

“Changing Patterns and Parameters in EU Immigration Policy”

Panel 9H. Quo Vadis in EU Immigration and Asylum Policy?

Chair: William Brustein (University of Pittsburgh)

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Dr. Georg Menz
Lecturer in Political Economy
Department of Politics
Goldsmiths College
University of London
New Cross
London SE14 6NW
UK
Email: g.menz@gold.ac.uk
Ph: +44-20-7919-7755
Fax: +44-20-7919-7743

Abstract :

Traditionally, “negative integration” has prevailed in EU migration policy, namely the market-enhancing encouragement of internal migration. By contrast, “active integration” efforts to create a common asylum and immigration policy (CAIP) have made far less progress.

However, the EU has vowed in the Amsterdam Treaty to construct such policy. Meanwhile, given demographic trends, member states are unlikely to sustain restrictive policies “Fortress Europe” notwithstanding the post-September 11 “securitization” of migration and the electoral rise of xenophobe parties.

This paper analyses both why past efforts to create a CAIP have encountered difficulty and outlines what contours such future policy will take once these differences are overcome. It examines the ideological, historical and institutional factors that have traditionally hampered a CAIP and will condition it. Firstly, the EU’s dedication to market-building through negative integration and its recent endeavours towards positive integration, secondly, drawing on historical institutionalist insights the embedded trajectories in key member states and their re-orientation as well as the cleavage between (southern) countries of emigration and (northern) countries more accustomed to immigration, and thirdly, the institutionalization of unanimous decision-making in the Council of Ministers and its reform.

1. Intro: negative integration, but little positive integration – but: changing, given pertinence, Tampere, Maastricht, demographic trends (OECD paper)
2. difficulties, because: EU integration progress through negative integration, historically embedded traditions (hist. institutionalism) in member states, third: Council of Ministers as major hurdle (veto point?)

changes predicted, because: demographic trends, business wants high-skilled and low-skilled employees (two tier pathways into Fortress Europe), “securitized approach” towards refugees, extension of Schengen eastward – which creates its own difficulties

1. Introduction

Over the past decade and a half, migration has become a highly politicized, divisive, and contested issue in European affairs. Nevertheless, little progress has been made in devising common EU-ropean regulatory schemes; member states maintain a strong and influential role in regulating migration and asylum policy. While the increasing pace and scope of the European integration process has curtailed and re-defined the role of the state, resulting notably in tight limits to state autonomy in economic affairs, linked to the imposed reduction of Europe’s once mighty public sectors in infrastructure provision and the abandonment of national monetary policy-setting, it is remarkable that in ostensibly less market-related policy sectors that would simultaneously appear particularly dear to the *core competencies* of the

nation-state, much less progress has been made in asserting European Union (EU) policy competency. The Treaty on the European Union (TEU) did attempt to provide the blueprint for the Europeanization of policy sectors that fit this description, including foreign and security policy and migration and asylum. And yet, a decade after the TEU, six years after Amsterdam and four years after the 1999 Tampere Summit, and despite the apparent pertinence and salience of the issue, the discerned lackluster progress made in devising such common European policies is remarkable. It appears important, yet ultimately insufficient to point to the purported absence of “market relevance” of this issue and thus blame the “market bias” the European integration progress has exhibited. After all, migration does have economic costs and benefits. The task of this paper is thus to account in theoretical terms for the slow progress made thus far in the Europeanization of migration and asylum policy and sketch the contours of a nascent EU-ropean policy in this field, taking into account the various domestic and trans-European factors influencing this issue.

One mechanism of circumventing the protracted and often frustrated attempts at harmonization of regulation at the EU level has been a de facto undermining of existing national regulations in the interest of pushing ahead the Single Market project. This approach of “negative integration” (Scharpf 1996) has come to dominate policy-making in sectors in which any such harmonization proved particularly difficult or, indeed, was neglected, including labor and social policy. The European project is scarred by a liberal “market-building” structural bias, embedded in the Treaty of Rome, and revived in the relaunch of the Single Market in the 1980s. Arguably, this was ironically enhanced by defenders of national sovereignty, notably de Gaulle and the 1966 Luxembourg “Compromise”. The reluctance to agree to a more sovereign voice of the Community in foreign affairs by de Gaulle, coupled with the French rejection of a European Defense Community, led to a focus mainly on economic affairs. To the extent that migration could be constructed as serving the purpose of

this market-building project, it was encouraged. Henceforth, freedom of *labor* mobility, already contained in the 1957 Treaty of Rome (Art. 48-66), was re-iterated as one of the Maastricht “four freedoms”. Indeed, with the partial exception of a bout of “positive integration” activism stemming from the 1970s Social Action Program, much of the EU’s labor and social policy in the 1960s, 1970s, and again most recently (Geyer 2000) sought to foster trans-European migration flows (CEC 1977). Thus, while discrimination on grounds of nationality had already been outlawed in the Treaty of Rome (Art. 6 and 48 (2)), more recently issues such as the transportability of social security and pension benefits have begun to be tackled, and steps towards the mutual recognition of professional qualifications were taken. Notably, migration was always conceived as being labor-oriented and related; as the German term used to denote the EU’s freedom of labor mobility: “permissiveness for employees” (*Arbeitnehmerfreizügigkeit*). In the 1970s, intra-EU migration was to serve the political ambitions of uniting Europe, while in the 1990s it was hoped to adjust for the structural inequalities and compensate for asymmetric shocks within the Eurozone, the latter far from being an optimum currency area.

In practice, intra-EU migration never amounted to much. By 1970, when the temporary ban on labor mobility ended, Italy, the only country potentially interested in taking advantage of it, had already concluded bilateral labor treaties with France and Germany and some of the first generation migrants were already returning to Italy. Similarly, Irish emigration to the UK, another major incident of intra-EU migration, already benefited from an open doors policy long before both countries joined the EU in 1973. Linguistic and cultural barriers stood in the way of massive intra-EU migration, as did the absence of major wage and income gaps, with the possible exception of Italy and Ireland. Newcomers Greece, Spain, and Portugal were all subject to a seven-year temporary ban on labor mobility. Small number of highly skilled professionals apart, there is scant evidence of intra-EU migration today, notwithstanding the divergent economic performance and unemployment levels amongst EU levels. Clearly, the

neoclassically inspired concepts of “push and pull factors” have to be modified in the European context.

Instead, new arrivals entered member states under the terms of bilateral treaties or preferential agreements for former colonies. De-colonization meant the return first of European settlers from British, Belgian, and French colonies, including among others Northern Rhodesia/Zimbabwe and the Indian subcontinent, Congo, and Algeria (*pieds noirs*), followed then by members of the native ruling and middle classes. Indeed, colonization had forcefully disseminated European languages, customs, and traditions throughout Africa, Asia, and the Caribbean. Some of its denizens felt attracted to the prospects of life in Europe. In addition, alternative emigration destinations either imposed national quotas heavily favoring European immigration, such as the United States and Canada, or even explicitly excluding non-Europeans, such as “White Australia” and New Zealand. Bilateral treatments were most important for countries with no former colonies, such as the Scandinavian and German-speaking countries, that had lost their natural historical reservoir of cheap labor after the construction of the Berlin Wall in 1961. The OPEC crisis of 1973 and the subsequent end of the postwar boom provided a convenient economic rationale for curtailing active labor migration recruitment throughout Western Europe. Though the acceptance of the long-term settlement of already existent migrants should have logically laid to the rest the notion of temporary labor migration of *Gastarbeiter*, this concept survived, at least in German-speaking countries.

Given that the front door had been slammed shut, the two remaining access channels were family reunion and asylum and refugee programs. The former leads to the perpetuation of existing migration patterns and the strengthening of existing immigrant communities: Turks go to Germany and the Netherlands, Moroccans and Algerians to France and Belgium,

Pakistanis and Jamaicans to Britain. Asylum and refugee policies, colored by the 1951 Geneva Convention and not least the bad conscience of nations that had turned their backs on refugees from Nazi Germany, were generally generous in nature. In the rampant spirit of anti-Communism refugees from Soviet-dominated Central and Eastern Europe were particularly welcomed.

Throughout the 1970s and until the 1990s, migration-related EU efforts focused on promoting intra-EU migration. Though the Council of Europe advocated the implementation of a common EU asylum policy, while the Commission proposed common measures against illegal immigration (Geddes 2000, 55), in the spirit of Eurosclerosis and given the perceived effectiveness of having “slammed the door shut” few European governments were willing to endorse EU-level common immigration and asylum policy (CIAP). In any event, institutional, ideological, and historical factors hampered any such Europeanization and continue to do so. Those will be explored in the second section.

One of the lasting legacies of the 1970s, however, was a “securitized” coloring of intragovernmental coordination on what came to be known as justice and home affairs. The TREVI (Terrorism, Radicalism, Extremism and Violence International) coordination group of 1975, part of the European Political Coordination framework, was an intergovernmental structure combining ministers of interior to counter political terrorism that grew out of the 1968 student revolts and regional separatism (*Brigadi Rossi*, *Action directe*, RAF, IRA, ETA).

Migration (re-)emerged as a highly salient and hotly debated issue in Europe in the late 1980s and early 1990s. Three factors coincided: Firstly, the collapse of the Iron Curtain eradicated the position of Eastern Europe and the Soviet Union as a gigantic roadblock against migration from Central and Eastern Asia and the Middle East to Western Europe.

Secondly, the political and economic turmoil in Eastern Europe, particularly war-torn Yugoslavia, led many of its citizens to flee. Thirdly, more affordable air travel and a more extensive array of destinations facilitated international travel.

In light of the increasing numbers of refugees and asylum seekers and, almost more importantly, given violent xenophobia, right-wing electoral successes, and populist xenophobe rhetoric even by mainstream politicians as Chirac (“odors and noises”), asylum practices became much less generous in Germany and Britain, and citizenship laws were reviewed in France in the early 1990s. Yet, notably all of these were national level initiatives.

The only trans-European initiatives that emerged were multilateral agreements *outside of the EU framework*, such as the 1990 Dublin Convention, permitting asylum applications only in one member state, and the Schengen Agreement of 1985 (implemented in 1996), that abolished intra-EU border controls, only to increase identity checks both at the common external Schengenland borders *and* internally. Here the tight nexus between migration and crime control becomes visible. Indeed, the Ad hoc group on Immigration, established in 1986, that produced Dublin, grew out of the TREVI efforts. Further initiatives included drawing up lists of countries whose nationals would require entry visa (not implemented yet) and carrier sanctions for airlines and shipping companies. Tellingly, the TEU united such efforts under a steering group on “immigration and asylum” in the Third Pillar as “justice and home affairs”, to be dealt with adjacent to a steering group on “police/customs co-operation” addressing matters such as terrorism and organized crime.

The intragovernmental nature of decision-making within the third pillar was not altered, meaning no direct input for either the European Parliament or the Court. This *modus operandi* was not significantly affected by shifting migration into the new Title IV of the 1997

Amsterdam Treaty (Geddes 2000, 110-113), where unanimity among the Council is required. Title IV, Art. 61 specified that by 2004 common measures regarding asylum, migration, and the free flow of persons should be taken, but permits for an extension of unanimous decision-making by the Council alone, based on an unanimous decision at the end of 2004. Both Dublin and Schengen were incorporated into Amsterdam, yet even then Ireland, Britain and Denmark reserved opt-out clauses from the Schengen Agreement, or, in the case of the UK and Ireland out of Title IV in its entirety. On asylum policy, Art. 63.1 incorporates Dublin, while Art. 61 affirms the commitment to the Geneva Convention; while Art. 63 sets forth minimum standards for the reception of asylum seekers, Art. 68 limits the involvement of the European Court of Justice, thus impeding juridical activity, challenge, and oversight.

Concerned that little action would result, in 1998 the Council and Commission presented an “action plan” (Geddes 2000, 127-130), reaffirmed by the heads of state at the 1999 European Council meeting in Tampere, that would include minimum standards for asylum, common visa requirements, and common policies on conditions and residency of third country nationals.

2. Why is there no EU-ropean CAIP? A historical institutionalist argument

The absence of a CIAS is not solely explainable by pointing to the EU’s focus on market-building, though that plays a partial role. Similarly, while it is true that the approach of “negative integration” has often been preferred to a “positive” approach in matters of labor and social policy, migration and asylum, though touching upon these two policy sectors cannot simply be subsumed under them.

A more sophisticated analysis is provided, I believe, by drawing on the insights of historical institutionalist arguments (Steinmo, Thelen, and Longstreth 1992), coupled with a

consideration of the institutional characteristics of decision-making at the heart of the EU. Such analysis also allows us to generate relatively informed predictions about the future contours of a truly European CAIP.

Henceforth, policy choices made by national governments regarding migration and asylum during the formative years in the past, institutionalized into a formative apparatus of government offices (the French OMI, the German BfA, etc), form a legacy that continues to condition current policy choices and preferences and colors national preferences for a CAIP. Thus, the somewhat vague concept of national legacies of migration policy can be operationalized, following Hall's (1986, 7) definition of institutions, as "formal rules, compliance procedures, and standard operating procedures that structure the relationship between people", or, in this case, the inflow of people.

I argue that conditions for the arrival of a "critical juncture" (Collier and Collier 1991) are met, since a conjuncture of a variety of factors is currently occurring that alone may not spearhead, but in unison combination do so, including the priority accorded to a CAIP in the Amsterdam Treaty, underlined by the Tampere meeting, adverse demographic trends, business calls for skilled labor, and the electoral rise of right-wing parties. Therefore, conditions exist for a break with these past traditions and the move towards a new equilibrium.

Regulating the access to its territory and defining the characteristics of its subjects, has been, arguably at the core of modern state sovereignty. While citizenship did not emerge with the Westphalian state system, but much later, controlling the access to its geographical borders has been an important preoccupation of the post-medieval state, not least in order to exert taxation from its residents and charge road tolls of some sort to the entrants. Yet members of the Eurozone have more or less willingly transferred the power to control monetary policy, an equally archtypical right of the sovereign nation-state to a clique of non-

elected bankers in a dreadful highrise at the edges of Frankfurt's sleazy Red Light District. Similarly, EU member states have accepted far-reaching limits to their economic policy and have embarked on a radical transformation of the mighty public sectors that used to dominate continental Western Europe, all in the name of European integration.

Added to the central status questions of citizenship and territorial access have inhabited, is, very centrally the extremely divergent nature of national traditions in dealing with issues of migration and asylum. These national traditions are deeply embedded in the historical trajectories of member states and often are directly related to the underlying defining ideology (or mythology) of nationhood or an "invented community" (Anderson 1983), providing an overarching framework for "a named human population sharing an historic territory, common myths and historical memories, a mass, public culture, a common economy and common legal rights and duties for all members" (Smith 1991, 14). But it is not simply the defining characteristic of citizenship, which conditions migration policies. While it is correct to highlight the fundamental difference in the ethnic citizenship criteria (*ius sanguinis*) historically used by Germany and contrast it with the political-ideological commitment to core values and/or accident of birth (*ius solis*) historically used by France, as several analysts have done (Brubaker 1992), there are important historical and cultural factors informing and shaping migration policy. Therefore, it appears equally important to mention the very different approach taken in postwar labor migration recruitment by a country that invited the new French subjects back to the motherland and a country that concluded temporary agreements with southeastern European countries, some of which had historically been influenced by Germanic culture, but which were clearly thought of as inferior and clearly alien.

The EU is composed both of countries that have either traditionally, or at least during the *trente glorieuses* solicited (labor) migrants and those that only most recently have experienced a shift in status from being a sending to being a receiving country. Britain, France, Germany, Austria, the Benelux and the Scandinavian countries all possess some form of experience with inward migration, most, though not all of it actively regulated and controlled. By contrast, Ireland, Portugal, Spain, Italy, Greece, and Finland have experienced very few if any immigration until the early 1990s, and, until very recently were thought of as emigration countries, feeding substantial expatriate communities in Australia, Britain, the USA, Canada, and Latin America, especially Argentina and Brazil.

To sum up: While currently a critical juncture has occurred that will affect the future path of migration policy at the national level, so far, attempts at creating a CAIP have been hampered by the very distinct national traditions in regulating migration, concerns over loss of national sovereignty, a market focus of the EU, and an unanimous decision-making mode that enables individual states to veto unacceptable proposals.

These distinct national traditions shall now be examined, using five case studies, including three countries with a longer history of immigration (France, Germany, the UK) and two countries with only a very recent experience of inward migration, Italy and Ireland. Thus, we maximize variance, by choosing two “most different” groups, while ensuring that both groups contain countries that entered the EU at inception (France, (West) Germany, Italy) and at the common later date of 1973 (Ireland, the UK). We also incorporate two countries (Ireland, UK) that have so far opted out of the CAIP efforts.

a. France

The mortar of the ideological construction of the (Third) French republic was the notion of integrating the considerably regionally divergent peoples of France by securing their adherence to the political and cultural values of this republic; a concept that was, re-discovered in the 1980s (Favell 2001, 46-59). Common state-run institutions, such as the army and the school, were charged with the mission to further help disseminate the common language and cultural and political values. This ideological abstract of French identity – in the first instance de-coupled from ethnic characteristics – also informed a missionary zest (*mission civilisatrice*) in French colonial policy to turn its subjects into little Frenchmen. In theory, such conception of self-identity facilitated the integration of migrants arriving from countries like Belgium, Italy, and Poland to the slowly industrializing East and Northeast in the late 19th century (Le Moigne 1986). In practice, citizenship was based on a combination of ethnically based (*ius sanguinis*) and territorially based (*ius solis*) characteristics.

Immigration control was relatively lax before World War I, not least because the unfolding wave of industrialization permitted and even necessitated the easy integration of migrants into the ranks of the industrial working class. Nevertheless, in direct contradiction to the lofty theoretical ideal of a color-blind republic – to use a slightly anachronistic term – backlashes against the Italian and Belgian immigrants during times of economic slump were not unheard of; the Dreyfus affair of 1871 uncomfortably revealed deep-seated antisemitism amongst many of the Third Republic's elite. Indeed, the mainly Jewish refugees from Nazi Germany in the interwar years were clearly not welcomed and many of them turned over to the German authorities during the occupation.

The postwar boom (*trente glorieuses*), subsequent large-scale industrialization, and postwar reconstruction exhausted domestic labor supplies. In 1945, the National Office for Migration (*Office nationale d'Immigration*) was formed to recruit foreign workers needed to reconstruct a devastated economy and compensate for demographic deficiencies, immediately

setting up dependencies in Italy. Since Algeria was still considered part of French territory, Algerian residents were automatically considered French citizens and could easily enter mainland France. This treatment continued to apply to residents born in Algeria before independence, creating “unwilling Frenchmen” who could pass on this status given the ethnic component of citizenship regulations.

Though formally labor recruitment occurred through the bilateral treaties administered by the ONI, in practice migrants that had arrived outside of any controlled framework commonly received work permits once they had secured employment in France (Le Moigne 1986, 9). A *gastarbeiter* concept sat uneasily with the republican tradition of *integration*, nevertheless, the ONI officially only issued temporary work permits. Posthoc *regularisation* stopped after a 29 July 1968 *circulaire* of the Ministry of Social Affairs, active recruitment in July 1974. Because of the legal status of Algeria, influx from there was difficult to limit; sub-Saharan African colonies – but not the other Maghreb countries – had similarly been considered French territory before independence, permitting facilitated access to the generation born before the wave of African independence in the 1960s. Though after 1970, EU citizens, including notably Italians could arrive freely, by then migration from Portugal, Spain, Morocco, and Tunisia had long surpassed the numbers of Italian migrants. Indeed, though French authorities had actively recruited Italians and tolerated Portuguese and Spaniards arriving, while Europeans still constituted the majority of resident foreigners in 1975, by 1990 non-Europeans had overtaken them (Hargreaves 1995, 22)

It has become a common myth on the French right to suggest that the cultural integration – read: assimilation – of Maghreb migrants encountered severe difficulties due to their notably different religious identity. Despite France being a secular country, it is argued, the

culture is colored by Catholicism, making integration of mainly Muslim migrants more challenging than that of Catholic Italians, Portuguese, and Spaniards.

Similarly, it is contested that the awakening self-consciousness of third or even fourth generation descendants of Maghreb migrants and their self-identification as *beurs*, a word itself derived from what might be called linguistic separation from standard French, demonstrates that the inclusive political-idealistic color-blind self-conception of the French republic is facing abject failure in light of a minority that no longer wishes to assimilate.

One might rightfully wonder whether the slogan of “*black, blanc, beur*” in reference to the multi-ethnic successful French soccer team of 1998 indeed denotes a re-invented color-conscious national identity, or whether it is simple political marketing. Yet the previous two statements are problematic. The self-assertion of a young generation of Maghrebians, giving rise to *Radio Beur*, a pirate Paris radio station, in 1981, was not so much motivated by separatism, as by an anti-racist movement (*Ne touche pas a mon pote*). The expression *beur* was coined to escape the often derogatorily used term *arabe*. By contrast, the attempt at a self-constructed identity by parts of the current fourth generation, particularly young males, isolated in the *banlieues*, composed of a simplistic and imaginary concept of Islam, extreme misogyny, and *faux* self-identification with the spill-over of the Algerian civil war into France, is not primarily a result of the failure of French *integrationisme* as such, but has more to do with the socio-economic exclusion from the labor market of a generation of young, male, low-skill adolescents. The low-skill manufacturing jobs enabling a living to the previous generation are no longer available, and the service sector prefers to attract skilled employees, many of them now female. Their fathers worked at Renault, but Renault now produces in the Czech Republic.

To the extent that political power has shifted from the right to the left and, most recently, back to the right, French migration policy over the years oscillated between more liberal policies, including the *regularisation of sans-papiers* (as we have seen, very much in the tradition of the postwar years) by the Left (Simeant 1998), and conservative measures aimed at impeding access to citizenship. Thus, the Chirac/Balladur government of the early 1990s ended the automatic bestowal of citizenship on French-born descendants of migrants, shifting the pendulum more towards *ius sanguinis*. Compared to the xenophobe rhetoric of Chirac in his infamous *odeurs et bruits* speech, the proclaimed goal of *immigration zero* (later re-phrased to *immigration illegale zero*) of Minister of Interior Pasqua (*Le Monde*, 2 June, 8 June 1993), and the electoral rise of far-right *Front National* under Le Pen, actual changes in policy vis-à-vis migrants were not dramatic, however. Indeed, the *Front* capitalized on archaic socio-economic xenophobia – it is not coincidental, that the party has done well in the former industrial strongholds of northern and eastern France, especially in *Pas-de-Calais* and *Alsace-Lorraine*. Indeed, the only region in which the party's electoral success correlates meaningfully with inward migration is in the south, in Toulon, Marseille, Nice, and along the Cote d'Azur (*Provence-Rhone-Alpes*), but notably not in Paris (*Ile-de-France*), even though the region attracts much more migration.

The reason why France was hesitant to endorse Europeanized migration policy went beyond the specifically Gaullian concerns over shedding national autonomy to an European entity, particularly over such a crucial domain dear to the core of the nation-state. Though French self-identity and the ideological construct of the nation is in theory open to newcomers willing to integrate (Hargreaves 1995, Favell 2001), this concept is coming under increased attack both by the moderate right, as outlined above, and an openly xenophobe and racist far-right. To the extent that multi-culturalism – understood as the embrace and affirmation of

cultural diversity – is imported into France and used by skeptics of the notion of a color-blind nation, the concept is also attracting criticism from the Left.

We might note that the citizenship ideal seems to have no concrete implications for a migration policy. The Left and Right have embraced a very different rhetoric and engaged in some modest symbolic gestures, but more fundamentally the extent to which migration was tolerated and legitimized in a post-hoc fashion seems to have been more motivated by the business cycle, while conversely migrants serve as scapegoats in times and/or regions of economic downturn. The implication for any European migration policy would then be to accept migrants during times of economic boom and encourage them to leave during times of economic slump – not a million miles away from the *gastarbeiter* concept in all but name.

The politically defined abstract French conception of identity, to the extent that it ever existed, is coming under fire domestically. A pressing question is whether such concept can be transferred to the European level. While the republican self-definition is relatively clear cut, the attempt to carve out such definition at the European level, currently undertaken by the European Convention in its efforts to create a constitution, would seem difficult at best. Neither are all EU members republics, nor do they share the ideals of *liberte, egalite, fraternite*. A related question is whether a constructed identity so broad to encompass all of Europe's people and their political self-concepts would produce anything beyond mere clichés or a generic hybrid, with which no-one can identify, similar to the generic bridges on the backside of the Euro bills.

b. Germany

Germany turned from being a country of emigration to one of immigration in the late 19th century. In the wake of the industrial revolution, the heavy steel industries of the Ruhr area in

particular attracted Polish workers, while political repression and economic instability led many Russians, many of them Jewish, to settle in Berlin and Frankfurt. Though forcefully united in 1871 under Prussian aegis, individual regions maintained their own regulations on citizenship, until the genesis of the 1913 law on citizenship. This legislation, remaining in effect in (West) Germany until 1998 with a reversal of the racist Nazi modification of 1936, was heavily colored by the Prussian tradition, itself based on an ethnic conception (*ius sanguinis*). Such ethnic conception is not just the outgrowth of late 19th century ethnically defined nationalism (Brubaker 1992), reflected in the works of Herder. Given the traditional plethora of German mini-states with often contested boundaries, a territorial definition would have created multiple instances of repeatedly changing citizenship statutes. That Prussia had adopted such concept as early as 1805 had as much to do with exclusionary motives – seeking to obstruct access to citizens by Poles – as by inclusionary motives – namely to permit the inclusion of ethnic Germans outside of the actual Prussian territory.

Indeed, postwar West Germany continued this tradition. Art. 116 of the Basic Law permitted the access to citizenship not only by residents of 1937 (i.e. pre-war) Germany, but, based on ethnic criteria also to descendants of Germans that had been invited by Catherine the Great to Russia and been forcefully re-settled by Stalin to Kazakhstan. During the Cold War, admitting mainly ethnically German refugees from East Germany, Russia, Poland, and Romania was deemed politically desirable and during the postwar boom even economically necessary. Conversely, the exclusionary characteristic applied to those migrants replacing German refugees after the construction of the Berlin Wall in 1961 had cut off the West's labor pool. Not coincidentally, West Germany concluded its first bilateral labor agreement in 1955 (Italy), followed by Spain and Greece (1960), Turkey (1961 and 1964) and later Morocco, Portugal, Tunisia, and Yugoslavia (Marshall 2000).

Unlike the somewhat lofty self-proclamation of the French republic, the Germanic concept of *gastarbeiter* embodies the prevalent notion of temporary and labor-focused migration. Since Germany had lost its colonies in 1918, there were neither returning settlers nor arriving colonized. While citizenship criteria were exclusionary towards non-ethnic Germans, West Germany possessed a theoretically very liberal asylum regime, influenced as a counter-reaction to the racism espoused by the Nazis and informed by the few countries that had accepted refugees from Nazi Germany.

While the oil shocks of 1973 were used to justify an end to active labor recruitment (*Anwerbestopp*), it had become readily apparent, yet was not acknowledged, that the *gastarbeiter* concept had failed. While some Italians of the first migrant wave might have returned, most of the Yugoslavian and Turkish migrants stayed (Marshall 2000).

The fall of the Berlin Wall and the civil war in Yugoslavia precipitated an unprecedented wave of migration to Germany. Not only could ethnic Germans enter from Russia, Kazakhstan, Romania, Poland, and eastern Germany: figures rose from 42,788 in 1986 to 202,673 in 1988 and 4000,000 in 1989 (Marshall 2000, 9). Strong existing ethnic communities and historical ties turned Germany into the preferred destination of Polish and Yugoslav migrants. The relatively liberal asylum regime, enshrined in Art. 16 of the Basic Law, had constituted the only gateway to West Germany in the 1980s. This, along with existing ethnic communities, accounts for the rise in asylum applications from countries experimenting authoritarian, repressive regimes in the 1980s, including notably Turkey, Iran, Iraq and Poland. The fact that West Berlin was an enclave governed by the Western allies, and not West Germany, was skillfully exploited by the East German government, which promoted and supported the migration of Sri Lankan refugees to West Berlin by way of East Berlin's airport. While in the 1960s and early 1970s asylum seekers were usually a few

thousand Eastern European refugees annually, this figure increased to an annual average of 100,000 throughout the 1980s. By the late 1980s, it had increased to 121,300 in 1989, 193,100 in 1990, and reached an all-time high of 438,200 in 1992 (UNHCR figures quoted in Marshall 2000).

In response to the regional electoral successes of the far right, notably *Die Republikaner*, and repeated instances of violent attacks on foreigners and asylum-seekers, notably in northeastern Rostock and Lübeck, the Kohl government essentially abolished the right to asylum in a 1993 revision of the Basic Law. Given the introduction of a zone of so-called safe third countries to which migrants arriving in transit could be immediately deported plus carrier sanction for airlines, access to Germany for potential claimants was rendered severely difficult. At the same time, Kohl supported strongly the nascent European initiatives of Dublin and Schengen. In fact, given his Euroenthusiasm he would have supported a (restrictive) European migration policy (Marshall 2000), which was not forthcoming, however. With the exception of ethnic Germans and Jewish Russians, German migration policy in the early 1990s was thus rendered more restrictive.

An important modification to German migration policy was the 1998 reform of the 1913 citizenship law under Schröder, facilitating access to citizenship after seven years of residence, and permitting the acquisition of citizenship for native-born descendants of migrants. The red-green coalition government has most recently attempted to pass new legislation on migration, placing the labor recruitment of migrants in niche sectors of the economy with labor shortages into a broader legislative framework. These previous attempts to recruit high-skill migrants in information technology, only modestly successful in filling about one fifth of the annual quota of 100,000, in some sense continues the temporarily limited labor contracts for workers from Central and Eastern Europe, signed in the early

1990s for the construction sector, hotels and catering (Menz 2001), and since then also for personal care. The law in turn seeks to reduce family reunion by reducing the age of children permitted to re-settle. Conservative opposition has so far impeded this legislation.

While the German government since Kohl might have been willing to create a European migration policy, it did so primarily out of the concern that it was affected disproportionately by migration from the East and Southeast. The German contribution would have thus been – and, arguably continues to be – of a restrictive nature.

Domestically, the concept of self-identity was and is heavily contested, since the image of Germany had been so heavily tainted with racism, authoritarianism, militarism, and aggressiveness during the Third Reich. East Germany sought to construct a national identity based on a radical rejection of fascism and on a stylized version of Marxist-Leninist ideology. The Bonn Republic possessed a feeble core of self-identification. Habermas' (1992) unconvincing attempt to call for a constitutional patriotism (*Verfassungspatriotismus*) did not resonate outside the ivory tower. If anything, materialism and consumerism associated with the new currency Deutsche Mark (*D-Mark-Patriotismus*) appeared as underlying and unifying national sentiments, in crass contradiction, of course, to the unchanged yet tainted ethnic definition of citizenship. Habermas was not alone among the Social Democratic left to be incapable of constructing a progressive post-national German identity. When Schily, currently architect of the most far-reaching police enforcement and surveillance legislation since the Third Reich, was asked to account for the popularity of unification amongst East Germans in 1990, his pathetic response was to hold up a banana.

Ethnic self-definition appears incredibly anachronistic now. Its long life was not least a result of the Cold War. Put to a test after the fall of the Berlin Wall, when ethnic Germans

arrived in large numbers to take advantage of this largely dormant right to gain access to citizenship, this conception seems to have reached the end of its lease on life.

However, attempts to construct a non-ethnic cultural or political-ideological identity have not been particularly successful in postwar Germany. The imposed state socialist identity of eastern Germany failed to gain solid support. As I have – perhaps cynically – argued, the mortar of the Bonn republic, rampant materialism, has been more successful in creating a sort of Mercedes-Benz identity, which was first rejected, but has since been embraced with a vengeance by the 1968 generation.

Whilst the left failed to construct a republican political self-identity *a la francaise*, the right traditionally had very little to offer as well, given the tainted image of Germany. In fact, most of the internationally successful banners of (West) German culture, whether in social science (Frankfurt School), literature (Boell, Grass), art (Wenders, Fassbinder), or popular music (Kraftwerk) have defined themselves in political opposition to the Bonn republic. Little wonder, then, that the ill-inspired attempts by the Christian Democrats in 2001 to call for a German “leading culture” (*Leitkultur*) to which migrants should aspire received little positive resonance. Exactly what does this *Leitkultur* consist of?

Given that there has been such an inconsistent and uninspiring self-definition at the heart of the Bonn republic, the one contribution that German migration policy might conceivably make to European policy is a re-invented concept of the *gastarbeiter*. Indeed, it is quite likely that such proposal might emerge, based on German experiments with new bilateral labor agreements in sectors such as construction, information technology, and personal care.

c. Britain

Having defined itself earlier in political terms than many of the continental states, Britain traditionally has been open to migration not solely, but primarily on economic terms.

Thus, the East European Jewish migrants that arrived in the late 19th century and again in the 1930s were accepted at least as much for their skills as for concerns over their persecution (Schuster and Solomos 1999). Since citizens of Commonwealth countries were legally considered British subjects, and, until a reform of the citizenship law in 1962 (Commonwealth Immigrants Act), even dual citizens, they could in theory freely migrate to Britain. However, labor migration was more tolerated than solicited. Since Britain did not experience a full-fledged *Wirtschaftswunder*, the stop to a more tolerant migration policy occurred ten years earlier than in France and West Germany.

Migration policy continued to apply preferential treatment towards (Old) Commonwealth countries – to some extent a functional equivalent to the German open invitation for ethnic Germans, as many of the residents of the “white dominions” were of British or Irish origin. Indeed, decolonization in the 1960s led to a wave of returning settlers. By contrast, the New Commonwealth was treated with significantly more suspicion, and subsequent reforms of British citizenship (1971, 1983) have rendered it ever more restrictive. While even in the postwar decade there was a large gulf between the theoretical right for New Commonwealth citizens to use their claim to British nationality and migrate to Britain, subsequent citizenship reforms sought to curtail access to this right to ever more restrictive circles, and notably abolish *ius soli*. Similarly, over the past two decades, British asylum policy, once relatively generous, has been rendered more restrictive, as asylum seekers’ numbers exceeded 30,000 annually in the early 1990s and peaked at 44,000 in 1995, with legislative initiatives in 1993, 1996, and 1999.

While the colonial concept of imposing political and cultural rule without the desire to assimilate the colonized full-fledged into British culture as in the French case (with the possible exception of India) *theoretically* permits greater tolerance for multi-culturalism,

understood as the parallel existence of several cultures, and does not underline calls for assimilation, *in practice* the process of de-colonization has severely shaken the British conception of self-identity. Thus, while the Notting Hill carnival is now seen as contributing to Britain's self-marketing as cool and multicultural rather than a political threat and while chicken massala is classified as English pub food, the fact that power is being seen as shifting away to Washington and Brussels and demands for regional autonomy are growing, is deeply unsettling. Meanwhile, the North American cultural influence is growing, further adding to the uncertainty of distinctly British culture.

That Britain should not have supported a move towards a European migration policy is unsurprising to those convinced of the deeply ingrained Euroscepticism among its leadership (George 1994). Ostensibly, the British refusal to adopt the Schengen agreement even after it became part of the Maastricht Treaty and opt of Amsterdam's Title IV is symbolic of such attitude. Indeed, the British government, particularly in the 1980s, has always been highly skeptical of supranational authority over this policy domain. There seems to be a continued strand in British political thinking emphasizing this "go it alone" attitude, even as the UK is facing challenges similar or equal to those encountered by other European countries. Meanwhile, the restrictive discourse and policy "solutions" currently under discussion in government circles point to the similarly restrictive approach towards "solving" the immigration issue as in other countries. The emphasis on the economic benefits of migration, highly typical of the British approach towards migration, can easily backfire as it nourishes populist media attacks on those exploiting the system. On the other hand, it has also spawned the willingness to open the labor market to citizens of EU applicants after admission to presumably fill open positions in a booming economy, a permissive policy not endorsed by the Schengenland countries.

d. Italy

Italy turned from being a country sending migrants to the USA, Canada, Australia, France, and Germany to one experiencing inward migration only in the mid-1980s. Even before then, outward migration had largely been substituted by internal migration, as workers flocked to the booming northern cities from the poorer South. The first foreign migrants to arrive came from former Italian colonies Somalia and Ethiopia. They were followed by arrivals from Albania and Yugoslavia. Only over the past few years has Italy become a transit and target country for refugees from the Middle and Far East (China, Sri Lanka), the Indian subcontinent, the Maghreb, and sub-Saharan Africa, as well as Latin America (Peru, Brazil, Dominican Republic). Major source countries of immigration include Albania (142,066), China (60,075), the Philippines (65,353), Egypt (32,841), Yugoslavia (36,823), Morocco (159,599), Tunisia (45,680) and Romania (68,929) out of a total foreign population of 1,388,153 million, including some 151,798 EU citizens (absolute figures as of 31 Dec 2000, ItalMin ofInt).

Italian authorities were relatively ill-prepared for hosting the arrivals. In light of the obvious need for some type of migration regulation, the first major piece of legislation was the 1986 *legge* 943, amended in 1990 by the so-called *legge Martelli*. Since then, important legislative milestones include the 1995 *legge* 489 and the 1998 Law on the Regulation of Immigration and the Living Conditions of Foreigners (Consolidation Act). While the 1986 law was modeled on the restrictive regimes put in place by France in Germany after the oil shock, along with cracking down on illegal immigrants, it did create annual quotas for legal immigration (Sciortino 1999). The 1990 law permitted for post-hoc French-style *regularization*. While both initiatives seem to suggest the contours of a relatively liberal asylum and migration policy (Contel and Di Biase 1999), it is important to consider a wide gap between theory and practice in the Italian case. In practice, it is close to impossible to be recognized as a political asylum seeker in Italy, as recent statistics clearly indicate. Also, by

pursuing a two tier strategy vis-à-vis migrants – very restrictive towards undocumented “undesirable” aliens, more permissive towards migrants arriving legally and/or undocumented but gainfully employed, legal or not – *in practice* Italian migration policy seems to dovetail with a pan-European trend towards making such distinction.

There have been a number of racist attacks on refugees in northern Italian cities, apparently with the silent approval of local police. Local authorities, particularly in the south, are often poorly prepared to offer accommodation and food to arriving refugees, inducing them even further, to encourage migrants to move northwards rather than stay.

In Italy itself, most foreign population is concentrated in the north and the center, especially the Lombardy, Veneto, Tuscany, and Lazio regions (ItalMinoffInt 2000). There is a close correlation between low unemployment and relatively high rates of foreign population. Foreigners are disproportionately employed in construction, agriculture and the service sector in general.

More recently, the Italian government has assumed a much more restrictive stance, commencing with the 1998 Consolidation Act, and culminating with the Bossi-Fini Law of 20 July 2002 (legge n.189). This law continues the trend alluded to before towards discerning between “useful” labor migrants and undesirable refugees. Italy has negotiated bilateral labor contracts with those countries that have proved particularly cooperative either in preventing outward migration and/or accepting deported nationals. These countries include Albania, Tunisia, Morocco, and Romania. These “privileged countries” (*paesi privilegati*) in 2000 received annual quotas of 6,000 and 3,000 for the latter three countries respectively for “subordinate”, “autonomous”, and “insertion into the labor market”. In addition to these four countries, there was an annual quotas of 45,000 workers for non-EU citizens in 2000. Whilst thus promising to work for the “integration of foreigners”, police powers in stop and search

were widened to combat illegal immigration. The stick and carrot tactic employed towards sending countries included closer police co-operation, and even the stationing of Italian police officers in sending countries, notably in Albania. Joint police stings and crackdowns with northern European countries were carried out.

Italian citizenship criteria are a mixture of elements of *ius sanguinis* and *ius solis*. Italian-born residents that can prove consistent residency in Italy can choose Italian citizenship on their 18th birthday, while ethnic Italians receive citizenship automatically. Descendants of Italian ancestors can claim citizenship, but only in combination with residency in Italy prior to the 18th birthday. There is little tradition of either integrating or assimilating substantial foreign population. The radical policy of Italianization employed by Mussolini towards the German-speaking minority in the northern region of South Tyrolia has caused a significant backlash, and is thus unlikely to be repeated. It is guesswork to speculate on the future of self-of a concept of identity; certainly the strong regional identities and the historical absence of a significant foreign population will color it.

Given the absence of inward migration and the important role of the Italian labor force as the major component of intra-EU migration, the Italian position vis-à-vis a migration policy was primarily influenced by ensuring free labor mobility within the EU, as was enshrined in the Treaty of Rome, without much concern for a policy vis-à-vis third countries. More recently, however, Italy had to come to terms with being a *de facto* country of immigration and has implemented a policy distinguishing between “useful” labor migrants, including actual labor recruitment quotas, especially for countries “cooperating” in accepting deported migrants, and undesirable undocumented migrants. To a large extent this is very consistent with the general policy direction throughout Europe.

It appears likely that the Italian government would either support or possibly even initiate a policy proposal towards a common European immigration policy encapsulating its own policy.

d. Ireland

Ireland has traditionally been a sending country of migrants to Australia, Britain, Canada, and the USA and has only experienced significant immigration since the mid-1990s. Though legislation on the regulation of migration has existed since 1935 (Aliens Act, Aliens Order 1946), only in 1999 was an Immigration Act passed, reflecting the low priority accorded to the issue until most recently.

Ireland has had a Common Travel Area with the UK, permitting easy and uncontrolled travel and full rights for residency and work for citizens of the respective country, a regulation pre-dating entry into the EC/EU. This agreement was cited as one of the factors leading Ireland to reject entry into the Schengen regime and indeed Amsterdam's Title IV.

Starting in the mid-1990s, Ireland experienced an unprecedented economic boom ("Celtic Tiger"), raising thus its profile as a destination of migration. Aside from returning Irish emigrants, some of which could benefit from the generous ethnic definition of citizenship, migrants arrived primarily from Eastern Europe.

While Ireland had accepted a small annual quota of refugees from the UNHCR, asylum seekers did not arrive in any significant numbers until the mid-1990s, either. In 1993, there were 91 applications, in 1994 362. This figure skyrocketed to 1,179 in 1996 and 3,883 in 1997 and had reached 10,938 by 2000 (government figures, IrishMinofJust 2003). The

Immigration Act of 1999 introduced a number of new restrictive measures in the area, including the payment of a rather minimum subsistence allowance, rather than standard welfare and the permit to work for asylum seekers whose claims were being processed. In addition, police powers in stop and search and even “temporary arrests” of up to 8 weeks have been introduced. The government further sought to “disperse” migrants throughout the country and thus alleviate the housing shortage in Dublin, without, however, making appropriate grants to local communities.

Irish citizenship traditionally is based on a generous mixture of *ius sanguinis* and *ius solis*, but recently access has been rendered more restrictive. Under the terms of the new Irish Nationality and Citizenship Act 2001, citizenship is acquired by birth and/or descend from at least one Irish parent. A more restrictive policy is now applied to individuals acquiring citizenship through naturalization or marriage. Traditionally, the country has had a very ethnically defined self-concept and no experience with a significant foreign population. It is therefore difficult to predict how a movement towards amore encompassing concept will progress.

In May 2000, Ireland concluded an agreement on “readmission” with Romania, followed by similar treaties Poland, Nigeria, and Bulgaria. These treaties are geared at easy deportation of migrants arriving or residing illegally from these countries and were not least fueled by the racist backlash against arriving Sinti and Roma. The treaty with Romania also permits deportation there of individuals of non-Romanian nationality who “arrived in either state from the other state”.

A significant exception to the generally restrictive policy is the availability of work permits for IT and computing professionals and technicians, construction professionals

(architects, engineers, building surveyors) and nurses. Individuals with these skills are granted work permits for up to two years, reflective of labor market shortages in these sectors.

It is therefore likely that Irish proposals towards a common European migration policy will combine elements of a relatively restrictive asylum and migration policy with select pathways for highly skilled migrants. Though its largely ethnically based concept of citizenship may appear a bit anachronistic, it is unlikely to be contested in the near future. The Common Travel Area outside of Schengen is a peculiarity, arising partly from the geographic particularities of an island, and partly out of the political barriers to enforcing severe border controls between the Republic of Ireland and Northern Ireland.

3. Towards a CAIP

In examining the traditional approaches towards migration policy, concepts of citizenship, traditions of incorporation and exclusion the empirical basis has been provided upon which this following analytical section draws.

The divergent traditions at the national level in migration policy cause severe difficulties to potential architects of a common European migration policy. “Southern” and “northwestern” European states have only most recently been forced to regulate the issue of migration at all, while even amongst countries that have a longer history of immigration, important differences exist between countries like Britain, France, and Germany.

Indeed, one of the few commonalities seems to be the acceptance of migrants and refugees both actively (through recruitment) and passively (through tolerating and/or post-hoc legalization of undocumented migrants) during times of labor shortages and/or

economically favorable development and a restrictive stance during economic recession. This economic motive will be explored in more detail below.

Member states maintain a very close and strong handle on any development in this policy domain. Despite migration policy having been shifted from the third pillar into the first in the Amsterdam Treaty, unanimous decision-making persists. Member states retain their veto right. Indeed, even the decision to hand the right to unilateral initiation of policy proposals to the Commission after the transition period of five years needs to secure unanimous consent. Any reform proposals therefore need to secure unanimous consent both *during* the transition period until 2004 and, should member states decide to retain close regulatory control over this policy sector, also *afterwards*.

The Council of Ministers thus acts as a powerful gateway through which any policy proposals must pass. Given the high saliency migration policy has attained in public perception, aided by the “securitization” of the issue and its linkage with a purported terrorist threat, in addition to growing demands by domestic actors (organized business, employers associations, policy experts, think tanks) to implement a more accommodating policy to address Europe’s demographic deficit, select labor shortages in certain sectors and a reversing age pyramid, the current situation can be classified as *a critical juncture*, in the terminology of historical institutionalism, which would signal an impending policy shift despite deeply historically embedded divergent traditions at the national level. This securitization of the migration issue is, I argue, not a new phenomenon, and while the media has been contributing to a portrayal of asylum seekers as a national security threat, aided by the involvement – in some instances more alleged than proven - of a number of high skilled Arab migrants in the attacks against two New York skyscrapers, the

underlying linkage between migration and crime, migration as a menace to state security and thus subject to police attention is decades if not centuries old.

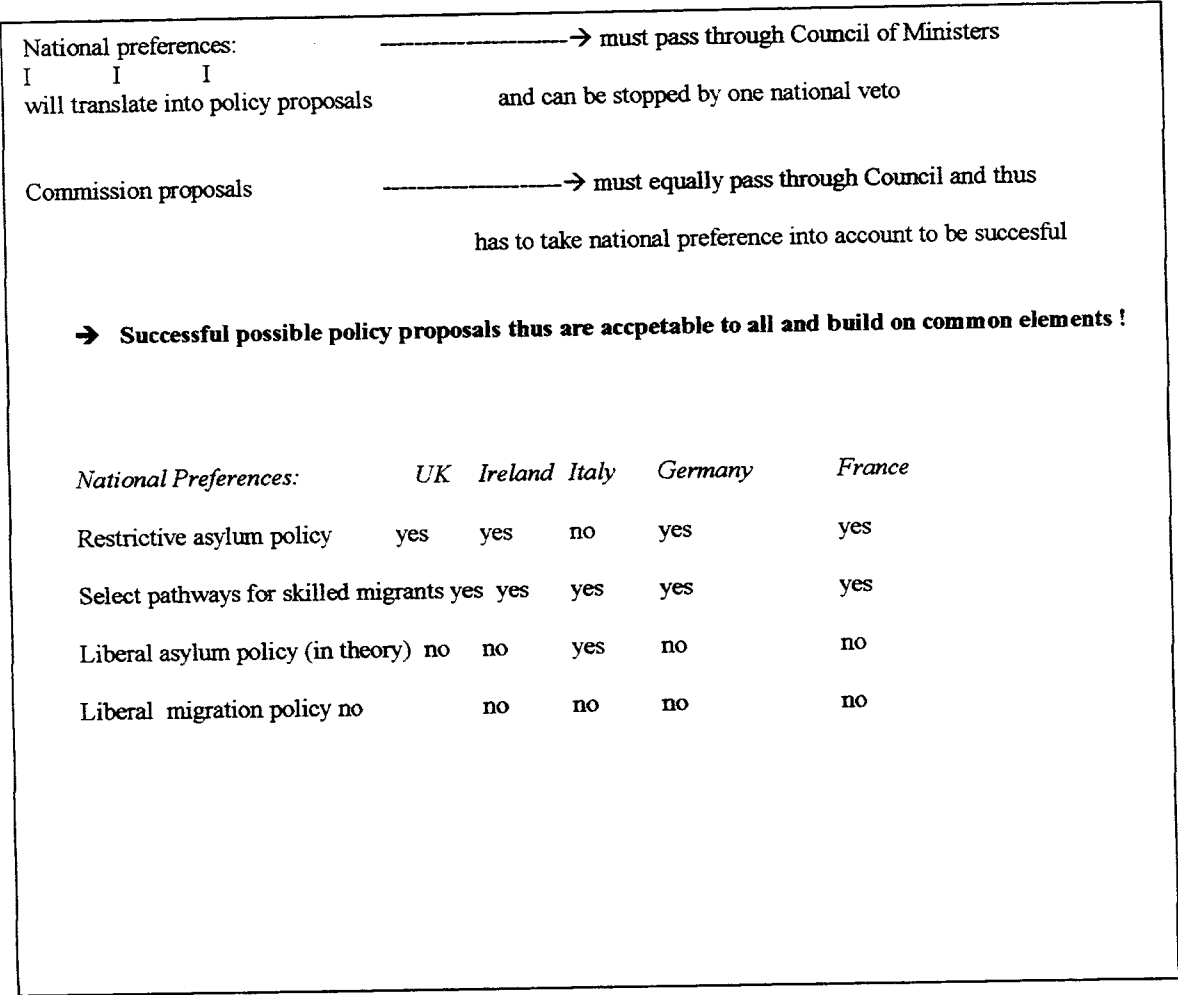
If we accept that pressure has been building on national decision-makers to address the issue of migration and take seriously the proclamations at the European level to engage in the construction of a CAIP at that level, the next step is to explore how such policy will likely be shaped in its outcome.

I posit that in order to pass the threshold of the Council of Ministers, secure the acceptance of all EU members and avoid a national veto, any successful proposals *regardless* of their source of origin, that is, amongst one of the national governments or the Commission, needs to take into consideration existing *commonalities* in the regulation of asylum and migration policy. Suggesting nationally particular models will only be successful to the extent that other national governments can be convinced of its merits. Likewise, other national governments will be more hesitant about proposals necessitating substantial *transaction and implementation costs* and will be more favorably inclined towards such proposals that have a high “goodness of fit”, as the Europeanization literature suggests (Boerzel and Risse 2000, Heritier 2001), thus minimizing adjustment costs.

If we concede that such regulatory outcome will therefore most likely consist of a *lowest common denominator* solution, acceptable to all, yet offensive to none we would predict a solution that builds upon the most recently emerging national approaches to solicit labor migration in select sectors in which shortages occur (information technology, nursing, engineering, personal care) coupled with a very restrictive stance in asylum and refugee policy. The emergent outcome, in other words, reflects a will to incorporate and even invite labor migration in select sectors of the economy, as is evident from policies in the UK, Ireland, Germany, and Italy, while at the same time attempting to cut down on

gateways for “undesirable” refugees and asylum seekers. The sad irony in such policy is that in reality such distinction is largely misplaced: Many of the asylum-seekers, ostensibly fleeing for political reasons, are indeed very skilled, yet those skills are not exploited due to problems with degree recognition, language difficulties, etc.

That low-skill positions will be made available to low-skilled migrants will no doubt irk liberal advocates of labor market “deregulation”, in other words the massive curtailment of employee rights. Such deregulation, coupled perhaps with cuts in social service provision, might force natives to take up the insecure, unattractive, low-pay jobs in sectors such as personal care and tourism in which labor shortages occur. However, not only does trade union resistance make such massive changes unlikely in the near future, past analysis describing the bottom tier of a “dual labor market” (Piore 1979, Berger and Piore 1980) would indicate that certain positions will nearly always be impossible to fill with natives, as even traditionally weak members of the labor force (women, teenagers, ethnic minorities) strive to move out of this sector and up the social ladder. In addition, as the demographic age pyramid is tipping, personal care particularly for the frail and elderly appears like a future growth industry.



► **Figure 1: The Emergence of a CAIP**

The “selection process” of migrants might be further enhanced by a “carrot and stick” approach towards individual countries that prove to be both sources of “desirable” labor migrants and willing to cooperate in shielding off the flow of undesirable migrants both from amongst its own citizens and from third countries nationals in transit. Both Southeastern Europe (especially Romania) and North Africa (particularly the Maghreb countries) fall into this category. The incorporation of these regions into some form of preferential access regime based on the Italian model would have the added advantage of

creating a new *cordon sanitaire* against migrants arriving from sub-Saharan Africa and Asia. Indeed, this prediction is shared by another analyst (Geddes 2000). The outsourcing of responsibility by using third countries as a buffer zone is already a tried practice imposed upon the candidate countries of Central Europe (Lavenex 1999).

Such agreements with third countries would most likely find the approval not only of the Italian, but also the British government that had recently proposed plans to create “safe zones” within third countries to accommodate preliminarily refugees. I advise a word of caution towards this add-on, as it is not clear whether this latter approach would indeed secure the necessary unanimous approval in the Council.

4. Conclusion

My main argument in this paper is that the development of EU common asylum and migration policy has traditionally been handicapped by a strong divergence in national regulatory traditions in this field. Another important factor is a strong concern by member states to shed sovereignty over this policy domain, which, for a variety of reasons, has been considered to be at the core of the nation-state’s regulatory nexus and indeed its very identity. Just like in other policy fields that are market-related, but not central to the strongly economic market-building mission and zest of the EU, such as labor, welfare, and social policy there has been relatively little initiative at the European level and a tendency towards lowest common denominator “umbrella style” regulations that do not impede – nor force to upgrade- national regulatory traditions.

I have sought to demonstrate that a critical juncture has been reached in the construction process of an European CAIP because of the “securitization” of the issue, growing real numbers of migrants, Europe’s demographic deficit, labor market shortages, business

demands for skilled labor and the electoral rise of the far right. In addition, the call for the creation of a CAIP, contained in the Amsterdam Treaty has been reiterated at the 1999 Tampere Summit.

The outcome of such European regulatory enterprise will be constrained by the institutional dynamics of decision-making process in this field, namely the existence of a national veto and the necessity for unanimity. Therefore, a lowest common denominator policy appears most likely, building upon existing national preferences. These are geared towards establishing select gateways into fortress Europe for desirable skilled labor migrants, while seeking to minimize the inflow of “undesirable” refugees.

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