations criticised the low standards established by the proposal (cf. Amnesty International 2006; UNHCR 2005; Marx 2006), for member states these standards still proved too high. From their perspective, the Directive had to ensure that return and removal were facilitated and provisions that were likely to prevent or delay the process were consequently forcefully resisted (Baldaccini 2009). The fiercest opponents in the Council were the UK, the Netherlands, Greece, Sweden and Germany (cf. Acosta 2009: 28; Fellmer 2011).

In Germany, the Commission proposal triggered in-depth political discussions with the German Federal Conference of the Ministers of Interior (IMK) and the Bundesrat, arguing that the proposal by the Commission was going too far, did not support the aim of fighting irregular immigration and fell behind already established measures in national legislation (Bundesrat 2005; IMK 2005; see also Franßen-de la Cerda 2008: 378f.). Critical statements were also voiced by German legal scholars. Hailbronner (2005b: 353-360), in particular, argued that the obligatory two step procedure would most likely contradict the aim of speeding up the process of removal; that the proposal did even increase international standards concerning the removal of minors and that the restriction of detention to six months at most was in contrast to Germany's experience which allowed to 18 months. As a consequence, the proposed provisions were rewritten in a series of meetings of the Council's Working group on migration and expulsion (Webber 2007). The analysis of the first reading of the Directive in the Council working group shows many similarities to the pattern found on asylum. Table 5.5 shows that overall 136 reservations and comments were put forward by national delegations with Germany supporting 37 %, again making it the country with the greatest activities during this process.

The first reading of the proposal lasted for more than a year and many actors in the Council preferred "to see this initiative quietly dropped" (Parkes 2007). During the Finnish Presidency negotiations finally got stuck and it was the German Presidency that restarted the process, as it provided Germany again with great influence to shape the final outcome of the Directive. Following a consultation with member states, the German Presidency presented a redraft of the original proposal in February 2007 arguing that, "Community rules should cover only some aspects of return and removal and must make allowance for Member States' established arrangements and procedures. More extensive harmonisation of return, including all the procedural rules, should be attempted only in the long term. In any event, it needs to be ensured that return and removal are not prevented or delayed by Community provisions" (CEU 2007d: 2; on this process see also Franßen-de la Cerda 2008: 379). The new German proposal highlighted the dominance of member states national laws and practices with the voluntary departure period, the possibility to be granted legal aid, the

length of detention and the possibility of a re-entry ban all left entirely within national discretion. Acosta (2009: 29) argued that, "the German Presidency wanted to drain the proposal of all its significance" and the provisions left in the German text "are not really worthy of being described as 'first-stage' EC harmonization" (Peers 2007: 2). Following the preparatory work of the German presidency, the Directive was then discussed in the informal Trilogue meetings between Council, Commission and European Parliament. The participation of the European Parliament has undeniably led to higher standards than the Council proposals, for example introducing provisions demanding forced return monitoring systems, but overall the Parliament acted in a very pragmatic way and political agreement was reached in June 2008 (cf. Acosta 2009; Bendel 2008a; Monar 2009: 156).

Table 5.5: National preferences in Council of the European Union negotiations: Numbers and quotas of scrutiny reservations and proposals for modification introduced by member states on the original draft legislation

		AT	BE	CH	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IS	IT
Return	N	27	37	15	11	23	50	11	33	26	25	18	35	15	2	27
Directive	%	20	27	11	8	17	37	8	24	19	18	13	26	11	1	20

		IE	LI	LT	LV	LU	MT	NL	NO	PL	PO	PT	SE	SI	SK	UK	Tot.
Return	N	18	4	15	4	9	18	39	11	37	5	18	34	15	9	18	136
Directive	%	13	3	11	3	7	13	29	8	27	4	13	25	11	7	13	

Sources: CEU (2006i, b, c, d, e, f, g, h). Many scrutiny reservations and proposals for modification are introduced and supported by several member states. Therefore, percentage figures do not add up to 100% but provide a measure of the participation of each member state in the negotiations.

The analysis of the uploading process of the Return Directive shows a close fit with the predictions of the backdoor opposition mechanism. The member states, and here Germany in particular, played again a prominent role and successfully shaped the original Commission draft along the lines of their national interests. Even the changing institutional conditions with the application of the co-decision procedure and the increased rights of the European Parliament have not resulted in any fundamental changes to the process or its outcomes. The final results diverged widely from the original Commission draft and the member states made sure that the Directive would result in minimal changes to the previously existing domestic *status quo*. In particular the numerous exceptions and discretions to the rules governing the return process "will ensure that widely diverging practices will persist and call into question the level of harmonisation which has been achieved" (Baldaccini 2009: 17). Whereas the member states viewed the final Directive as a balanced compromise between the interests of member states and the interests of irregular migrants, NGOs and international organisations heavily criticised the outcomes, which they judged as an "expulsion regime that is lacking from a perspective of the rights of the individual" (cf. ECRE 2008; Amnesty International 2008; UN 2008).

5.4 Unbearable Lightness of Complying: The Administrative Implementation of New European Structures

The activities of the German executive during the uploading dimension of Europe's common return policy followed two different mechanisms of Europeanisation. On the one hand side, the propositions of the venue shopping mechanism largely fit the political processes and outcomes of European policies addressing international and operational cooperation. On the other hand side, the analysis of the Return Directive showed that the third dimension of this policy area – legal harmonisation – follows the backdoor opposition pattern. The final section of this case study concentrates on the downloading dimension of Europeanisation and analyses the implementation of those European developments into Germany's return and deportation policy. It argues that the Return Directive has in negligible policy changes at the domestic level so far, but reveals a completely different situation with respect to international and operational cooperation. Here, the new policies and institutions of the EU have resulted in a dualist system, increasing the overall problem solving capacity and effectiveness of Germany's migration control policy. The unbearable lightness of complying (Ette/Kreienbrink 2008: 69) describes the activities of the administration easily implementing the new European structures and instruments into their day-to-day routines.

5.4.1 Cosmetic Changes to the Legal Framework

The German executive never perceived the existing domestic legal framework governing return and deportation as a crucial factor constraining the effective enforcement of this policy. Neither during the 1990s nor during the last decade had legislative reforms constituted the main focus of debate. In 2006, the German Ministry of Interior affirmed this perspective arguing in the context of the evaluation of the Immigration Act that existing obstacles to the effective return and deportation of migrants could only to a small extent be abolished by means of federal legislation and that existing regulations were largely sufficient (cf. BMI 2006b: 7; Cernota 2006: 391). This position explains the activities of the German government during the negotiations about the Return Directive when they showed little appetite for any legislative changes calling into question the national *status quo*. Although the final text of the Directive includes some aspects that had to be transposed into German legislation, the BMI strictly controlled the national transposition process. In line with the predictions of the backdoor opposition mechanism it adopted its strategies of late, restrictive, incomplete and incorrect transposition to reduce the European influence on the national legislative framework as far as possible.

Late transposition of the Return Directive constitutes the first strategy to oppose remaining European demands. Finally published in the Official Journal of the European Union in December 2008, the member states were supposed to transpose the Directive by the end of 2010. Although the BMI prepared draft legislation in 2009, the government did not agree before March 2011[41] and the Ministry used the opportunity to speed up the

[41] "Act to Implement Residence-Related Directives of the European Union and for the Adaptation of National Legal Provisions to the EU Visa Codex" (Gesetz zur Umsetzung aufenthaltsrechtlicher Richtlinien der Europäischen Union und zur Anpassung nationaler Rechtsvorschriften an den EU-Visakodex) finally enacted in November 2011.

legislative process with reference to the European deadlines which had already lapsed. The opposition parties as well as the European Commission complained about this governmental strategy. Whereas the first criticised the unnecessary creation of time pressure and the reduction of parliamentary scrutiny to an absolute minimum (Basse, et al. 2011: 363; Bundestag 2011h: 31), the Commission decided in September 2011 to send Germany a reasoned opinion because of its failure to ensure full compliance with the EU Directive (cf. Commission 2011b). Time pressure was used by the Ministry to keep the political process under control. With the same intention, the Ministry presented its draft legislation again as a purely technical endeavour. With the existing immigration law already consistent with the Directive, the BMI as well as the representatives of the federal states argued that the draft law constituted only a "one-to-one" (Bundestag 2011h: 21; see also Bundestag 2011f: 17f.) transposition, strictly following the European demands and not including any issues of concern for the domestic political debate. Time pressure together with this highly technical presentation of the legislation depoliticised the issue and reduced the opportunity for successful mobilisation. This was true for the Coalition government, the opposition parties as well as for actors outside the political system. Concerning the governing parties, their coalition contract from autumn 2009 explicitly referred to the provisions of the EU Return Directive, arguing that they would evaluate Germany's return policy and in particular the conditions of detention pending deportation (CDU/CSU/FDP 2009). Similarly, the opposition parties (Bundestag 2010a), as well as a broad coalition of NGOs tried to use the transposition process to make their own political claims (Amnesty International, et al. 2009; see also JRS 2010; Rechtsberaterkonferenz 2010). The final Transposition Act of November 2011 shows, however, that the Ministry successfully controlled the political process. Neither the parts of the government originally interested in a reform nor the opposition parties or the NGOs were able to significantly shape the legislation in their interests.

Restrictive transposition is a second aspect of the backdoor opposition mechanism providing national executives with an opportunity to interpret the provisions of European Directives in their interests. In those cases where the Return Directive provided scope for interpretation, the German government regularly opted for the restrictive transposition of European demands. A first example is the provision requiring that member states provide for an effective forced-return monitoring system. In Germany no legislative changes followed from the Directive, with the government arguing that sufficient administrative control mechanisms already existed and that alternative systems would create unnecessary additional costs. The underlying intention of the Parliament and the Commission was that member states would introduce monitoring systems including with the participation of independent actors. In Germany such systems already existed at some international airports on a voluntary basis and in particular the churches wanted to see the Return Directive legally codify and expand those systems (cf. Allenberg/Küblbeck 2011). Although the intention of the Directive was different, legal experts during a public hearing in the Parliament argued in favour of the government. Because the Directive does not explicitly demand the incorporation of independent actors, the new legislation was a restrictive interpretation but did not infringe the Directive (cf. Bundestag 2011h: 24; but see Keßler 2014).

A second example concerns the length of detention, which constituted one of the most controversial aspects during the negotiations of the Directive. Because of German pressure, the Directive finally included the possibility for detention periods of up to 18 months. Although Germany and Greece were the only countries making use of such a restrictive application of detention prior to deportation, the German government did not see any

reason to change the existing national *status quo*. Finally, a third example concerns the necessary supervision of a judicial authority reviewing prolonged detention periods. Again, the German system already provided for judicial review, but the opposition parties nevertheless complained that this process did not sufficiently consider the rights of irregular migrants if they were not adequately supported by legal professionals (Keßler 2012). Particularly in Germany's federal political system only uniform legal prescriptions would help to secure such rights of irregular migrants because otherwise the federal states implement widely diverging actual practices as a major interpellation in the Parliament indicated (Bundestag 2012b).

The federal political system in Germany is also the cause for the most obvious case of incomplete or even incorrect transposition – the third strategy of backdoor opposition – relating to the conditions of detention. The Directive stipulates that member states have to provide accommodation in specialised detention facilities and only in cases where these are not available they are allowed to resort to prison accommodation and only if detained irregular migrants can be kept separate from ordinary prisoners. In principle, the new § 62 a in the Residence Act (AufenthG) transposes this provision, but includes an escape clause stating that federal states without specialised detention facilities are allowed to continue detention within normal prisons. During the expert hearing in the parliament, the government was criticised for this case of incorrect transposition and was urged to actively push for establishing specialised facilities. Similarly, the Commission argued that with special detention centres in several federal states in Germany, the continued detention of irregular migrants in prisons was clearly inadmissible. The final legislation nevertheless included this escape clause. Whereas the government was recalcitrant to change this (Bundestag 2011h: 17; Habbe 2011: 290), a ruling by the European Court of Justice in April 2014 together with a formal notice sent by the Commission in October 2014 (Keßler 2014) has now ended this practice. These European developments – together with other shortcomings of the legal situation in Germany compared to the requirements of the Return Directive – finally resulted in a more fundamental reform of the legal situation on detention in July 2015 (BAMF 2015a: 48f.).

5.4.2 Dualist Systems of Readmission

The transposition processes of the Return Directive largely followed the propositions of the backdoor opposition mechanism. Together with active opposition by Germany and other member states during the uploading dimension, the extent of Europeanisation of those policies addressing legal harmonisation of return policies is close to the inertia end of the spectrum. Overall, the Return Directive neither markedly improved the situation of irregular migrants in Germany nor did it cause a race to the bottom and a withdrawal of existing standards. In comparison, transposition processes of European policies addressing international and operational cooperation greatly differed. Here, the German administration was eager to apply new European instruments and institutions once they had been established. In both cases, European cooperation has certainly not transformed previously existing domestic policies and practices. Instead, the new European structures have been easily incorporated into the existing structures and supported the administration in establishing more effective policies.

The establishment and application of Community readmission agreements marks a first case where such dualist systems of European cooperation exist (Cassarino 2010). Although

the Treaty of Amsterdam (ToA) transferred the competence to conclude readmission agreements to the Commission, the extent of this competence developed into a controversy between the member states and the Commission during the German Presidency of the Council in May 1999. Whereas the Commission argued for its exclusive competence, the member states opposed this view and reserved their right to conclude bilateral agreements. The only applicable exception stipulated that in cases where a Community agreement is signed this agreement shall take precedence over any bilateral provisions (cf. CEC 2002b; Cassarino 2010; Peers/Rogers 2006a: 888). The nature of this dispute paved the way forward. Germany continued its established domestic policy with the European level becoming a welcome supplement for those cases with lower priority or where bilateral initiatives failed.

When the ToA entered into force in May 1999, Germany had already signed 24 bilateral readmission agreements with 19 of them concluded between 1992 and 1999. Despite the new European dimension of this policy area, domestic efforts did not diminish with another 13 agreements signed between 2000 and 2012 (BMI 2015). Geographically, the early agreements covered the direct neighbours (e.g. Poland, Czech Republic, Bosnia and Herzegovina) and only later addressed major irregular migration producing countries at a greater distance from Germany (e.g. Morocco, South Korea, Armenia, Syria, Kazakhstan). During the last decade, this existing bilateral web of readmission agreements was amended by 13 EU readmission agreements, which entered into force between 2004 and 2012, as well as eight additional countries where negotiations are still under way (cf. Table 5.2).

Proper assessments of the importance of Community readmission agreements for Germany and other member states are rare (cf. Janmyr 2015; Kohls 2014: 28; for a more general debate about the difficulties to evaluate the effectiveness of migration policies see Czaika/Haas 2013). From a quantitative perspective alone, readmission agreements have developed into "one of the most used instruments of EC external relations in the field of migration" (Billet 2010: 79). Because of the meagre negotiation results, however, negative evaluations of the readmission policy are rather widespread and there exists a general feeling that the existing agreements are not of great relevance. The main difficulty for conducting a comprehensive evaluation of this policy instrument is the lack of accurate data and Coleman (2009: 319) rightly complains that "there is a need for more statistical data regarding the numbers of returns implemented by the Member States using a readmission agreement. More qualitative data, regarding implementation problems, and the functioning of formal readmission procedures, are also required". Also the Commission has taken up this argument proposing in their evaluation to "examine options for the extension of the existing Eurostat data collection on returns to allow these statistics to provide a useful basis to assess the implementation of the EURAs" (Commission 2011d: 3; see also Cassarino 2010: 43f.).

Despite the difficulties in conducting substantial evaluations at the EU level, the assessment of Community readmission agreements and their impact on the situation in Germany proves less demanding. Concentrating on third countries only, the quantitative analysis of the last decade has been particularly dynamic. In 1999 Germany had signed only four agreements with third countries. This number increased to 22 by the end of 2012 with nine on a purely bilateral basis, five with a legal basis in European as well as national legislation and eight on a purely European basis. This simple evaluation shows that the national together with the European initiatives of the last decade have substantially broadened the previously existing bilateral web of readmission agreements, and Federal Police reports demonstrate that the EU Readmission Agreements are largely applied

without major difficulty (Schneider 2012: 66). The dualist structure of both, national and European agreements, improves the situation for the administration responsible for carrying out deportations.

A more comprehensive evaluation of the existing readmission agreements necessarily has to rely on data about returned migrants. In Germany such information has been available since 2005 when the government had to provide the Parliament with the necessary statistics by answering yearly motions presented by the socialist party Die Linke. Those documents present yearly deportation figures carried out by air for each country of destination. Despite generally decreasing deportation figures in recent years, the data provide evidence that the percentage of deportations carried out on the basis of bilateral or European readmission agreements is clearly on the rise. Between 2005 and 2011 overall 56,000 deportations to third countries were carried out by air of which 25,000 were organised on the basis of a readmission agreement. More important than aggregate figures, is the development during the last seven years (see Table 5.6). Whereas in 2005 only 34.8 % of all deportations were carried out on the basis of a readmission agreement this number clearly increased to 68.3 % of all deportations being carried out on the basis of an agreement in 2011. This trend is explained by the growth of bilateral as well as European readmission agreements with the latter providing in 2011 the basis for 43.4 % of all deportations.

Although the German experience also shows that a Community readmission agreement does not fundamentally alter the quality of cooperation in those cases where the cooperation had been problematic before (Schneider 2012: 66), the fact is that two thirds of all deportations from Germany are meanwhile organised on the basis of either national or European readmission agreements, a figure which doubled within only seven years. This trend is set to continue in the following years with five more readmission agreements currently under way. Furthermore, in March 2011 an agreement entered into force with Georgia and in June 2012 the EU signed an agreement with Turkey, a country that had caused 15 % of all deportations to third countries from Germany in the previous seven years. The negotiation of a readmission agreement with Turkey was a major demand of the German administration during the evaluation of the Immigration Act in 2006 (BMI 2006a: 211) and will, if it enters into force, support the deportation of a substantial number of irregular migrants to Turkey (cf. Bürgin 2011; Bundestag 2011d). Whereas a recent examination of the Council showed that most member states have little difficulty returning Turkish nationals to Turkey the opposite is true for the return of third-country nationals, which are now covered by the new agreement (CEU 2012e).

Overall, the analysis has shown that the actual meaning of the European readmission policy has to be seen in these dualist – national and European – structures that co-exist today. The European readmission agreements were easily absorbed into the day-to-day routines of the administration in Germany. Although this form of Europeanisation has not resulted in transformative change, the administrative processes have become easier through this new dualist structure and the costs of deportation have reduced.

Table 5.6: Development of deportations by air from Germany to third countries organised on the basis of existing bilateral or European readmission agreements, 2005-2011, in percentage

	2005	2006	2007	2008	2009	2010	2011
Deportations into countries on the basis of bilateral readmission agreements	34.0	37.2	40.8	43.2	41.4	53.8	58.7
Deportations into countries on the basis of European readmission agreements	0.8	2.9	6.3	25.1	25.7	28.9	43.4
Deportations into countries on the basis of bilateral or European readmission agreements	34.8	37.9	43.9	51.1	50.2	63.3	68.3
Deportations into countries without existing readmission agreement	65.2	62.1	56.1	48.9	49.8	36.7	31.7
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: Own calculations based on Bundestag (2012c, 2011c, 2010f, 2009, 2008b, 2007c, 2006).

Note: Numbers on deportations based on bilateral and European readmission agreements do not add up because they partly involve the same countries.

5.4.3 Centralised European Structures of Operational Cooperation

In parallel to the establishment of a European readmission policy, the third dimension of Europe's return migration policy – operational cooperation – was widely welcomed by the German executive. The different Decisions and Directives adopted in the first years after the Treaty of Amsterdam (ToA) and in particular the establishment of Frontex as a centralised European structure all support the administrative processing of forced returns in Germany and have been easily incorporated into their day-to-day routines. Overall, the processes and outcomes during the downloading dimension show a close fit with the predictions of the venue shopping mechanism. In Germany, a similar process of centralisation started in the 1980s and 90s with the delegation of responsibilities from the federal states to the federal level. During the last decade, the European integration of this policy area supported Germany in its effort to establish specialised administrative structures to reduce existing enforcement constraints particularly with respect to the most problematic cases of deportation.

In the first few years after the ToA, the Council adopted a number of different Decisions and Directives aiming at increased operational cooperation, which had to be implemented between 2002 and 2005. Although Germany failed to transpose every instrument in time, the overall compliance record is neat and clean and in correspondence with the theoretical expectations. Directive 2001/40/EC on the mutual recognition of expulsion decisions together with the connected Decision 2004/191/EC correcting for financial imbalances have been implemented as part of the new Immigration Act of 2004, adding additional legal grounds enabling the state to carry out expulsion orders. Together they support reducing the existing practical difficulties of executing decisions of forced removal in a border free Europe (Kreienbrink 2007: 36).

A second example is Directive 2003/110/EC on assistance in cases of transit for the purposes of removal by air. Although in Germany transposition into national law was delayed by two years, with implementation being part of the 2007 Transposition Act, the new legislation *over-implements* the European propositions – what has become known as gold-plating – restricting its provisions not to European member states alone but generally allows for transit by air and additionally also for overland removals. Overall, the Directive reduces existing barriers of practical cooperation and the two supplemental elements originated from demands by the Federal Police on the basis of their every-day experience (Hitz 2006: 227).

Finally, Decision 2004/573/EC on organising joint flights for group removals was easily incorporated into Germany's return policy. Already in 2003, before adopting the Decision, European member states had started implementing joint deportation measures with the first charter flight taking place in March 2004 (Schuster 2005: 612). The Decision reduces the practical barriers for organising and executing group removals among member states. For the German case, the appendix including joint guidelines for safety standards has been of particular importance. After a migrant died during a deportation measure in 1999, Germany implemented authoritative safety standards in 2000 as part of the official instructions for the executing officers of the Federal Police. Without similar standards in other member states, the German authorities had difficulty participating in joint flights for group removals, because they could not guarantee the implementation of the German standards. With the European joint guidelines now modelled closely on the German standards their adoption makes it much easier for German authorities to cooperate with European partners (Kreienbrink 2007: 36f.).

In addition, the German executive provides a positive evaluation of those new European instruments. Both, BPol as well as BMI argue that these reforms have improved the operational cooperation with organisations in Europe as well as in other member states. One example concerns the administrative procedures for joint return measures, which have been optimised. Additionally, the new European legislation improved the predictability of legal decisions for transit situations. Previously, these were carried through on a non-binding and bilateral basis between member states, but are now evenly regulated (cf. Kreienbrink 2007: 36f.; BMI 2007: 11). Despite obvious progress, the different existing administrative logics followed by member states and lack of routines between the practitioners in the different national administrations hampered a more widespread application. The law enforcement agencies consequently still complain about lengthy procedures, an obvious lack of efficiency of cross-border cooperation and a lack of applicability of European measures in actual practice. With respect to the latter point, ICONet is the typical example referred to in the administration. Originally it was planned as a secure web-based information and coordination network allowing national authorities to determine quickly if other member states had demand for return measures to a certain country of origin. Actual practice showed, however, that the database never developed into an operational instrument because of its bureaucratic structure and the lack of enthusiasm from most member states. It was later replaced by FOSS, the Frontex One-Stop-Shop to exchange information about return measures (on the original intention see CEC 2006a: 10-11; Kreienbrink 2007: 37).

Compared to those legislative measures, Frontex had the greatest impact on the practice of Germany's return policy. The new European agency successfully transformed cooperation between member states into a matter of routine. The actual involvement of member states in Frontex activities differs widely (see Pollak/Slominski 2009: 914), but Germany is

one of the staunch supporters of the new agency. During the uploading dimension, Germany successfully shaped Frontex closely along the federal agency model already providing the basis of its own national police organisation. In reverse, the commonality between these organisational structures now made it easy for Germany to become an active user of this new agency whereas other member states – not used to a similar federal agency model – have been much less forthcoming and effective in this respect (for a similar argument on the basis of Europol see already Monar 2003: 313f.).

Cooperation with Frontex quickly developed into an important aspect of the work of the Federal Police. Germany is today one of the member states with the highest participation rates in the agency's joint operations. In 2008, for example, BPol participated in 27 of the 30 joint operations and 26 of the 29 focal points (BMI 2009: 12f.; Schneider 2012: 61). Whereas German participation in these operations involved mainly the deployment of border management support officers abroad to support other member states in stepping up border surveillance and management, the impact of Frontex for Germany's return policy had a more direct influence on the every-day routine of the authorities in Germany. Frontex's financial and organisational capabilities to perform return operations vastly improved in recent years. While in 2006 Frontex had been involved with the coordination of only one charter return flight with eight returnees, this number increased from year to year resulting in 11 flights in 2007, 15 in 2008, 32 in 2009, 39 in 2010 and finally 42 flights in 2011 and 39 flights in 2012, resulting in more than 9,000 returned persons on the basis of joint return operations (cf. Table 5.7). In parallel, Germany has been increasingly successful in implementing the new European structure into its every-day administrative routine. Whereas in 2007 only 4.9 % of all persons deported by joint return operations organised or supported by Frontex originated from Germany, in 2012 almost one-third of all persons returned by Frontex came from Germany.

Table 5.7: Development of Germany's participation in Joint Return Operations organised by Frontex, 2007-2012

	2007	2008	2009	2010	2011	2012	Total
Total number of deportations from Germany	9,617	8,394	7,830	7,558	7,917	7,651	48,967
Total number of deportations organised on the basis of Joint Return Operations	428	801	1,622	2,038	2,059	2,110	9,058
Total number of deportations from Germany organised on the basis of Joint Return Operations	35	25	152	226	384	645	1,454
German Participation in Joint Return Operations [in %]	4.9	3.5	9.2	11.1	18.6	30.6	16.1

Source: Own calculations based on Frontex (2008, 2010c, 2011, 2013b) and Bundestag (2009, 2010f, 2011a, c, 2012c).

Overall, the German administration evaluates the work of Frontex positively and considers that cooperation for organising flights is "running very smoothly by now" (Schneider 2012: 61f.). The administrative staff argues that they have fully internalised the new European structures and incorporated them into their everyday routines. They are well aware of the budgetary savings of Frontex for Germany's return policy and even set internal targets for their participation rate in return operations and associated savings. Although absolute numbers of deportations on the basis of joint return operations are small compared to all deportations from Germany, the impressive increase from 25 people in 2008 to 645 in 2012 demonstrates that every tenth person deported from Germany in 2012 was organised with the support by the new European agency (Bundestag 2013a: 26; for a similar analysis on austria see Slominski/Trauner 2014: 161f.).

Those absolute numbers hide its qualitative character. Similar to the centralisation of return operations within Germany during the 1980s and 90s, the support of Frontex is particularly used in difficult cases of deportation. In its everyday practice, the Federal Police acts on the basis of a regularly updated list of 'problematic states' including information about those countries of origin where forced removal actions regularly fail and it is particularly those countries where BPol applies the new European structures. Of the largest groups of nationals deported on the basis of joint return operations from Germany between 2007 and 2011 (Kosovo: 336; Nigeria: 166; Serbia: 161; Vietnam 83) most relate to countries of origin traditionally included in this list and therefore Germany particularly benefits from the support of Frontex in these cases and hopes that Frontex will become even more active. Next to these gains by centralisation, European cooperation also helps because best practices are exchanged between member states. Particularly member states less experienced with the forced return of migrants profit from those coordinated measures. Senior representatives of the Federal Police argue, that countries support each other in respect to specific countries of origin. Germany, for example, profited from operating relationships between Belgium and the Democratic Republic of Congo in returning irregular migrants whereas Germany, on the other side supported the Netherlands by returning migrants to Nepal.

5.5 Conclusion

The aim of this chapter was to describe and explain the development of Germany's return policy. Focusing on the decade after the turn of the millennium it shows how multi-level policymaking and cooperation in Europe helped to develop a more effective and restrictive dualist administrative system. The executive in Germany has easily absorbed the new European policies, effectively implemented them into its day-to-day routines and increased its room for manoeuvre.

The findings of this chapter question existing research interpreting Germany's (but also other countries) return policies primarily on the basis of the "gap hypothesis" (Wong 2014). For them, the misfit between official declarations and the actual numbers of deportations carried out is the dominating characteristic of this policy area (e.g. Gibney/Hansen 2003b; Ellermann 2005). Whereas these studies concentrated on Germany's unilateral endeavours only, this chapter offered a necessary extension by analysing the multi-level activities within the EU. It showed how Germany's 'escape to Europe' and the cooperation with

other member states has increased the effectiveness of this policy and reduced some of the existing national enforcement constraints. Not all of the new European instruments developed as quickly as Germany's and other member states' executives originally wished and not all resulted at any measurable impact on domestic policies and outcomes. In combination with the previously existing national structures, however, the developing dualist system certainly improved the overall effectiveness by reducing the political, diplomatic and financial costs of this policy. This is not to argue that the previously existing 'gap' is not a characteristic of this policy area anymore – although the discrepancies between potentially deportable irregular migrants and actual deportations has certainly decreased in the last decade. Instead, it shows how Germany, by using the European venue, has brought its policy of deportation to greater perfection and given rise to "a formidable machinery" (Meissner, et al. 2013).

From a theoretical perspective the processes resulting in these restrictive outcomes of Europeanisation were far from linear. The Tampere Action Plan from 1999 together with the Return Action Programme from 2002 largely structured the policy developments during the last decade and focused on three separate dimensions: (1) minimum standards for return, (2) international cooperation, and (3) operational cooperation. Political processes in the three dimensions followed different mechanisms of Europeanisation. The processes in the first dimension, which concentrated on legal harmonisation and the setup of common legal rules concerning the procedure and practice of deportations closely followed the predictions of the backdoor opposition mechanism. The fate of the Return Directive was at the centre of this dimension and the initiative for this instrument was clearly located in the European Commission. Although member states principally accepted the need for legislation in this area, Germany and other member states shaped the final text in line with the previously existing national *status quo*. The influence of the German government during the uploading, as well as subsequently during the downloading dimension resulted in minimal domestic policy changes.

The situation looks completely different with respect to the other two dimensions – international and operational cooperation. Here, the initiative for common European policies was generally located at the level of member states, which presented several of the subsequently adopted legislation. The prominence of the German government in shaping the developments in these two dimensions was certainly supported by the country's influential role during the 1990s. But even the last decade has seen several developments going back to German initiatives including the Transit Directive, the shape of European readmission agreements and in particular the establishment of Frontex as the most obvious symbol of increasing cooperation on return migration. The German 'fingerprint' during the uploading processes together with a strong interest by the administration therefore explains the 'unbearable lightness' in complying with these new European structures and their effective implementation into the daily practices of Germany's deportation policy.

Predicting future developments of this policy area in Germany are difficult. On the one hand there are several reasons to expect that the venue shopping mechanism will continue shaping the political processes in this policy area. Although the enthusiasm of the German government for actively shaping the European agenda recently decreased, the Treaty of Lisbon has given operational cooperation and the establishment of readmission agreements for the first time a treaty base, providing member states with excellent institutional venues to pursue their national interests for more effective return policies at the European level. Similarly, the role of Frontex is set to increase with the Regulation 1168/2011 from October

2011 granting more powers to the agency in the area of return migration as well as the most recent developments aiming at the introduction of a Frontex Return Office (Commission 2014b, 2015). On the other hand, the empirical evidence shows that the overly rational choice interpretations of the last decade will be replaced by other mechanisms and logics of action. Today, Frontex is still very much in its infancy, but it results in continuous learning processes between member states which in the long run might provide the basis for more fundamental policy changes in this area (Pollak/Slominski 2009: 908). Furthermore, the long-term consequences of the backdoor opposition mechanism also question the dominance of the venue shopping mechanism. Chapter 4 on Germany's asylum policy has already shown that continuous European initiatives have opened up the political agenda in Germany for new actors. Similarly, the most recent developments in return policies have shown that the Court of Justice of the European Union might in the long run develop into an institution resulting in obvious 'limits of control' even at the European level and decrease the executive dominance.

6 Policy Learning in Europe? New Ideas Governing Highly Skilled Labour Migration

6.1 Introduction

One of the most basic causes of international migration flows is the individuals' desire for better working and living conditions. Unsurprisingly, the governance of labour migration constitutes one of the most important aspects of this policy area with more than one third of all permanent immigrants in the countries of the Organisation for Economic Co-operation and Development (OECD) coming for labour market reasons.[42] Furthermore, labour migration constitutes a particularly interesting case because it is the policy area which has been "in flux" in Europe since the turn of the millennium (Boswell 2003a), experiencing some extraordinary changes compared with the period before. Traditionally, European member states are seen as "reluctant countries of immigration" (Cornelius, et al. 1994), which sealed their borders for labour migrants after the post-war economic boom came to a halt in the early 1970s. This basic stance, however, has been fundamentally challenged in the last 15 years with an increasing number of European member states developing new policy instruments to govern labour migration in general and to support the inflow of highly skilled migrants in particular.

The developments in Germany since the late 1990s mirror those general European patterns. Its labour migration policies that upheld its self-described character as 'not a country of immigration' witnessed the sudden "death of a national myth" (Schierup 2006; see also Kurthen 2006; Zimmermann, et al. 2007). Although highly skilled labour migration certainly marked an important focus of Germany's recent migration discourse, the actual extent of the introduced reforms have been the topic of intense political as well as academic debate (cf. Vogel/Wüst 2003; Schönwälder 2004; Bauder 2008). At least until early 2012, the political debate conveyed the impression that the reforms of the last decade were doomed to failure. This was explained by the incremental development of this policy area, which is not perceived as a result of strategic political planning but *ad-hoc* reactions to sudden events (cf. Angenendt 2008), as well as by putative failed reforms resulting in unsatisfying political compromises or small numbers of migrants utilising those new regulations (SVR 2010: 109). Similarly, the academic debate was also critical of the introduced reforms. From that perspective, the new regulations have been enacted "[a]ll too silent and almost secret-conspiratorial […] and they were also accompanied with such a loud staged insistence on the continuance of the general restrictions […] that they may have unfolded little effect" (Hinte/Zimmermann 2010: 8).

Behind the mist of party political contention, however, far-reaching policy changes have been implemented during the period of investigation. Comparing the 1990s with the situation today a totally different picture emerges. Traditionally, Germany's labour migration policies have been characterised as a "non-policy" (Esser/Korte 1985) and as a "muddling-through

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42 The precise figure is 34.6 % for 2009. This number is based on permanent inflows into the OECD countries by category of entry excluding free movement. The actual share of labour migration on all yearly international inflows is obviously far higher because temporary labour migration as well as academic migration is excluded from those figures (cf. OECD 2011: 43).

approach" (Thränhardt 1999) with no long-term planning and few instruments for actively steering migration towards national interests. Only a decade later, Germany has implemented a rather comprehensive legislative framework to organise the temporary and permanent settlement of highly skilled third-country nationals. Furthermore, the political discourse has fundamentally shifted and concentrates now on establishing a 'welcome culture' as a crucial precondition to compete with other industrialised countries in the "global race for talent" (Shachar 2006: 150). This policy change is measureable with respect to the stepwise implementation of new legislation, increasing the potential number of people eligible to apply for immigration to Germany, as well as the increasing level of rights granted to those successful migrants and their family members. Furthermore, this policy change is also obvious with respect to the actual development of highly skilled labour migration to Germany. Comparative analyses are confronted with numerous statistical difficulties but clearly show that the numbers of highly skilled immigrants have multiplied in the last decade (see Figure 6.1). Whereas the labour administration registered only 1,200 highly skilled immigrants in 1998, their numbers multiplied and peaked in 2011 with 27,800. Overall, the proportion of highly skilled immigrants of total immigration from third countries to Germany increased from 0.4 % in the late 1990s to approximately 10 % within only one decade (cf. Ette, et al. 2012).[43] Finally, the OECD (2013: 15) publicly accredited this fundamental policy change in early 2013 when it argued that compared to other industrialised countries, "Germany's policy for highly skilled migration is among the most open".

In parallel to the developments in Germany and other European member states, the European Union (EU) successfully implemented the building blocks of a common highly skilled labour migration policy in the last decade. For a long time, member states strongly opposed any transfer of responsibility to the EU on those issues, and the paradox existed that a fundamentally economic Community had no policies on economic migration in place (Peers 2006a: 224). Although common European labour migration policies governing the admission of foreign workers remain a distant prospect, a set of legislative instruments have been adopted since the late 1990s regulating specific types of labour migrants and allocating certain rights to those migrants and their family members (cf. Geddes 2015; Roos 2015). Particularly, this includes directives regulating the mobility of highly skilled migrants, researchers and students, as well as a horizontal measure introducing a single procedure for work and residence permits.[44]

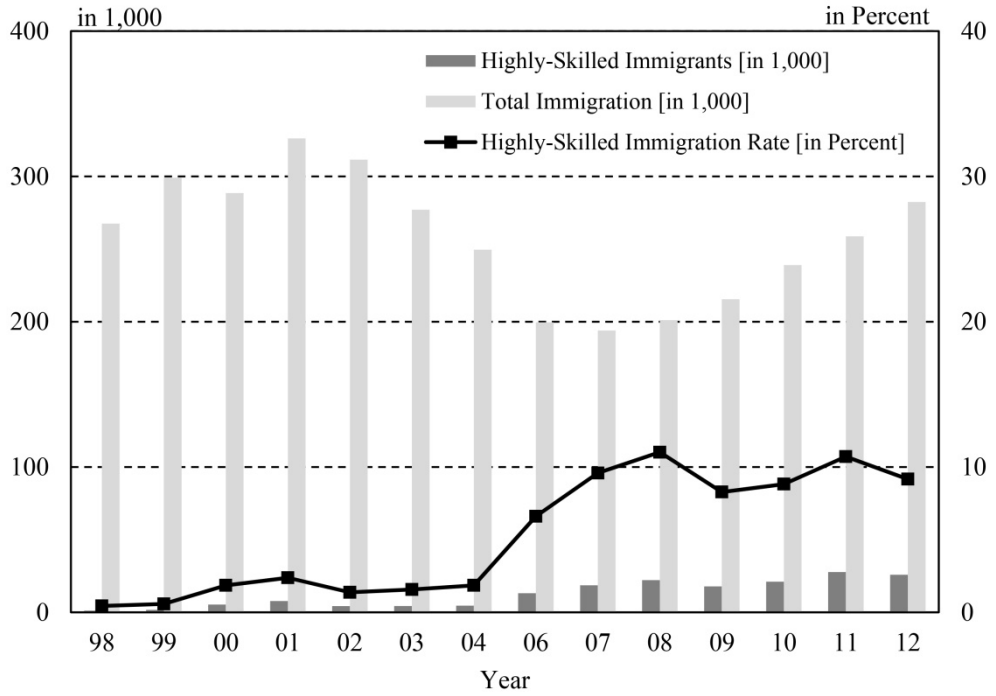
Despite the parallel developments at the European and the national level, the EU is generally not considered to be a major factor explaining recent national labour migration

[43] Any analysis aiming at an accurate temporal comparison of the development of highly skilled immigration to Germany is confronted with numerous difficulties concerning different methodologies of data collection by different administrative institutions involved, as well as regularly changing legal frameworks and changes with respect to the source countries of immigration (for a general discussion about the shortcomings of basing immigration analyses on actual work permits see Bilsborrow, et al. 1997). For details on data and methods see also Ette et al. (2012). The general trend of these results is also supported by recent survey-based analyses on the educational selectivity of new immigrants in Germany (cf. Diehl/Grobecker 2006; Kogan 2011; Ette, et al. 2015).

[44] The Directive (2014/66/EU) for intra-corporate transfer of non-EU skilled workers is not part of the following analysis because it was adopted only in 2014. Finally, the Seasonal Workers Directive (2014/36/EU) is not addressed for the same reason, but touched upon in the next chapter focusing on Europe's migration and development agenda.

policy reforms. Available approaches regularly refer to the impact of globalisation and basic demographic trends and highlight the influence of the social partners in determining the course of national highly skilled labour migration policies. Those studies concentrating in particular on the situation in Germany, additionally point to the role of cultural factors and recent changes to Germany's ethno-cultural national self-understanding or focus on the impact of political parties to explain the outcomes of individual reforms. In contrast to those accounts, the following chapter argues that the changes to Germany's highly skilled labour migration policy are strongly shaped by Europeanisation processes closely following the path of the policy learning mechanism. Both, the timing as well as the outcomes of national policy changes have to be explained with reference to policy ideas and policy templates actively developed at the European level and only later transferred into the national political debate. The analysis highlights important conditions for when and how the EU exerts liberal influences on national migration policies.

Figure 6.1: Development of highly skilled immigration to Germany, 1998-2012



Source: Bundesagentur für Arbeit, Bundesamt für Migration und Flüchtlinge, Statistisches Bundesamt; own calculations.

Note: No data is available for the year 2005 because of administrative reorganisations in the aftermath of the Immigration Act 2005. The analysis underestimates highly skilled immigration to Germany because it excludes highly skilled migrants from certain nationalities (§ 34 BeschV) as well as labour migrants which do not require approval from the labour administration and are therefore statistically not identifiable (§ 18 AufenthG). For more details see Ette et al. (2012).

Following the procedure in the previous chapters, the analysis of the Europeanisation of Germany's highly skilled labour migration policy is based on a precise conceptualisation of this policy area. Generally, there exists no single highly skilled labour migration policy but a number of very specific immigration schemes each targeting particular groups of highly skilled migrants (cf. Table 6.1). The most common differentiation of those schemes separates permanent from temporary highly skilled migration policies (cf. Lowell 2005). Permanent migration schemes generally enable the admission of migrants on the basis of their skills with some addressing in particular foreign investors and entrepreneurs (Desiderio 2010) and others following a more general "human capital approach" selecting migrants along different specified criteria (Abella 2006).

Whereas permanent immigration schemes generally provide migrants from the very start with a long-term perspective in their country of destination, a first key feature of temporary migration schemes is exactly that they do not create an entitlement to stay permanently in the host country (Ruhs 2006: 9). Consequently, migrants whose temporary work permits have expired lose their right to residence and are thus expected to return home – although the possibility exists that some migrants originally admitted under a temporary immigration scheme later qualify for permanent settlement. A second key feature differentiating permanent from temporary immigration schemes is that the latter usually address very specific labour market needs and are generally highly diverse following the specific needs of particular economic sectors.

Table 6.1: Analytical dimensions of national highly skilled labour migration policies

Dimension	Objective	Individual instruments
Permanent immigration	Permanent benefit of highly skilled migrants	Target groups Admission conditions Spouses work rights
Temporary immigration	Reacting to short-term labour market needs	Target groups Admission conditions Spouses work rights
Academic immigration	Students	Admission conditions, work rights
	Graduates	Admission conditions, spouses work rights
	Researchers	Admission conditions, spouses work rights

Source: Own compilation.

Finally, a third immigration scheme that addresses highly skilled migrants focuses on the academic gate for migrants. These include the liberalisation of national tertiary education systems for international migrants, the opening of labour markets for foreign graduates of national universities and finally the set-up of particular immigration schemes for researchers (Hawthorne 2009; Kuptsch 2006).

By comparing the development of highly skilled labour migration policies, the subsequent analyses will focus on a number of specific measures to assess the changing conditions for admission as well as the changing residence rights for those foreign workers. These measures include, first, the existence of national labour market tests, which ensure that local employers recruit foreign workers only after having made every reasonable effort

to recruit local workers. The labour market access for the migrant as well as potential family members marks a second policy measure to assess the extent of policy reforms in this particular area of international migration.[45]

Compared to the first two empirical case studies, the following chapter is based on a slightly different structure and starts in the next section with an analysis of the development of a new policy idea and new policy templates at the European level (Chapter 6.2). Whereas the economic crisis in the 1970s and the developing refugee crises during the 1980s heralded the end to large scale labour migration and moved security and control aspects into the focus of national migration debates, the European Union provided a far more favourable environment to develop new policy ideas and templates on labour migration. The context of the Lisbon Agenda and the European endeavour towards becoming the most competitive knowledge economy in the world provided a fundamentally new policy idea for governing international labour migration. In the following years, the European Commission successfully developed a broad range of precise policy templates to comprehensively govern the immigration of highly skilled third-country nationals. Based on this analysis of the European developments, the next section focuses on the downloading dimension and the impact of those European policy ideas and templates on Germany's labour migration reforms. Two factors – cooperative informal institutions and the existence of national norm entrepreneurs – are highlighted which explain the substantial influence of the new policy idea on Germany's labour migration policy in the months and years following the turn of the millennium. Finally, the analysis traces the close connections between the development of European policy templates and successive national policy changes.

6.2 Developing Policy Ideas and Templates: Towards a Common European Highly Skilled Labour Migration Policy

6.2.1 Security Considerations Trump Economic Interests

The development of a common European highly skilled labour migration policy has been a lengthy and arduous project. A first phase of this uploading process covers the period from the mid-1970s until the end of the 1990s when security considerations and the protection of national labour markets trumped shared economic interests. Although the subsequent Treaty reforms throughout those years increasingly expanded the legal basis for common labour migration regulations, the actual legislative output signalled minimal progress. From the very beginning, it was the European Commission who actively argued in favour of the

[45] An additional dimension of highly skilled labour migration policies focuses on migrants already residing in the country, but not able to make full use of their education and labour market qualifications. Policies addressing those 'domestic potentials' have become increasingly prominent in recent years. In Germany, for example, these aspects played a crucial role in the context of the 2007 and 2010 National Pact for Training (cf. BMWi 2007, 2010) and in particular for the Recognition Act for the procedure to assess professional qualifications, which came into effect in April 2012 (Bundesregierung 2009; BMBF 2015). Because of the subordinate role of these regulations for admission policies and actual immigration they are not considered in this analysis, but certainly follow parallel processes at the European level as well.

harmonisation of labour migration governance, whereas the member states – and here Germany played a particularly prominent role – showed a markedly disinterest in loosing sovereignty about admission to their labour markets.

The first initiatives by the European Commission towards closer cooperation of national regulations governing labour migration are found throughout the 1970s (cf. EC 1974; EC 1980; for an overview see also Collinson 1993; Peers 2006a).[46] Without any basis in the founding treaties of the European Union for the development of supranational labour migration policies, it was not before the preparation for the single market in 1985 that the Commission successfully made a claim for closer cooperation on those issues. The initial White Paper contained almost 300 proposals for the creation of a single market, including the "coordination of the rules on residence, entry and access to employment" (CEC 1985: 16). Although these were not included in the final legislation of the Single European Act, member states started to recognise that there were no longer national answers to the phenomenon of international migration in general and labour migration in particular (cf. Mitsilegas, et al. 2003; Geddes 2008). Nevertheless, the following years did not see any serious initiatives to design common labour migration policies. On the contrary, legal migration issues were almost absent from the agenda at that time and cooperation on refugee and irregular migration shifted towards new intergovernmental forums like, for example, the Schengen Group deliberately side-lining the European Commission.

In response, the Commission took a pragmatic position and continued working together with the member states as much as possible (Guild/Niessen 1996: 19). The Treaty of Maastricht in 1992 provided the next opportunity for the Commission to advance its agenda on a common labour migration policy. In two documents, one by the Commission and the other by the Council, both institutions proceeded for the first time to a more comprehensive analysis of international migration. In light of the fact that a number of member states applied temporary labour migration programmes, the Commission in particular employed this platform to argue in favour of "a common framework for temporary employment contracts" (CEC 1991: 24). The Council principally accepted the necessity for working towards the "harmonization of national policies on admission to employment for third-country nationals" (European Council 1991; see also Guild/Niessen 1996: 451; Papagianni 2006: 121) and the Treaty of Maastricht included this change of perspectives in its final version, defining the conditions of entry and movement by nationals of third countries on the territory of member states as matters of common interest.

For actual policy developments, however, the Treaty of Maastricht had little effect. At that time, all member states shared the principal perspective that the open doors policy of the decades following World War II had finally ended during the 1970s and that therefore labour immigration was only possible on the level of specific exceptions from this general rule (cf. Nanz 1996: 70). Although the Commission continued to press for a comprehensive legislative framework (CEC 1994), member states retained their restrictive stance. Consequently, the measures adopted during the Maastricht era show rather mediocre results. This is most obvious in the case of a number of Resolutions adopted by the Council of Interior and Justice Ministers in 1994, with Germany being particularly on the go actively arguing against any proposals that would curtail the government's authority to control the admission

[46] Although several earlier initiatives by the European Commission regarding labour migration exist, these concentrated only on free movement rights of workers between European member states and did not touch on the admission and rights of foreign workers from third-countries (for an overview see Geddes 2008).

of labour migrants (e.g. Peers 1999: 150, 1998: 1242ff.). In the Resolution on limitations on admission of third-country nationals for employment, for example, member states argued that, "no Member State is pursuing an active immigration policy. All States have, on the contrary, curtailed the possibility of permanent legal immigration for economic, social and thus political reasons. Admission for temporary employment may therefore be considered only in terms of what is purely exceptional. […] the present restrictive measures should be continued and where necessary reinforced (European Council 1994a: 1). The resolution set very strict rules arguing that such exceptional admission should only be permitted where a vacancy cannot be filled by a national worker and pressed the member states to prevent third-country nationals from obtaining a permanent status and become integrated into the Union. Similar positions were taken on a resolution on the admission for self-employment as well as a resolution on the admission of students where the Council – although principally accepting that both forms can principally be of positive value for member states – urged member states to make sure that admission is only allowed if the migrant is actually of benefit for the host country and that it makes sure that students are not allowed to work during their studies and their temporary status does not turn into permanent immigration (European Council 1994c, b).

The European Commission was unsatisfied by those resolutions with their narrow scope, lack of enforcement procedures, legal shortcomings and the many exceptions and frequent references to specific national factors. In response, the Commission tabled a new proposal for a Convention on Admission in July 1997 starting from a far more comprehensive approach, but member states reacted rather negatively on this proposal (CEC 1997; Papagianni 2006: 129; Peers 1999) and it was only the Treaty of Amsterdam (ToA) that provided an opportunity for a next step forward. The ToA placed the whole migration agenda in the more general framework of an 'Area of Freedom, Security and Justice' and provided for detailed legal bases for the adoption of common immigration policies. When compared to the Treaty of Maastricht, the Treaty of Amsterdam included new powers for the Commission arguing, that measures on immigration policy including conditions of entry and residence should be adopted. However, immigration for economic purposes is not explicitly included and the new Treaty did not change the reluctant perspective on labour migration. Again, Germany – originally one of the driving forces of this issue area since the late 1980s – had shifted its national position and developed into one of the major stumbling blocks for more far-reaching harmonisation of labour migration policies during the Treaty negotiations (cf. Bösche 2006).

6.2.2 A New Policy Idea on Highly Skilled Labour Migration

The previous section focused on the largely divergent interests around labour migration between member states and the European Commission until the late 1990s. National governments privileged security considerations to the detriment of economic rationalities, concentrated on political measures to reduce immigration and attached issues of national sovereignty to control of admission to their labour markets. As a consequence, for more than two decades there has been negligible actual legislative output and only slight improvements concerning the Treaty basis for this policy area. This situation changed fundamentally at the turn of the millennium. Within a few months a completely new rationality started to govern this policy area. Whereas before, international migration was by and large seen as an issue putting additional strain on national welfare and labour market systems,

suddenly, the perspective on international migrants changed and became a cure for national economic growth. What had changed was the underlying policy idea, which now claimed that the economic competitiveness of the European Union was fundamentally based on a dynamic knowledge base that had to be supported by international immigration of the highly skilled. After decades of immigration restriction, shifting understandings of the role of the state crystallised in the discourse about the "competition state" (Cerny 1997) and the basic liberal paradox of the migration state "where regulation of international migration is as important as providing for the security of the state and the economic well being of the citizenry" (Hollifield 2004a: 885; see also Lavenex 2007), which led to a reconsideration of former policy approaches.

Key to explaining this fundamental change in the underlying discourse of this policy area is the Lisbon Strategy – now succeeded by the Europe 2020 strategy (Commission 2010c) – which was prepared throughout 1999 by the European Commission and the Portuguese Presidency as a new strategic and visionary programme for the Union. When it was finally adopted at the European Council in March 2000, the Lisbon Strategy postulated that the European Union should "become the most competitive and dynamic knowledge-based economy in the world" (European Council 2000: unpag). It placed the knowledge economy at the centre of international competitiveness and further economic growth, identified key strategic challenges for European member states and proposed a broad package of responses including the completion of the internal market, the modernisation of the welfare system, new priorities for national education policies and more investment in research and development. This strategy was clearly based on the conviction that the development of a highly qualified workforce, in particular with respect to scientific and technical skills as well as the widespread acquisition of information and communication technology (ICT) skills was the key factor of employment growth in Europe. Concentrating on removing "obstacles to the mobility of researchers" and to attract "high-quality research talent" (European Council 2000: unpag), the Lisbon Strategy successfully assigned highly skilled labour migration policies a particular role in resolving existing economic challenges of widening skills gaps and increasing numbers of unfilled jobs for highly skilled workers. The importance of labour migration was also obvious in a number of preparatory documents, both by the Portugal Presidency as well as the Commission, stressing the importance of "making Europe attractive to researchers from the rest of the world" (CEC 2000c: 19) and arguing that "Europe must strengthen its role as a major world centre for R&D, fully integrated into the big international networks and able to attract new talent from anywhere in the world" (CEU 2000b: 11; see also Geddes 2008: 137).

Before continuing tracing the development of this new link between economic growth and labour migration, the successful implementation of this new policy idea by the European Commission had to be explained which shifted new responsibilities to the European level in policy areas previously firmly under national control. The first factor concerns the intensive preparatory initiatives by the European Commission and the successful cooperation with the Portuguese Council Presidency. Already in the mid-1990s, the Commission reflected on the importance of European information infrastructures to support economic competitiveness in an increasingly globalised world economy (cf. CEC 1993; High-Level Group on the Information Society 1994). Although at that time policies addressing ICT and the knowledge society had been dominated by the overarching strategy of European telecommunication liberalisation, the agenda broadened in the following years. This included in particular the set up of the Information Society Forum, a Green Paper on the key social

challenges raised by the transition to the knowledge society and finally the launch of the "eEurope: An Information Society for All" (CEC 1999b) initiative in December 1999, which was set out as a basic piece of the Lisbon Strategy proposing ambitious targets to bring the benefits of the information society within reach of all Europeans (Gómez-Barroso, et al. 2008). Those intensive preparatory works of the Commission in expert groups and consultative forums in combination with the close cooperation with the Council Presidency enabled the prominent placement of the Lisbon Conclusions as an influential political strategy for the EU and its member states.

A second factor explaining the successful introduction of the Lisbon Strategy concerns its coherence and consistency. With respect to its emphasis on labour migration it did not plainly follow business friendly demands for more liberal admission policies for sought after talents. Instead, the Commission successfully implemented the Lisbon Strategy across different follow-up processes in a wide range of policy areas. The necessity of highly skilled labour migration policies, for example, was firmly included in the European Employment Strategy arguing that "fulfilling the Lisbon objectives by 2010 and beyond will notably depend on the shape and dynamics of immigration in the EU. Economic immigration could be relevant for overcoming short run labour shortages in several sectors" (CEC 2003c: 13), resulting in an overall far more coherent and consistent political agenda.

Finally, a third factor explaining the successful implementation of this new policy idea by the European Commission and its subsequent sustainable impact on labour migration policies concerns its ambitious approach. The Strategy focused on a wide range of different policy areas (e.g. education, employment, social policies, international migration) many of them with little European dimension so far. Taking national sensitivity about the loss of sovereignty in additional policy areas into account, the Commission proposed the Open Method of Coordination (OMC) as a soft form of governance concentrating on defining guidelines, exchanging best practices and periodic evaluation (European Council 2000). Although precursors of the OMC had been formally established by the Treaty of Maastricht already, the Lisbon Strategy actively promoted this instrument which aimed at converging policies explicitly based on policy learning processes (Pfister 2009; Borrás/Jacobsson 2004; Lodge 2007; Zeitlin, et al. 2005; Eberlein/Kerwer 2004: 123; Héritier 2001b; Hodson/Maher 2001).

The Lisbon Strategy was mainly developed externally to the Directorate General (DG) on Justice and Home Affairs usually responsible for the development of labour migration policies. During the months following the Lisbon Council, however, the responsible DG adopted this new link between economic growth and highly skilled migration and based all subsequent political initiatives on this new policy idea.[47] A first step in this direction has been taken by the Commission in November 2000 shortly after the Lisbon Council, with the publication of a Communication on a Community Immigration Policy. There, the Commission argued that in light of recent economic and demographic developments and as a result of growing shortages of labour at both skilled and unskilled levels "the 'zero' immigration policies of the past 30 years are no longer appropriate" (CEC 2000a: 3) and

[47] Recent scholarship shows intensive debate on the locus of policy entrepreneurship within the European Commission. Whereas Menz (2015) focuses in his analysis on DG Justice and Home Affairs only, Cerna and Chou (2014) also focus on DG Research as well as on DG Employment. For the mechanism-centred analysis of this study the crucial and uncontested point is that the political initiative for the new policy idea was the European Commission and not member states.

that new channels for legal immigration to the Union should now be made available for labour migrants. Although the Communication did not directly link with the Lisbon Strategy and only mentioned the European Employment strategy in passing, it already started to incorporate the idea that economic competitiveness rests on the international immigration of highly skilled labour and for the first time stressed the need for skill selective labour migration policies (CEC 2000a: 15). In subsequent Communications, the role of immigration for attaining the Lisbon objectives was increasingly strengthened. For example, in its Communication on immigration, integration and employment published in June 2003 the Commission specifically argued that to "fulfil the objectives set in Lisbon, the […] main challenge will be to attract and recruit migrants suitable for the EU labour force to sustain productivity and economic growth. In the context of increasing skills gaps and mismatches, which require time to be overcome, it is becoming recognised that economic immigration can play a role in tackling labour market imbalances, provided the qualifications of immigrants are appropriate" (CEC 2003b: 15). Finally, the Green Paper in 2004 (CEC 2005b) and in particular the Policy Plan in 2005 most eloquently built on this firmly established policy idea by arguing that "labour immigration can – as part of Lisbon Strategy's comprehensive package of measures aimed at increasing the competitiveness of the EU economy – positively contribute to tackling the effects of this demographic evolution, and will prove crucial to satisfying current and future labour market needs and thus ensure economic sustainability and growth" (CEC 2005a: 5).

Concluding this section, it is important to note that around the turn of the millennium a new policy idea was established which from then onwards governed the development of highly skilled labour migration policies in the European Union. Alongside the expectations of the policy learning mechanism of Europeanisation, the development of this new policy idea had been strongly shaped by the leadership of the European Commission (for recent analyses ending up at similar conclusions see Cerna/Chou 2014; Menz 2015). Compared to other policy issues discussed in previous chapters, the initiative of member states at this early phase of the political process had been comparatively small. Nonetheless, the activities by the European Commission did not take place in a political vacuum. The next section – focusing on the development of concrete policy instruments – will show that member state opposition was substantial. In addition to objections by member states there was also great demand to develop this new policy idea against potentially controversial arguments questioning the need for highly skilled migration in times of high unemployment in many member states or even substantially higher levels of immigration in light of demographic changes in Europe. Those examples demonstrating the political conflicts around this new policy idea serve to highlight the successful role of the Commission in developing this new policy idea, which has guided the establishment of concrete legislative instruments throughout the last decade.

6.2.3 New Policy Templates on Highly Skilled Labour Migration

The policy learning mechanism specifies a new policy idea as the major component to understanding the political developments and outcomes of Europeanisation in the uploading as well as downloading dimension. Based on the successful implementation of the new policy idea, the European Commission actively tried to establish common legislation governing labour migration in the following years. Whereas the previous two case studies on asylum and deportation policies focused on legally binding legislation, existing international agreements as well as obligatory structures of operational cooperation, the following two case

studies – on highly skilled labour migration as well as on Europe's migration and development agenda in the next chapter – apply a broader analytical framework. Along the three dimensions of highly skilled labour migration policies – permanent, temporary and academic immigration schemes – the analysis focuses on legally binding as well as non-binding policy templates. The latter include in particular proposals for policy instruments that did not find consent by the Council. Nevertheless, even proposals that have not made it into final legislation constitute a pool of policy templates on which member states can draw in reforming their own national labour migration policies.

The analysis documents three characteristic features of this policy area. First, policy templates are not equally distributed across all dimensions of this policy area. Whereas a rather differentiated set of proposals exists in the case of academic immigration and temporary immigration schemes, templates governing permanent immigration are lagging behind. Additionally, the templates for the first two dimensions – at least partly – resulted in common European legislation, but the templates addressing permanent immigration remained at the level of proposals that did not result in binding legislation. Second, the policy templates disproportionally address the substantial aspects of this policy. Their focus is mainly on establishing common rights for foreign workers and leaving the decision about the admission conditions to the member states. This imbalance was addressed by Geddes (2015: 74) when he argued that "[r]ecent developments suggest an EU focus on rights for migrants that are 'in', i.e. on the territory of a member state, rather impinging on the right of member states to determine the numbers of TCN migrant workers to be admitted". Finally, the analysis shows that, despite the importance of the new policy idea, the concrete policy proposals by the European Commission were not unanimously welcomed by the Council. This is particularly true for the activities of successive German governments during those uploading processes of Europeanisation. Although Germany's prominence as a major opponent to the Commission proposals was on a lower level compared to the situation for refugee policies (cf. Chapter 4.3.2), the country remained hesitant about any steps leading towards further European integration. Alongside the predictions of the policy learning mechanism the analysis demonstrates that the harmonisation of highly skilled migration policies was accomplished by the political leadership of the European Commission against a general disinterest or even the outright opposition of member states.

Permanent Immigration

The policy dimension that proved most difficult for the European Commission to establish common European policies in was permanent labour migration schemes. The negotiations about the draft directive from July 2001 on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities (CEC 2001d) were highly controversial in the Council. Generally, the proposal approached the issue along already established lines, defining general conditions, standards and procedures for entry and residence of third-country nationals for the purposes of employment and did not build on the newly created policy idea focusing on a skill-selective highly skilled labour migration policy. Taking into account the difficult discussions about such general admission systems during the 1990s, the proposal was confronted with numerous objections by member states with Germany, again, playing a prominent role (cf. CEU 2003f). In the end, the draft directive did not result in common European legislation, but it included templates providing potential solutions to existing national policy problems (see,

for example, Thym 2008; Ryan 2007; Peers 2006a; Papagianni 2006 for analyses of the draft directive and the discussions in the Council). Altogether three concrete policy templates are highlighted all of which have not reached the level of binding European legislation.

The first policy template concerns proposals for the admission of third-country nationals for the purpose of self-employed economic activities. The Commission Communication on a Community immigration policy from November 2000 already mentions self-employed activities of labour migrants as an important aspect to respond to demands on national labour markets. The subsequently published draft directive included concrete proposals for the admission mechanism for this group of migrants. It argued that admission should only be allowed "if the self-employed activities of the third-country national will have a beneficial effect" (CEC 2001d: 16) for the member state and lists a number of necessary conditions: the submission of a detailed business plan, evidence of having sufficient resources to support the applicant and family members so as to avoid becoming a burden on the social assistance system of the host member state for the duration of their stay, as well as evidence of the required minimum investment sum including financial guarantees.

A second policy template which was also included in the Commission Communication from November 2000 concerned considerations to establish a pathway from temporary to permanent status. Although the Commission generally focused on the admission of temporary highly skilled labour migrants, it clearly realised the need for transparent procedures to renew those initial permits for admission subsequently followed by a permanent work permit after a number of years (CEC 2000a: 18).

Finally, a third policy template concerned the establishment of a job-seeker visa. Generally, the Commission accepted that in all member states the admission for labour migrants was based on the demand of the domestic labour markets. This included in particular the principle that a post can only be filled after a thorough assessment of the situation on national labour markets. Nevertheless, the Commission realised the need for more flexible and simple application and assessment procedures in those areas of the labour market where labour shortages were expected. In response they proposed the introduction of a job-seeker visa which would allow potential highly skilled labour migrants the right to stay for a defined period of time to actively search for a job and apply afterwards for admission (CEC 2000a: 18; see also the questions included in the Green Paper from January 2005 CEC 2005b).

Temporary Immigration

In comparison to the negotiations about permanent immigration schemes, the efforts by the European Commission aiming at temporary immigration proved more successful. In the decade following 1999 when the Treaty of Amsterdam came into effect, at least three concrete policy templates developed.

With respect to the first policy template – the introduction of a one-stop-shop procedure governing labour market access – the European Commission in its very first Communication proposed a fundamental shift in the national system for the admission of migrants. Aiming at "provisions to facilitate the swift adoption of decisions on individual applications for admission" (CEC 2000a: 17) they presented in their draft directive the "creation of a single national application procedure leading to one combined title, encompassing both residence and work permit within one administrative act" (CEC 2001d: 5). The Commission argued that the one-stop-shop procedure would reduce the highly complex national administrative rules

and procedures in most member states, which reduce the attractiveness of the EU particularly for highly skilled labour migrants. With the abandonment of the draft directive from 2001, however, the proposal took an additional 10 years to become legally binding European law. When the discussion about the draft directive from 2001 came to a halt in 2003, the Commission advanced its idea for a one-stop-shop procedure in its Green Paper on managing economic migration in Europe (CEC 2005b) and in particular in the following Policy Plan on Legal Migration from December 2005 (CEC 2005a: 6). Finally, the Commission published the draft of the Single Permit Directive in October 2007 still arguing that, "in line with the broad philosophy of the Lisbon Agenda […] [t]his combined permit will create useful synergies and enable Member States to better manage and control the presence of third-country nationals on their territories for employment purposes" (CEC 2007d: 2). Within the negotiations in the Council working groups, which started in January 2008, Germany together with other member states "managed to downgrade the Directive considerably" (Brinkmann 2012: 365; see also Pascouau/McLoughlin 2012; Roos 2015) and it was only adopted in December 2011 finally providing for a common European single application procedure.[48]

The second policy template proposes a labour market monitoring systems to support an evidence-based highly skilled migration management and was first published by the European Commission in its 2008 Communication on a common immigration policy. One of the included guiding principles argued that, "[a]s part of the Lisbon Strategy, immigration for economic purposes should respond to a common needs-based assessment of EU labour markets addressing all skills levels and sectors in order to enhance the knowledge based economy of Europe, to advance economic growth and to meet labour market requirements" (CEC 2008a: 6). In particular, the Commission proposed a new instrument for the evidence-based approach to migration management under the label of 'immigration profiles'. These profiles should consist of a comprehensive and regular assessment of future skills requirements in European member states and the identification of labour market needs with the aim of identifying potential skill shortages.

The third policy template concerned the admission of highly skilled labour migrants. Closely in line with the policy idea developed by the Lisbon Strategy, European legislation focusing particularly on this specific group was proposed in the Policy Plan of December 2005 and resulted in the publication of a draft directive by the Commission in parallel to the Single Permit Directive in October 2007. There, the Commission argued that the Directive aims "in particular, to improve the EU's ability 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 2007e: 3). To achieve these objectives, the proposal included a fast-track procedure for the admission of highly qualified third-country workers based on an existing work contract, professional qualifications and a salary above a minimum level set at national level. Finally, the draft directive allowed for the admission of highly skilled labour migrants to work and provide their families with more attractive residence conditions than usual. This included, for example, a reduced waiting period before being allowed to apply for permanent resident status as well as waiving obligations to wait for up to three years before family reunion and one-year waiting periods for family members to access employment (see Peers 2009: 399).

48 Next to the single permit provisions, the Directive includes a common set of rights for third-country labour migrants (on these aspects of the Directive see Eichenhofer 2011).

Table 6.2: National preferences in Council of the European Union negotiations: Numbers and quotas of scrutiny reservations and proposals for modification introduced by member states on the original draft legislation

		AT	BE	BG	CY	CZ	DE	EE	EL	ES	FI	FR	HU	IT
Blue Card	N	46	18	10	9	30	50	23	42	21	11	20	30	23
Directive[1]	%	31	12	7	6	20	34	15	28	14	7	13	20	15
Students	N	6	13				17		21	6	4	16		8
Directive[2]	%	11	23				30		38	11	7	29		14
Researcher	N	13	3				19		23	16	1	14		18
Directive[3]	%	21	5				31		37	26	2	23		29
Total	N	65	34	10	9	30	86	23	86	43	16	50	30	49
	%	24	13	4	3	11	32	9	32	16	6	19	11	18

		IE	LT	LV	LU	MT	NL	PL	PT	RO	SE	SI	SK	UK	Tot.
Blue Card	N	9	8	13	2	8	35	22	13	8	29	2	8	0	149
Directive[1]	%	6	5	9	1	5	23	15	9	5	19	1	5	0	0
Students	N	0			5		14		4		3			0	56
Directive[2]	%	0			9		25		7		5			0	
Researcher	N	1			2		8		8		7			1	62
Directive[3]	%	2			3		13		13		11			2	
Total	N	10	8	13	9	8	57	22	25	8	39	2	8	1	267
	%	4	3	5	3	3	21	8	9	3	15	1	3	0	

Source: Own calculations, based on the first reading of Commission proposals of the respective draft directives in the Migration and Expulsion working group.

Note: [1] CEU (2008d); [2] CEU (2004c). The analysis of the Students Directive is not based on the first reading of the Commission proposal (CEU 2003g, h), because the relevant documents are only partially accessible to the public and the assignment of individual comments to the relevant national delegation is not possible. Alternatively, the analysis is based on the second reading of the scheme; [3] CEU (2004e). The analysis is based on the first and second reading of the Commission proposal because no individual protocol documenting the outcomes of the first reading only exists.

Although the proposal had been widely welcomed, the so-called 'Blue Card' Directive nonetheless resulted in difficult negotiations. Within the 'European Pact' member states strengthened their role even on highly skilled labour migration arguing in particular that "it is for each Member State to decide on the conditions of admission of legal migrants to its territory and, where necessary, to set their number" (CEU 2008a: 5; see also Monar 2009; Parkes/Angenendt 2009). During the negotiations in the Council working groups, countries like France and Spain welcomed the instrument whereas others like several of the new member states, the Netherlands and in particular Germany were less receptive (cf. Cerna 2014; Guild 2007; Gümüs 2010). The analysis of the first reading of the proposal in the working group shows that 50 of the overall 149 remarks were submitted by Germany,

showing its active participation during the uploading dimension of Europeanisation (see Table 6.2). The principally critical stance of the German government was also mirrored in the statement from the Bundesrat (2007: 3). Nevertheless, the close fit between the 'Blue Card' and the policy idea originating in the Lisbon Strategy certainly supported the Commission in their attempt for a common European instrument. When the Directive was finally adopted in May 2009, "the Council [had] reduced the standards in the Commission proposal by less than usual, and even improved them on a few points" (Peers 2009: 410).

Academic Immigration

Compared to the other two dimensions of highly skilled migration policies, academic immigration schemes show the highest degree of harmonisation and they proved to be least controversial. Altogether three templates were developed: (1) an instrument governing immigration and mobility of foreign students; (2) a proposal governing labour market access for foreign graduates; and (3) an instrument governing the admission and mobility of foreign researchers.

With respect to the first instrument, the Commission published its proposal for the Students Directive in October 2002 (CEC 2002d). The draft included rather favourable conditions to enable the admission of large numbers of third-country nationals as students in Europe's universities – including the mobility of students between member states – and provided them with a general access to the labour market up to a maximum number of weekly hours enabling them to cover the cost of training by working part-time. Although a number of those provisions changed during the Council negotiations, the length of these negotiations – lasting only four months and taking place from December 2003 to March 2004 – as well as the comparatively high compatibility between the original proposal and the final Directive (2004/114/EC)[49] shows a high level of agreement between the Commission and member states on the issue of the international migration of students (cf. Roos 2011: 162f.). Furthermore, the comparatively low number of 56 remarks by member states' delegations in the Council working groups supports this analysis (see Table 6.2). Although this is partly explained by the lower complexity of the legislative instrument, of greater importance is certainly the fact that the issues of academic migration have been less controversial. This form of international migration is generally thought as of temporary in nature and shows the closest fit with the Lisbon Strategy, claiming the importance of research and development for economic growth. Finally, also Germany's role during those negotiations was more relaxed with particularly the southern European member states showing a comparable level of remarks. Nevertheless, Germany remained one of the most active member states participating again in one third of all remarks.

The Commission did not only concentrate on aspects of admission and mobility of foreign students but also realised that international students graduating at universities in Europe principally provide an important resource that could be used to satisfy national demands for highly skilled labour migrants. From their perspective, "many Member States more and more often provide certain third-country nationals with the opportunity to remain after their training as workers, at least for a limited period, so as to remedy shortages of skilled manpower" (CEC 2002d: 3). Nevertheless, the issue of labour market access after

[49] In 2013, the Commission published a new proposal for a recast of the Students Directive as well as the Researcher Directive with political agreement finally reached in December 2015 (Commission 2013).

graduation was not included in the Students Directive but was dealt within the draft directive setting out general rules on migration from July 2001, which was still under discussion when the Students Directive was published. Within this draft directive the Commission included concrete policy templates with Article 5 enabling foreign students to apply for residence and work permits after their graduation.

Finally, the third policy template governs the admission and mobility of foreign researchers. The Commission published the draft of the Researcher Directive and two related Recommendations on the immigration of foreign researchers in March 2004 (CEC 2004b, d, c). Supported by the high relevance the Lisbon Strategy assigns to research and development, the Council "warmly welcomed the objectives of the proposals" (CEU 2004f: 10) and already in November 2004 agreed in principle on those regulations. The regulations include comparatively liberal conditions for the immigration of researchers including a special visa awarding procedure that partly excludes the national immigration authorities, but integrates research organisations in the process. Furthermore, the 'scientific visa' as it is often called, is based on a streamlined procedure demanding that residence permits are granted within 30 days and allows for intra-European mobility of the researcher. In parallel to the Students Directive, the negotiation process in the Council working groups was comparatively relaxed. Of the overall low number of only 62 remarks issued by member states during the first reading (see Table 6.2), however, Germany participated again in 31% (for a more in-depth analysis of these negotiations see aslo Cerna/Chou 2014: 85f.). Interestingly, and in contrast to the other analyses of negotiations in the Council working groups, the Council ended up with a text that finally added overall more liberal aspects to the draft including more favourable rights for family members (Peers/Rogers 2006b: 675f.).

Table 6.3: European policy templates on governing highly skilled labour migration

Dimension	Template	Source
Permanent immigration	Admission for self-employed activities	Draft Directive COM (2001) 386 final
	Path to permanent immigration status	Communication COM (2000) 757 final
	Provision of a job-seeker visa	Communication COM (2000) 757 final
Temporary immigration	One-stop shop procedure	Directive 2011/98/EU
	Labour market monitoring system	Communication COM (2008) 359 final
	Admission of highly skilled migrants	Council Directive 2009/50/EC
Academic immigration	International student mobility	Council Directive 2004/114/EC
	Labour market access for graduates	Draft Directive COM (2001) 386 final
	Admission of researchers	Council Directive 2005/71/EC

Source: Own compilation.

By way of a conclusion, Table 6.3 provides a summary of the previous section. It demonstrates that within each of the three dimensions of highly skilled labour migration policies the European Union developed an impressive portfolio of precise policy templates in the last decade. Although not each dimension has matured to the same degree, with policies on academic immigration certainly showing the highest level of harmonisation and policies on

permanent immigration lagging somewhat behind, the overall track record is impressive. Within one decade, altogether four directives were adopted – to name only the legally binding instruments – which provide a basis for common European highly skilled labour migration policies. Nevertheless, the policy area is regularly criticised for its selective and partial approach to harmonisation as well as the low level of ambition of the individual policy templates. It is hard to understand, for example, why the 'Blue Card' focuses only on employees and why no comparable legally binding system has been developed for the admission of self-employed persons (Peers 2009: 408). Furthermore, the individual directives and in particular the 'Blue Card' are criticised for many derogation clauses leaving too much leeway for member states in the national transposition processes (cf. Angenendt/ Parkes 2010; Collett 2009; Parusel 2010). Even those measures addressing academic immigration schemes – which have been overwhelmingly welcomed – are often seen sceptically. Kuptsch (2006: 59), for example, argued with respect to the Students Directive that it had certainly not turned the EU into "'Harbour Europe' for the students of the world".

Despite this necessary critique, the overall picture looks far more optimistic comparing the *status quo* today with the situation during the 1990s. When the Council in the mid-1990s adopted its highly negative resolution on admission of workers, nobody ever imagined that this policy area would develop a European dimension at all, not to mention that those developments would take place within only a decade. Boeles et al. (2009: 250; see also Bendel 2009) are therefore certainly right when they argued that the European Commission "has been successful in propelling harmonisation efforts in this area. Although the rights of entry and employment created by these directives remain fairly modest, they have the potential to simplify and converge procedures for admission in the various Member States, and may moreover serve as a basis for further harmonisation attempts". These processes, however, were certainly not without conflict. The analysis has shown that it was in particular the successful leadership of the European Commission that resulted in the implementation of a fundamentally new policy idea together with a whole list of concrete policy templates. Similar to the case study analysing asylum policies (Chapter 4), Germany was one of the most prominent opponents of these European policies. In line with the theoretical predictions, Germany had to endorse those policies against its principal rejection of the need for harmonisation in this policy area.

6.3 Learning from Policy Ideas and Templates: Germany's Transformation from 'No Immigration' to the 'Welcome Culture'

In parallel to the uploading processes developing common European highly skilled labour migration policies, the last decade was also characterised by continuous reforms of this policy area in Germany. Whereas Germany's self-description as 'not a country of immigration' dominated this policy area until at least the late 1990s, today the aim to establish a 'welcome culture' is the new political mantra. During the three decades following the recruitment stop in 1973, highly skilled labour migration was governed on the basis of exceptional regulations for very specific occupational sectors. Instead, today the discussion is not any longer whether Germany needs immigrants at all, but only about the numbers

required. The Governmental Board of Advisers on Integration[50] recently got to the heart of this changing mentality when they explained the substance of this often heard 'welcome culture' along the lines to the situation in traditional countries of immigration as a "comprehensive, political and societal consensus and a positive commitment to immigration, to the immigration of qualified employees including their family members, to diversity and sensitivity for migration" (Integrationsbeirat 2012: 9).[51]

The following section explains this fundamental transformation of Germany's highly skilled immigration policy as a process of Europeanisation. National policy changes are generally not explained by one factor alone and it would certainly overstate the role of the European Union to claim that the policy developments in Germany's labour migration policy are only due to supranational influences. Nevertheless, the analyses in the following section show that without policy learning processes originating from the European level the outcomes and the processes of national developments are hardly understood. Most scholars have ignored the European factor so far because they either focus on external influences from the global level or alternatively concentrate too much on internal dynamics of the national political process. The multi-level policy processes in Europe, instead, provides a middle ground for policy analysis without which the particular timing and form of Germany's reforms are hardly understood.

The following section proceeds in three steps. First, the national *status quo* of highly skilled labour migration policies until the 1990s – before the EU acquired any meaningful competences in this policy area – is discussed. In a second step, the introduction of the German 'Green Card' is analysed as an important instance of the policy learning mechanism of Europeanisation. By creating and supporting new national norm entrepreneurs and providing a new policy idea the EU is a crucial factor to understand the implementation of this policy measure which decisively shaped the subsequent development of Germany's labour migration policy. Finally, the analysis concentrates on the subsequent changes in the three different dimensions of highly skilled labour migration policies. Although not each individual policy decision has been shaped by European developments, the overall design as well as the precise form and timing of individual measures closely mirror the previously developed European templates.

6.3.1 Muddling Through: Labour Migration Policy until the 1990s

Germany's labour migration policy has a long tradition. It dates back to the end of the 19th century when the country shifted from an emigration to an immigration country. As a consequence of this early immigration, at least four major principals of Germany's labour migration policy had taken shape by the early 20th century: These included (1) a general preference for domestic over migrant workers; (2) a general belief that the immigration of migrants has to depend on the domestic labour market situation; (3) a generally broad

50 The 'Beirat der Beauftragten der Bundesregierung für Migration, Flüchtlinge und Integration' was appointed in May 2011 as a continuous advisory board for the Federal Government Commissioner for Migration, Refugees and Integration.

51 The denial that Germany has actually developed into an immigration country was regularly supported by pointing to the recruitment stop exception decree (ASAV) originally introduced in 1990. The fundamental turn in Germany's labour migration policy is also seen in the fact that from January 2012 onwards this regulation has been annulled.

discretion for the administration; and finally (4) a preference for *ad hoc* and improvised rather than long-term planning of its labour migration policy (cf. Bade 1992; Esser/Korte 1985; Herbert 2001).

Those characteristics continued to shape Germany's labour migration policy throughout the last century. The legislative framework that structured this policy area until the late 1990s, however, developed later. Responding to economic recovery after World War II, Germany institutionalised its guest-worker policy, which structured labour migration from 1955 until 1973. It allowed Germany to actively recruit foreign labour based on bilateral agreements with the sending states resulting in mass immigration to respond to obvious labour shortages (Salt/Clout 1976; Schönwälder 2001). The necessary legislative framework developed during the 1960s. It consisted of three instruments: The Aliens Act from 1965 (AuslG) which required immigrants to hold a residence permit, the Labour Promotion Act from 1969 defining the conditions for work permits for foreign workers and the Work Permit Decree (Arbeitserlaubnisverordnung, BGBl I 1971: 152) from 1971, which stated that a work permit may be granted "according to the situation and development of the labour market" and only after a labour market test secured that domestic national applicants are not replaced.

These policy instruments clearly followed the four major principles of Germany's labour migration policy: they focused on temporary migration, provided for a high level of protection for national employees, endowed the administration with broad discretion and included a minimum level of rights for foreign workers, which together allowed the system to be easily adjusted along national preferences (cf. Hönekopp/Ullmann 1982). When the federal government in November 1973 passed a recruitment stop, it responded to the world economic crises and increasing social unrest towards foreigners and ended active foreign recruitment in Germany. In the following years, successive governments stressed the priority of the national work force, reduced labour migration to a minimal level and restricted labour market access for spouses and children. Although the legislative framework remained intact and principally allowed for the continuity of the immigration of foreign workers, it was during those years in the 1970s that Germany developed its self-characterisation as being 'not an immigration country'.

This situation did not change until the late 1980s, when the lack of employees in certain sectors (e.g. agriculture, hotels and restaurants) together with foreign policy considerations in response to the upheavals in Eastern Europe in 1989 resulted in the introduction of new labour migration schemes. The government set up a system for the temporary admission of workers from Central and Eastern European countries to support those states with their market economic transformation of their economies and reduce the migration pressure between Eastern and Western European countries. Through bilateral government agreements it provided employment opportunities for contract work, seasonal and posted workers as well as cross-border commuters. The similarities between these programmes and the labour recruitment of the former guest-worker period are obvious. They particularly apply to the pragmatic policy approach following short-term necessities of the labour market, as well as the large discretion the administration keeps in the process. Consequently, the official doctrine of the 'no immigration country' was also maintained (cf. Castles 2006; Faist, et al. 1999; Rudolph 1996; Hönekopp 1997; Hunger 2000; Menz 2001). Additionally, the new labour migration schemes did not result in any far-reaching legal reforms. The new Aliens Act in 1991 together with the Recruitment Stop Exception Decree (ASAV) from 1990 only transferred the former system of administrative regulations into legal decrees and added the new temporary migration schemes for Central and Eastern European countries.

Already during the 1980s, this policy approach had been criticised for its "lack of planning in the FRG's immigration policy that it could be described by the expression 'non-policy'. If immigration policy is 'made' at all, it is only to solve problems as they arise through ad hoc measures" (Esser/Korte 1985: 201). After the introduction of the labour migration schemes in the 1990s the complexity of this system increased, its reactive and defensive behaviour and "the lack of an overarching conception" (Joppke 1999: 66f.) became defining features of Germany's labour migration policy (see also Zimmermann, et al. 2007: 9; Straubhaar 2006).

At the end of the 1990s, Germany's labour migration policy consisted of a series of prescriptions, allowing temporary labour migration from non-EU countries in exceptional cases and for particular groups only (Cyrus/Vogel 2003) – a comprehensive labour migration policy with an explicit focus on highly skilled foreign workers did not exist. This situation slowly started to change during the 1990s with the introduction of some smaller reforms concerning the introduction of temporary and academic immigration schemes. With respect to temporary highly skilled immigration, the ASAV – when introduced in 1990 – included, next to the regulations concerning Central and Eastern Europe, a provision enabling temporary labour migration for skilled employees with a university degree who had special technical skills. In 1998 an additional reform introduced the possibility of employing third-country nationals on the basis of international intra-company exchange. In both cases, however, the admission mechanisms were very bureaucratic and complex, including nine separate administrative decisions before a highly skilled worker was able to work in Germany (Sachverständigenrat 2004: 132). Furthermore, specific regulations concerning permanent highly skilled immigration did not exist in Germany until the late 1990s. This resulted in a legally highly insecure situation for all potential applicants who were asked to regularly extend their temporary residence and work permits until later, eventually, a more secure permit would be issued.

In the case of academic immigration, the situation was not much different. For the admission of international students interested in completing (parts) of their studies in Germany, the cooperation of several administrations was necessary, including the university administration, the local foreigner administration and the labour office, therefore making an application a particularly complicated and troublesome process (Wollenschläger 1986). Although the 1990s have already seen some initial steps towards liberalising this situation (cf. Renner 2000: 195; Beauftragte 2000: 135f.), the whole procedure remained highly inflexible. For example, any change of course taken by the student was prohibited because this would change the original purpose of residence and would therefore ultimately result in termination of the residence permit. Similarly complicated situations existed with respect to part-time work to finance the studies or family reunification with a spouse, which included a one year waiting period. Even worse was the situation for foreign graduates where the principle of return after graduation – officially following developmental interests of the country of origin – governed this policy area. Employment after graduating was generally prohibited including even in those cases where an applicant would fulfil all conditions set in the ASAV (Renner 2001: 52). Only in the case of the immigration of researchers was German legislation more anticipatory with the Work Permit Decree from 1971 already allowing for the issuance of work permits to academics working in public research institutions. The admission procedure, however, was as non-transparent as the situation for temporary immigration because both aspects were regulated on the basis of the ASAV (for an overview of the *status quo* of the policy at the end of the 1990s see Table 6.4 on page 190).

In conclusion, the legislative framework in Germany at the end of the 1990s can certainly not be described as a comprehensive highly skilled labour migration policy. Although the provisions theoretically opened the German labour market for some narrowly defined highly skilled migrants, it did not offer any preferential treatment for the group of highly skilled, offered only temporary migration schemes with unclear prospects for permanent residency, a very bureaucratic and complex admission procedure including strict labour market tests, a restrictive set of residence rights for the applicants as well as their family members and very restrictive regulations concerning academic immigration schemes. Furthermore, the existing immigration schemes were hardly known by potential migrants and overwhelmingly applied for by large companies with specialised human resource departments able to find their way through this legal muddle. As a consequence, the existing immigration schemes were used by a very small number of migrants resulting at little more than 1,000 highly skilled migrants per year in the late 1990s (cf. Figure 6.1 on page 163).

In the late 1990s there were few signs of a fundamental reform of this highly skilled labour migration policy. Thränhardt (1999: 45), still in 1999, argued that recent discussions about an immigration law "are largely oriented to amendment of the existing immigration policy, reducing or increasing one element or the other. It seems impossible to close the door totally, and in the present situation, it would also be quite difficult to open them for new inflows, be they bright young talent from all over the world or other world wide schemes. Thus the 'muddling through' approach of the past seems set to continue into the future, and changes will only be implemented gradually".

6.3.2 Putative Surprises: The Advent of New Norm Entrepreneurs

The previous section helps to explain the general astonishment in Germany, following Chancelor Schröders speech during the opening ceremony of the Cebit – the then world's biggest computer fair in Hannover – in February 2000, where he asked: "How many do we need? In which way, apart from the procedures followed in regulatory authorities, are we able to get those specialists […] We are prepared, to issue the Card, which is called 'Green' in America, and which would be called 'Red-Green' here" (Bundesregierung 2000b). Despite regular demands by employer organisations during the previous two years arguing that a lack of ICT-specialists would hamper economic growth in Germany, this principal support by the government for the active recruitment of highly skilled labour migrants took everybody by surprise.[52] When the 'Green Card' – the name under which this measure became widely known to the public – was finally implemented in August 2000, it consisted of two separate Decrees[53] enabling the recruitment of up to 20,000 computer experts from third countries, who were allowed to work and live in Germany for up to five years. The crucial criterion for an application was the qualification of the applicant including a university degree or a yearly salary of at least 51,000 euros. Although the individual labour

52 Particularly after the defeat of the governing parties in the Hesse elections in spring 1999, following a public mobilisation against their citizenship reform project and the subsequent need for serious compromise with the FDP (cf. Gerdes, et al. 2007), nobody expected any additional migration reform project during the on-going legislation period.

53 Verordnung über Aufenthaltserlaubnisse für hoch qualifizierte ausländische Fachkräfte der Informations- und Kommunikationstechnologie (BGBl I 2000: 1176); Verordnung über die Arbeitsgenehmigung für hochqualifizierte ausländische Fachkräfte der Informations- und Kommunikationstechnologie (BGBl I 2000: 1146).

market test was maintained, the reform reduced the bureaucratic effort and the process time for the administration, provided for more favourable work rights including the portability of the permits in cases of changing employer, and concerning family reunification provided access to the labour market for family members after one year.

Overall, the 'Green Card' itself was a rather minor political decision because it maintained the major principles of previous labour migration policies in Germany, particularly its focus on temporary migration and the reliance on an individual labour market test. Some commentators at that time even argued that it would have been possible to organise the 'Green Card' within the existing legal framework (Angenendt 2002; Hunger/Kolb 2001: 158; Martin, et al. 2002: 15; Werner 2002). However, the actual relevance of the 'Green Card' was not the legal changes it introduced, but its catalytic role for starting a far more fundamental discussion about overhauling Germany's labour migration regime. It closely aligned labour migration with national economic interests and marked a symbolic departure from the former self-description of being 'not a country of immigration'. From this perspective, the importance of the 'Green Card' cannot be overestimated because "it laid the tracks into terrain that the prevailing political system had never dared to enter" (Kruse, et al. 2003: 130; see also Meier-Braun 2002) and is correctly seen as the first step in a whole range of reforms that finally established a comprehensive highly skilled labour migration policy in Germany during the following decade.

In an attempt to explain these policy changes in Germany's highly skilled labour migration policy introduced by the 'Green Card', as well as all subsequent reforms, scholars mainly apply globalisation or cultural theories as well as domestic politics approaches. With respect to the first, globalisation theory became prominent in migration studies during the 1990s generally claiming that recent economic trends had reduced the state's capacity to control immigration (cf. Sassen 1998; Soysal 1994). More specifically, representatives of this approach claimed a universal trend towards introducing labour and particularly highly skilled labour migration programmes and an increasing convergence between industrialised countries (e.g. Castles 2006; Kolb 2014; Martin 2014). Instead of specific European factors they point to global influences to explain policy developments in Germany. In their empirical analyses they highlight, for example, the initiatives by international organisations like the Organisation for Economic Co-operation and Development (OECD) or the International Labour Organization (ILO) pushing for a more coherent global labour migration policy. The timing of events, the adoption of specific policy ideas and the particular substantive form of policies, however, hardly fit those general and diverse global sources.

A second approach applies cultural arguments to explain the specific German Sonderweg of its labour migration policy. These studies generally argue that "the unique history of each country, its conceptions of citizenship and nationality, as well as debates over national identity and social conflicts within it, shape its immigration policies" (Meyers 2004; Brubaker 1994). Traditionally, this approach has been favourably applied to the German case (e.g. Castles 1995; Kurthen 1995), but the developments during the last decade provide a formidable challenge to these studies. The tendency to reify various historical and ideological strands into more or less static national models (cf. Feldblum 1999) runs into trouble in explaining the dynamics and changes of a policy. The fundamental shifts in Germany's highly skilled labour migration policy are therefore hardly accounted for by these approaches (Green 2004; Klusmeyer/Papademetriou 2009; Kurthen 2006).

Finally, a third group of studies concentrates on domestic politics and in particular the role of political parties and interest groups to explain the developments in Germany. They adopt a pluralist understanding of the state which "serves as a neutral arena for societal interests" with policy-making being the result of bargaining and compromises between these interests (Meyers 2000: 1257; see also Freeman 1995; Money 1999; Akkerman 2012; Giugni/Passy 2006). Compared to the approaches discussed before, such studies have the obvious advantage that they have a better understanding of situational factors and the dynamics of national policy-making processes. With respect to the influence of political parties, however, these approaches have obvious difficulties in explaining the developments in Germany during the last decade. Although the details of the negotiations about the Immigration Act, for example, are certainly only explained with reference to electoral sensibilities (Schönwälder 2006: 18; see also Fellmer/Kolb 2009; Triadafilopoulos/Zaslove 2006), reference to party politics provides a poor understanding of the overall timing and form of policy change.

From this domestic politics perspective, already the debates about the Aliens Act, finally passed in 1991, had seen numerous demands by the opposition parties for a more comprehensive immigration law (cf. Bundestag 1988a, 1989), a debate which became particularly pressing after the asylum compromise in 1993 (cf. Joppke 1999: 97; Marshall 2000b: 156). During the following years, several policy proposals by academics (Bade 1994), non-governmental organisations (Friedrich-Ebert-Stiftung 1995) and both Christian churches (Evangelische Kirche, et al. 1997) as well as by the opposition parties (Bundestag 1997b, a) and the federal states (Bundesrat 1997) had been spread but the change in government in 1998 – from a Christian Democrat-Liberal to a Social Democrat-Green coalition – resulted in a Coalition Agreement which solely concentrated on a reform of citizenship law and no far reaching policy projects in the area of labour migration (SPD/Bündnis 90/Die Grünen 1998: 38f.). What is even more striking and questions the domestic politics approaches is the substantial reform proposals the parties held in the late 1990s (e.g. Bündnis 90/Die Grünen 1998: 121; SPD 1998: 24f.), which crucially differ from all policy changes introduced in the following decade. Similarly, studies referring in particular to the lobbying efforts of interest groups, claiming that the introduction of the 'Green Card' was the result of the successful influence of the social partners on the federal government – Chancellor Schröder was at that time euphemistically called 'Comrade of the Bosses' – have similar difficulties to the party political references discussed above (e.g. Caviedes 2010; Cerna 2009; Kolb 2004; Menz 2009). With representatives of the ICT sector already complaining about a labour shortage of computer experts at least a couple of years earlier and the employer organisations lobbying for a reform of Germany's labour since the mid-1990s (cf. Welsch 2001: 60), the particular timing and form of the subsequent policy changes are hardly explained by these approaches.

The previous discussion has shown that each of the existing approaches has serious shortcomings in explaining the substantial changes in Germany's highly skilled labour migration policy in the last decade. The following analysis argues that the reform of Germany's labour migration policy is a good example for the domestic usages of the Lisbon Strategy (Borrás/Radaelli 2011). The European Union constitutes a crucial factor in explaining the timing as well as the substantial outcomes of those national policy developments. The specific downloading processes of Europeanisation closely follows the predictions of the policy learning mechanism and highlights two major factors – the existence of cooperative informal institutions and national norm entrepreneurs.

Concerning the first factor, the discursive context in Germany provides the central cooperative informal institution supporting the implementation of the new European policy idea. The speech by Chancellor Schröder announcing the 'Green Card' "marked a watershed" (cf. Green 2004: 112; Meier-Braun 2002: 102) demonstrating an obvious departure from the previous self-declaration as 'not a country of immigration' and fundamentally transformed the public debate over immigration in Germany (for the following analysis see also Ette (2003a, b)). Whereas before, migration was understood as a burden to the welfare state, this image changed practically overnight when immigration became one of the central solutions to Germany's economic problems. The simple label 'Green Card' combined the fame of the 'new economy' with the necessity of allowing a few thousand people to come to Germany. The previous analyses about the developments at the European level, however, show that this new policy idea did not develop in a void. Instead, the preparations of the Lisbon Strategy provided the necessary intellectual background as well as an important source legitimising this policy idea. The direct link between the Lisbon Strategy and the 'Green Card' is obvious in the close temporal co-occurrence, but was directly spelled out in a debate in the German Bundestag shortly after the European Council. In his governmental declaration, Schröder actively promoted the main ideas of the Lisbon Strategy arguing, for example, that "[w]e want a capacious European region for research and development. We want to attain highly-qualified researchers permanently for Europe. You see […] even in this sector the Europeans are opening up, because they know that we need the worldwide exchange of qualified researchers to promote our own development, even our own economic development" (Bundestag 2000d: 9082; see also Bundestag 2000c: 1-2). In this context he justified the announcement of the 'Green Card' as a major achievement on the way to a knowledge society.

In the following weeks, this new policy idea was comprehensively implemented in the political strategy of all ministries of the government inventing slogans like "Germany is spelled with .de" (Bundesregierung 2000a) and the Ministry of Labour demanding to "Get Germany ready for the Information Age" (BMAS 2000). The widespread implementation of this new European policy idea within few weeks is also explained by its close ideological similarity with on-going developments in Germany's political discourse, providing a favourable cooperative informal institution at that time. This concerns in particular the far-reaching programmatic revision of the Social Democratic Party commonly discussed under the label of the "third way" (Green-Pedersen, et al. 2001: 307), which closely fitted the new European policy idea. The Social Democrats in Germany were at that time considerably influenced by the British Labour Party, documented by a common manifesto by the two party leaders Blair and Schröder (1999) where they transformed their former understanding of macro-economic policy along the lines of a fundamental transformation to a knowledge-based society (cf. Bittlingmayer/Bauer 2006; Gerdes 2006).

The importance of the new policy idea for the migration discourse in Germany is also seen in the fact, that from "one day to the next, prejudices which normally die hard […] were not expressed anymore" (Schmalz-Jacobsen 2001: 41). Diverse strategies by the conservative parties in the parliament referring to original ideas underlying Germany's labour migration policy did not find any support anymore in the political and public sphere. Examples include the CDU candidate and former federal technology minister Rüttgers who made opposition to the 'Green Card' the centrepiece of his election campaign. He asserted

that Germans preferred "children instead of Indians", and sent postcards to voters with the slogan 'more training instead of more immigration' (cf. Martin 2001);[54] as well as the debate about a 'German guiding culture' developed by the then leader of the parliamentary faction of the CDU Merz (CDU 2000), which "embrace the traditional idiom of Romantic German nationalism" (Klusmeyer 2001: 521).[55] Additionally, the success of this new policy idea is also seen in the fact that within a few months, all political parties in the German parliament – except the PDS – used the new policy idea as one of the central arguments in their policy papers on migration policy (cf. Bündnis 90/Die Grünen 2001; CDU 2001; CSU 2001; FDP 2001; PDS 2001; SPD 2001), whereas before it has not been available in any policy paper by the political parties. Neither did those earlier proposals focus on the necessity of particularly highly skilled migration nor did the justifications refer to the necessity of labour migration for international competitiveness and future economic growth.[56]

With respect to the second factor – the existence of a national norm entrepreneur – the introduction of the German 'Green Card' was decisively shaped by the recent experiences of the Federal Ministry of Education and Research (BMBF) as well as the Federal Ministry of Economics and Technology (BMWi) at the European level. The active participation of both ministries in the respective European working groups preparing the Lisbon Strategy provided them with the necessary expertise and legitimacy in this new policy area. Traditionally, Germany's labour migration was coordinated by the Ministry of Labour and the Ministry of Interior in cooperation with the employer organisations and the unions (Schneider 2009: 140; Esser/Korte 1985). The growth of the Information and Communication Technology sector during the 1990s, however, had largely bypassed both ministries. Although this new economic sector experienced rapid growth, its political structures including a clear responsibility within the government as well as the establishment of the representation of employers and the employees lagged far behind. In this situation, the BMBF as well as the BMWi were able to accumulate the necessary political expertise on those issues not least by European cooperation. Since the second half of the 1990s the European Commission together with its partners in the member states worked on a clear

54 The reference to the Indian was born in the public discourse in Germany. It created the image of the 'Computer Indian' as an association of the highly successful ICT in India. The campaign argued for a better educational policy as an alternative to importing foreign high-tech workers and referred to classic scenarios, which depicted 'immigration as a threat' and appealed to images of cultural homogeneity. It tried to repeat the successful campaign against the new citizenship law in January 1999 by appealing to xenophobic attitudes and taking up the restrictive discourse against foreigners of the 1980s and 90s. However, the campaign failed and was criticised by a broad range of actors. Particularly important was the critique of the employer organisations whose President Hundt judged the campaign to be "not thought through and full of wretched populism".

55 Although some observers argued that the CDU only adopted this nationalistic stance toward immigrants because of strategic considerations, it indicates the decreasing resonance of the former discourse. One of the results was that even within the CDU/CSU itself the term was not often used and was abandoned before the CDU published its proposal for a German immigration policy in May 2001. The term 'Leitkultur' was not included in the joint paper by CDU and CSU (CDU 2001). Only the concept paper by the CSU (CSU 2001) continued to use the term.

56 For example, the proposals for a reform of Germany's migration policy by the SPD and the Greens during the 1990s – although including preliminary ideas about a points system – justified such an instrument with the reduction of illegal migration and demographic developments only (cf. Bundestag 1997a, b; Bundesrat 1997). Similarly, an analysis of relevant publications by employer organisations or influential scientists did not reveal political concepts or justifications similar to the new European policy idea which links economic growth with the need for highly skilled labour migration.

political vision for this policy area. The working and expert groups provided the necessary preconditions of less politicised and more insulated, private settings conducive for policy learning processes to take place. The European level therefore constituted an important learning environment for both ministries finally resulting in the 'eEurope: An Information Society for All' (CEC 1999b) initiative as its most visible outcome. Both ministries were consequently well informed about the developments in other European member states and these European forums also provided room to discuss difficulties in a number of member states of a crucial lack of ICT-specialists, resulting in February 2000 in a Commission Communication on 'Strategies for Jobs in the Information Society' (CEC 2000b). Finally, the participation of Germany in the European context was particularly active during the year preceding the Lisbon Strategy with Germany holding the Council Presidency from January to June 1999 (cf. Maurer 2000).

In parallel to the participation of both ministries in the European context, they were responsible for developing Germany's national political strategy in this new policy area.[57] This included in particular the preparation of the German Action Programme 'Innovation and Jobs in the Information Society of the 21st Century', which was jointly presented by the German Ministry of Education and Research and the German Ministry of Economics and Technology (BMWi/BMBF 1999: 18) closely in line with the 'eEurope' strategy published only weeks later. When the developing lack of ICT-specialists became more obvious this confronted the government with a novel and uncertain environment, which principally makes policy learning processes more likely. The lack of highly skilled labour had not been experienced before and therefore no deeply embedded beliefs existed in Germany that would hinder the adoption of a new policy idea. In this situation with little previous experience, the two ministries were able to use their political expertise – not least acquired in their active cooperation at the European level – to decisively shape the future course of Germany's highly skilled labour migration policy. It is therefore of great importance to note that it was only a few hours before Schröder announced the 'Green Card' at the Cebit opening ceremony, that Bulmahn the then Minister of Education and Research – generally holding a close relationship to the Chancellor – presented her strategies for the labour shortage in the ICT sector to the Federal Cabinet. In response, the Chancellor followed her – in the European context well prepared – advice despite criticism from the Ministry of Interior and the Ministry of Labour not to risk the bright prospects for growth in information technology through a too rigid immigration policy (Astheimer 2010; Münchenberg/ Finthammer 2000).

[57] A final institutional factor that supported the introduction of the 'Green Card' was the strong personal involvement of the Chancellor in this policy area. To support policy reforms on central social and economic policy areas, the new government together with the trade unions and employer organisations in 1998 set-up the Alliance for Jobs, Training and Competitiveness (Bündnis für Arbeit, Ausbildung und Wettbewerbsfähigkeit) marking a central project of the government with high symbolic relevance. Within the Alliance, the labour shortages in ICT were also an issue with the unions and the employer organisations generally agreeing, for example, to increase the volume of training for new ICT and media occupations, (BMWi/BMBF 1999: 33f.). The Chancellor therefore felt personally responsible for this particular policy area, which provided additional support for the two new norm entrepreneurs.

6.3.3 *Incremental Transformation: National Policy Developments in a European Context*

The previous section concentrated on the introduction of the 'Green Card' as the central catalytic event in the development of Germany's highly skilled labour migration policy. Carefully tracing the process, the analysis showed the crucial influence of the EU on this specific policy measure. Following the predictions of the policy learning mechanism, the analysis focused first on the importance of cooperative informal institutions with the new policy idea changing the traditional discourse in Germany. Second, the importance of the European context for the development of new norm entrepreneurs in this policy area was highlighted and the analysis pointed to the close working cooperation in the preparation of the Lisbon Strategy as crucial arenas for policy learning processes to take place.

After the adoption of the 'Green Card' the close relationship between the national and European level diminished. Nevertheless, the following section argues that the subsequent policy reforms – the Immigration Act 2005,[58] the Transposition Act 2007 (AsylREURL-UmsG), a Decree regulating the admission of university graduates 2007 (HSchulAbsZugV), the Labour Migration Control Act 2009 (ArbMigrStG) and finally the European Highly Skilled Directive Transposition Act 2012 (HQRLUmsG) – all taking place in the last decade are successfully explained as incremental policy learning on the basis of previously established templates.[59]

These policy templates originate from different sources. Certainly, the report of the Independent Commission on Migration to Germany (UKZU 2001) as well as the publication of the short-lived Immigration Council[60] (Sachverständigenrat 2004) played a prominent role. Additionally, more specific processes have shaped these policy templates. Examples include the endeavours of the Federal Ministry for Education and Research within the preparations of the National Integration Plan (Bundesregierung 2007: 191), their 'Strategy for the Internationalisation of Science and Research' (BMBF 2008), as well as several academic reports and policy papers (e.g. Zimmermann, et al. 2002; Straubhaar 2002; Angenendt 2008). Nevertheless, the following section shows that in this context the European Union has developed into an additional actor providing particular policy solutions for domestic policy problems.

Confronted with the multiplicity of individual political processes and participating actors, the empirical analyses do not attempt to trace individual policy processes. The impact of the European level, instead, is demonstrated by the obvious correlation between the previous development of specific templates at the level of the European Union and the subsequent national adoption of new legislation closely in line with these templates (cf. Table 6.4). Whereas in those national political processes of transposing specific European directives the impact of the European context is obvious, most of the political debates are still taking place within purely national parameters. Nevertheless, the various advisory

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58 Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern (Zuwanderungsgesetz).

59 For a more chronological analysis of the development of Germany's highly skilled labour migration policy see also Ette et al. (2012).

60 Sachverständigenrat für Zuwanderung und Integration (Zuwanderungsrat). Shortly after the publication of the report, the Ministry of Interior withdrew the financial means of the Council. Nevertheless, the recommendations of the Council have informed subsequent policy debates.

boards, former staff members of those Commissions as well as the government itself on several occasions pointed to the crucial importance of the European context for national developments. The Immigration Council argued, for example, that, "the national level is 'lagging behind' the forward looking and innovative approaches developed at EU level in many policy areas in recent years […]. In face of the development of European policies, it will be less a task to set up own national solutions but to represent German interests most effectively in negotiations about receivable regulations at the EU-level and to enable speedy subsequent implementation of those common solutions" (Sachverständigenrat 2004: 86-87). Similarly, the government admitted at various instances that recent policy reforms are obviously shaped by the EU when they argue, for example, in the context of setting up the Labour Migration Control Act that these are shaped by recent "European consultations" (BMI/BMAS 2008: 2).

Permanent Immigration

Permanent immigration schemes are regularly equated with 'human capital approaches' selecting migrants along different specified criteria mainly on the basis of points systems without demanding a concrete job offer. Although the political discussions in Germany during the last 15 years have mainly centred on the introduction of a points system to govern labour migration, this dimension of highly skilled labour migration policies has experienced little progress during the last decade because neither at the end of the 1990s nor today does such a policy instrument exist in Germany. The Independent Commission on Immigration which was introduced soon after the announcement of the 'Green Card' recommended a points system in its final report (on the work of the Independent Commission see Schneider 2009; Siefken 2008) and employer organisations have demanded such a system at all opportunities (e.g. BMI 2006b). Nevertheless, at the end of the period of investigation a points system – which interestingly was never proposed at the European level as a reasonable policy template – has not found its way into Germany's highly skilled labour migration policy.

Despite the failure to introduce such a policy instrument to govern permanent labour migration – regularly applied in traditional countries of immigration – the decade after the turn of the millenium has nevertheless seen progress showing certain similarities with policy templates originally developed at the European level. A first aspect concerns the introduction of a clear mechanism providing individual migrants a pathway from temporary to permanent immigration. Principally, this path was introduced with the Immigration Act 2005. The new Residence Act together with the two new ordinances on employment (Beschäftigungsverordnung) as well as on the employment procedure (Beschäftigungsverfahrensverordnung) provide for a certainly more transparent procedure leading towards permanent residency after five years, improving the formerly highly insecure status for temporary highly skilled labour migrants (cf. Feldgen 2006: 179). As a result, labour migration was seen for the first time in German immigration history as an independent form of immigration with the prospect of permanent residence. After a minimum stay of five years in combination with a number of other requirements such as language acquisition and payment of 60 monthly contributions to the statutory pension fund, a temporary residence permit would be exchanged for a permanent residence permit (Zimmermann, et al. 2007: 36).

A second aspect includes the introduction of a permanent immigration scheme for self-employed migrants, which was also introduced with the Immigration Act in 2005.[61] Whereas such a scheme was a novelty in Germany's labour migration policy, it originally set very high limits. These included an investment sum of one million euros, the necessity to create at least 10 new jobs and the necessity of the local chambers of industry and trade assessing the underlying business plans. If the migrants were successful in realising the planned economic activity after three years they would be given permanent residency. During the following years, however, these requirements were successively reduced. In a first step the Transposition Act 2007 halved the investment sum to 500,000 euros and the number of new jobs to five and included the immigration of self-employed working in liberal professions (e.g. engineers, accountants etc.). In a next step, the Labour Migration Control Act reduced the investment sum to at least 250,000 euros and the Transposition Act 2012 completely dropped those requirements only generally demanding a promising business idea from now on.

Finally, a third aspect – the provision for a job-seekers visa – was introduced with the Transposition Act (2012), but was proposed as an important instrument in the very first Commission Communication in 2000. The new § 18c in the Residence Act (AufenthG) provides a temporary residence permit for third-country nationals with a university degree to seek a job during a six months period. Most commentators consistently assess this instrument as a first step towards a 'human capital approach' providing potential highly skilled labour migrants liberal access to get in contact with potential employers. This reduces a major hurdle for international migrants to a minimum and completely drops the former principal of demand-side labour regulation based on an existing job offer (e.g. Thym 2012; SVR 2012).

Temporary Immigration

More far-reaching policy changes have been introduced on temporary highly skilled immigration schemes. At the end of the 1990s, the admission of this group of labour migrants was only possible on the basis of specifically defined occupations (e.g. university graduates with specific skills, intra-corporate transfers etc.) and on the basis of bureaucratic and non-transparent mechanisms including an individual labour market test and no special provisions concerning family reunification and spousal work rights. The legal basis at this time was succinctly summarised by Feldgen as a principal "No, but" to highly skilled labour migration including very specific exceptions which changed in the meantime to a "Yes, please" (Feldgen 2006: 169).

61 Additionally, the Immigration Act includes a provision for highly skilled researchers who are able to apply directly for a permanent residency permit at the discretion of the foreigner authorities and the Federal Employment Agency.

Table 6.4: Comparison of legislative framework governing highly-skilled labour migration in Germany, 1999-2012

	1999	2012
Permanent immigration	No comprehensive permanent labour migration scheme existent. Permanent highly skilled labour migration only possible on the basis of temporary labour migration contracts. The regular extensions of the initial permit resulted later, eventually, at a permanent residence status.	No comprehensive permanent labour migration scheme existent with the exception of self-employed as well as very highly skilled researchers. Transparent path to permanent immigration status after five years exists on the basis of the extension of temporary labour migration permits. Job-seeker visa exists enabling university graduates from third countries to stay in Germany for six months.
Temporary immigration	Temporary highly skilled labour migration was possible for small groups on the basis of specifically defined occupations (e.g. university graduates with specific skills, intra-corporate transfers etc.). The admission procedure was very bureaucratic and non-transparent including an individual labour market test. No special provisions concerning family reunification and spousal work rights existed.	Transparent and more efficient admission mechanism based on the one-stop-shop procedure. A regular labour market monitoring system aiming at the detection of possible occupations or sectors with a lack of skills is introduced. Admission of highly skilled migrants on the basis of the European Blue Card including the lowest salary caps the Directive allows and providing for a transparent mechanism as well as attractive residence rights for the applicant and its family.
Academic immigration	The international migration of students as well as researchers was principally possible but only on the basis of a complicated admission mechanism. Special residence rights, e.g. concerning family reunification or spousal work rights did not exist. Employment of foreign graduates was principally prohibited.	International migration of students increased with more liberal opportunities to work part-time to finance their studies as well as improved intra-European mobility rights of students. Foreign graduates from German universities have 18 months to find a job after graduation and are allowed to work during this period. Labour market access without labour market test and priority examination. Researchers (including PhD's and postgraduate students) are following a separate admission procedure without interference of local foreigner authorities (even not for issuing visas) but sole responsibility of the private or public research institutions. The prolongation of stay is possible despite changing research project. No labour market test for spouses work rights.

Source: Own compilation.

A first aspect that fundamentally changed this situation was the introduction of the one-stop-shop procedure first presented by the European Commission in its Draft Directive in 2001 and later adopted within the Single Permit Directive. In Germany, this proposal was included within the Immigration Act 2005. The new legislation omitted the previously additional work permit and the local foreigner authorities now issue a residence permit specifying whether labour market access is allowed. Compared to the complicated and non-transparent mechanism before, the importance of this procedural innovation cannot be overestimated (cf. Eichenhofer 2005). During the following years, several succeeding reforms have been introduced principally broadening the group of potential beneficiaries enabled to apply for temporary labour migration, simplifying the admission mechanisms and granting more favourable residence rights. Examples include the waiving the labour market test for specific groups, the introduction of principal access to the German labour market for all university graduates from foreign universities and particularly improved residence rights with respect to family members with the skipping of the individual verification procedure providing for far better spouses' work rights than before (cf. Storr/ Albrecht 2005; Bünte/Knödler 2008, 2009; Heß 2009).

A second aspect concerns the introduction of a measure closely resembling the Commission proposal of 'immigration profiles'. Under this label, the Commission referred to an evidence-based approach to migration management, which should consist of a comprehensive and regular assessment of potential skill shortages in national labour markets. Shortly after the publication of the Commission proposal in 2008, the German Federal Ministry of Labour and Social Affairs in 2009 established a new advisory board – the 'Alliance to advise the government on questions of labour force needs' (Allianz zur Beratung der Bundesregierung in Fragen des Arbeitskräftebedarfs) – which also aimed at the establishment of a regular monitoring system to assess current as well as future labour force needs and potential skill shortages (BMAS 2009; see also Bundestag 2010e; Helmrich/Zika 2010). In November 2011 the first – of a now yearly series – 'Labour Force Report' was published providing the government with more solid data for future decisions (BMAS 2011).

Finally, the third and certainly most important European template, which has fundamentally reformed this dimension of Germany's highly skilled labour migration policy, concerns the implementation of the European 'Blue Card'. Although there have been fierce debates about the Blue Card in Germany during the uploading as well as the downloading phase (see, for example, Angenendt 2008: 57), the final Transposition Act 2012 fully transposed the European template and used the full capacity of the original Directive to introduce a new regulation for governing temporary highly skilled labour migration (cf. Thym 2012). The reformed Residence Act now specified, for example, that an applicant would be issued a Blue Card if a university degree or comparable professional experience is existent as well as a yearly salary of 44,800 euros (Kolb/Fellmer 2015). In economic sectors with a lack of skilled labour force – including physicians, engineers, information scientists and mathematicians – the salary is even lower on a level of approximately 35,000 euros. Furthermore, a 'Blue Card' holder as well as his/her family can apply for permanent residence after three years, a period which can be reduced in the case of good German language skills. In her detailed analysis about the Europeanisation of Germany's highly skilled labour migration policy in the case of the 'Blue Card' Laubenthal (2014: 470) showed that Germany, although very sceptical towards the introduction of such a policy instrument during the uploading process, now "used the provisions of the directive to significantly liberalize the German labour migration regime".

Academic Immigration

The legislative system governing academic immigration in the late 1990s was a far cry from a comprehensive academic immigration policy with highly bureaucratic admission mechanisms for international students and in particular researchers, no special residence rights concerning family reunification or labour market access for the spouse, the principal of return to their country of origin after finishing their studies and no access to the labour market for foreign graduates. The situation today has changed this dimension of highly skilled labour migration policies completely with many reforms enacted during the last 15 years closely following the European templates.

A first aspect concerns the admission and residence of international students from third countries at German universities. Here, the policy changes of the last decades have been smallest because the reforms during the 1990s included some new provisions largely in line with the proposals of the European Commission. Nevertheless, the Immigration Act introduced the new § 16 providing for the first time a legislative provision governing the admission and residence of students, whereas before it was governed by a general decree only. In the following years further reforms resulted in additional liberalisation of this policy dimension. This concerned in particular the implementation of the Students Directive within the Transposition Act in 2007, as well as later reforms within the Transposition Act 2012. These reforms increased the intra-European mobility of international students, provided more flexible periods of validity of residence permits in particular with respect to changes in the courses taken by students – until the late 1990s such changes generally resulted in the annulment of residence permits – and finally created more extensive possibilities for students from third countries to work part-time to finance their studies (Maier-Borst 2008: 128).

A second aspect concerns access to the national labour market for foreign graduates of German universities. Similar to the proposals by the European Commission in their first Draft Directive in 2001, the Immigration Act in 2005 implemented the general residence right for an additional year after graduation to find an adequate job and ends the principal of return by providing the possibility to apply for permanent or temporary highly skilled labour migration schemes – although these applications are conditional on a labour market test securing the national labour force. Additional reforms including this group of highly skilled labour migrants were introduced during the following years including a decree regulating the admission of university graduates (HSchulAbsZugV) which was introduced as an *ad-hoc* measure following an extraordinary cabinet meeting of the government. Although the Transposition Act was already underway at that time and introduced new regulations for this group – including the right to work part-time during this one year job seeking period – the issuance of this additional decree eliminated the labour market test and provided those graduates with direct access to temporary residence permits as well as included the right to work on a self-employed basis (Maier-Borst 2008: 128). Finally, the Transposition Act 2012 introduced additional liberalisations for this group including the extension of the job-seeking period, the complete termination of the approval for labour market access by the Federal Labour Office and priority access to permanent residence after two years.

Finally, a third aspect concerns the admission of foreign researchers. Although this group of highly skilled labour migrants has been defined first as an exception from the general recruitment stop in the 1970s, it is this group whose admission mechanism has become most innovative during the last decade. The Transposition Act 2007 provided the

basis to implement the Researchers Directive which included a completely new immigration scheme for international researchers (Kluth 2008). The innovative feature of the new admission procedure concerns the fact that the responsibility for the immigration of researchers was now a "cooperative composite" (Thym 2010: 385) between the administration and a public or private research institution.[62] It crucially reduced the influence of the foreigner authorities by providing the host-research institution with the right to grant admission. Finally, the implementation of the Researcher Directive granted more favourable residence rights including spouses' access to the labour market and the waiving of the labour market test by the Federal Labour Office, as well as the usually necessary German language skills. Similar to the aspects discussed before, the following years saw additional reforms of these regulations, which were introduced in the course of more general legislative initiatives (e.g. Labour Migration Control Act 2009, General Administrative Regulations for the Residence Act 2009, Transposition Act 2012).

6.4 Conclusion

The preceding chapter aimed at an analysis of the developments in Germany's highly skilled labour migration policy. Whereas Germany's self-description as 'not a country of immigration' dominated this issue area until the late 1990s, since then it has introduced a multiplicity of reforms now governing the admission and rights of highly skilled labour migrants in a comparatively comprehensive manner. The policy changes are most obvious with respect to academic and temporary immigration schemes, including the partial privatisation of the admission of researchers, a comparatively quick and transparent admission mechanism for principally all university graduates from third countries with an adequate job offer as well as the liberalisation of labour market access for highly skilled foreign workers. Only on the dimension of permanent immigration is the legislative framework still lagging behind with the introduction of a small scheme for self-employed migrants. The introduction of a job-seekers visa for tertiary educated migrants, however, also witnessed some progress on this dimension, moving Germany swiftly towards a hybrid labour migration system also characterising many traditional immigration countries (cf. Papademetriou/ Sumption 2011).

The major argument of this chapter concentrated on the role of the EU for explaining these national policy changes. Whereas most available accounts focus mainly on globalisation or cultural theories as well as domestic politics approaches, the analysis showed that today any approach not taking the European context sufficiently into account will omit crucial variables to account for the process and also the outcomes of national labour migration policy reforms. Along the lines of the policy learning mechanism, the analysis demonstrated in a first step, how the European Commission has developed into an influential actor in this policy area. Linking future economic growth and the transformation towards

62 The reform introduced a three-step admission procedure closely along the lines of the Researcher Directive. It includes the recognition of a research organisation by the Federal Office for Migration and Refugees, the conclusion of a hosting agreement between the research organisation and the researcher and finally the granting of a residence title by the foreigners authority.

knowledge-based economies closely to the international migration of researchers as well as greater openness towards highly skilled labour migration more generally, it provided a crucial precondition for far-reaching domestic usages of the Lisbon Strategy. In a second step, this new policy idea was successfully implemented into Germany's highly skilled labour migration policy supported by two additional variables. First, the great resonance of this idea within the national migration discourse; and second, the birth of two new norm entrepreneurs – the Federal Ministry of Education and Research and the Federal Ministry of Economy and Technology – which implemented this new policy idea against the principal opposition from the Federal Ministry of Interior and the Federal Ministry of Labour. In a third step, precise policy templates were developed at the European level governing in particular the rights of highly skilled labour migrants. Although these templates did not always find consent by member states and have obviously been modified during the European policy-making process – and in particular during the negotiations within the Council working groups – the Commission was successful in adopting at least some of these common policies. Finally, in a fourth step these policy templates have shaped the timing of political processes and also the substantive outcome of national policy reforms in Germany. The case study showed how the European context can – under certain conditions – set new limits to control and provide for liberal national policy changes. Although similar developments might have occurred even without the European Union, the timing as well as the precise substance of these reforms is hardly explained without the European dimension. Nevertheless, the limited use of the 'Blue Card' in most member states – except Germany – shows that common European labour migration policies are still in the making; they are not yet integrated into more general EU labour market and employment policies and suffer from the almost exclusive competence of member states to decide on the number of admissions (cf. Ette, et al. 2013; Commission 2014c; Kalantaryan/Martin 2015; Martin, et al. 2015). Germany, however, has used the European level as a welcome context for national reforms – contrary to its reservations in the beginning.

7 Playing a Wrong Plot? Rhetoric Compliance with Europe's Migration and Development Agenda

7.1 Introduction

The previous three empirical case studies have concentrated on traditional aspects of refugee and migration policies: the governance of asylum, the return of irregular migrants and the international mobility of labour migrants are all based on well-established and extensive national legal systems deeply entrenched with specific national models of migration. In contrast, this final case study focuses on the relatively recent emphasise on international cooperation aiming at more sustainable governance of migration. It describes the implementation of European policies addressing the migration-development nexus in Germany and explains the marginal outcomes of Europeanisation.

A border crossing activity like international migration by definition has an international dimension and nation-states in Europe always cooperate with the immigrants' countries of origin. However, the last decade has witnessed more urgent demands for the international governance of migration and a framework for international migration management (e.g. Ghosh 2000; Betts 2011). This increasing interest in the international dimension of migration and a principal openness towards cooperation has been supported by a changing conceptualisation of migration in countries of destination and origin. Industrialised countries began to realise that their traditional approaches to controlling migration had hit the end of the road and that their future economic prosperity also depended on additional international migration. In parallel, developing countries' perspectives on international migration equally started to change when they realised that emigration of their highly-skilled populations does in the long run probably result in economic benefits by financial remittances and economic entrepreneurship of potential return migrants.

From a theoretical point of view, migration and development have always been intimately entwined. Regional income differentials, differences in living conditions as well as the level of economic and social development of an area more generally constitute basic drivers of migration. Similarly, also the outcomes of international migration with its impacts on economic development in countries of origin and destination show the close connection between both concepts (cf. Skeldon 1997; Nyberg-Sorensen, et al. 2002). Recent review articles about the intellectual history of the nexus between migration and development show that this relationship has experienced fundamental shifts swinging "back and forth like a pendulum" (Haas 2010: 227; see also Faist 2008: 25f.). They differentiate between at least three phases with the first dominating the 1950s and 60s and characterised by developmental optimism. Corresponding to economic modernisation concepts migration was conceptualised as a necessary precondition for the optimal allocation of production factors benefitting both countries of origin and destination. Consequently, emigration from southern to northern countries was actively supported at that time because it was expected that it would help to promote development in the former and subsequently fill gaps on the labour markets in the latter countries.

The second phase lasted from the 1970s until the 1990s and was dominated by developmental pessimism. The dependency perspective explained underdevelopment as the result of structural conditions between the peripheries dominated by a centre. The expected relationship between development and migration changed fundamentally with migration now seen as

a factor increasing global inequalities. The negative impact of out-migration and in particular the loss of potential highly skilled employees under the label of 'brain drain' dominated empirical studies. Furthermore, a negative view on remittances prevailed in debates because empirical evidence suggested that they would generate conspicuous consumption instead of being invested productively. Finally, this negative perspective fitted existing security concerns in industrialised countries about international migration. Confronted with the refugee and migration crises of the 1970s and 80s, northern countries of destination thankfully adopted those negative migration images (Collier/Hoeffler 2004; Weiner 1995).

This pessimistic perspective on the relationship between migration and development had an enormous influence on academic and political concepts. When a third phase of thinking took off throughout the 1990s, international migration was largely absent from mainstream development discourses (cf. Bakewell 2008; Haas 2010: 238). Nevertheless, during the last decade the pendulum has swung back and the relationship between migration and development is again seen in a more positive light. Out-migration is now conceptualised as a safety valve to poverty and as a precondition for economic and social remittances sent by expatriates. Overall, migration is increasingly seen as a tool for development with its promise of 'triple win scenarios' benefitting countries of origin and destination as well as the migrants themselves. Today, the aim has become to manage migration in such a way as to increase its impact on development in the countries of origin and to better control migration in the countries of destination (cf. Portes 2009; Lavenex/Kunz 2008). During this third phase and its reconceptualised migration-development nexus, a flurry of policy proposals attempting to make migration work for development emerged. Many of these initiatives originally started in the ambit of the United Nations (2003) and other International Organisations like the World Bank (2003), but the European Union quickly developed into one of the most prominent supporters of this debate.

In the European context, two external events in particular propelled policies addressing the link between migration and development to the top of Europe's Justice and Home Affairs agenda: The migration crises of Ceuta and Melilla – two Spanish enclaves in Northern Africa – in 2005, certainly marked the first of those events opening a window of opportunity to establish this new policy idea at the European level (cf. Bendel 2007). In direct response, the Commission for the first time argued in a Communication that the "links between migration and development offer a significant potential for furthering development goals" (CEC 2005c: 2) and the Council subsequently adopted the 'Global approach to migration' in December 2005 stating that there exists an urgent need "to ensure that migration works to the benefit of all" (CEU 2005a: 3). The second external event, which again pushed the migration-development agenda to the fore, was the Arab Spring with its socio-political changes in Northern Africa in 2011. It resulted in additional efforts by the European Union to make this agenda actually work and an even more comprehensive approach was adopted by the Council in May 2012 under the new label of the 'Global Approach to Migration and Mobility' (CEU 2012b).

For the analysis of the Europeanisation of the 'Global Approach' in general and the policies addressing the migration-development nexus in particular, different dimensions of this policy area are differentiated. Compared to the already well-established policies addressed in the previous three chapters, no coherent set of policies and legislation exists: the definition of the migration-development nexus and its corresponding policies is still highly contested and the novelty of this policy area results in a certain project base character which dominates this area.

Nevertheless, most scholarly analyses revolve around three major dimensions which are included in Table 7.1 (for similar conceptualisations see Musekamp 2013: 94f.; Keijzer, et al. 2015). The first dimension concentrates on diaspora organisations and their engagement for the development of their countries of origin. The term diaspora principally refers to groups of migrants who are dispersed to two or more locations, possess a specific cultural distinctiveness as well as on-going linkages to their homeland (cf. Faist 2010). In the context of the migration-development nexus, diaspora organisations refer to all kinds of migrant organisations which are generally seen as keeping competences and resources that can be activated for development (cf. Gamlen 2011; Carling 2008).

The second dimension concerns the partnership approach, which dominates recent policy agendas addressing the migration-development nexus. It promises the establishment of more formal modes of international cooperation to make migration actually work for development. In the European context, the conclusion of mobility partnerships (MP) aims at the adoption of concrete policy measures profiting countries of origin and destination (cf. Kunz, et al. 2011; Parkes 2009).

Finally, the third dimension focuses on the promotion of temporary migration schemes. The establishment of well-managed circular migration programmes is generally seen as the silver bullet for those 'win-win-win' scenarios profiting countries of destination, migrants as well as their countries of origin (cf. Ruhs 2006; Agunias/Newland 2007).

Table 7.1: Analytical dimensions of national policies addressing the migration-development nexus

Dimension	Objective	Individual instruments
Diaspora Organisations	Supporting diaspora organisations	Development funding for migrant organisations
	Supporting remittances transfer	Easing money transfers
Partnership Agreements	Cooperative framework with countries of origin for partnership cooperation	Partnership agreements with countries of origin
Temporary Migration	Increasing circularity between countries of origin and countries of destination	Circular labour migration schemes

Source: Own compilation.

Based on those three analytical dimensions of the migration-development nexus, this chapter analyses the Europeanisation of this new policy area. From a theoretical perspective, the Europeanisation of this policy area in Germany is of particular interest because it addresses a paradoxical case. Largely in line with the theoretical predictions of the role playing mechanism, this new European policy area has been actively shaped by German activities during the uploading dimension. Although the underlying motives differed, the new attention to the international dimension of migration provided the German executive – and in particular the German Ministry of Interior – with the opportunity to upload already existing national ideas about a comprehensive approach to the European level (cf. Chapter 7.2). In a next step the influence of those European proposals on Germany's migration and development policy

is analysed resulting in a trimmed agenda: Whereas the altered role of diaspora organisations for development policy has been absorbed, the outcomes of Europeanisation with respect to partnership agreements and temporary migration schemes are close to the inertia end of the spectrum (cf. Chapter 7.3). In line with the role playing mechanism those marginal policy changes are explained by the absence of informal supportive institutions and in particular the existing conflict of interests between potential national norm entrepreneurs.

7.2 Balancing Acts between Insurmountable Interests: Developing a Comprehensive Approach on Migration in Europe

Policies addressing the nexus between migration and development are generally surrounded by an aura of novelty. Wherever one looks – whether concentrating on the international level and the discourse at the United Nations institutions or at the level of the European Union – they all present these policies as brand new and based on a political agenda which only started soon after the turn of the millennium. A closer analysis of the actual contents of this agenda, however, reveals far older historical roots that one can trace back to the early 1980s at least with the efforts of industrialised countries to establish a comprehensive approach on migration as well as by the regular calls of developing countries for political mechanisms for cooperation on migration (for an overview see UN 2006; Castles/Delgado Wise 2008; Hickey 2015). The following sections will therefore provide an analysis of the political history of this apparently new agenda before the construction of this new policy idea in Europe and its specific policy templates are analysed.

7.2.1 Mutually Exclusive Disinterest between Migration and Development Actors

The historical roots of European policies addressing the migration-development nexus rest in the early 1980s when for the first time both issues were conceptually linked on the level of concrete policies.[63] This includes, for example, early political and academic initiatives highlighting the contribution of return migrants to the economic development in countries of origin which subsequently found their way into assisted return programmes of different European countries (cf. COE 1987; King 1986; Chaloff 2005).

The most direct predecessor of the European 'Global Approach', however, has been a request in 1980 by the then West German government to the General Assembly of the United Nations to work on the issue of "International co-operation to avert new flows of refugees" (cf. Zolberg, et al. 1989: 258ff.; Lee 1984; Stein 1986). Confronted with the accelerating refugee and migration crises of the 1970s and 80s, Germany together with other northern countries realised early on that a strategy focusing on the stricter control of migration alone would be likely to fail and subsequently tried to develop an alternative response. As a consequence, the General Assembly introduced a UN Group of Governmental Experts

[63] Others refer to the establishment of secondary legislation on migration in the European Communities during the 1970s constituting the earliest traces of this new political agenda (cf. Chou 2009). Although these early initiatives were important for the latter development of a legal migration agenda in the EU, they were hardly related to policies addressing the migration-development nexus.

and together with similar processes at the level of the International Organization for Migration (IOM) and the United Nations High Commissioner of Refugees (UNHCR) different ideas under the labels of 'comprehensive approaches', 'root cause approaches', 'preventive approaches' and 'durable solutions' were developed at that time. All of these concepts shared a commitment to governing international migration in a way that would reduce the push factors leading to forced migration and the creation of refugees. This included increasing wealth in third countries and targeting the rule of law and democracy by providing development assistance.

In parallel to developments at the international level, European institutions became aware of the potential of a comprehensive approach on migration when the Committee on Legal Affairs and Citizens' Rights of the European Parliament argued in 1986 that an effective European development policy must focus on economic progress and political and social stability in the countries of origin to prevent the creation of large groups of refugees (EP 1986: 7). Similarly, the European Commission in its first clear and encompassing Communication on asylum and migration in 1991, called for a broad and comprehensive approach proposing to govern international migration by incorporating the topic of migration into the Community's external policy (cf. CEC 1991: 19f.). Supported by different reports and resolutions by the Legal Affairs Committee as well as the Committee of Civil Liberties and Internal Affairs of the European Parliament, which also proposed measures to co-ordinate these diverse policy areas (e.g. EP 1992b, a), the Commission presented an additional Communication a few years later, discussing a comprehensive approach in greater depth. Based on the general understanding that root causes can take a variety of forms – ranging from economic disparities, to demographic and environmental factors as well as the human rights or political situation in the country of origin – the Communication proposed to use the various external policy instruments available to the Union to address those root causes. This could involve action at a number of different levels such as in the areas of trade, development and cooperation policies, humanitarian assistance and human rights policies (CEC 1994; see also Thorburn 1996). Although the Commission perceived the general political climate to be "favourable to the development of a comprehensive approach" (CEC 1994: 11) the Communication had little practical impact. Similar to the developments in the international arena, the establishment of a comprehensive approach at the European level got largely stuck in its infancy (cf. Lavenex 2006b: 333; Niessen 1999: 485; Selm 2002).

That does not mean that political actors responsible for migration policy did not take a comprehensive approach seriously. Germany is a point in case with the then Christian Democratic Minister of Interior, Schäuble, arguing in the late 1980s that a sole focus on restriction is short-sighted and a focus on the root causes of migration would be more promising (Schäuble 2006: 223 see also the later analysis in Chapter 7.3). Nevertheless, cooperation between European member states and countries of origin developed in a different direction, aiming at more effective control of migration rather than addressing the underlying motives to move. The dominating strategies which developed during the 1990s and guided cooperation with third countries at that time were rightly coined "externalization approaches" (Boswell 2003b: 636; Ette/Fauser 2005). Its logic was to engage countries of origin or transit in strengthening border controls, combating illegal entry, migrant smuggling and trafficking as well as readmitting irregular migrants. The conceptual ideas that addressed the migration-development nexus and constituted the core of a comprehensive approach were lost during this period and third countries were reduced to their function as protective barriers against unwanted immigrants (cf. Sterkx 2008).

Compared to the active cooperation with third countries by traditional home affairs actors – although not following ideas of a comprehensive approach but following their externalisation strategy – development policy actors remained at least hesitant to actively engage with the issue of international migration. Although the Commission discussed the existing relationship between certain migratory movements and development cooperation policies in its 1992 Communication on development cooperation policy, arguing that the best remedy to those migratory pressures would be the promotion of economic growth in developing countries and the integration of an active migration policy into general development cooperation policies and external economic relations (CEC 1992), in reality development and foreign affairs actors showed a marked disinterest in the issue. In 2000, in a Commission Communication (CEC 2000d) and a later Declaration by the Council and the Commission aiming at clear objectives for the European Community's development policy (CEU 2000a), international migration was totally absent from those conceptual declarations (cf. Orbie/Versluys 2008: 72).

Several factors might have contributed to this exclusive disinterest and the absence of migration issues from Europe's development agenda. A first aspect that might have played a role is the fragmented nature of Europe's development policy and its conceptual weakness. Although development policy is among the oldest EU policies with the Treaty of Rome introducing some elements of a common policy, formal development policy competences were only introduced in 1993 with the Treaty of Maastricht. Before this, the Community regularly sought to realise development objectives via its long-standing trade competence but instead of a conceptually consistent approach the policy area was largely governed by incrementalism and pragmatism (Holland 2002: 4; Smith 2006: 532).

Of greatest importance to understanding the overall absence of migration issues from the development agenda, however, has been the few commonalities in the principal conceptualisation of migration between home affairs and development policy actors (Parkes 2010: 115; Lavenex/Kunz 2008: 443). Particularly because of the one-sided and restricted externalisation agenda governing cooperation with third countries so far, development actors throughout the 1990s were hesitant to condition development aid for migration purposes as "helping migrants to stay at home" (Böhning 1994). Several developments during the 1990s and early 2000s clarified that there already existed a general trend to subordinate Europe's development agenda to broader home affairs and security concerns. A first example concerns the introduction of conditionality clauses in the Cotonou Agreement from 2000, including a mandatory clause in all its association or partnership agreements compelling signatories to accept back immigrants who fail to secure asylum in the EU. A second example can be seen in the increasing distribution of development aid along security concerns towards European neighbouring states and the fact that since 2002 the Community's development cooperation has been subordinate to the General Affairs and External Relations Council (Peters/Wagner 2005: 235; Orbie/Versluys 2008: 68).

7.2.2 Making Migration Work for Development: The Birth of a New Policy Idea

Whereas the developments during the 1990s ended in few tangible results for the development of a comprehensive approach, the last decade witnessed a fundamental shift establishing

the migration-development nexus as a central new policy idea for the governance of international migration.[64] In particular the publication of the European Commission Communication in September 2005 on 'Migration and Development: Some concrete orientations' marked a "watershed" (Lavenex/Kunz 2008: 446) in this respect and moved this new idea to the "top of the pyramid of EU priorities" (Devisscher 2011: 59). For the first time, the Communication questions the established perspective on the migration-development nexus: it does not represent the potential of development to control migration anymore, but highlights the importance of migration for development arguing that "the links between migration and development offer a significant potential for furthering development goals" (CEC 2005c: 2). Aiming at the integration of "development concerns into the Community immigration policy" (CEC 2005c: 7), the Commission identifies four proposals for improving the relationship between migration and development: (1) engage diasporas as actors of home country development; (2) facilitate flows and impact of remittances; (3) mitigate the adverse effect of brain drains and (4) promote circular migration and brain circulation.

The following months and years have seen a staggering dynamic in this new policy area. In October 2005, heads of EU member states called for a comprehensive approach to tackle migration issues and already in December 2005, the Council adopted the 'Global approach to migration' implementing many of the previous proposals (CEU 2005a: 9-14). In parallel, the Council, together with the European Commission and the European Parliament published the 'European Consensus on Development' as a joint policy statement. It established poverty eradication as the central objective of its development policy and assigned migration a positive factor for development (CEU 2005b). In July 2006, the EU intensified its dialogue with Africa and the Mediterranean countries at the first Euro-African Conference on Migration and Development and launched the Rabat Process with regular successor conferences in 2008, 2011 and 2014 (Rabat Process 2014). Furthermore, the Tripoli Process was established in November 2006 at the Ministerial Conference on Migration and Development, which resulted in a Joint EU-Africa Declaration on Migration and Development. In the following years the new policy idea based on the migration-development nexus continued to draw the attention with additional Communications by the Commission and regular discussions and Conclusions by the Council. The relevance of the new policy idea became particularly obvious with the adoption of the 'European Agenda for Change' in May 2012 (CEU 2012c), together with the adoption of the extended 'Global Approach to Migration and Mobility' now providing "the overarching framework of EU external migration and asylum policy" (CEU 2012b: 3) and increasing the coherence of migration and development policies (Carbone 2013).

64 The late 1990s saw continuing efforts in some parts of the migration policy community to keep their interest for a more comprehensive migration management strategy on the agenda. The implementation of the Treaty of Amsterdam resulted in the creation of the High Level Working Group on Asylum and Immigration (HLWG). It prepared several action plans for individual countries, defining comprehensive approaches covering foreign policy and development as well as migration and asylum (Niessen 1999: 492f.). The 1999 Tampere European Council took those initiatives officially on board and argued that the EU "needs a comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit" (European Council 1999: 11). Despite those important predecessors, the final policy recommendations by the HLWG concentrated on migration prevention and the support of restrictive policies (cf. Boswell 2008: 499).

These dynamic developments have fundamentally reoriented the ways in which migration has been dealt with before and are ambitious attempts to establish a comprehensive approach on migration. Most studies stress two major factors to explain these developments – one exogenous and one indigenous to the European Union. The first factor focuses on the international level and in particular on specific international organisations that have played an important role in questioning the previously held negative perception of the relationship between migration and development. This includes initiatives by the World Bank highlighting in 2003 for the first time the enormous potential migrants' financial remittances have had for development, as well as the later widening of this concept to include other flows like knowledge and universal ideas (Faist 2008: 21; Kapur 2005; for an analysis of the recent interest in remittances see Lindley 2011: 251), but also initiatives by other international organisations which started in the late 1990s to study the potential of migration and return to promote development (e.g. Ammassari/Black 2001). In a stream of international initiatives, this changing relationship between migration and development was widely promoted (for an overview see Betts 2011; Geiger/Pécoud 2010). Of particular importance has been the 'Report of the Global Commission on International Migration' (GCIM), which provided the framework for the formulation of a coherent, comprehensive and global response to the issue of international migration and to examine inter-linkages between migration and other global issues (GCIM 2005); the introduction of a United Nations High-Level Dialogue on Migration and Development in September 2006 (Martin, et al. 2007); the founding of the Global Migration Group as an inter-agency group of currently 16 international organisations with a particular emphasis on mainstreaming migration into general development policy planning (GMG 2006); as well as the set-up of the Global Forum on Migration and Development in July 2007 (Rother 2010). Together, these initiatives have helped to provide the basic preconditions to establish a new policy idea linking migration and development. Taking into account the close orientation of the European Union in general and its development policies in particular on respective international developments (cf. Peters/Wagner 2005: 235f.; Orbie/Versluys 2008: 73), it is of little surprise that these developments have "pushed the EU to rethink its approach to adopt the migration-development nexus and design measures to implement this shift" (Lavenex/Kunz 2008: 449).

The second factor regularly stressed to explain the establishment of the new policy idea addressing the migration-development nexus is indigenous to the developments in the EU and focuses on the important role of the European Commission in this process. The fact that the different responsible Directorates General (DG) were able to act as a single actor and overcome previously existing differences of interest between them provided the basis for the dynamic development of the new policy idea in the EU (for a general argument about the importance of this aspect see Carbone 2007). When the Commission published its Communication at the end of 2002 on the integration of migration issues in the European Union's relations with third countries, the agenda was dominated by DG Justice and Home Affairs (CEC 2002c: 7-8), whereas the positions by DG Development and the then DG for External Relations were "characterised by a clear reluctance to see their agenda changed" (Lavenex/Kunz 2008: 450). In the following years, however, it was particularly DG Development that appeared to have embraced the migration agenda leading Boswell (2008: 509f.) to conclude that "it is unlikely that the Global Approach and the more development oriented approach would have emerged without the engagement of DG Development". The innovative potential of the Commission concerned its activities to link Europe's general drive towards greater policy coherence for development with the migration agenda and to

establish the migration-development nexus not only as an issue of home affairs, but implemented it as an important aspect for Europe's development policy most prominently seen in the adoption of the European Consensus on Development in 2006 (Carbone 2008).

Next to those two factors – the international and the European levels – the mechanism centred theoretical approach advanced in this study additionally highlights the activities of member states – and here again not least by the German executive. The national level and the influence member states exercised during the uploading process of Europeanisation is a necessary condition to explain the establishment of this new policy idea. In the years before 2005, member states became increasingly aware that they would have to take the concerns of third countries more seriously into account. Without any credible rewards, third countries were hardly interested in cooperating with the EU on border controls or implementing readmission agreements. From the perspective of member states, the nexus between migration and development provided exactly those needed possible services that they could offer in return in political negotiations. Already the first Council Conclusion from December 2005, which mentioned the migration-development nexus, clarified the divergent interests of the Commission and member states when they argued that "action must be taken to reduce illegal migration flows and the loss of lives, ensure safe return of illegal migrants, strengthen durable solutions for refugees, and build capacity to better manage migration, including through maximising the benefits to all partners of legal migration" (CEU 2005a: 7). From the very beginning, policies addressing the migration-development nexus were therefore not aims in themselves but instrumental in attaining additional objectives linked to traditional migration control interests. In the 'Global Approach', this instrumental idea was particularly dominant in the establishment of the 'more for more' approach, which implied a clear element of conditionality.

The German executive and in particular the Federal Ministry of Interior was particularly engaged during these uploading processes. When Schäuble returned into the Ministry of Interior after 14 years of abstinence from this appointment, the European developments provided him with the opportunity to spread original political ideas from the late 1980s and early 1990s. The Christian Democratic politician Schäuble had already filled this position from 1989 to 1991. During that time, the German Ministry of Interior started to incorporate development policy for migration control interests (see Chapter 7.3.3 for a more detailed analysis of these developments). Senior representatives of the Ministry regularly pointed to the high level of Schäuble's personal involvement for this specific policy idea and the Minister himself argued that he would principally support any European initiative for strengthening the external dimension of European migration control because it provides an economy of scale effect in cooperation with third countries (Schäuble 2006: 223).

Three examples provide evidence of Germany's engagement during those uploading processes of Europeanisation. Particularly the Ministry of Interior mastered these processes with little involvement of other governmental departments. A first example concerns the development of policy templates promoting bilateral mobility partnerships and circular labour migration schemes with countries of origin. During the preparations of Germany's Council Presidency starting in January 2007, these ideas were first articulated in an autumn 2006 paper by the German and French Ministries of Interior on a new European migration policy. The initiative called for the first time for the signature of partnerships with countries of origin and member states (c.f. BMI 2006c; Reslow 2012; Zerger 2008). Following its publication, the European Council in December 2006 stated in its Conclusions that "legal migration opportunities can be incorporated into the Union's external policies in order to

develop a balanced partnership with third countries adapted to specific EU Member States' labour market needs" and that ways and means to facilitate circular and temporary migration will be explored (CEU 2006a).

A second example of the German influence concerns the Immigration and Asylum Pact from October 2008, when Germany together with other member states followed their "well-established role as strategic agenda-setters" (Monar 2009: 154; CEU 2008a: 4). Although originally a French initiative, this 'European Pact' was prepared in close cooperation with Germany and was used to suggest that readmission agreements should be integral to the Global Approach. The proposal subsequently included in the Commission Communication from October 2008 presumably hoped that the Global Approach and its focus on making migration work for development would unblock readmission negotiations (cf. CEC 2008b: 6; Parkes/Angenendt 2009: 2).

Finally, a third example concerns the geographical priorities for applying the new policy idea. The original version of the 'Global Approach' was based on the 'migration routes' concept, highlighting in particular cooperation with countries of origin or transit of migrants in the south of Europe. Generally interested in spreading the burden in the control of eastern migration (Altmaier 2007), the German government facilitated – in the context of the Trio Presidency with Portugal and Slovenia – the eastward extension of the Global Approach by giving in to Portugal's interest to promote circular migration schemes. In its Conclusions of December 2006, the European Council called on the Commission to make proposals on enhanced dialogue and concrete measures with regard to applying the Global Approach to the eastern and south-eastern regions neighbouring the EU and the subsequent Commission Communication responded to that invitation. In the report by the German government to the Bundestag, the government sold this as one of the central achievements of its presidency in the area of Justice and Home Affairs (CEC 2007a; Bundestag 2007d: 13; Vieira/Lange 2012: 18).

7.2.3 Developing a Common Agenda: Concrete Policy Templates Addressing the Migration-Development Nexus

Based on this new policy idea focusing on the migration-development nexus, the following years saw the establishment of concrete policy templates including – as in the case of highly skilled labour migration – legally binding instruments, as well as non-binding proposals. Whereas the German government and particularly the Federal Ministry of Interior was an absolute supporter of the new policy idea in general, not every proposal for those policy templates received its outright approval. Compared to other member states, however, Germany remained a relatively low-key actor on policies addressing the migration-development nexus and expressed overall sympathy for those templates.

In comparison to other aspects of refugee and migration policies analysed in previous chapters, policies addressing the nexus between migration and development often take a different approach. They do not necessarily consist of precise legislative proposals, but are implemented through several political instruments and have a much stronger project and initiative based character. Examples include the subsequent setup of different financial programmes like the 'B7-667 Budget Line on Cooperation with Third Countries in the Area of Migration', the 'Aeneas Programme for Financial and Technical Assistance to Third Countries in the Area of Migration and Asylum' and the 'Thematic programme for Cooper-

ation with Third Countries in the areas of Migration and Asylum' which increasingly included projects directly addressing the migration-development nexus (CEC 2007g; Commission 2011f). Furthermore, the European Union was active to include the aspect of migration and development into its general foreign policy by establishing migration missions as well as cooperation platforms and regularly addressing it in its on-going migration dialogues within the framework of the Cotonou Agreement and relevant bilateral and regional partnership and cooperation agreements such as the Africa-EU Partnership on Migration, Mobility and Employment, the EU-Latin American and Caribbean countries dialogue or the Prague Process on Building Migration Partnership (European Commission/ African Union Commission 2006, 2011). Whereas these aspects involved particularly the engagement of the European Commission, the following analysis concentrates instead on those policy templates directly involving participation of member states. This includes policies addressing (1) diaspora organisations, (2) partnership agreements, and (3) temporary migration schemes (for an overview see Table 7.2).[65]

Diaspora Organisations

In line with parallel initiatives aiming at policy coherence for development, the Commission proposed in its 2005 Communication on Migration and Development to integrate diaspora organisations as actors for development and called for stronger involvement of diaspora members in the development of their countries of origin. Additionally, they argued that member states should increase their knowledge about remittances and provide cheaper, faster and safer transfers of this important source to finance development (cf. CEC 2005c, d). In the following years, several Communications by the European Commission provided for more concrete policy templates, which have been generally uncontroversial and found widespread support in the Council.

Concerning the integration of diaspora organisations, the Council Conclusions from November 2009 stated that the Commission and the member states had committed themselves to "strengthen dialogue and cooperation with Diaspora groups and migrant organisations, encourage contacts between migrants and their countries of origin, and to support migrant networks at the European level" (CEU 2009b). This included a number of more specific proposals: (1) supporting diaspora organisations that are engaged in development-related activities in their countries of origin by financing studies on the potential of diaspora organisations as partners in development cooperation, (2) supporting diaspora organisations financially by opening existing development budget lines for diaspora organisations, (3) initiatives to enable members of diasporas to access business management advice, micro-credit opportunities and support for setting up small and medium-sized enterprises in source countries, and finally (4) to support countries of origin to reach out to their diasporas (CEC 2008b: 8; Commission 2011a: 4). Other policy templates did not find invariable support and are still under discussion including, for example, the development of specific diaspora investment vehicles that could channel the voluntary contributions by the diaspora and adding EU resources to boost those initiatives or the setup of private-public partnerships to engage migrant entrepreneurs in trade and skills transfers between EU member states and partner countries (Commission 2011e: 20).

65 With the exception of the Seasonal Worker Directive, which was only adopted in 2014, no legislative processes have taken place in this policy area. Consequently, the analysis of the legislative procedures followed in the previous three chapters was not applied in this case study.

Similarly, on the issue of remittances, the Council together with the Commission urged member states "to promote transparent, cheaper, faster and more secure flows of remittances to migrants' countries of origin, and to ensure that relevant legislation does not contain provisions hampering the effective use of legal remittances channels" (CEU 2009b; see also CEU 2012b). Particularly because of its close links with the more fundamental question of financing of development and the corresponding bi-annual reports on policy coherence (CEC 2007b; Commission 2012a), recent years have seen the development of several policy templates. These included (1) the proposal to improve data on remittances; (2) the call to support financial sector development as well as creating an environment favourable to foreign direct investments in countries of origin; (3) the adoption of the Directive 2007/64/EC on payment services, which will increase competition and enhance transparency by requiring payment service providers to make charges and other conditions fully transparent to customers; and finally (4) the proposal to set up national websites comparing the conditions for remittance sending by different banking institutions with the aim of more transparent and cheaper remittances (CEC 2008b: 8). Again, other aspects are still under discussion, including, for example, the set up of a common EU portal on remittances as well as offering support for partner countries for promoting financial literacy, new technologies and access to credit to stimulate productive investment and job creation (Commission 2011e: 20, 2011a).

Partnership Agreements

Concrete templates concerning the precise form and aim of partnership agreements were provided by the Commission in May 2007. There, the Commission argued that mobility partnerships – as they were now called – were a way of improving the organisation of legal flows of migrants. They set up this new tool as a flexible and voluntary instrument depending always on the participating third-country as well as the participating European member states and the interests and commitments they were willing to attach to such a partnership.

The Communication only provided for possible contents of such partnerships, including for the participating third-country (1) to readmit its own nationals as well as third-country nationals who arrived in the EU through the territory of the country concerned, (2) initiatives to discourage illegal migration through targeted information campaigns, (3) efforts to improve the security of travel documents against fraud or forgery, (4) efforts to improve border control and border management and support operational cooperation with member states as well as efforts to combat migrant smuggling and human trafficking (CEC 2007c: 4). With respect to the commitments by the European member states, the Communication also listed a number of possible commitments including (1) improved opportunities for legal migration for nationals of the third-country, (2) assistance to help third-countries develop their capacity to manage legal migration flows, (3) measures to address the risk of brain drain and to promote circular migration or return migration, and finally (4) the improvement of procedures for issuing short stay visas to nationals of the third country (CEC 2007c: 5f.). With these possible commitments by participating third countries and European member states, mobility partnerships potentially regulate all major kinds of migration – legal migration, illegal immigration and asylum – making them "the archetypal 'comprehensive' policy tool" (Parkes 2009: 337).

This policy template was enhanced in the following years and the Commission presented an enlarged concept in November 2011, subsequently adopted by the Council in May 2012. Mobility partnerships now constitute the most important instrument and provide the most comprehensive framework to ensure that movements of persons between the EU and potential partner countries are well governed. They bring "together all the measures to ensure that migration and mobility are mutually beneficial for the EU and its partners, including opportunities for greater labour mobility […] [and principally] offer visa facilitation based on a simultaneously negotiated readmission agreement" (Commission 2011e: 10f.; CEU 2012b).

Temporary Migration

Finally, the last dimension of policies addressing the migration-development nexus concentrates on the establishment of circular migration schemes. Whereas the term 'circular migration' was initially coined to describe a phenomenon that already existed *de facto*, the term was now used to describe a specific policy approach (cf. Castles 2006). In the understanding of the Commission, circular migration is defined "as a form of migration that is managed in a way allowing some degree of legal mobility back and forth between two countries" (CEC 2007c: 8). This definition can include legislative measures which ensure that the residence rights in the EU of diaspora members who decide to engage in such activities are not affected by temporary returns to countries of origin or alternatively the establishment of new legal temporary labour migration options.

With respect to the first aspect, several legislative measures are principally conceivable including changes to the nationality law, the portability of social insurance benefits and pension entitlements, as well as questions of taxation, the continued validity of residence titles upon exit from a member state and the conditions for re-entry following a longer period of absence. Although the Communication touches upon several of these proposals more concrete templates are largely absent. Only the Directive on the status of long-term residents includes some provisions stating that a third-country national does not necessarily lose the possibility for a long-term resident status because of temporary absence from the territory of a member state (Articles 4 and 9). Although this provides a small possibility of circularity it does not lead to a real facilitation of mobility and certainly lacks any connection to the migration-development nexus, which did not play a role during the debates on this directive (Devisscher 2011: 66f.).

With respect to the second aspect, establishing new temporary legal labour migration options, European policy templates are also rather restricted. Whereas labour migration schemes for highly skilled workers have been established already with the adoption of the European Blue Card Directive, new temporary labour migration options would therefore concentrate in particular on skilled or low-skilled workers. With respect to these strata of the labour force, European member states are far more ambivalent, expecting that future labour needs could be met from the labour surpluses of the 12 accession states, which joined the EU in 2004 and 2007 respectively. Therefore the Policy Plan on Legal Migration from 2007 concentrated largely on the harmonisation of highly skilled labour migration and left the important goal of creating legal channels for lower skilled workers largely out of the Plan. Even the emphasis by the Commission on opening migration channels for both skilled and unskilled labour in its 2011 Communication on extending the Global Approach towards a Global Approach on Migration and Mobility (Commission 2011e), was not welcomed by the Council. Member states argued that although "the EU should strive, where appropriate,

to organise labour migration in order to promote economic growth […] the Global Approach should contribute to this effort through considering non-binding measures aimed at better organising legal migration in cooperation with third countries taking into account the priorities, needs and capacities of each Member State" (CEU 2012b).

Table 7.2: European policy templates on governing policies addressing the migration-development nexus

Dimension	Template	Source
Diaspora	Supporting diaspora organisation	Communication COM(2005) 390
Organisations	Cheaper and faster remittances	Communication COM(2005) 390
Partnership	Opportunities for legal migration	Communication COM (2007) 248
Agreements	Assistance to manage legal migration flows	Communication COM (2007) 248
	Promotion of circular and return migration	Communication COM (2007) 248
	Improved procedures for short stay visas	Communication COM (2007) 248
Temporary	Supportive legislative framework	Communication COM (2007) 248
Migration	Establishing circular migration schemes	Draft Directive COM (2010) 379*

Source: Own compilation.

Note: *The proposal was finally adopted in February 2014 as Directive 2014/36/EU on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers.

The most serious element of circular migration schemes was developed within the Seasonal Workers Directive, which was proposed by the Commission in summer 2010 responding to "a structural need for seasonal work for which labour from within the EU is expected to become less and less available" (Commission 2010d: 2). Next to this focus on economic competitiveness of member states, the Directive – finally adopted in February 2014 by the European Parliament and the Council[66] – directly addressed the migration-development nexus, because it planned to provide seasonal workers with multi-seasonal permits or a facilitated re-entry procedure for a subsequent season. Following this proposal, migrants could return to their countries of origin after moving to a member state with the guarantee that they would be permitted another temporary residence period in the same member state. This would positively affect the abilities of those circular migrants to send remittances and potentially also increase the transfer of skills and investment (Devisscher 2011: 73f.). The draft Directive directly impacted on member states' control over the volume of admission and national parliaments – and Germany was no exception – considered them too expansive (cf. Bundesrat 2010; Bundestag 2010c, d; Monar 2011: 150f.). Even within the Federal Ministry of Interior, the Seasonal Workers Directive was criticised as a potentially gratuitous instrument providing "Europeanisation for the sake of Europeanisation" (Hammerl 2009: 8). In line with many other member states, Germany asked for greater national procedural autonomy as well as the right to manage the immigration of seasonal workers in line

66 The Directive requires member states to transpose the new legislation by September 2016. The empirical analysis of the downloading process in Chapter 7.3 focuses therefore mainly on the policy templates included in the draft directive and their likely effect.

with the demands of their national labour markets (STMI 2014: 71f.). The circular migration proposals by the Commission were softened during the negotiation process and the adopted Directive increased the discretion of member states with respect to the re-entry procedure. Nevertheless, the final text argued that member states "shall facilitate re-entry of third-country nationals who were admitted to that Member State as seasonal workers at least once within the previous five years", but offered a whole list of different means of facilitating re-entry providing for extensive national discretion during the downloading dimension. Despite this diminished level of rights granted to temporary migrants, "what makes the Directive distinctive from an international perspective is that it is a supranational regulation for skilled and low-skilled temporary migration that gestures towards a circular migration program" (Fudge/Herzfeld Olsson 2014: 440).

Concluding this analysis of the uploading process of the Europeanisation of policies addressing the nexus between migration and development one certainly has to concede that the last 15 years have seen substantial progress in this newest area of migration policy. Nevertheless, the new enthusiasm already casts doubt on this overly optimistic agenda (cf. Faist/ Fauser 2011). The 'Global Approach' has been extensively criticised for not being "a new concept [but] merely a new twist on a set of external relations policies" (Collett 2007: 2), as well as for the fact that "proposals for measures pertinent for development remain not only very vague but also non-committal and discretionary" (Lavenex/Kunz 2008: 453). Nevertheless, at the bottom line a new policy idea together with a range of concrete policy templates has been established which may indeed be seen as "stepping stones to a comprehensive migration policy" (Devisscher 2011: 63). From a theoretical perspective, the analysis has provided clear evidence that next to the initiatives by international organisations, as well as the European Commission the European member states have been major drivers of this new policy area. Along the propositions of the role playing mechanism, the German executive supported the establishment of this new policy area. Although the causal narrative did not start at the national level alone, the international and European developments provided in particular the German Federal Ministry of Interior with opportunities to upload their preferences and policy ideas.

7.3 Progressive Ideas on Infertile Ground: Missing Resonance and Norm Entrepreneurs in Germany

In contrast to the dynamic development of the new policy idea at the European level, actual policy changes in many member states fell well below early expectations about the potential influence of the migration-development nexus for the governance of international migration (cf. Keijzer, et al. 2015). The following three sections concentrate on this downloading perspective and present first an analysis of the outcomes of Europeanisation in Germany. Although the Federal Ministry of Interior was highly active during the uploading process, this did not necessarily result in uncontroversial and far-reaching national implementation. The outcomes are close to the inertia end of the spectrum with the most far-reaching changes occurring in the context of diaspora organisations. With respect to mobility partnerships and circular migration, policy changes remained on the level of rhetorical efforts only with minimal effects for countries of destination and origin as well as the migrants themselves.

Next to the fact that the policy templates provided by the European Union provide little guidance on a more fundamental integration of the migration-development nexus into national policy and practice, the following sections explain these findings along the two major explanatory factors highlighted by the role playing mechanism. First, a discursive analysis shows that in Germany the progressive policy ideas fell on infertile ground because they were largely in opposition to already established policy ideas in the migration and particularly the development policy communities. Second, an institutional analysis highlights the institutional complexity of European policy-making. Whereas the uploading process was governed rather independently by the Federal Ministry of Interior, effective implementation during the downloading process would have required a political compromise between at least two ministries – the Federal Ministry of Interior and the Federal Ministry for Economic Cooperation and Development – traditionally sharing a low level of political commonalities and trust.

7.3.1 The Migration-Development Nexus on the Ground: A Trimmed Agenda

Similar to the historical formation of the migration-development nexus at the European level, also in Germany the relationship between both policy areas was discovered before the most recent attention cycle. This connection can be traced back at least until the early 1970s when first initiatives started to counteract the most severe problems of brain drain. The most popular programme at that time was established by the Federal Ministry for Economic Cooperation and Development (BMZ) and the Federal Employment Agency (BA) supporting citizens from developing countries in their reintegration into the labour markets of their countries of origin. Already in 1978 this programme, which directly addressed the brain drain problematic, included 9,000 participants. The relevance of this programme is also seen in the fact that in 1980 a separate organisation – the Centre for International Migration and Development (CIM) – was founded taking over responsibility for this aspect of Germany's personal development cooperation (Schmidt-Fink 2007: 250f.; Bundestag 1980). Despite these early predecessors, a more fundamental concept exploring the multiple relationships between international migration and development was absent from political debates and concepts in Germany, when this new policy idea developed in the years following the turn of the millennium.

Diaspora Organisations

The most obvious influence of the new policy idea on German policy and practice is found for the European templates on diaspora organisations. Neither Germany's migration nor development policy had this group of actors on their agenda before the new policy idea developed. The developments with respect to the organisation of cheaper and faster remittances as well as the different programmes to support diaspora organisations therefore introduced new aspects into Germany's migration and development policy.

With respect to the first policy template – providing for cheaper and faster remittances – the German Agency for International Development Cooperation (GIZ)[67] was the major actor. In 2006 it consulted a study with the goal of investigating conditions for money transfers from Germany. Taking into consideration that Germany is one of the most important countries for sending remittances to migrants' countries of origin – amounting in 2006 to approximately 10 billion euros – this issue affects many migrants. The study followed the example of five remittance corridors – Albania, Ghana, Morocco, Serbia and Montenegro and Vietnam – and found that the market for money transfers was extremely opaque with the result that transfers were frequently made through informal channels, reducing the developmental potential of remittances (Holmes, et al. 2007). In response, GIZ implemented in the following year a price comparison website to improve market transparency. Since then it has provided for more than 20 countries up-to-date information about the prices of service providers for transfers from Germany (Kleiner-Liebau 2008: 11-12; for an overview in other countries see Lindley 2011: 256). In the following years, GIZ invested in the conceptual integration of remittances into German development cooperation. This included scientific studies about the role of remittances for social protection (GTZ 2009c), the setup of microfinance institutions in countries of origin (GIZ 2013b), as well as programmes to increase the financial literacy of migrants (GTZ 2009b). Today, the better organisation of money transfers sent by migrants to their countries of origin has become a regular aspect of the expertise and services provided by the implementing organisations of Germany's development policy.

Concerning the second policy template – supporting diaspora organisations – German development policy also adopted many of the policy proposals discussed at the European level. Chronologically, the first initiatives towards diaspora organisations concerned the accumulation of knowledge about already available organisations, their engagement for development in their countries of origin and their potential as partners in development cooperation. Of greatest importance in this respect was the establishment of a new unit at the German Agency for International Development Cooperation (GIZ) working on 'migration and development', which soon after financed the study of 11 explorative studies about migrant organisations from different countries of origin (e.g. Riester 2011; Baraulina, et al. 2006; Schmelz 2009; Schüttler 2007), as well as more conceptual papers about the impact of diasporas for conflict resolution (Fahrenhorst, et al. 2009).

With respect to the second proposal – financial support for diaspora organisations – the federal government began to gradually adjust their funding requirements to the needs and capacities of diaspora organisations. Although the available budget line 687-76 for non-state actors in development provided by the BMZ has principally always been open to diaspora organisations, their main focus was non-governmental organisations and all available information did not address the specific needs of diaspora organisations (cf. BMZ 2007; Bengo 2011; GTZ 2009a). Although some small-scale workshops for diaspora organisations have taken place, representatives of the consultancy network of the ministry (Bengo) argue that no specific attention was directed to these groups. As a consequence, the ministry established in 2007 a pilot programme specifically for cooperation with diaspora organisations.

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[67] In January 2011 the German Agency for International Development Cooperation (GIZ) was established through a merger of three previously independent organisations: the German Development Service (DED), the German Technical Cooperation (GTZ), and InWEnt – Capacity Building International. For reasons of clarity, the text always refers to the recent organisation.

After a successful evaluation, the pilot project resulted in a continuous new project, organised by the Centre for International Migration and Development (CIM) since early 2011, allowing diaspora organisations in Germany which work closely together with local partners in their countries of origin to apply – in comparatively non-bureaucratic way – for financial support up to 40,000 euros (CIM 2011; BMZ 2010a; GIZ 2011: 3).

Overall, recent years have witnessed an increasing acknowledgement of migrant organisations as important actors for development policy. Although the Federal Ministry for Economic Cooperation and Development (BMZ) in 2008 did still not mention diaspora organisations as a new actor for development in their report of the federal government on development policy (BMZ 2008a), soon afterwards they published a strategy paper on education for development arguing that they aim at "new cooperation with migrants and their organisations to have a broader societal impact" (BMZ 2008b: 7). Furthermore, it meanwhile attributes diaspora organisations a special role for harnessing the opportunities of migration for development arguing that "by combining the strategic expertise of German development cooperation in terms of project management and technical know-how with the knowledge and experience of the diaspora communities, the impacts of activities can be scaled up" (BMZ 2010b: 18).[68]

Mobility Partnerships

Taking into account Germany's active involvement during the uploading dimension of establishing the instrument of mobility partnerships, it is of little surprise that Germany has been actively involved during the downloading dimension as well. Following the conclusion of this policy instrument in 2007, four partnerships had been concluded by the end of 2012 and an additional four were concluded between 2013 and 2015 (see Table 7.3). Furthermore, several negotiations have not (yet) succeeded (e.g. Senegal, Egypt, Libya) and preparations for other partnerships are currently underway (e.g. Belarus). Germany decided to participate in six of these partnerships and certainly belongs to the group of countries making use of this instrument most actively – trumped only by France who decided to participate in all eight existing international contracts. Whereas the early activities of

[68] In addition to those endeavours at the federal level, the level of the federal states and municipalities increasingly acknowledge migrant organisations as development actors. Politically, the decision of the Conference of Minister-Presidents from 2008 has been seminal, arguing that "[t]he interface of development policy, migration and integration offers new tasks and opportunities for the Federal States" (cf. WUS 2015). In response, different federal states have included the migration-development nexus into their political agenda. Examples include North-Rhine-Westphalia with its efforts to support their local diaspora organisations and the general strive towards greater political engagement of migrants obvious in the adoption of its Act to support political participation and integration (see also Sieveking, et al. 2008) as well as by Baden-Württemberg rewriting their guidelines on development policy on the basis of a broad dialogue process with civil society and specifically addressing migrant organisations (Staatsministerium 2012). For the local level, the establishment of a service department – originally founded in 2001 as an organisation to support municipalities in their development initiatives – developed into an important actor implementing migration-development projects. Originally running on a pilot basis from 2007 onwards with the aim of increasing the integration of migrant organisations into local development initiatives, since May 2011 it is now based on a permanent basis (Servicestelle Kommunen in der Einen Welt 2010). A number of recent evaluations and surveys of migrant organisations show that at the local level the new policy idea resulted in dynamic cooperation between traditional local development initiatives and migrant organisations (e.g. Engagement Global 2012; AGL 2011).

Germany concentrated mainly on countries belonging to the Eastern European migration route and decided against participating in the partnership with Cape Verde – due to the quantitative irrelevance of this country for immigration to Germany – recent years have seen a substantial geographical broadening of German activities in the South.

Table 7.3: Existing Mobility Partnerships and participating European partner countries

Partner Country	Date of Signature	European Partner Countries
Moldova	2008/5	BG, CY, CZ, FR, DE, EL, HU, IT, LT, PL, PT, RO, SK, SI, SE
Cape Verde	2008/6	ES, FR, LU, PT
Georgia	2009/11	BE, BG, CZ, DK, DE, EE, EL, FR, IT, LV, LT, NL, PL, RO, SE, UK
Armenia	2011/10	BE, BG, CZ, DE, FR, IT, NL, PL, RO, SE
Morocco	2013/6	BE, FR, DE, IT, NE, PT, ES, SE, UK
Azerbaijan	2013/12	BG, CZ, FR, LT, NL, PL, SI, SK
Tunisia	2014/10	BE, DK, DE, ES, FR, IT PL, PT, SE, UK
Jordan	2014/10	DK, DE, EL, ES, FR, IT, CY, HU, PL, PT, RO, SE

Source: Own compilation on the basis of Commission (2014a) and CEU (2013a, c, 2008c, b, 2014, 2009a, 2013b).

Despite their ambitious agenda, the existing mobility partnerships in practice fall well below their proclaimed aims. In general, they have been criticised for their focus on migration control and security aspects and an underrepresentation of measures addressing the migration-development nexus (Lavenex/Stucky 2011: 132f.). Irrespective of these potential imbalances, an analysis of the commitments relating to the migration-development nexus already shows the marginal effects of this new policy instrument. Table 7.4 provides an overview about all identifiable commitments addressing the migration-development nexus by the German government included in the first three mobility partnerships which had been signed by 2012.

A first result concerns the first two aspects of possible commitments made by European member states towards third countries – assistance to manage legal migration flows as well as the creation of new opportunities for legal migration. Along both aspects, the German government included some commitments in the first two mobility partnerships – concluded with Moldova and Georgia – whereas no offers were included in the latter partnership signed with Armenia. These commitments, however, are general promises on the sharing of expertise and principal support for managing legal migration as well as the provision of information on legal migration to and legal employment in the EU. The commitments certainly do not include any opening up of new routes for economic migration to Germany and all three mobility partnerships were not signed with the aim of tapping into new sources of additional labour migration.

A second result concerns the other aspect of possible commitments included in mobility partnerships – promotion of circular and return migration. Obviously, the German government focused in particular on the promotion of circular and return migration where the greatest number of commitments in all three mobility partnerships can be found. However, a more detailed reading shows that there is little in the agreements that signify an obvious

interest for the development of the partnering country. With the exception of non-binding proposals to facilitate remittance sending, these commitments only concern the support for voluntary and forced migrants and their subsequent reintegration into their countries of origin. In conclusion, the promotion of circular migration actually boils down to Germany's principal interest in supporting the voluntary return of migrants and the only more progressive proposal concerning the allowance for extended absences without loss of rights of residence has not been included in the latest partnership with Armenia (Vergeer 2012).

Table 7.4: German commitments addressing the migration-development nexus in existing Mobility Partnerships

Policy Dimension	Moldova May 2008	Georgia November 2009	Armenia October 2011
Assistance to manage legal migration flows	Horizontal support for capacity building in the area of migration.	Strengthening Georgia's migration management capacities through exchange of experience and support for capacity building.	-
	-	Sharing experiences on legal labour migration.	-
Opportunities for legal migration	Providing information on legal migration to and legal employment in the EU.	Providing information on legal migration to and legal employment in the EU.	-
	-	Facilitating recognition of qualifications.	-
Promotion of circular and return migration	Providing information on return to and reintegration in Moldova.	Providing information on return to and reintegration in Georgia.	Facilitation of outward mobility for legally residing Armenians.
	Support voluntary return projects addressing social affairs, the labour market, supply of medical services, information campaigns and network-building.	Providing information and financial support as well as job finding support to highly skilled migrants willing to return to Georgia.	-

Table 7.4: Continuation

Policy Dimension	Moldova May 2008	Georgia November 2009	Armenia October 2011
	-	Facilitating the smooth reintegration into Georgia's labour market of Georgians voluntarily or forcibly returning home from EU member states , and support these in making the best possible use of the skills and resources acquired through the migration experience for their own benefit and the development of Georgia, particularly by promoting immigrant entrepreneurship.	Facilitating the smooth reintegration into Armenia's labour market of Armenians returning home with a programme for short-term assistance and long-term reintegration, including support to migrant entrepreneurs, creation of micro businesses, supporting the return of highly skilled migrants, recognition of skills, promotion of medical assistance and social reintegration.
	Extension of the remittances website.	Facilitating remittances to support migrants and diaspora organisations investment in their country of origin.	Promoting well-informed and cost-effective remittances channels.
	Allowing for extended absences without loss of rights of residence.	Allowing for extended absences without loss of rights of residence.	-

Source: Own compilation on the basis of CEU (2008c, 2009a, 2011a).

Despite Germany's active participation in most existing mobility partnerships, the analysis of its actual content with respect to commitments addressing the migration-development nexus leave a disillusioning impression of the outcomes of Europeanisation tending to the inertia end of the spectrum. This impression is supported by the almost complete absence of mobility partnerships from political debates in Germany. Mobility partnerships are not signed as legally binding international treaties but as joint declarations between the partner country, the European Community and the participating member states. This particular legal instrument does not only exclude the European Parliament from negotiating and controlling the application of this new instrument (Reslow 2012: 231), but also any political interest and control from national parliaments. Despite the fact that in recent years Germany has already signed six mobility partnerships, the German parliament has neither

seen conceptual discussions about the principal aims of these declarations nor their actual contents. Additionally, hardly any information exists about the implementation of the existing mobility partnerships or about any periodic updating or score boarding processes. In the case of the first mobility partnerships, the commitments made by individual member states were published in Annexes included in the relevant documents. Instead, the Annexes of the more recent partnerships only include preliminary versions of Commitments (e.g. Morocco) or are still under discussion between the signatory states (e.g. Tunisia) (CEU 2013a; Bundestag 2015: 17). Finally, the Commission also shared a sceptical perspective on this new instrument when they argued in their recent evaluation of the implementation of the Global Approach to Migration and Mobility (GAMM) that "more work needs to be done to make sure that the MPs are being implemented in a balanced manner, i.e. better reflecting all four thematic priorities of the GAMM, including more actions with regard to legal migration, human rights and refugee protection" (Commission 2014d: 9) and that the majority of participating member states had not yet made any financial contribution to their implementation. Similarly, the BMZ complained in a study about mobility partnerships that their partners in third countries demanded "a dialogue on an equal footing" and complained that their interests were not adequately taken into account in the context of mobility partnerships (GIZ 2013a: 38).

Temporary Migration

With respect to circular migration, two policy templates have been developed by the European Union with a first concentrating on the establishment of a legislative framework generally supporting circular migration and a second concentrating on setting up specific circular migration schemes. Of all policy templates addressing the migration-development nexus, these measures addressing circular migration proved most problematic for many member states. In their recent comparative analysis Keijzer et al. (2015: 7) argued that "only a few of the 11 countries have really included circular migration as part of their policy reflections, and even fewer have attempted to translate this policy interest into concrete measures".

Germany is no exception and with respect to the first template, only minimal policy changes have been introduced in the last decade to facilitate circular migration. The only change worth mentioning concerns a minor reform of the Residence Act, which stipulated before the reform that residence titles expire if a foreigner leaves German territory for a reason that is not of a temporary nature or if a foreigner has left Germany and does not re-enter the country within six months. With this six month period, the German provisions were very restrictive because they reduced circular migration to a very short period.[69] In this context, the introduction of the General Administrative Regulations relating to the Residence Act in October 2009 provided for a minimalist reform now providing for the possibility of a longer period spent abroad before expiry of the residence title. Reasons for granting such extended periods abroad explicitly refer to instances when the foreigner works as a development aid worker or spends time abroad to promote development-related

[69] These reforms addressed Section 51, 1, 6 and 7 (AufenthG). Exceptions from those regulations existed already, including foreigners who were in possession of a settlement permit and who had been legally resident in Germany for at least 15 years, foreigners living in conjugal partnerships with a German national as well as foreigners who returned to their home country for the sole purpose of meeting their compulsory military service obligations.

business or employment relationships, which serve the interests of the Federal Republic. In such cases, the maximum period for stays abroad without losing the residence title is now two years. The fact that these decisions are still at the discretion of the Local Foreigner Offices together with the low level of familiarity of these regulations amongst foreigners potentially interested in circular migration, however, certainly reduces the effectiveness of the reform and reduces it to a primarily rhetorical act (cf. General Administrative Regulation relating to the Residence Act dated October 26, 2009, No. 51.4.1.2; see also Schneider/Parusel 2011: 32f.; BAMF 2010b: 245).

With respect to the second template – the establishment of circular migration schemes – the situation is different because Germany already has a long history with different forms of circular migrations schemes. This concerns in particular the returning expert's programme, which has been run since the early 1980s by the Centre for International Migration and Development and generally assists professionals from developing countries who have been employed or educated in Germany, but who would like to return to their home country to take up a position significant to their country's development (cf. Schmidt-Fink 2007: 246).[70] Next to the continuity of this returning experts programme, Germany has seen few new initiatives with respect to the development of truly circular migration schemes in recent years. Despite the fact that the European Union provides financial support for the setup of circular migration schemes on the basis of the AENEAS programme, as well as the Thematic Programme for Migration and Asylum, a recent evaluation of the projects with a specific focus on circular migration projects shows that Germany has not participated in any of them (Charpin/Aiolfi 2011; EMN 2011; Commission 2011a: 5). Only more recently, the German Federal Employment Agency together with its International Placement Services (ZAV) and GIZ have agreed to develop, test and evaluate a new management system for temporary labour migration as part of their institutional cooperation within CIM. Under the label of 'triple-win-migration' they aim at the establishment of a modular system of different services for the sustainable management of all phases of circular migration (Musekamp 2013: 491). The project manager, Dominik Ziller, argued however that the project is very small scale and aims to provide circular migration for approximately 40 engineers from Indonesia and Vietnam, 80 care workers from Bosnia and Albania as well as a small number of highly-skilled engineers from Tunisia (Bundestag 2012a). Although these numbers have increased in the last two years and now include an additional 2,000 skilled migrants from Serbia, Bosnia, the Philippines and Tunisia (GIZ 2013c) those numbers show the project-based character of these newly set-up programmes and show that the triple-win migration projects "operate on the basis of scurry steps only".[71] Similar to the first policy template concentrating on a more supportive legislative framework, also with respect to the second template the actually introduced policy changes in Germany are more symbolic in nature.

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70 Next to those circular migration schemes with a direct development focus some authors also argue that Germany has generally made widespread use of temporary and seasonal labour migration on the basis of bilateral placement agreements with Central and Eastern European countries since the early 1990s. From the perspective of the German government, however, these programmes do not aim at promoting circular migration but are only measures to meet specific labour needs occurring at short notice (cf. Castles 2006; SVR 2011a: 223). With the eastward extension of the European Union, these schemes have been suspended. Despite the general interest in supporting and integrating seasonal labour migration at the European level, in Germany no bilateral agreements exist anymore (BAMF 2015b: 53).

71 Contribution by Andreas Merx at the conference "Zirkuläre Migration – Erfolgsmodell oder Mythos" organised by GIZ and BA, 29 March 2012, Berlin.

In conclusion of the detailed analysis concerning the outcomes of Europeanisation in this policy dimension a rather disillusioning result remains. Despite the enthusiasm and the dynamic of this new policy idea at the international and European level, the national level is governed by a trimmed migration-development agenda. The focus of policy changes in Germany concentrated on the reduction of costs for remittances as well as the support for migrant organisations. Instead, policy developments concerning the two dimensions of the migration-development nexus which have a direct bearing on actual migration flows – mobility partnerships and circular migration – mainly remained at a rhetorical level only. Particularly with respect to mobility partnerships it appears that they are being judged not so much as a solution to a migration problem, but rather in terms of their capacity to foster activity of some kind.

7.3.2 Inconsistent Discourses: Missing Resonance of the New Policy Idea

The minor outcomes of Europeanisation are certainly surprising taking into account the active role Germany played during the uploading process. Instead of overall stalemate and inertia in this policy area one would have expected a more far-reaching influence of these European developments on Germany's development and migration policy. Existing studies have focused in particular on the lack of clarity in the policy templates and the ambiguity between different political goals inherent in this new policy area to explain the minor outcomes of Europeanisation (e.g. Lavenex/Kunz 2008: 453; Wunderlich 2013).

The following two sections concentrate instead on the explanation of this minor impact of Europeanisation by referring to the two major independent variables accounting for the downloading process highlighted by the mechanism-centred approach advanced in this study: supportive informal institutions and the availability of national norm entrepreneurs. With respect to the first factor the new European policy idea certainly did not fall on fertile ground in Germany. Particularly it did not resonate with previously held beliefs along two lines: first, it conflicted with existing beliefs about homeland-oriented behaviour of migrant organisations regularly seen as a burden to integration in Germany; and second it was confronted with an ambivalent perception of international migration by development actors. Whereas the negative perspective on migrant organisations started to change in the last decade, the development discourse remained sceptical about allegedly development-friendly migration policies.

Migration Discourse

For a long time, the migration and integration discourse in Germany adhered to a generally negative attitude about homeland oriented engagement of migrants. Whereas diaspora organisations are today seen as an important new actor for implementing the migration-development agenda, previously, activities of migrants in these parts of civil society have been seen with great scepticism. These inconsistent discourses can be traced back to fundamental disputes in migration studies about the effects of migrant organisations on integration. In Germany, this international debate culminated in an academic dispute – the Elwert-Esser-debate – which dominated discussions during the 1980s but shaped academic and political discourses about the role of migrant organisations until today and provide a first part of the explanation as to why the new policy ideas addressing the migration-development nexus resulted in minor outcomes of Europeanisation in Germany.

The origins of the international debate about the role of migrant organisations for integration can be traced back to early migration studies by the Chicago School of the 1920s, which began to study the forms, activities and orientation of migrant organisations in the US context. They already described what later was termed an ethnic paradox between the continuity of ethnic identifications with the country of origin despite an increasing process of integration into the society of the country of destination (cf. Fauser 2012). The academic question behind this debate asked whether migrant organisations contribute to the integration process or instead act as barriers to successful social and political incorporation (Breton 1964; Huntington 2004; Wiley 1967; for an overview of this debate see also Portes, et al. 2008; Worbs 2007).

In the early 1980s, this American debate was transferred into the German discourse largely following the same lines. On the one hand, Elwert but also Heckmann highlighted the principally positive effect of migrant organisations and pointed to the importance of ethnic colonies for the settlement process of new immigrants and their function as a bridge of transition towards integration (Heckmann 1981: 218; Elwert 1982). On the other hand, it was Esser (1986) who represented the more sceptical position. He argued that processes of ethnic self-identification would result in obvious disintegrative effects and deficits of social mobility. For him, the participation of migrants in migrant organisations and their homeland-oriented activities reduced the necessity to achieve the resources and capabilities for successful integration. In the following years, the positive or negative effects of migrant organisations on integration developed into a dynamic research area but empirical studies showed at best mixed results (e.g. Berger, et al. 2004; Diehl, et al. 1998: 54f.; Diehl 2002; Fennema/Tillie 1999; Şen, et al. 2002; for an overview see also Huth 2002).

This academic dispute about the potentially negative influence of migrant organisations and the depreciation of homeland-oriented activities did not go unnoticed in the German political sphere. In fact, migrant organisations were either disregarded by political actors altogether or they were perceived as a challenge to integration or even as a potential risk to public security. Whereas some scholars even trace this discourse back into the late 19th century and the immigration of Poles to Germany (cf. Pries 2013), these findings certainly hold for the second half of the 20th century (Schimany/Schock 2010).

From the late 1960s onwards, associations and organisations by foreigners of different nationalities have become an issue in the German political sphere. From the very beginning, the political discourse was closely linked to issues of public security when politicians argued in the parliament that different groups of foreigners would "abuse hospitality in the Federal Republic of Germany" (Bundestag 1967: 1). Examples of the political discourse at that time included violent clashes between rival groups of foreigners, political assassinations, terrorist sentiments, blackmail and other illegal interferences which were directly linked with the question of restricting the German law of associations for foreigners as well as providing public authorities with the necessary rights to examine extremist groups of foreigners (e.g. Bundestag 1970). Also in the following years, the political discourse only concentrated on the link between migrant organisations and public security and reports by the government regularly touched upon the violence by foreigner associations as well as their anti-democratic publications with a special focus on Turkish, Yugoslav, Iranian, Kurdish and Sri Lankan extremist organisations (e.g. Bundestag 1975, 1981: 10, 1982, 1994b).

In light of this dominant political discourse, it is of little surprise that the first two reports by the Federal Government Commissioner for Migration, Refugees and Integration – the 1979 Kühn Memorandum as well as the 1991 published report – never mentioned

migrant organisations (Beauftragter 1979; Beauftragte 1991: 21). This close link between migrant organisations and public security even continued after the turn of the millennium (Beauftragte 2000: 189) and certainly dominated the political discourse in the years following the terrorist attacks on 9/11 2001 in New York with additional restrictive reforms focusing on extremist migrant organisations introduced with the anti-terror laws in the following year (Bundestag 2001b), as well as numerous motions about Islamic organisations in the German parliament (for an overview of this debate with reference to Islamic organisations see Rosenow-Williams 2012). At the same time Germany was confronted with a widespread public debate on 'parallel societies', which also highlighted the disintegrative effects of migrant organisations. First introduced during the 1990s by a German sociologist studying the Islamic fundamentalism of Turkish youth (Heitmeyer, et al. 1998; Heitmeyer 1998), the term developed into a catch frame of all existing integration problems in Germany. It was willingly adopted by conservative authors and politicians (Luft 2006: 65) and even the German Chancellor started using the term to focus on resulting problems of immigration in public speeches (for an overview about this debate see Worbs 2007).

The analysis showed so far that from the perspective of the dominant political discourse in Germany homeland oriented activities of migrant organisations "inhibit the process of adaptation and thus do not contribute to peaceful and democratic resolution of conflicts" (Faist 2000: 329). At least for the federal government, migrant organisations did not play any role in migration and integration policy. Nevertheless, from the mid-1990s onwards this situation started to change slowly.[72] In a number of major interpellations (Große Anfrage) – constituting a very effective parliamentary instrument for obtaining the comments of the government on important political questions (Linn/Sobolewski 2010: 62) – the federal government granted migrant organisations and migrant self-help organisations a certain role in the integration of older migrants into German society, as well as of migrant youth into the labour market (e.g. Bundestag 1993a, b). In parallel, the report by the Federal Government Commissioner for Migration, Refugees and Integration in 1994 included for the first time a separate paragraph on migrant organisations to argue that hardly any statistically firm data about migrant organisations existed in Germany, but that the "number of foreign or foreign-German organisations is now in the thousands" (Bundestag 1994a: 39). With the turn of the millennium, a number of governmental reports on different policy areas continued to reformulate the political discourse on this so far neglected group: the sixth governmental report on families in Germany (Bundestag 2000e), the third governmental report on the role of older people in Germany (Bundestag 2001d) and the report by the Enquete-Commission on civic engagement. Next to these discursive developments, the following years witnessed institutional changes with the establishment of a series of summits on migrant integration as well as of the German Islamic Conference, both providing new forms of closer cooperation with migrant organisations (Thränhardt 2009). Next to those highly visible political developments, migrant organisations also developed into an impor-

[72] Again, these political developments are best understood in the context of new academic perspectives. Scholars of transnational migration started to develop a completely new perspective on migration. From their perspective, homeland oriented behaviour and the regular exchange between countries of origin and destination are not incompatible with successful integration (Portes, et al. 2008; Faist 2000). In contrast to traditional views of assimilation, recent empirical analyses showed "that transnational political activities are not the refuge of marginalized or poorly educated immigrants" (Guarnizo, et al. 2003: 1238) and that those immigrants showing the highest levels of transnational exchanges are those having access to better socio-economic resources and more secure residence statuses (Faist/Amelina 2008).

tant actor to implement federal integration programmes (Bartels 2010; Hunger/Metzger 2011). This changing perspective was also obvious in the most recent report by the Federal Government Commissioner for Migration, Refugees and Integration arguing that, "[m]igrant organisations build bridges between immigrants and their families as well as the host society. They can be important actors for integration. This is the case for issues of language learning, civic engagement, the early visit of childcare facilities and parental involvement" (Beauftragte 2012: 28).

The previous analysis showed that in Germany a deeply rooted sceptical perspective on migrant organisations and their homeland-oriented activities existed, which provided far from optimal conditions for the new European policy ideas focusing on greater involvement of migrants in development cooperation. Particularly after the turn of the millennium the migration and integration discourse about migrant organisations in general started to change. Nevertheless, transnational activities still do not fully fit with Germany's attitude on integration and it is questionable at least whether migrant organisations are today already the new "silver bullet" (Pries 2013: 6) for integration and development issues.

Development Discourse

The inconsistency between established discourses in Germany and new policy ideas at the European level is even more pronounced in the field of development policy. The most fundamental finding, with respect to the perception of international migration by development actors, concerns the overall neglect of migration in Germany's development policy. Between the mid-1950s – when the federal government for the first time provided official development assistance – and the mid-1980s, migration and development have been dealt with strictly separately. The political discourse by the Federal Ministry for Economic Cooperation and Development (BMZ) rarely touched upon the issue. And in those cases when the regular reports by the federal government on its development policy mentioned issues of migration they presented a principally negative perception about international migration (cf. Kerner 2002: 52ff.).

This argument is supported by an analysis of the two most prominent migration issues, which have been discussed by development policy actors – remittances and brain drain. The first example shows that the federal government only started to take note of the issue of migrants transferring money back into their countries of origin in the 1980s. In the regular reports on development policy, remittances were mentioned with respect to certain countries where these financial flows played a particularly important role (e.g. Egypt, Jordan, and Pakistan). The official perspective certainly provided a negative evaluation of these effects of international migration when they argued that "[t]hese remittances exceed with 70 billion Dollars the annual global official development assistance (55 billion Dollars), but are developmentally quite problematic. They provide for some countries the most important source of foreign exchange, contribute to the care of family members in the event and thus support domestic demand. More rarely, the funds will be used for domestic investments. But the interest in this inflow of foreign exchange reduces the political will of governments in the home countries to take measures to reduce the actual causes of migration" (Bundestag 1995: 27).

The second example concerns the negative effects of brain drain for developing countries. During the 1970s, the federal government started to argue that the lack of qualified employees in many developing countries is one of the major obstacles for economic

development (e.g. Bundestag 1977: 28). Educated migrants from countries affected by brain drain formed a new audience for Germany's development policy. This resulted in scholarship programmes for migrants from developing countries (e.g. by the then so called Carl Duisburg Society and the German Foundation for International Development)[73] making the return of these scholars compulsory, as well as the reintegration programmes offered by the Federal Ministry for Economic Cooperation and Development, which have been already discussed in the previous section (Chapter 7.3.1). These programmes continued to represent an important aspect of Germany's personal development cooperation policy (Bundestag 1985: 58, 1988c: 61) and even during the 1990s, the government argued that "[t]he emigration of skilled workers often causes problems for countries of origin because the emigrated professionals cannot always be replaced by equally qualified workers. In this way, the already weak professional elite further diminish in many countries of origin, which would be of high importance for their further development. This 'brain-drain' effect is even more problematic […] because generally always the younger and most qualified emigrate first and the public costs for their education results in no public benefit" (Bundestag 1995: 27; see also Opitz 1993: 391-392).

The two examples show that before the new policy idea was established at the European level, the German development discourse certainly did not provide an informal institution supporting far-reaching outcomes of Europeanisation. International migration was rarely discussed by development policy actors and when it was they showed a principally negative perception closely resembling the dependency perspective of development. For German development actors international migration increased problems of development and their policy responses were only attempts to cure those negative effects. Although the reintegration programmes became an important aspect of Germany's personal development cooperation, they were hardly seen as an active development strategy and remittances were never included in any conceptual approach to financing development.

Despite this critical stance towards international migration by the development policy community, the new European policy ideas certainly left a mark in the German political debate and the last decade has not been inactive with respect to plenty of conferences, publications, public hearings and other formats of discussing this new policy idea. One of the earliest activities was started by the United Nations Association of Germany (DGVN), which promoted the new policy ideas from very early onwards with a whole series of conferences and publications introducing the general idea of linking migration and development, as well as more specific formats discussing particular policy ideas like circular migration (DGVN 2006, 2007, 2008). Similar activities have taken place by the usual suspects of these processes. For example, the German Organisation for Technical Cooperation (GTZ) already in 2004 approached the issue with a conference on the international mobility of the highly skilled and the consequences for brain drain (GTZ 2004). In addition, public and private think tanks like the German Institute for International and Security Affairs (SWP) and the Expert Council of German Foundations on Integration and Migration (SVR) approached the issue with wide public coverage (SVR 2011b; Angenendt 2007). In parallel to these developments, also the German Parliament took note of these

[73] Neither organisation exists anymore. In 2002 the Carl Duisburg Society and the German Foundation for International Development (Deutsche Stiftung für internationale Entwicklung) formed a new organisation InWEnt - Capacity Building International, which became part of the newly formed German Agency for International Development Cooperation (GIZ) in 2011.

new policy ideas. Already in 2004, the Committee on Economic Cooperation and Development (Ausschuss für wirtschaftliche Zusammenarbeit und Entwicklung) organised a first public hearing on the issue 'From brain drain to brain gain: The diaspora as resource for development policy' (Bundestag 2004) followed by a motion supported by almost all political factions (Bundestag 2007a). Whereas this first initiative concentrated mainly on the resources of migrants for development, circular migration policies were later discussed in a public hearing by the same Committee on Economic Cooperation and Development in 2008 (Bundestag 2008d).

Despite these activities, the development discourse remained rather hesitant about the new policy ideas. The promises of the new policy idea about the potential benefits of migration for development – migrant organisations becoming development agents, circular migration stimulating development and changing a brain drain into a brain gain as well as the partnership approach between countries of origin and destination – were never completely taken on board by the majority of the development community. Next to weak empirical evidence supporting the promises of the new policy idea, the development policy community advanced in particular three major arguments.

First, they remained sceptical because the new policy ideas continued "to reflect the interests of the global North" (Glick Schiller/Faist 2010: 1). This is a principal criticism regularly voiced at international conferences advancing the new policy idea, where non-governmental organisations and particularly those from the global south have a hard time in making their claims (Rother 2010). In the national context, this argument mainly addressed the fact that a rights based approach was missing for example in the context of circular migration (DIMR 2007b). In an early contribution, Backes (2007: 15) argued that the new policy idea did not address the human rights of migrants and their structural exclusion from many development goals, but concentrated only on their global economic impact and easily ended up in the "powerful appropriation of the benefits of migrants […] (and) migration becoming a cost-effective replacement model for the retrenchment of the welfare state". The then Parliamentary State Secretary in the Ministry of Interior, Altmaier complained about the difficulties of implementing circular migration programmes because development policy actors "have said, for God's sake, because migrants are indeed relegated to a commodity only – they should come, stay for five years and leave again. This is completely unacceptable. No! This is something we certainly do not support!" (Altmaier 2010: 359).

A second argument concentrates on the fig leaf function of the new policy idea only serving as a legitimation for stricter migration control. Already in the late 1990s Niessen (1999: 483) voiced this concern, arguing that "most NGOs are very reluctant to become engaged in debates on migration prevention precisely because it has come to mean keeping migrants and asylum seekers out". This position has not changed much in the meantime and for them the main challenge for a development-friendly EU migration policy would still be advancements in the area of legal migration. This is also the central argument in an early policy paper of VENRO, the major non-governmental development policy umbrella organisation in Germany (VENRO 2009; see for a similar argument also European Think-Tanks Group 2010: 50).

Finally, the most fundamental criticism concentrated on the fact that the most basic problem to development is the existing structural constraints to economic growth in many developing countries. A policy approach which focuses on development by labour migration "reinforces existing economic disparities at the global level. […] These people have to bear by their migration the costs of the structural mistakes of the last few decades"

(VENRO 2015: 22). Instead of any far-reaching proposals for structural and institutional changes to decrease existing inequalities between the North and the South, the development community complained that the new understanding of migration "unintentionally operate as a crucial cog in the neoliberal machinery, providing it with an appearance of 'stability' and, paradoxically, a 'human face'" (Delgado Wise/Covarrubias 2008: 1371).

This scepticism in the development policy community was principally shared in the Ministry for Economic Cooperation and Development. Compared to the situation up to the late 1990s, their regular policy report from 2008 was certainly influenced by the international and European policy ideas and includes a separate chapter on "development and migration" (Bundestag 2008c: 52f.). Nevertheless, it is dominated by a discussion about the potential of integrating migrants and diaspora organisations into the development process of their countries of origin. Policy proposals about circular migration, however, are only marginally and very reluctantly discussed and the issue of mobility partnerships is not even mentioned. From their perspective, the "systematic promotion of circular migration is not seen as a primary task of the Ministry for Economic Cooperation and Development, which […] is more interested in implementing accompanying measures in the context of development cooperation" (Schneider/Parusel 2011: 27). In the following years, this situation did not change fundamentally and the next report published in 2013 included the issue of migration and development only under the heading of cooperation with civil society. Again, only the involvement of diaspora organisations for the development of their countries of origin and the issue of remittances was discussed (Bundestag 2013b: 31, 98).[74]

In conclusion, the new policy ideas obviously resonated even less in the development policy community compared to the migration policy community. For his analysis of the difficulties in implementing the migration-development nexus on the international level, Rother (2010: 409) argued that no "islands of persuasion" exist supporting a more fundamental governance of migration regime. This is mirrored by the German situation where the discursive analysis showed that neither traditionally nor in the most recent years have the new policy ideas resonated with existing policy ideas in Germany. In the end, the government and the responsible Ministry reduced its role to adopt the new approach on migrant organisations and their role for development policy, but abstained from the additional ideas about partnership approaches and circular migration. This result is rather surprising because at the same time the Ministry pushed the policy coherence agenda and tried to reduce existing asymmetries between policy areas with a negative influence on development (Musekamp 2008). From this perspective, the migration-development nexus would have been a welcome opportunity to increase coherence between development and migration, but it is particularly the institutional discrepancies analysed in next section that hampered such political progress.

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74 In addition to the European factor, the closer cooperation with migrant organisations is also a small and legitimate valve to enable migrants to engage in development policy. The Development Workers Act (EhfG) generally sets that migrants are not employed for development policy or at least are not employed in their countries of origin (arguments for this policy refer mainly to potential dangers of corruption). The small-scale projects run mainly by CIM now offer migrants an official way to engage with development issues. Nevertheless, instead of providing structures to enable those not trained in development policy to engage, the introduction of those new programmes often leads to fundamental but largely misleading debates on who are the better development aid workers (Nieswand 2011: 419).

7.3.3 Ministerial Turf Wars: The Absence of National Norm Entrepreneurs

Next to the discursive analysis, the institutional structure of actors responsible for downloading these policies marks a second explanatory variable to explain the low level of Europeanisation in this policy area. The previous analyses have shown that the Federal Ministry of Interior was an active driver of those new policy ideas during the uploading dimension. In line with experiences of the venue shopping mechanism, one would have expected smooth transposition processes with the BMI again being actively involved in implementing these new policy ideas in Germany.

Analysing the role of the BMI during the downloading dimension of Europeanisation largely confirms these expectations. This interest of Home Affairs actors for smooth transposition is documented in the fact that new staff were employed specifically working on different aspects of the Global Approach, as well as by an analysis of policy documents by the Ministry convincingly showing that this new policy idea was broadly adopted and regularly addressed. Already the official migration report in 2006, for example, discussed the Global Approach and argued that, "given growing migratory pressures at the external borders of the EU, efforts are stepped up to pursue coherent approaches to migration management both in the context of common foreign, migration and development policies, as well as by coordination of the policies of the individual Member States, and seek political dialogue and cooperation with countries of origin and transit countries along the major migration flows. This includes having to analyse the causes of flight and illegal migration and to put the solutions where they originate: in the countries of origin" (BAMF 2007: 152). Whereas this early discussion still followed a typical home affairs perspective and discussed the Global Approach as a potential solution towards irregular migration, this perspective changed in the following years towards a more balanced presentation of the new policy ideas closely in line with the perspective adopted by the European Union (BAMF 2010b: 230ff.). Finally, the political prominence and interest in implementing these new policy ideas was also seen in the fact that Schäuble – the new Minister of Interior – personally addressed these policy templates in several statements and speeches (e.g. Schäuble 2006, 2007).

The political interest of the Federal Ministry of Interior in implementing the existing European policy templates in Germany was only a necessary, but not a sufficient precondition for more far reaching outcomes of Europeanisation. Migration is generally an issue which cross-cuts different political domains, but with respect to the new migration-development agenda the dependency of Home Affairs actors from other departments of the government is most obvious. Implementation of this cross-cutting issue, therefore, does not only depend on the willingness of the Federal Ministry of Interior, but depends on the support by other national norm entrepreneurs. Because of the traditional departmental principle and the autonomy of the Ministry for Economic Cooperation and Development, the BMI certainly needed the support of the BMZ for effectively implementing the new policy idea. Furthermore, development policy in Germany is traditionally strongly shaped by societal sources with the political parties and their foundations together with civil society having a strong impact on this policy area. Whereas the BMI had fully adapted to the new policy ideas, the following analysis will show that neither non-governmental actors nor other ministries in the federal government whole-heartedly adopted the new policy idea and so it remained of the political agenda.

Non-Governmental Actors

In Germany, non-governmental organisations are traditionally of great importance for development policy (cf. Eberlei 2002; Kulessa 2006; Wardenbach 2006; Woods 2000). Before continuing with the analysis of the German executive, it is worth considering non-governmental actors and German civil society positioned themselves in relation to this topic, including religious organisations, classical non-governmental organisations as well as migrant organisations.

A first group of actors potentially pushing for the implementation of these new policy ideas on the national level could be migrant organisations. The political discourse in Germany about this potential group of actors already showed that only during the last decade the German political system began to take these groups into account. Migrant organisations have been excluded for a long time from political decision-making processes in Germany and compared to other European countries they are not well organised with respect to the number of employees and financial resources (cf. Huth 2002; Koopmans, et al. 2005; Thränhardt 2013). With respect to the issue of migration and development, existing studies have already documented a substantial level of development activities for migrant organisations in Germany. With respect to the federal political discourse, however, they remained comparatively silent and marked no clearly visible voice (Mohammed/ Aikins 2009; Haase/Müller 2012: 124f.).

Of probably greater political importance are the various organisations with a close relationship to the Christian churches and which show the longest tradition of involvement with humanitarian and development policy in Germany's civil society. Although the churches are traditionally active players in both policy fields – migration and development – overall they have been rather absent from the discourse about the migration-development nexus. The Catholic Church, for example, was closely involved in the preparations and discussions about the New Immigration Law in 2005. During that time it intensively focused on the issue of brain drain when discussing new forms of labour migration in Germany (Bischofskonferenz 2005). With respect to the migration-development nexus, however, the Christian churches have been widely absent from the debate in Germany (e.g. Hansen/Wirsching 2009). Particularly interesting in this respect is the fact that the Joint Conference Church and Development (GKKE) as an ecumenical developmental organisation with a specific focus on coherence in Germany's development policy has been absent from this debate although they principally understand migration as potentially affecting development aims (e.g. GKKE 2008, 2009, 2010).

Next to those ecumenical organisations, also for classical non-governmental organisations the new policy idea did not figure prominently on their political agendas in recent years. VENRO, the umbrella organisation of non-governmental development organisations, for example, established a working group on migration and development, which meets three to four times a year, but actual policy outcomes have been minimal (e.g. VENRO 2009, 2011; Ferenschild 2011). This is partly caused by the fact that in all organisations represented in this working group – Justitia et Pax, Caritas, Medico International, Conference of Catholic Bishops, UNHCR, Südwind and Brot für die Welt – the representatives have only small amounts of time to deal with this new issue. Of probably greater importance, however, is the fact that senior representatives of development NGOs themselves argue that it is difficult to find the right handle on the topic. These organisations try to participate in specific policy processes – the further development of the Stockholm Programme or the Seasonal Workers Directive – but without well-established networks in the respective

policy community it is difficult to get access to the political sphere at the European as well as the national level. Most actively, Brot für die Welt pushed the topic and has also supported the representation of migrant organisations at the Global Forum for Migration and Development since 2009 (Brot für die Welt 2012). Nevertheless, coordinated action particularly within VENRO regularly failed mainly due to the internal differences between members (cf. Kurat/Lieser 2010; VENRO 2009: 4).

Governmental Actors

The Ministry of Interior was not only confronted with limited institutional support from non-governmental actors, but even in the Cabinet other Ministries showed little interest in this new agenda. The Federal Ministry of Labour and Social Affairs, for example, was always sceptical about models of circular migration, because they were generally regarded as means of meeting the labour needs of the German economy. In the context of the migration-development nexus, the BMAS aligned with the German Confederation of Trade Unions, which also feared that these new forms of labour migration would reduce existing standards of rights of employees and potentially new forms of exploitation (cf. Benedetter/Schira 2009: 184f.; DGB 2008). Similarly, the Foreign Office, although deeply involved at the European level in the preparation of the concept of the Global Approach in general and the instrument of mobility partnerships in particular, remained ambivalent in advancing mobility partnerships. Senior representatives of the Ministry argue that they instead concetrated on already established forms of diplomatic cooperation providing less influence to other ministries.

For effective implementation of these European templates, the support of the Federal Ministry for Economic Cooperation and Development would have been of greatest importance. The Ministry as well as its implementing organisation, however, remained hesitant because of insurmountable contradictions in the interests of the migration policy community on the one hand and the development policy community on the other. The changing perspective on the relationship between migration and development has been intensively discussed within the Ministry as well (see, for example, BMZ 2001). Although the new policy idea could potentially increase the Ministry's influence to shape policy coherence for development even in the area of migration policy and advance this central agenda of the department, the BMZ remained rather hesitant to initiate major activities on those issues (cf. Ashoff 2005). This sceptical position towards this new policy idea is mainly explained by at least two former experiences of Germany's development policy becoming exploited by home affairs actors.

The first experience is related to the change in government in 1982 when the former SPD/FDP government was replaced by a CDU/CSU/FDP government. As already discussed, the 1970s saw the development of a differentiated system for supporting citizens from developing countries for their reintegration into the labour market of their country of origin to counteract the most severe problems of the brain drain. In the late 1970s, the increasing numbers of guest-workers and their family members developed into a politically highly sensitive topic. After the change in government in 1982, these programmes that had been originally developed with the idea to counteract problems of brain drain, were exploited by migration control interests. The former director of CIM argued that at that time development policy became part of more general migration policy aims: "It aimed to fulfil this expectation by launching a 'return of talents' programme for highly skilled workers, even though there was absolutely no interest in this programme on the

part of the workers themselves as under current legislation, it could result in them losing their right to return to Germany afterwards" (Mundt 2007: 6).

The second experience of exploitation of development policy by home affairs actors is related to the refugee crises of the late 1980s and early 90s. The process of making use of development policy for controlling migration started in 1988, with a motion adopted by the German Parliament. It argued that the government should use the available instruments of development cooperation to help solve the world's refugee problem. It aimed at the prevention of refugee flows as well as the promotion of the return of refugees to their home countries (Bundestag 1988b). In response, the Scientific Advisory Board of the BMZ issued a memorandum on the world refugee situation including proposals for a refugee-oriented development policy. The main focus of the proposals concentrated on tackling the outcomes of refugee movements whereas the prevention aspect – which troubled home affairs actors – remained relatively vague (BMZ 1989; Kerlen/Wimmer 1997). As a consequence, the Ministry of the Interior itself initiated and chaired a working group consisting of representatives of different Ministries and developed a policy paper published in September 1990. In this paper, they defined refugee policy as consisting of all activities of the Federal Government contributing to either preventing the creation of refugee flows or solving existing refugee problems and assigned development cooperation a prominent role in combating causes of flight and helping keep migrants at home.

The political interests between home affairs actors on the one hand and development policy actors on the other definitively differed at that time. Within the strategy, home affairs actors argued that "the taken measures aiming at a solution or alleviation of existing refugee problems are not exempt from general weakness and poor coordination. Development cooperation has not yet sufficiently considered the world refugee problem" (BMI 1990: 13). Development policy actors, however, criticised "the fact that the preparation of the concept has been managed by the BMI as well as the importance ascribed to asylum issues in Germany and Europe suggest that the perception of the problem is dominated by domestic priorities" (Klingebiel 1994: 32; see also Kleiner-Liebau 2008: 8).

At the end, home affairs interests trumped the interests of the development community and in response Germany's development policy fundamentally changed its approach to refugees and migration. Whereas until the late 1980s the only development measures related to refugees aimed to relieve the receiving countries, the early 1990s saw a number of new initiatives by the Ministry and the implementing organisations including reducing the causes by introducing political conditionality measures and disaster prevention as well as integrating refugees in existing return and reintegration programmes (Klingebiel 1994: 42f.; GTZ 2001; BMZ 1994: 5; Kerlen/Wimmer 1997). In response, the Ninth Report on the development policy of the Federal Government published in 1993 now argued that "the Federal Government may, by raising the economic and social standards of living in the countries of origin contribute to ensuring that people receive in their ancestral homeland a life perspective. German development policy with its focus on poverty reduction, environmental protection, food security and the promotion of education serves as a preventive refugee policy. It improves the situation in developing countries and thus the prospects of the people there (Bundestag 1993c: 37).

The change in the federal government in 1998, from the Christian-Democratic/Liberal Coalition to the Social Democratic/Green coalition government, provided the opportunity for Germany's development policy to free itself from the close grip of home affairs exploiting this policy area for their own interests (Kerner 2002). The party political change at

the top of the Ministry certainly helped to explain why the previous exploitation of Germany's development policy for home affairs interests had been brought to an end in the late 1990s. Of probably even greater importance, however, was the fact that these early experiences of development policy actors and particularly the staff in the Ministry as well as the major implementing organisations led to resentments and an overall denial of working for political aims advanced by home affairs politicians working under the assumption that "development is about enabling people to stay at 'home'" (Bakewell 2008).

This perspective was also shared by Wieczorek-Zeul as the new Minister for development policy who was one of the most prominent critics of the restrictive reforms of Germany's asylum policy in the early 1990s (Wieczorek-Zeul 1993). This biographical experience made the new leadership of the Ministry particularly aware of the migration issue and led to a dismissive position towards any closer cooperation with the Ministry of Interior. With the exception of those policy ideas and policy templates provided by the European Union which could be implemented in Germany without any greater cooperation with home affairs – including the issue of remittances and the inclusion of migrant organisations a potential actor for development policies – no greater involvement of the BMZ with these new policy ideas was perceivable. There had been little enthusiasm in the leadership of the Ministry to advance this new agenda and with the exception of some low level presentations by the parliamentary state secretary (e.g. Kortmann 2007) the Ministry did not actively involve itself with these new policy ideas. Similarly, the German Development Institute (DIE) as the major general departmental research institute Ressortforschungseinrichtung) in the context of development cooperation in Germany remained rather silent on these issues.[75] Although this situation slightly changed with the change in the leadership of the Ministry after the federal elections in 2009, these early experiences of exploitation led to a situation where the Federal Ministry of Interior was rather isolated in the implementation process and could not build on the support of the BMZ. These departmental turf wars also surfaced in the Parliament, when in 2014, for example, the left wing party Die Linke issued a motion focusing on the instrumentalisation of development policy by home affairs interests. Particularly, they asked the government which committees exist between the Federal Ministry of the Interior and the Federal Ministry for Economic Cooperation and Development to liaise regularly on migration issues, as well as what requests for cooperation in the fields of voluntary and forced return, the BMI had made to the BMZ and whether the BMZ had been involved in the negotiation of readmission agreements (Bundestag 2014: 5).

The political aim to restrict and manage migration has had certainly more political influence than the aim of development cooperation and the Ministry for Development Cooperation has certainly had only a junior status and a lower political standing in the development of policy compared to the minister leading on migration policy. Nevertheless, the previous analysis has shown that next to the informal institutional structures the fact that the major national norm entrepreneur was not supportive of this new agenda marks therefore a major part of the explanation for the minor outcomes of Europeanisation particularly with respect to circular migration and mobility partnerships.

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75 Although the German Development Institute (DIE) is actively involved in the debate about policy coherence their focus was on trade, fisheries, agriculture, fiscal policy and arms export but not migration (Ashoff 2002). More generally, they viewed migration as of no particular importance in this respect and have touched upon this issue only eclectically (Bauer 2007; e.g. Klingebiel 2006; Grimm/Deshingkar 2005).

7.4 Conclusion

This final empirical chapter analysed the development of a new policy area addressing the migration-development nexus at the European level, as well as their subsequent national implementation in Germany. Previous studies regularly focused in a neo-functional manner on the influence of international developments, external developments as well as the European Commission as agenda-setter for this policy area. In contrast, the mechanism-centred approach followed in this study focused on the role of member states – and in particular the activities of the German Federal Ministry of Interior – to explain the content of the new policy idea and its accompanying policy templates.

Despite Germany's highly active role during the uploading process and its ability to shape European templates along its own political interests, the analysis of the actual outcomes of Europeanisation remained close to the inertia end of the spectrum and resulted in few tangible national policy changes. In the German case, the most visible reforms concerned the revaluation of diaspora organisations as relevant actors for development policies, as well as concrete measures to lower the costs for sending remittances. Only minor policy changes characterised the other two aspects of policies addressing the migration-development nexus – the conclusion of mobility partnerships as well as the establishment of circular migration schemes. Here, implementation of European policy templates was reduced to the establishment of different pilot projects, which have been criticised for their small scale character.

This obvious discrepancy between Germany's intensive activities during the uploading dimension of Europeanisation and the minor outcomes of implementation is also supported by a recent comparative study arguing that migration and development policy "remains in a tentative and experimental phase, and that countries experience difficulties reflecting their international positions in their own policies" (Keijzer, et al. 2015). This puzzle between successfully shaping the uploading processes of Europeanisation and the marginal outcomes of Europeanisation are best explained by the role playing mechanism. The separate analysis of the two dimensions of Europeanisation – uploading and downloading – exposes the paradoxes of European policy-making and the German case illustrated those different dynamics.

The uploading process of European policy-making still is a very hierarchical procedure with the responsible national ministry acting as the crucial gate-keeper. When the idea to conceptually link migration and development emerged at the international and European level, this was closely in line with the policy interests of the new conservative Minister of Interior taking office in 2005. In the course of the process, the Federal Ministry of Interior became increasingly involved into the development of the new policy idea. Particularly the Council Presidency in 2007 as well as the preparation of the 'European Pact' from 2008 provided them with the opportunity to transfer some of its national policy approaches to the European level and to shape the new policy idea in line with its own proposals.

When the 'Global Approach' was first published in 2005, it successfully reconciled policies that were previously seen as contradictory and diverging. Instead of referring to the quality of the policy templates and a potentially loose policy framework, however, the role playing mechanism provides an explanation that focuses on the politics of the downloading dimension. With respect to the first factor, the new policy idea hardly resonated with established political discourses in Germany. At least until the late 1990s, diaspora organisations were hardly recognised as a political actor and homeland-oriented activities of migrants

were seen with great suspicion. Whereas the last decade experienced slowly changing discourses, the overwhelmingly negative link between migration and development in Germany's development community remained rather stable.

The absence of national norm entrepreneurs – the second explanatory factor – proved even more important to explain the minor outcomes of Europeanisation. The implementation of most of the policy templates addressing the migration-development nexus had to be based on the close cooperation between different governmental departments – at least by the Ministry of Interior and the Ministry of Economic Cooperation and Development. The experience of the early 1990s, when Germany's development policy was placed in the service of a restrictive migration policy, led the socio-democratic leadership of the BMZ to abstain from close cooperation with the conservative leadership of the Ministry of Interior. In response, only those policy templates were implemented where either department could act on its own. Proposals for mobility partnerships and circular migration, instead, have resulted in minor changes because no political commonalities for more far-reaching projects and policy changes existed. Although this resulted in the insufficient implementation of the new policy templates, at least it safeguarded Germany's development policy against a generally more restrictive home affairs agenda (see Musekamp 2013: 494f. for an opposite result in the French case).

The findings of this case study paint a rather disillusioning picture about the actual potential of the European Union to implement more progressive policy ideas potentially changing deeply entrenched national policy approaches. The role playing mechanism highlights national politics as a crucial precondition for successful Europeanisation and the European 'limits of control' are certainly hampered without supportive informal national institutions and norm entrepreneurs supporting new policy ideas. Nevertheless, the results of the German case study also question some of the critical voices in the migration-development debate. Arguments against the new policy idea point to weak empirical evidence of the positive effects of international migration and remittances for the development of the countries of origin. From their point of view, the recent focus on migration and development only serves the interests of the highly developed countries in the North, still overwhelmingly interested in stemming immigration from less-developed countries (e.g. Delgado Wise/Covarrubias 2008; Faist/Glick Schiller 2009; Munck 2008; Puentes, et al. 2010; Nyberg-Sorensen 2012). Although the migration-development nexus might indeed be an "ingenuous instrument" (Faist 2008: 38), actually deplorable today is the marginal impact this new policy has had so far for improving the situation of countries of origin and would-be migrants.

8 Conclusion

The point of departure of this study was the dynamic development of common European refugee and migration policies. Within two decades, the European Union expanded its tasks into an area traditionally seen as one of the founding principles of the modern nation-state and established comprehensive regulations governing refugee and migration movements in Europe. Nevertheless, observing these individual political processes one cannot but lament the cumbersome and incremental reforms in the EU, which have not resulted in a comprehensive European refugee and migration framework. One of the privileges of the academic writer compared to the political observer, however, is the ability to focus on broader contexts and longer timeframes. From such a birds-eye perspective the dynamic of European integration during the last decade is highly visible. Shortly after the turn of the millennium, Favell (2001: 252) argued that, "[t]he problems of immigration and minorities cry out for international regulation and norms, and co-ordinated, proactive policies. Yet the EU is technocratic, distant and politically weak". Today, one might still complain about the European Union being a distant and technocratic institutional order. The times when it was politically weak, however, are certainly a characteristic of the past.

Nothing illustrates this European task expansion better than the continuous mode of crisis management in recent years. The financial and economic crisis demonstrates the relevance the European Union meanwhile attained in deciding about the weal and woes of whole European societies (e.g. Cramme/Hobolt 2015; Heidenreich 2014; Tosun, et al. 2014). Not much different, the unfolding of the migration crises during the last years illustrate again that the European Union has become the major political context in which Europe's member states decide about principles of its home affairs policies. Below these apparent developments, the last decade has witnessed an obvious supranationalisation of this policy area, which is now, following the Treaty of Lisbon, completely integrated into the Community method of decision-making. Today the Commission exercises the exclusive right of initiative and the Council decides by qualified majority voting even on legal migration issues like, for example, labour migration and family reunification. Furthermore, the Parliament now acts as co-decision-maker – substantially strengthened through the creation of a single legislative procedure – and the role of the Court was enhanced leading to an overall judicialisation of this policy area.

Despite these institutional transformations and associated developments of substantive European policies, most academic analyses of the last decade have put a unidirectional perspective on this policy area. A first aspect which is puzzling is the overwhelming focus of most contributions on intergovernmental theoretical frameworks and in particular the "venue-shopping" approach (Guiraudon 2000). It argued that European cooperation provides institutional and discursive opportunity structures allowing national executives to develop common policies to increase the states' autonomy to control refugee and migration movements. In its original conceptualisation, the approach was well prepared to explain the early construction of 'Fortress Europe' during the 1990s. Studies applying the approach on subsequent developments, instead, regularly focused on a narrowing selection of Europe's refugee and migration policy.

A second aspect producing biased outcomes in many existing studies concerns the almost exclusive focus on the developments at the European level. The interactions between the member states and the supranational European institutions as well as the domestic repercussions of

the developing common policies are regularly absent. Although recent years have seen a number of in-depth studies on the consequences of Europe's institutional changes on the substance of its common policies (e.g. Kaunert, et al. 2014; Roos 2015; Trauner/Ripoll Servent 2015b; Wolff, et al. 2011) there is a paucity of studies which trace the incremental European institutional and substantive developments to their final consequences for member states.

Against this path dependency in academic analyses, this study aimed at more appropriate theoretical understandings of the interactions between member states and the European Union and its more diverse policy outcomes. The thesis took the institutional and substantive developments since the Treaty of Amsterdam at its starting point and tested whether the venue-shopping approach can still be seen as the universal explanation or whether the more recent interactions between the EU and its member states could be better explained by patterns of interactions characteristic for other mechanisms of Europeanisation. The first aim of this study was therefore the description of the more recent developments in the Europeanisation of refugee and migration policies. Secondly, the study contributes by explicitly testing established theoretical approaches and by developing an alternative framework to explain the interactions between member states and the European Union. Whereas the constraints of a global human rights regime together with national judicial control and the characteristics of democratic and federal politics originally caused national executives to 'escape to Europe', the thesis consequently discussed whether the institutional and substantive developments of the last decade have turned the European Union itself into a new European 'limit of control', effectively restricting state sovereignty in favour of the rights of refugees and migrants.

This final chapter summarises the main findings of this research project. In a first section it discusses the national outcomes of Europeanisation. The operationalisation of this study differentiated for all four case studies several policy dimensions used to measure the extent and the direction of Europeanisation. Based on its analysis of policy changes in Germany between the late 1990s and the end of 2012 this chapter assesses the empirical validity of the 'race to the bottom' hypothesis and shows far more diverse policy outcomes. In a second section it provides a comparative analysis of its mechanism-centred explanation of the outcomes and processes of Europeanisation. The results successfully provincialise the venue-shopping approach and show that interactions between the European level and the member states follow different mechanisms of Europeanisation. Even in Germany, as a least-likely case, the observable patterns of interactions are found across the whole property space provided by the conceptual framework of four ideal-typical mechanisms of Europeanisation. Finally, the last section discusses the empirical findings of this study in the light of recent developments in Europe's refugee and migration policy, which provides an ideal research site to test and advance many of the propositions and findings of this research project.

8.1 Patterns of Europeanisation: Moderate but Diverse Impacts on Germany's Refugee and Migration Policies

The first research question of this study focused on an adequate description of the outcomes of Europeanisation. Particularly it asked whether the institutional and substantive developments in Europe's refugee and migration policies resulted in increasing or decreasing levels of rights for refugees and migrants at the national level. Does the Europeanisation of poli-

cies and the increasing interactions between the European and national level result in more open and liberal policies or do we witness a continuity of illiberal and restrictive policies? Many of the existing studies have concentrated so far only on the legal output of European policies and consequently fail to study the transposition of these policies into national legislation as well as their execution in practice. Particularly in the case of the EU, which is fully dependent on the member states executing common policies, the outcome of Europeanisation has to be analysed by comparing national legislation and practice before as well as after the EU has developed competencies in the respective policy area and has taken steps towards common policies. This research question is of particular importance in understanding the functioning of multi-level policy-making in Europe, but also touches one of the most pressing "problems for the EU institutions to ensure the implementation of both the agreed objectives at the European level and agreed measures at the national level" (Monar 2015b: 7). In recent years it has become increasingly obvious that the implementation deficit has developed into one of the major impediments for more European harmonisation of refugee and migration policies. And the European Council in adopting its 'Strategic Guidelines within the Area of Freedom, Security and Justice' argued in June 2014 that "the overall priority now is to consistently transpose, effectively implement and consolidate the legal instruments and policy measures in place" (European Council 2014: 2).

As a consequence, the study put much effort into an appropriate operationalisation of the outcomes of Europeanisation as its dependent variable. Instead of general assessments of changes in a complete policy area, the study followed the advice to "disentangle these various features of immigration regimes" (Boucher/Gest 2014: 9) and disaggregated refugee and migration policies into four constituent parts: asylum policies, policies addressing irregular migration, labour migration policies as well as policies addressing the foreign and development dimension of migration. Each policy part, again, was further differentiated into three policy dimensions whose developments were analysed separately focusing on individual policy instruments. On the basis of the resulting 12 policy dimensions, the study measured the extent and the direction of Europeanisation by comparing the existence and the settings of a policy in Germany at the late 1990s – before the EU defined common European policies – with the status of the policy at the end of 2012 – several years after the EU had adopted its proposals. Comparing both measures resulted in a relative assessment of the dependent variable.

At least three advantages of this procedure compared to many other existing studies should be highlighted. First, measuring policy changes is always a matter of degree either because of the quantitative indicators chosen or because the qualitative judgement includes a personal judgement of the author. By providing detailed qualitative and quantitative information about the actual policy changes, the study provides a transparent and reproducible basis for the final classification of a single policy dimension into a particular extent and direction of policy change. Second, this documented measurement of the dependent variable also included a solution to the problem of measuring the direction of a policy. Instead of adopting some normative standard, the study assessed the direction of Europeanisation on the basis of the variation between the two periods. Finally, the research design responds to the character of many processes of Europeanisation. Already in a very early study, Héritier (2001a: 2-3) argued that, "the interlinking of European and national policy processes are relatively inconspicuous and politically invisible, constituting the exact opposite of the politically salient, spectacular and controversial 'history-making' decisions, such as treaty revisions. Such 'everyday decisions' consist of a large number of small, incremental issues

that, besides lacking visibility, are frequently complicated matters that are not easily accessible to the layman and thus generate little public interest". Despite the obvious necessity to focus on the incrementalism of these changes, many empirical studies nevertheless focus on individual legislative processes either on the national or European level. This includes analyses of the European impact on the Immigration Act from 2005 in Germany, for example, or the immediate transposition processes of single European directives. The strategy adopted in this study, instead, covers the developments of different policy dimensions over more than a decade. It consequently enabled the uncovering of the interactions between the national and the European level in 'everyday decisions', just as well as the study of the long-term outcomes of Europeanisation.

The integrated results of the description of the dependent variable are presented in Table 8.1 including all four case studies and the respective 12 policy dimensions. A first finding concerns the degree of Europeanisation. Here, the table principally confirms earlier findings on the domestic repercussions of the EU on national policies with an assessment that, "the predominant scope of domestic change has been within in the medium range" (Ladrech 2010: 209). The findings on the Europeanisation of Germany's refugee and migration policy show that Europeanisation has not resulted in transformative changes during the last decade. Instead, the table shows that seven policy dimensions experienced a medium level of Europeanisation whereas in five dimensions only small policy changes were discovered.[76]

During the last 15 years, probably the greatest public as well as academic attention was received by Germany's labour migration policy reforms. Table 8.1 demonstrates that also in this comparative study of different dimensions of refugee and migration policies, this policy area experienced a comparatively large extent of Europeanisation. The policy change is most obvious with respect to academic and temporary labour migration schemes, including the partial privatisation of the admission of researchers, the introduction of a comparatively quick and transparent admission mechanism for principally all university graduates from third-countries with an adequate job offer, as well as the liberalisation of labour market access for highly skilled foreign workers. Only on the dimension of permanent immigration, the legislative framework is still lagging behind with the introduction of a small scheme for self-employed migrants. Of certainly less public attention has been the change in Germany's policy towards the forced return of irregular migrants, but they are hardly less relevant. The analysis of the conclusion of European readmission agreements (international cooperation) as well as the establishment of Frontex's role in supporting member states with the return of irregular migrants (operational cooperation) and their respective implementation into the day-to-day routine of Germany's administration, demonstrated how European cooperation has substantially increased the effectiveness of formerly national policies and increased the executive's room for manoeuvre. Two policy dimensions experiencing a medium level of Europeanisation also characterise the developments in Germany's asylum policy. Chapter 4 argued that the decade following the turn oft he millenium marked a fourth round of asylum conflict in Germany, which largely acknowledged the former *status quo* with respect to most instruments related to asylum procedures. With respect to the definition of refugee status and reception conditions, however, Europeanisation contributed to a

[76] This finding might explain why quantitative studies regularly fail to observe an influence of the EU on national policies. Their measures of policy change are generally too broad and do not detect policy changes at the level of policy instruments and settings (e.g. Koopmans, et al. 2012).

reversal of the previously existing restrictive policy trend. Finally, the analysis of policies addressing the migration-development nexus shows that here actual outcomes remained close to the inertia end of the spectrum. The most visible reforms concerned the revaluation of diaspora organisations as relevant actors for development policies as well as concrete measures to lower the costs for sending remittances. Only minor policy changes, however, characterised the conclusion of mobility partnerships as well as the establishment of circular migration schemes which both remained on a rhetorical level only.

The second dimension of the dependent variable – outcomes of Europeanisation – concerns the direction of policy changes. Concentrating on those policy dimensions that experienced a medium level of Europeanisation, Table 8.1 shows that the developments in Germany did not add up to a universal trend – neither towards more illiberal and restrictive policies nor towards more liberal and open policies. Whereas Dür (2011) argued for the example of the service sector that this area does "not result in Fortress Europe but in Open Door Europe" something similar is not visible concerning the regional integration of refugee and migration policies. On the other hand, the re-evaluation of the original 'race to the bottom' hypothesis – expecting a general trend towards more restrictive policies and a curtailing of rights of refugees and migrants – also does not find support on the basis of the outcomes of Europeanisation of Germany's refugee and migration policies between the late 1990s and today. Although certain qualifications apply because of the relative instead of normative measurement of the direction of Europeanisation, the empirical results point to a rather fragmented pattern. On the one hand outcomes of Europeanisation increase control and restriction whereas on the other they include more liberal policies increasing the rights of refugees and migrants.

Table 8.1: Diverse pattern of national outcomes of Europeanisation in four areas of Germany's refugee and migration policies for the period 1999-2012

Policy area	Policy dimension	National outcomes of Europeanisation	
		Extent	Direction
Refugee migration	Refugee status	Absorption	Liberal
	Asylum procedure	Inertia	Linear
	Reception conditions	Absorption	Liberal
Irregular migration	Legal harmonisation	Inertia	Linear
	International cooperation	Absorption	Restrictive
	Operational cooperation	Absorption	Restrictive
Highly skilled labour migration	Permanent migration	Inertia	Linear
	Temporary migration	Absorption	Liberal
	Academic migration	Absorption	Liberal
Migration and development	Diaspora organisations	Absorption	Liberal
	Partnership agreements	Inertia	Linear
	Temporary migration	Inertia	Linear

Source: Own compilation.

The restrictive trend of Europeanisation is most obvious in the case of policies addressing irregular migration. Here, the analysis of international and operational cooperation measures showed how multi-level policy-making supports member states in developing more restrictive and effective dualist administrative systems. Existing studies on Germany's return policies generally highlight the 'deportation gap' – the misfit between official declarations and the actual numbers of deportations – as the dominating characteristic of this policy area and fundamentally fail to address Germany's multi-level endeavours. Although not all European instruments developed as quickly as national executives originally wished, and not all resulted at any measurable impact on domestic policy outcomes, overall they have reduced existing national enforcement constraints. In combination with the previously existing national structures, the developing dualist administrative system certainly improved the overall effectiveness by reducing the political, diplomatic and financial costs of this policy and increased the control of national executives over 'unwanted' migration.

The liberal trend of Europeanisation outcomes strengthening the rights of refugees and migrants is obvious across different policy dimensions. Of probably greatest importance have been the reforms in Germany's asylum policy. Compared to the restrictive standards in the late 1990s, the reforms of policies determining the status of a refugee as well as their reception conditions have started to incrementally improve refugee rights. The outcomes of Europeanisation include here the explicit reference to the Geneva Refugee Convention in German legislation, the recognition of non-state and gender-specific forms of persecution, as well as the termination of the 'religious subsistence level' doctrine, together obviously increasing the protection rate. With respect to reception conditions, outcomes of Europeanisation furthermore include steps towards reducing some of the most restrictive aspects of Germany's deterrence regime, e.g. the incremental liberalisation of residence restrictions as well as the withdrawal of Germany's reservation to the United Nations Convention on the Rights of the Child, previously legitimising its restrictive approach towards unaccompanied minor refugees. Examples of liberal outcomes of Europeanisation also exist in other policy dimensions. In the migration and development policy area, the inclusion of diaspora organisations into Germany's development policies as well as measures to lower the costs of sending remittances are also measures which increase the rights and opportunities of migrants. Of certainly greater relevance have been the liberal outcomes in the case of highly skilled labour migration policies. Here, Europeanisation has had a liberal influence by supporting the termination of Germany's self-description as 'not a country of immigration' and subsequently shaping several policy reforms. These discursive and legislative changes have resulted in the introduction of policy schemes for academic as well as temporary highly skilled immigrants, which today closely resemble the existing policy frameworks in traditional countries of immigration.

In comparison to the existing studies about the Europeanisation of refugee and migration policies in Germany, the empirical results on the extent and direction of Europeanisation provide for an updated as well as more comprehensive and conclusive assessment of the domestic repercussions. So far, the question of whether Europe matters for this policy area in Germany has resulted in largely different assessments. Particularly some of the earlier studies have attributed the EU a crucial influence (Birsl/Müller 2005; Tomei 2001) and particularly legal scholars have already for some time now argued that the increasing influence of the EU fundamentally replaced German refugee and migration legislation "by implementation rules of European Union legislation" (Renner 2005: 274). Nevertheless, others have remained more sceptical with Monar (2003: 318) arguing for example that "the impact

of the rapidly growing EU Justice and Home Affairs agenda on the national setting has so far remained limited". And no principally different conclusion was reached by Prümm and Alscher (2007: 75) stating that, "Germany represents a case of high compatibility with low misfit and consequentially minimal change" (see also Musekamp 2011; Wassenhoven 2011; Baukloh, et al. 2005). Although European membership has not resulted in a transformation of Germany's refugee and migration policy, the results of this study have shown the considerable influence of the EU. The outcomes of Europeanisation have resulted in the modernisation of previously existing national policies (e.g. labour migration policies), brought them into line with internationally accepted standards (e.g. asylum policies), strengthened the control over international flows of people, but also increased the rights of refugees and migrants.

8.2 Mechanisms of Europeanisation: From an External Venue for National Executives to Normalised Multi-Level Policy-Making Processes

Based on the description of the dependent variable, the second research question concentrated on the theoretical explanation of the developments in member states' refugee and migration policies. In particular it asked whether venue shopping remains the single underlying theoretical mechanism or whether different interests and logics of actions actually feature multiple mechanisms of Europeanisation. Against the dominance of the 'venue-shopping' approach, this study proposed a mechanism-centred approach, which started from the peculiarities of the multi-level European political system and constructed precise expectations of the politics during the uploading and downloading processes of European policy-making. The more recent interactions between previously strictly separated theoretical camps resulted in regular calls not to favour one theory over another but to favour bridge building between different frameworks (cf. Scharpf 2001; Jupille, et al. 2003; Zürn/Checkel 2005). These general discussions in European studies were also echoed in refugee and migration studies. Guiraudon (2006: 305; see also Boswell 2010: 294 for a similar argument comparing different dimensions of migration policies explained by different theoretical mechanisms), for example, argued that "studies rarely adopt a comprehensive approach, because of theoretical or methodological bias, while it may be fruitful to trace different mechanisms of change. This in turn requires a better specification of the mechanisms themselves and a need to link them to the change expected". By systematically linking the uploading and downloading dimension of Europeanisation, this study aimed at specifying such different mechanisms and different ways of interacting between member states and the European Union and to apply four ideal-typical mechanisms to the Europeanisation of Germany's refugee and migration policy.

Despite this structured theoretical framework, the empirical analyses were regularly confronted with the difficulty that those ideal-typical mechanisms were based on a rather rigid understanding of the European policy-making process. Although they are adequate descriptions of the overall process, the closer one focuses on the micro-details of political processes the messier these processes get and deviate from a linear and chronological reading. Furthermore, the clear separation of the uploading and downloading dimension of

Europeanisation was also regularly called into question. On the one hand, this separation continues an understanding of strictly separated political spheres – one in Berlin and one in Brussels. Not least on the level of the persons involved, however, the reality shows both spheres increasingly merging. On the other, the separation focuses in particular on vertical processes of Europeanisation and is less able to focus on horizontal processes of member states copying policies from each other (Börzel/Risse 2007: 497). Nevertheless, even such a simplifying conceptual approach at times results in high levels of complexity. Therefore, the application of the "life-cycle of public policy" (Saurugger/Radaelli 2008: 213) remains a reasonable technique particularly for studies covering different policy areas and a comparatively long time period, because it helps to structure otherwise too complex processes, which would hardly allow any systematic empirical analysis.

A summary of the four mechanisms and their specific paths of Europeanisation in the different policy areas is provided in Table 8.2. In a chronological fashion, it starts from the national policy context at t_0 in the late 1990s, provides a characterisation of the uploading and downloading processes and the specific interactions between the European institutions and the member states, and ends with actual outcomes of Europeanisation and the status of the national policy at t_1 – at the end of 2012. Before going into the details of each mechanism, the table shows that the Europeanisation of refugee and migration policies in Germany can hardly be understood on the basis of a general theoretical model. The processes of Europeanisation are characterised by a variety of different causal mechanisms and successfully provincialise the venue-shopping approach. Although venue shopping still remains an important path describing the interactions between the national and the European level, the explanation of the outcomes of Europeanisation in all four constitutive areas of refugee and migration policies necessarily has to apply all four mechanisms.

With respect to the first mechanism – *backdoor opposition* – the empirical analyses of different aspects of Germany's asylum and return migration policies since the late 1990s highlighted the obvious constraints of the European Union in influencing national policies. The results on both dimensions of Europeanisation – uploading and downloading – provide clear evidence for the continuity of national executives as the most relevant and influential actors in European policy-making processes, which reduce the impact of EU legislation in opposition to national interests to a minimal level. Although the initiative for the concrete proposals outlining a common European asylum policy originated not from member states but from the European Commission tabling individual draft legislation, member states – and Germany in particular – were actively involved in watering down the draft directives to bring them into line with national preferences. Similarly, the initiative for the Return Directive was clearly located in the European Commission during the uploading process. Although member states principally accepted the need for legislation in this area, Germany shaped the final text in line with the previously existing national *status quo* because it never perceived the existing domestic legal framework governing return and deportation as a crucial factor constraining the effective enforcement of this policy. In both cases – asylum as well as minimum standards for return – the German executive wanted to make sure that the introduction of new European legislation did not curtail existing – and from their perspective well-performing – national policy approaches. Following these uploading processes, the downloading dimension of Europeanisation provided the German government and here in particular the BMI with the opportunity to oppose Europe 'through the backdoor'. In both policy areas those European policies that remained in conflict with German preferences were distorted through late, restrictive, partial and incorrect transposition. Even

Table 8.2: Stylised framework of four mechanisms and their particular causal paths of Europeanisation

	National Policy (t_0)	Uploading Dimension	Downloading Dimension	National Policy (t_1)	Case studies
Backdoor Opposition	Comprehensive and far-reaching introduction of restrictive asylum policies in response to the 'asylum crises' in the early 1990s; existing standards on return providing no constraint for administration.	On the initiative of the European Commission development of demanding common asylum policies and minimum standards of return. Germany's negotiations in the Council cut many of those proposals but not all.	New European norms on asylum policies and legal harmonisation of return policies remaining in conflict with national preferences were distorted by late, restrictive, partial and incorrect transposition processes.	Few national policy changes in the case of minimum standards on return as well as asylum procedures. The restrictive and from the perspective of the administration in Germany well performing national approaches are perpetuated.	e.g. asylum procedures; legal harmo-nisation of minimum standards on return.
Venue Shopping	Particularly administrative enforcement constraints because of the lack of international and oper-ational cooperation result in 'deportation gap' in the late 1990s.	On the initiative of the German government as well as other member states presentation and adoption of different legislation addressing international and opera-tional cooperation.	'Unbearable lightness' of complying with new Euro-pean policies. Effective implementation of new European structures into daily administrative practices.	New European policies in combination with previously existing national policies developed into a dualist and more effective system reducing political, diplomatic and financial costs.	e.g. interna-tional co-operation; operational cooperation.

Table 8.2: Continuation

	National Policy (t_0)	Uploading Dimension	Downloading Dimension	National Policy (t_1)	Case studies
Policy Learning	No comprehensive labour migration policy (e.g. unclear prospects for permanent residency, complex admission procedure, employment for academic migrants after graduation prohibited); restrictive conditions on definition of refugee status and reception conditions.	European Commission established new policy idea linking future economic growth and highly skilled migration. On the initiative of the Commission the development of demanding EU legislation on labour migration and asylum.	New policy idea based on the Lisbon strategy established two new norm entrepreneurs as important actors in the early phases of reforming labour migration policies. On asylum policy, European developments shaped legislative and judicial processes and tipped forces.	New migration schemes governing temporary highly skilled labour migration as well as academic migration; incremental improvement of refugee rights (e.g. non-state persecution) and reduction in deterrence regime (e.g. residence restrictions)	e.g. temporary and academic labour migration; refugee status.
Role Playing	Mutual disinterest between migration and development policy and despite some early predecessors no political concept existed exploring the multiple relationships between international migration and development.	National ministries of interior together with European Commission and international actors establish new policy idea linking migration and development and shape policy templates along national interests.	Contingency of ministries of interior during the implementation process from other actors. Absence of cooperative informal institutions and national norm entrepreneurs stalled most policy templates.	Few national policy changes. Hardly any national commitments in partnership agreements with an effect on development in countries of origin. Temporary migration has a project-based character with small number of beneficiaries.	e.g. partnership agreements, temporary migration programmes.

Source: Own compilation.

more, the administration sometimes introduced new restrictive policy instruments under the guise of European implementation demands. This "tendency to cherry pick with the transposition of EU directives" (Bendel 2008b: 19) showed the weakness of the EU in making sure that EU policies are actually complied with.

During the first decade following the Treaty of Amsterdam the backdoor opposition mechanism was quantitatively not of upmost importance and described only a small share of policy-making processes within refugee and migration policies in general. Unanimous voting in the Council reduced the likelihood of states being outvoted to a minimum and the mechanism describes only a small share of policy-making processes within refugee and migration policies in general. With the increasing European integration of refugee and migration policies, the increasing autonomy and influence of European institutions and in particular with the introduction of QMV in most aspects of this policy area by now, the quantitative importance of this mechanism will likely increase in the years to come. This developing institutional context will raise package deals at the European level as well as the chance of becoming outvoted within the Council or because of necessary compromises between the European institutions. Member states may therefore increasingly "include signature but not compliance" (Haas 1998: 19) and political calculations during the downloading dimension to comply with European legislation will more regularly be quite different from the rationalities during the uploading processes.

The empirical analysis of Germany's policies addressing irregular migration highlighted that the *venue shopping* mechanism still describes an important path leading to substantial and restrictive national policy changes. Along the theoretically predicted lines, the mechanism described the 'escape to Europe' as a predominantly rational political decision in response to existing national constraints. Compared to the original formulation of the venue-shopping approach which focused in particular on existing – in the broadest sense – political constraints, the analysis of Germany's return migration policy not only referred to democratic constraints originating from political and public opposition, but additionally highlighted the lack of cooperation of countries of origin or transit as well as existing administrative hurdles as two further groups of national enforcement constraints causing the "deportation gap" (Ellermann 2006: 294). As a response to these difficulties in implementing an effective return policy on a unilateral basis, the German executive together with governments from other European member states, already during the 1990s converged on the perception that irregular migration in general and their forced removal in particular were issues of common concern. From their perspective, the European level provided more favourable venues to address some of the existing national enforcement constraints underlying the deportation gap. With respect to international and operational cooperation, the initiative for common European policies was during the uploading dimension located at the level of member states, which presented several of the subsequently adopted pieces of legislation. The prominence of the German government in shaping the developments was supported by the country's influential role during the 1990s, but even during the last decade several developments followed German political initiatives. This German 'fingerprint' during the uploading processes together with a strong interest by the administration also explains the 'unbearable lightness' in complying with these new European structures and their effective implementation into the daily practices of Germany's deportation policy.

The third mechanism – *policy learning* – was applied to two different policy areas. This includes Germany's reforms of its highly skilled labour migration policy – and in particular

the early developments around the turn of the millennium – which have been explained on the basis of this mechanism, as well as several aspects of Germany's asylum policy concerning in particular the definition of refugee status and the reception conditions. With respect to the first case, the present study showed that although most available accounts still focus mainly on globalisation or cultural theories as well as domestic politics approaches, today any approach not taking the European context sufficiently into account will miss crucial variables explaining the process and also the substantial and liberal outcomes of national labour migration policy reforms in Germany. Along the lines of the policy learning mechanism, the analysis demonstrated how the European Commission developed during the uploading dimension of Europeanisation into an influential actor in this policy area. Linking future economic growth and the transformation towards knowledge-based economies closely to the international migration of researchers as well as greater openness towards highly skilled labour migration more generally, it provided a crucial precondition for far-reaching domestic usages of the Lisbon Strategy.

During the downloading process, this new policy idea was successfully implemented into Germany's highly skilled labour migration policy, supported by the great resonance of this idea within the national migration discourse, as well as the birth of two new norm entrepreneurs – the Federal Ministry of Education and Research as well as the Federal Ministry of Economy and Technology – which successfully supported the implementation of this new policy idea shortly after the turn of the millennium, and against the principal opposition of the Federal Ministry of Interior and the Federal Ministry of Labour, into Germany's basic approach towards highly skilled labour migration. Similarly, the analyses of Germany's asylum policy showed how during the downloading process several new European norms were absorbed into German legislation and practice. These specific processes played out in different institutional venues, including the legislative process dominated by party politics, the judicial venue with the increasing importance of the CJEU, as well as national norm entrepreneurs outside the inner political systems where the European context now helped to tip political forces into their interests.

Finally, *role playing* has been identified as the fourth mechanism which explains the – at first sight – counterintuitive outcomes of Europeanisation as a result of the paradoxes of European policy-making, where the downloading dimension of Europeanisation involves different actors not represented during the previous uploading processes. In the German context, the mechanism successfully shed light on those policy outcomes addressing the migration-development nexus. Whereas previous studies regularly focused in a neo-functional manner on the influence of international developments, external developments as well as the European Commission as agenda-setter, the mechanism-centred approach also highlighted the role of member states – and in particular the activities of the German Federal Ministry of Interior – to explain the content of the new policy idea and its accompanying policy templates. Despite Germany's highly active role during the uploading process and its ability to shape European templates in line with its own political interests, the analysis of the actual outcomes of Europeanisation remained – as theoretically predicted – close to the inertia end of the spectrum and resulted – with few exceptions – in few tangible national policy changes.

This puzzle between successfully shaping the uploading processes of Europeanisation and the marginal outcomes of Europeanisation are best explained by the uploading process of European policy-making, which is still a very hierarchical procedure with the responsible national ministry – here the Ministry of Interior – acting as the crucial gate-keeper was

actively involved in shaping the new policy idea in line with its own proposals. During the downloading dimension, however, necessary cooperative informal institutions and in particular national norm entrepreneurs implementing European policies were absent. The implementation of most of the policy templates addressing the migration-development nexus had to be based on the close cooperation between different governmental departments – at least by the Ministry of Interior and the Ministry of Economic Cooperation and Development. Because of experiences in the early 1990s, when Germany's development policy was placed in the service of a restrictive migration policy, the socio-democratic leadership of the BMZ abstained from close cooperation with the conservative leadership of the Ministry of Interior. In response, policy templates were only implemented where either department could act on its own. Proposals for mobility partnerships and circular migration, resulted in only minor changes because no political commonalities for more far-reaching projects and policy changes existed.

The previous discussion showed, that the study successfully provincialised the venue-shopping hypothesis. Although this intergovernmental approach has dominated the early beginnings of integrating Justice and Home Affairs policies more generally, the dominance of those intergovernmental explanatory frameworks has certainly come to an end. Although the venue shopping mechanism is still an important component of the interaction between the EU and its member states, today it provides only one causal mechanism next to other approaches better suited to explaining the interactions between the EU and its member states. Today, not only national governments pursue their objectives by exploiting institutional spaces that open at the supranational level, but other actors – and particularly the European institutions – increasingly represent their interests. The three additional mechanisms describe these alternative and slowly changing interactions between member states and the EU. Together the process patterns and policy outcomes of Europeanisation no longer fit any linear story of Europeanisation. Nevertheless, the typology of four mechanisms and the attempt to provide mechanisms covering the full spectrum of possible two-level games has certainly succeeded and is an important avenue for future theorising. Although the study has not uncovered a new "master mechanism" (Faist, et al. 2004: 939) of political change in Europe, it has demonstrated that new mechanisms are necessary to accurately describe the developments in this dynamic policy area. The property space offered by the four ideal-typical mechanisms of Europeanisation should provide a promising starting point for future studies.

Next to explaining outcomes of Europeanisation on the basis of a mechanism-centred approach, the study aimed at the construction of causal inferences and the analysis of the "net impact" (Levi-Faur 2004) of the European factor. Because of the importance of alternative international and domestic factors providing competing accounts against one-dimensional explanations focusing solely on the European factor, the study adopted a longitudinal, inter-temporal comparative approach. Closely following a bottom-up research design, the empirical case studies started "from actors, problems, resources, policy style and discourses at the domestic level" (Radaelli/Pasquier 2007: 41) and analysed whether the EU provided for national policy changes and if so, how such influences were actually operating. Additionally, the study applied a process tracing method to actively include potential alternative explanatory factors in the research process. As a specific type of within-case analysis it analyses not only the existence of the European factor, but on a finer level of analysis the specific process and how this specific variable played a role during the process.

Whereas the study successfully demonstrated the diversity of outcomes and mechanisms of Europeanisation, the research design and the available resources sometimes reached their limits when constructing causal inferences. Although each case study explained the specific national policy changes on the basis of individual steps and highlighted the specific order of developments during the uploading and downloading processes of Europeanisation, in the case of the conclusion of partnership agreements and their respective content, for example, alternative explanatory theories could not be tested with the necessary empirical rigor, which would have included the perspective of the partnering country (for such an approach, although not covering the German case, see Reslow 2013). Similarly, a precise process tracing covering the whole time period of more than a decade was not always possible. In the case of Germany's highly skilled labour migration, for example, process tracing focused in particular on the first years of this period only and covered the European factor for later years with a broader 'effects of causes' approach (but see Laubenthal 2014 for an empirical analysis of the transposition process of the Blue Card Directive in Germany supporting the theoretical argument of this study; as well as Heidenreich/Bischoff 2008 for a study of the impact of the Lisbon Strategy on labour and social policies in Germany principally highlighting similar mechanisms). In such cases, further empirical evidence to analyse the causal influence of the European Union could have been revealed by going more micro and trying to identify, for example, the underlying elite learning processes (cf. Checkel 2001a). Confronted with the difficulty that the "EU could be a specific regionalized example of a more general set of responses to migration flows" (Geddes 2007: 67) one could have also analysed the development of highly skilled labour migration policies outside the European Union, or alternatively analysed other member states to see whether policy outcomes and mechanisms of Europeanisation there follow similar processes to Germany (cf. Balch 2010).[77]

Despite these limitations, the mechanism-centred approach regularly demonstrated the causal relevance of the European factor by applying four different analytical strategies. Starting the analysis on the level of the national political actors and their existing policy problems in the domestic setting constituted a first strategy substantiating the empirical analyses. The promise of more effective return policies by international and operational cooperation at the European level – even at the cost of potential new European legal standard setting within, for example, the Return Directive – guided the behaviour of the Federal Ministry of Interior during the 1990s when they started to actively shop for multilateral solutions for the deportation of irregular migrants. The experience of the national 'deportation gap', as well as the loss of external borders with EU enlargement in 2004 also explained the several own European initiatives during the decade following the Treaty of Amsterdam, as well as the far-reaching support for similar activities by other member states during Council negotiations and the lightness of complying during the downloading dimension.

The timing of particular political processes provided a second strategy, regularly demonstrating the relevance of the European factor. In the case of Germany's highly skilled

77 Balch (2010) provides an empirical analysis of the role of policy ideas on national labour migration policies in the case of the United Kingdom and Spain. Although many similarities exist between his research and the empirical analysis of the German case provided in the present study, he differently locates the origin of those policy ideas. Defining Europeanisation as processes where the EU impacts on member states only when clearly defined and legally binding EU policies are in place, he misses the EU as an important source for new policy ideas and focuses with levity only on national epistemic communities.

labour migration policy, the schedule of the preparations for the European Council in March 2000 in Lisbon largely pre-structured the political developments in Germany. Adding the European factor, the introduction of the new policy idea, Chancellor Schröder's linking of future economic growth and the transformation towards knowledge-based economies with highly skilled labour migration at the Cebit computer fair in February 2000 provides a far more conclusive interpretation. Existing studies highlighted the putative surprises and the spontaneous ideas of a responsive head of government, whereas the Europeanisation lens added a causal narrative presenting the developments around the turn of the millennium as a prearranged political choreography.

A third strategy focused on the separate explanation of each mini-step within the overall historical developments. The introduction of the European 'Global Approach', for example, is generally interpreted in the context of activities by the United Nations, the Global Commission on International Migration as well as the migration crisis of Ceuta and Melilla in 2005. In contrast, the analysis provided in this study also highlighted national political processes in Germany. The change of government in 2005 and in particular the reappointment of Schäuble as Minister of Interior is a crucial event in this respect. Schäuble – already holding office during the refugee crisis in the late 1980s and early 1990s – was now provided with the opportunity to pursue already far older political objectives at the European level. The separate explanation of mini-steps explained the unsuccessful introduction of circular migration schemes in Germany by the different actor constellations during the uploading and downloading dimensions of Europeanisation, instead of referring to the lack of coherence of European policy templates.

Finally, a fourth empirical strategy to demonstrate the causal impact of the EU concentrated on the testing of alternative theoretical approaches within the process tracing account. Whereas the majority of existing scholarly analyses of Germany's asylum policy focus on the influence of the judiciary, party competition, right-wing parties or regional cleavage structures, the mechanism-centred approach shows the quickly diminishing influence of those domestic factors and describes the developments of the last decade as a fourth round of asylum conflict which was performed within strictly European confines.

During the 1980s and 90s, the European level represented for national executives a favourable venue to circumvent existing 'limits of control'. The empirical analyses on the developments in Germany since the late 1990s showed that "no longer can the EU be understood as an external venue to which Member states escape in order to circumvent domestic legal constraints" (Acosta/Geddes 2013: 191). On the other hand, the European Union has not developed into a new limit of control in the sense of exclusive federal powers resulting in the EU being the major driver of domestic policy changes. From a democratic perspective, it is welcome that the EU now provides a political level which results in more balanced policy outcomes resulting in domestic policy changes; towards the open and liberal end increasing the rights of refugees and migrants but also for effective control policies tending to the restrictive end of the spectrum. From a governance perspective interested in the configuration of power between the different political levels, a recent study concentrating on the effects of the Treaty of Lisbon on Justice and Home Affairs policies in Europe came to the conclusion that "[t]he EU primarily constitutes a new governance layer 'intervening' in how member states frame and define their national policies" (Trauner/Lavenex 2015: 222; Geddes 2015: 78). The empirical results of this study largely support this conclusion: without the European factor the national political processes and also some of the policy outcomes might have looked rather different, but overall the EU is not the straightforward driver of national policy change.

Together these results support the image of a certain normalisation of EU policy-making now more comparable to the political process in well-established federal state systems. Compared to the situation only 15 years ago, however, the dynamic process in this state-building endeavour cannot be overestimated. During this relatively short period of time, national policies have become increasingly exposed to European investigation and review and traditional national policies have been incrementally transferred into a European mainstream. Although this European mainstream regularly follows previously existing national interests in Germany, these national convictions are now locked-in within a European model of refugee and migration policies. Although previously existing national models might still hold explanatory value for understanding some specific national perspectives and problem solving approaches, the degrees of freedom for member states to diverge from the increasingly precise European model will diminish.

Recalling the least likely case method on which the case selection of this study was based, these results are astonishing. Traditionally, Germany played the venue shopping game in Europe at its very best. Because the study was able to successfully demonstrate for the German case that the previously restrictive outcomes of Europeanisation are today showing a greater diversity and that the underlying explanatory theoretical mechanisms are changing as well, the least likely case method counts this as strong evidence to refute existing theories. Although generalisations from the results of one member state to the situation in others are always severely limited, the specific case selection makes it rather likely that these findings will be reproducible in other member states as well – particularly in those with less power to influence European policies in line with their national interests.

8.3 Europe at the Crossroads: Mechanisms of Europeanisation and the Recent Migration Crises

Evaluating the validity and generalisability of an explanatory approach, a natural next step would be to apply it to different empirical case studies, focusing, for example, on other time periods or other geographical areas (i.e. other member states). For European studies in general, the slowly accelerating financial and economic crises since 2008 provided an excellent application area to test existing theories of European integration (for an overview about recent edited volumes and special issues see, for example, Cramme/Hobolt 2015; Heidenreich 2014; Rittberger/Schimmelfennig 2015; Tosun, et al. 2014). Whereas the existing empirical data of this research project covered the area from the late 1990s to the end of 2012, the recent migration crises in Europe similarly constitutes a test case for the mechanism-centred approach developed in this study. It is hard to define a definite starting date for the recent migration crisis but it certainly includes the political conflicts about a border-free European Union, which arose when the transition periods on free movement with the Eastern European candidate countries from 2004 and 2007 phased out in 2011 and – in the case of Bulgaria and Romania – in 2014 respectively. Next to this intra-European migration debate, the protests in Northern Africa and the Middle East from 2011 onwards resulted in a continuously growing number of refugees from these regions, leading to European conflicts about burden-sharing. Whereas this was a conflict of Southern European countries complaining about the lack of solidarity from Northern European countries first, the diversion of migration flows has now resulted in an even more fundamental debate. The

European responses to these crises in JHA have been inconsistent from the very beginning. On the one hand, fundamentally different political interests and a renationalization trend have shaped these responses, including controversial negotiations of common responses and their half-hearted national implementation. On the other hand, recent years have witnessed sweeping policy reforms unthinkable only months before. This applies to the establishment of the European Border and Coast Guard Agency as well as proposals for a European Union Agency for Asylum, both increasing the operational resources of common European policies. Furthermore, the introduction of a relocation mechanism of asylum seekers from Greece and Italy together with the hotspot approach provides now a more direct approach to sharing responsibility (cf. Hampshire 2015).

This rapidly changing political context provides plenty of additional research questions analysing the Europeanisation of refugee and migration policies. On the one hand this includes the possibility to test the persistence of the results of this study and to analyse how, for example, refugee or return policies developed under changing external conditions. On the other hand, however, recent years have provided a welcome opportunity to test at least four basic presumptions and results of this study: (1) the extent and direction of Europeanisation, (2) the conceptualisation of policy processes in Europe, (3) the mechanisms of Europeanisation, and finally (4) the legitimacy of refugee and migration policies in Europe.

Testing the Extent and the Direction of Europeanisation

The empirical analyses of this study have provided ample evidence that European refugee and migration policies have so far resulted in an ever-increasing Europeanisation of national policies – although with variable extent and direction in different dimensions of this policy area. During the negotiations for a multi-annual programme for the period 2015 to 2020 it surfaced that the 'Area of Freedom, Security and Justice' had lost its wind and that after more than a decade of dynamic institutional and substantive developments member states showed little interest in further harmonisation (Monar 2015a: 14). Additionally, the recent migration crisis with its unresolved issue of a fully operational burden-sharing mechanism and the regaining of nationalist responses casts doubts on the evolution of this policy area.

Together, these developments highlight the increasingly diverse interests between European member states in this policy area. Previously, Parkes (2014: 8) described the constellation of interests as a "kind of internal geopolitics, tugged in three different directions": European countries in the north showed a particular interest in issues of document security to facilitate border controls at their international airports; European countries in the east showed interest in practical arrangements to facilitate mobility between the EU and their neighbouring countries like, for example, Belarus or the Ukraine; and the European countries in the south wished the existing unbalanced burden of controlling migration across the Mediterranean were more equally split between member states.

Compared to this traditional constellation of interests, the more recent developments highlight not only the weaknesses of the existing policies, but also the more general – and probably culturally based – differences of interest with respect to international migration (Behrends 2015). On the one hand, the coming years might therefore see a reversal of previous trends and the conceptualisation of Europeanisation might be in need of adaptation – taking account in the future of the renationalisation processes. On the other hand, the most recent developments also signify an increasing willingness of European member states to make concessions on their national sovereignty and introduce sweeping burden-sharing measures

on refugee and migration issues unthinkable only few months ago. On the case of the economic and financial crises, Tosun et al. (2014: 195) recently concluded that "at least in the short run, the crises has (overall) created an opportunity structure for European integration rather than an obstacle". Additional empirical research projects will have to test whether the measurement of the extent and direction of Europeanisation applied in this study actually holds for other time periods and other member states of the European Union. The next years will show whether the truism of integration theory, which generally sees external crises as a motor of further harmonisation, might find verification in the case of the migration crisis – in the short as well as in the long run.

Testing the Conceptualisation of the Policy Process in Europe

The increasing politicisation of the European project – with the economic and financial crisis as well as the migration crisis constituting the most recent promoters – also provides a test case for the general conceptualisation of policy processes in Europe applied in this study. Not least because of the complexity of the multiple levels of government in Europe, the study focused during the uploading processes in particular on the Council of the European Union and the governments of the member states as major actors in understanding policy developments in the 'Area of Freedom, Security and Justice'. Similarly, also during the downloading processes the administrative logics of member state governments were seen as the crucial determinants shaping the national adaptation process of European policies and ideas. This focus certainly did not completely exclude additional European institutions – in particular the European Commission but also the European Parliament and the European Court of Justice – as well as national actors – here in particular the major political parties, the two chambers of the Parliament as well as specific interest groups. Nevertheless, with an empirical focus covering the whole time period since the Treaty of Amsterdam this concentration on national governments as the crucial gate-keeper can be easily substantiated.

On the one hand, such an intergovernmental conceptualisation of policy processes is supported by the economic and financial crisis of the recent years. The abundance of European summits regularly moved heads of government centre stage, increased the influence of national executives and sidestepped the legislative institutions on all political levels. On the other hand, the institutional reforms introduced with the Treaty of Lisbon, as well as the "greater politicization of European issues in national public spheres and greater public awareness of the responsibilities and powers of the EU" (Cramme/Hobolt 2015: 9) call this prerogative of national governments increasingly into question. Empirical studies applying a mechanism-centred approach of Europeanisation on the most recent developments should test whether more comprehensive conceptualisations of European policy processes – including additional European and national institutions – substantially increases the explanatory potential of such approaches.

Testing the Mechanisms of Europeanisation

The empirical analyses have provided ample evidence that the four mechanisms of Europeanisation provide an adequate property space to describe and explain the multiplicity of interactions between the European and the national level. The study's main aim was to demonstrate the applicability of this mechanism-centred framework. Consequently, each mechanism was only applied to a very small number of policy dimensions. For Exadaktylos

and Radaelli (2009: 514) this results in a more general shortcoming of mechanism-centred approaches which "are in danger of neglecting the necessary and sufficient conditions under which these mechanisms are triggered".

The aim of this study was not to specify for each mechanism their individual domains of application. However, aiming at a more general typology of mechanisms of Europeanisation, the next step for theory development would be to specify the scope conditions of these different mechanisms to better understand when and how they produce certain outcomes (cf. Bennett/Elman 2006). The recent migration crisis again provides an interesting test case to comparatively analyse individual mechanisms in different settings. Do the expected assumptions of individual mechanism on the extent and direction of Europeanisation even hold under different circumstances? Does the migration crisis favour one mechanism to the detriment of others? Does the general strengthening of national executives in a political crisis, for example, result in the resurgence of the venue shopping mechanism? In the last few years, studies on European refugee and migration policies have started to analyse the scope conditions in the context of individual European level decision-making processes (e.g. Cerna/Chou 2014; Menz 2015; Trauner/Lavenex 2015; Roos/Zaun 2014). Whereas these studies focused on the uploading dimension of Europeanisation only, additional research projects should also include the dynamics of the downloading dimension to result in an increasingly specific mechanism-centred approach.

Testing the Legitimacy of Refugee and Migration Policies in Europe

The recent migration crisis marks not only a test case for analytical approaches, but also questions the legitimacy of established asylum and migration policies in the European Union and its member states. From a country of destination perspective, the migration crisis challenges the legitimacy of common European refugee and migration policies, because it questions the basic claim for cooperation in a policy area constitutive of national sovereignty. In an increasingly globalised and denationalised context, the European integration of this policy area aimed at reducing existing coordination problems and consequently strengthening effective national policy interventions. The media images of uncontrolled and unrestricted immigration crossing Europe's border in the autumn of 2015 question this underlying promise of European cooperation. From a country of origin perspective, however, the crisis challenges the legitimacy of the European refugee and migration policies. It highlights the contradictions of the established political objectives slanted towards the interests of the countries of the Global North. Whereas security and economic interests dominate recent refugee and migration policies, the interests of the migrants and the countries of origin are hardly represented.

The history of integrating refugee and migration policies at the European level was always triggered by external events, which caused member states to search for common answers. The migration crisis in the early 1990s was the original catalyst for European integration of this policy area. Similarly, the migration crises in 2005 in Ceuta and Melilla as well as the reactions to the protests in Northern Africa and the Middle East in 2011 caused the development of the 'Global Approach'. With a steadily growing demand from the developing world for entry to states in Europe, which is unlikely to abate in the foreseeable future (Sander, et al. 2014; World Bank/IMF 2015), the recent migration crisis might once more open up "windows of opportunity" (Bendel 2007: 32). At the European as well as the national level, the window of opportunity provided by the current migration crisis

should not result in *ad hoc* solutions to stem the numbers of refugees only, but should result in the implementation of a new policy which focuses more comprehensively on the interests of both – countries of destination and origin. At least in the short term, such a policy approach which starts at existing global inequalities would not be a world of open borders (cf. Pécoud/Guchteneire 2007; Carens 2013), but there is also no need to develop it from scratch. The previous chapter has presented the 'Global Approach' as a policy idea principally including such a new perspective as well as concrete policy measures that would allow the weighing the interests of countries of origin and destination. Despite the essential criticism about the hitherto implemented policies, a reformed 'Global Approach', which does not exploit development for stricter migration control objectives but views migration and development as a basic principle of an ever closer world, would constitute a promising new framework for refugee and migration policies.

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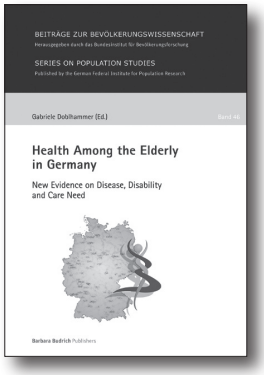

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