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IMMIGRATION POLICY AS A CHALLENGING ISSUE IN
THE EU POLICY-MAKING PROCESS: A STUDY OF
IMMIGRANT INTEGRATION POLICY

Kunskapens rot är bitter, men dess frukter är söta.
CICERO

Authors: Ramin Shafagatov
Aygün Mirzayeva

Supervisor: Dr. Per Jansson

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Title

Immigration Policy as a Challenging Issue in the EU Policy-Making Process: A Study of Immigrant Integration Policy

Författare

Author

Ramin Shafagatov & Aygun Mirzayeva

Abstract

Issue of immigration was for a long time controversial concern throughout the Europe. Because of its demand for labor, Europe needs certain level of qualified immigration. However, in late decades a big amount of refugee immigration flow created serious challenges as well. Perceived 'threat' of immigration resulted in restrictive policies at both national and EU level. EU level policies in this respect are very interesting to research on. Because of great sensitivity of immigration issues to state sovereignty, formulation of EU level policy also faces challenges in terms of balancing intergovernmentalist and supranationalist logic of integration. Therefore, we have studied those policy and decision-making processes in immigration policy focusing on two issues: first, the motives behind the cooperation at EU level and the role of supranational institutions in shaping these EU level policies, second, the scope and capabilities of those policies. Immigrant integration policy have been chosen as a case to comprehend issue more closely and detailed.

Immigrant integration policy is very important for the social cohesion of European societies and is inseparable part of immigration policies. Immigrant integration debate is very new in EU agenda; it is just getting its way to Brussels. Although EU has no competence on this issue, we found out that there are quite real opportunities for EU to have its own way of helping with member states' policies. The paper identifies and discusses important aspects of immigration and immigrant integration policies at EU level, the reasons why EU level policies are not pro-active and not supranationalised yet. It further explores the available EU level instruments and sources for constructing strategy of integrating immigrants. All these study is done in the light of theoretical framework which is the combination of several theories, due to the complexity of the immigration matters. Every theory explains either some stage in the development of EU level policies (liberal intergovernmentalism and new institutionalism) or the possible EU level policy-making framework (intensive transgovernmentalism and policy coordination/benchmarking) for the studied issues.

Keyword

European Union, Immigration Policy, Immigrant Integration Policy, Third Country Nationals

To the best memory of my father

Ramin A. Shafagatov

ABSTRACT

Issue of immigration was for a long time controversial concern throughout the Europe. Because of its demand for labor, Europe needs certain level of qualified immigration. However, in late decades a big amount of refugee immigration flow created serious challenges as well. Perceived 'threat' of immigration resulted in restrictive policies at both national and EU level. EU level policies in this respect are very interesting to research on. Because of great sensitivity of immigration issues to state sovereignty, formulation of EU level policy also faces challenges in terms of balancing intergovernmentalist and supranationalist logic of integration. Therefore, we have studied those policy and decision-making processes in immigration policy focusing on two issues: first, the motives behind the cooperation at EU level and the role of supranational institutions in shaping these EU level policies, second, the scope and capabilities of those policies. Immigrant integration policy have been chosen as a case to comprehend issue more closely and detailed.

Immigrant integration policy is very important for the social cohesion of European societies and is inseparable part of immigration policies. Immigrant integration debate is very new in EU agenda; it is just getting its way to Brussels. Although EU has no competence on this issue, we found out that there are quite real opportunities for EU to have its own way of helping with member states' policies. The paper identifies and discusses important aspects of immigration and immigrant integration policies at EU level, the reasons why EU level policies are not pro-active and not supranationalised yet. It further explores the available EU level instruments and sources for constructing strategy of integrating immigrants. All these study is done in the light of theoretical framework which is the combination of several theories, due to the complexity of the immigration matters. Every theory explains either some stage in the development of EU level policies (liberal intergovernmentalism and new institutionalism) or the possible EU level policy-making framework (intensive transgovernmentalism and policy coordination/benchmarking) for the studied issues.

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Ramin & Aygun

Linköping, February 2005

ABBREVIATIONS:

AHIG	Ad Hoc Immigration Group of Senior Officials
CAR	Cities Against Racism
COREPER	Comité de Représentantes Permanentes <i>Permanent Representatives Committee</i>
DG	Directorate General
EC	European Council
ECJ	European Court of Justice
EEA	European Economic Area
EES	European Employment Strategy
EMN	European Migration Network
EP	European Parliament
ERCOMER	European Research Centre on Migration and Ethnic Relations
ERF	European Refugee Fund
ESF	European Social Fund
EU	European Union
EUMF	European Union Migration Forum
INTI	Integration of Third Country Nationals
JHA	Justice and Home Affairs
LI	Liberal Intergovernmentalism
LIA	Local Integration Action
NAP	National Action Plan
NCP	National Contact Points on Integration
NGO	Non-governmental organization
NI	New Institutionalism
OECD	Organization for Economic Cooperation and Development
OMC	Open Method of Cooperation
QMV	Qualitative Majority Vote
SEA	Single European Act
SIS	Schengen Information System
TCNs	Third Country Nationals
UK	United Kingdom
WWII	World War II

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CHAPTER I

1.1 INTRODUCTION

1.1.1 Background

The European Council's plans to harmonize member state's immigration policies mark a new step in the European Union after the common market, common currency and Schengen.

*Romano Prodi, president of European Commission, October 16, 1999*¹

As a component of the growing globalisation, international migration has increased over the last few decades. Through the centuries the world has witnessed a number of immigration² flows brought by economic, political, and social concerns and still is continuing so far. Europe in this regard holds a significant place. It has formed a new wave of discussions in the EU policy-making process.³ Accordingly, this problem remains to be one of the major sources of debate among the EU member states. Today, EU countries face the serious dilemma of how to deal with and regulate the volume of rising numbers of “unwanted” denizens – immigrants⁴.

In order to be able to manage all these movements, immigration policy needs a comprehensive approach and bringing together with other policy areas. During the past 10 years the immigration issue has received more attention within the EU than ever before. The process has been a part of the Social Chapter of the Treaty of Rome for a long time, as well. Although the European Union institutions have taken a number of initiatives to harmonize immigration policies among the member states, harmonization process is far from complete.⁵ Consequently, rising migration flows into the European Union increases the need for a change in policies and strategies on the supranational and national levels.

¹ Julie Watts, “*Passport to Unity: European Immigration Policy from Schengen to Amsterdam*”, European Union Center of California, February-2000

² According to Hammar, 'Immigration' refers to the physical entrance of immigrants, either singly or as a group, into a country.

³ Andrew Geddes, “*The Politics of Migration and Immigration in Europe*”, Sage Publications-2003, p. 104

⁴ According to Hammar, 'Immigrant' is a person who migrates to a country and then actually resides there longer than a short period of time, i.e. for more than three months.

⁵ Regeringskansliet: Utrikesdepartamentet, “*Sweden in 2000 – A country of Migration: Past, present and future*”, Sweden-2001, p. 7

Historically, the elaboration and adoption of a common immigration policy throughout the Europe has proved to be a very difficult task.⁶ In this regard the Scandinavian countries are usually regarded as the most developed when it comes to ‘public programs’ directly aimed at the integration of immigrants. However, even though Sweden – one of the Scandinavian countries, considered as a multicultural country, sometimes there are doubts on it if it’s indeed reality or it is some kind of manipulation. The policy which states ‘we should try to keep them out, yet if they manage to get in, they have to be integrated’ makes it really doubtful. The statement is quite interesting, because according to it, “unwanted” immigrants deemed to be undeserving of welfare state benefits in the EU.⁷ If the immigrants are not successfully integrated, this can create serious social problems in the long run. More fundamentally, from a normative perspective, these settled populations have a moral claim to belong to the societies in which they live.

1.1.2 The Definition of the Problem

As we mentioned above, immigration concern have become major issue in the European research agenda. The main dilemma in front of the EU is a challenge of creating a real common supranational immigration policy. The reason for that is a sensitivity of immigration for the state sovereignty. Some argues that it needs to be analyzed and consequently resolved in the supranational level, which means that independent national policies will be insufficient to confront an immigration crisis. But at the same time, others urge that the considerable concerns like immigration issues must be viewed at the national levels.

Immigrant integration is crucial part of migration policies. Integrating the existing immigrant population to the society, if hasn’t implemented properly, can create serious social, economic problems and in fact is creating, as many Europeans consider immigrants as a burden and threat to their society. If the state doesn’t succeed in such policy, they run the risk of having ethnic segmentation and the hostile reaction of native population. It is remarkable therefore to examine if there is a common European policy regarding this and what kind of policies is constructed, and should be pursued to gain the wanted result. This specific area of immigration

⁶ Barbara Melis, “*Negotiating Europe’s Immigration Frontiers*”, Kluwer Law International, The Hague-2001, p. 14

⁷ S. Lavenex & E. M. Ucarer, “*Migration and the Externalities of European Integration*”, Lexington Books-2002, p. 205

policy is not researched well enough, that is why we have chosen this interesting issue in order to open up new tendencies in it.

1.1.3 Aim of the Study and the Research Questions

The objective of the study is to gain understanding, describe and analyze EU level responses to immigration concerns facing the European countries, specifically in the field of immigrant integration. Our intention is firstly, to examine European integration process in the field of immigration in terms of policy/decision-making and intergovernmental/supranational discourse and then secondly, for making our study more specified, to explore the possibilities of EU level immigrant integration policy.

The main research questions which will guide our paper are:

1. Does EU have real common immigration policy? Sub-questions:
 - Why the need for common policy in the area of immigration has appeared? In what form do EU member states cooperate on the issue?
 - What is the institutional and policy-making framework for immigration issues and how it effects the development of cooperation in this area?
 - In which policy areas concerning the immigration has EU managed to have successes, and which areas are still weakly discussed in EU level and why?
2. What perspectives and opportunities exist for EU level immigrant integration policy? Sub-questions:
 - How is the situation in regard with the EU's available instruments and policy frameworks and which prospects does it have for future?
 - Which factors and actors affect the formation of the integration policy?
 - What is the EU strategy for integrating immigrants?

1.1.4 Delimitation of the Study

To serve the purpose of the paper, we have concentrated our research on mainly two parts: EU immigration policy and immigrant integration. Due to the magnitude of the research area, we have several limitations to our study. Firstly, the study doesn't include the intra-EU immigration policies (immigration within EU countries itself), our focus is extra-EU immigration and Third Country Nationals (TCNs) that are in Europe. Secondly, policies

regarding legal immigration are main center of attention, that is to say illegal immigration is largely excluded. Thirdly, EU level policy-making and decision-making framework, role of institutions are more emphasized rather than policy context. Finally, only immigrant integration policy among vast immigration issues is studied as a case to broaden our understanding.

1.1.5 The Structure of the Paper

The paper comprises content part, five chapters which are divided in smaller subchapters, conclusion, bibliography and appendix. The overview of the structure of the paper follows as below:

First chapter introduces the introduction which contains a background to the study. Further, we present the research problems and the objective of the study and it continues with the methodology in which we try to explain our choice of scientific approach, methodological perspective and the methods of our investigation.

Second chapter presents the theories and models we have used to analyze the empirical findings.

Third chapter highlights the common immigration policy of EU, its dynamics and constituent parts.

Fourth chapter deals with the case study - EU immigrant integration policy, context and prospects.

Fifth chapter makes the analysis of empirical findings and proposes further recommendations on the study.

1.2 RESEARCH METHODOLOGY

In this research study, mostly qualitative methods of research will be used in order to draw a comprehensive analysis of the proposed topic. One of the advantages of qualitative approach is that its research methods can employ multiple methods and strategies. Punch points on its more 'flexibleness', so that it can be used in a wider range of purposes and can be modified as a study progresses.⁸ As the paper will examine immigrant integration policy of EU, the richness

⁸ Punch, K.F. (1998). *Introduction to Social Research: Quantitative and Qualitative Approaches*, London: Sage Publications, p. 243

and holistic approach that qualitative methods give is what we need in order to get closer to what is being studied. Constructionist and interpretive features of qualitative analysis is very important in this case, because policies are socially constructed and proceed by people. Words, their interpretation is essential in qualitative analysis.

However, sometimes it is impossible to find out everything needed by using only one approach, the combining of approaches can increase the scope, depth and power of research.⁹ Within this framework, as ‘quantitative research emphasizes quantification and numbers in the collection and analysis of data and qualitative research emphasizes words’¹⁰, using both of the methods will enable us to utilize their advantages to make better research and analysis on the relevant issue and to avoid the disadvantages. For example, when examining policy-making as a process and as a subject to change over time, qualitative method is helpful with its ‘processual’ aspect, and when structural and statistic features of social life and institutions is in focus quantitative approach is useful.

1.2.1 Research Design

Research design is defined as ‘framework for the collection and analysis of data’¹¹. As we chose to highlight a specific area, case study is the most suitable research design. According to Yin, case study can be described as an empirical examination that ‘investigates a contemporary phenomenon within its real-life context, while the boundaries between case and context are not clearly evident and in which multiple sources of evidence are used’.¹²

It is important to mention that we will apply case study in order to specify rather broad issue and more comprehensively research the narrowed field. These results in a study with two parts by complementing each other that are meant to shed light on particular case. Keith F. Punch exploring the details of case studies states that the main motivation for using cases is to get deeper and full understanding of a specific case, taking into account the context of the case. In

⁹ Ibid.

¹⁰ Bryman, A. (2001). *Social Research Methods*, New York: Oxford University Press, p 506

¹¹ Bryman, A. (2001). *Social Research Methods*, New York: Oxford University Press, p. 29

¹² Yin, R.K. (1995). *Case Study Research. Design and Methods*. 2nd ed., Thousand Oaks: Sage Publications, p. 23

studying a specific issue, case studies are more an overall research strategy than a method, since a case study can employ a number of different methodologies such as interviews, content analysis and so on.¹³ As case of integration policy will be examined within the context of broader immigration policy, here the holistic focus of case study, aiming to preserve and understand the wholeness/unity of the case is very appropriate.

Stake differentiates intrinsic, instrumental and collective case studies.¹⁴ This study represents mostly intrinsic elements where to get better understanding of the particular issue, and to some extent instrumental case study to give insight into an issue, may be to refine a theory.

Although case study has many advantages for conducting this kind of specific and little explored areas, it has been criticised on the ground of external validity or its generalizability. It is often asked how the results of one single case study can be generalized to all other ones. *If the objective of study is not to generalise the findings, this is not a problem.* There are now serious debates on how EU's immigrant integration policy can be formulated. Punch proposes that apart from being a unique on its own right, cases can be generalized by developing theoretical propositions out of its findings. Whether a case study should seek to generalise, depends on the context and purpose of particular study.¹⁵ However, in our study we do not intend to generalize the findings of our case to other immigration policies; purpose is to generate an intensive exploration of a single case, so it is not the concern of this study. The reason of choosing immigrant integration policy as a case among the other migration policy areas is related to its increasing importance through the Europe and to its being very new issue on EU agenda. It is particularly interesting for us to explore this relatively less studied area. Only in-depth case study can provide understanding of the important aspects of a new research area.

¹³ Punch, K.F. (1998). *Introduction to Social Research – Quantitative and Qualitative Approaches*, London, Sage Publications, p.150.

¹⁴ Stake, R.E. (1994). Case Studies. In *Handbook of Qualitative research*, Denzin K.N.&Linkon, Y.S., pp 236-238, Thousand Oaks: Sage Publications.

¹⁵ Punch, K.F. (1998). *Introduction to Social Research – Quantitative and Qualitative Approaches*, London, Sage Publications,, p.158

1.2.2 Data Collection

Collection of data entails in itself the research methods. Multiple sources of data and data collection will be used, as it is possible within the framework of case studies very easily. Therefore, quantitative data will be used in triangulation with qualitative data to facilitate and support the main arguments in the research. Bryman describes triangulation as using more than one method or source of data in the research which can operate both within and across the research strategies.¹⁶

Quantitative data in form of *official statistics* and *secondary analysis of data collected by others* are used to back up qualitative one. The benefits of secondary data is evident such as reducing cost, time spent on research and providing high quality data generated by usually experienced researchers. However, the challenges of using someone else's data for your own purposes, complexity of data should also be taken into consideration while researching.

On the other hand, as qualitative method, data collection has focused on: firstly, primary documents of EU institutions in form of treaties, communications, and state official documents, speeches of EU officials; secondly, review of existing relevant literature, books, journals and articles. Documentary data is perhaps the most common data employed in scientific enquiry as it usually can complement studies of all sorts, regardless of subject. State and institutions are a source of large information that can be used in research for uncovering their position and policy process and for evaluation research. The documents have been acquired mainly through the official web sites of EU and the main institutional level documentation and legislative texts, such as treaties is used to have systemic approach. Secondary literature is also of high value to evaluate the existing theoretical and empirical approaches to the issue. 'Purposive sampling' will be employed to focus only on appropriate materials for the study. Nonetheless, Bryman points out that the collecting documents and secondary data relevant to the research can sometimes be frustrating process and requiring interpretation abilities in order to determine the meanings of them.¹⁷

¹⁶ Bryman, A. (2001). *Social Research Methods*, New York: Oxford University Press, p. 274

¹⁷ Ibid. p. 370

1.2.3 Analysis of Data

The rich and bulky data generated by qualitative research methods can create difficulties for analysing it. According to Punch, ‘there is no single right way to do qualitative data analysis – it depends on the purpose of study’.¹⁸ Most suitable analysis methods for the proposed study can be defined as following:

As most of the sources of research are documents and secondary data, the interpretation of them is needed to draw wanted results. *Qualitative content analysis* is one framework of analyzing the materials. According to Bryman, qualitative content analysis is the most common way of analysing documents.¹⁹ Specifically, Klaus Krippendorff defines it as a research technique for making replicable and valid inferences from texts (or data) to a context of their use. Content analysis will be used to analyse the official documents, reports and pronouncements to unravel the explicit as well as the implicit meaning of the texts regarding the policies and their orientation, in other words ‘reading in-between lines’. As the study will be mainly dealing with exploring the policy process, policy analysis is the best instrument to analytically read the documents to get clear picture of policy. As policies are formulated, these policies have effects on the political, economic, and social context as well. These effects lead to other policy demands or different policy claims.²⁰

There are many advantages in using textual analysis. It is usually relatively easy to get a hold of the material, whether it is official documents or newspapers. It is, last but not least, relatively cheap, as it doesn’t employ a lot of resources.²¹ Therefore secondary analysis of qualitative data offers rich opportunities.

¹⁸ Punch, K.F. (1998). *Introduction to Social Research: Quantitative and Qualitative Approaches*, London: Sage Publications, p. 199

¹⁹ Bryman, A. (2001). *Social Research Methods*, New York: Oxford University Press, p. 381

²⁰ Wallace, H. and W. Wallace (2000): ‘Policy Making in the European Union’, fourth edition, Oxford: Oxford University Press, p. 73.

²¹ B. Chadwick, *Social Science Research Methods*, (New Jersey, Prentice Hall, 1984), pp. 243-245.

1.2.4 Evaluation and Criticism of Methodology

It is very important to bear in mind the evaluation criteria for the research strategy, as it will serve to get coordinated research work. Reliability and validity is especially problematic when conducting qualitative case study. Reliability determines if the results of the study are repeatable²² and how data collection methods are consistent and reliable.

Validity of research can be defined in two terms: internal validity implies to which extent the findings represent and reflect the reality which has been studied, and if the research and its conclusions have degree of integrity and coherence.²³ To increase the internal validity of research, triangulation of methods was used; the qualitative data collection was supported by quantitative data. Multiple sources of data make the study more valid.

External validity refers to the question of generalizability: can the conclusions be transferred across other settings and contexts? Goetz argue that external validity represents a problem for qualitative research because case studies are often employed there. All above mentioned criteria are often ground to criticise the qualitative research methods. Its weaknesses include subjectivity (relying too much on researcher's view), difficult to replicate, unrepresentative, problem of generalization. However, in our situation, it is not the intention of study to generalise, but rather to understand the case in its complexity and in its context; therefore, we do not the requirement of to be generalised. Another criticism raised against qualitative research concerns the lack of transparency issue. When conducting the forthcoming research we will try to take the above-mentioned into account, hopefully not making the most obvious mistakes.

1.3 Review of Relevant Literature

1.3.1 Theoretical Literature

As we used several theories in the study, theoretical literature varies also. Numbers of theorists' perspectives were considered very useful. For general integration theories, book of Rosamond, 'Theories of European integration' is a good source. Particularly, theoretical

²² Bryman, A. (2001). *Social Research Methods*, New York: Oxford University Press, pp. 29-32

²³ Punch, K.F. (1998). *Introduction to Social Research: Quantitative and Qualitative Approaches*, London: Sage Publications, p. 259-60

approaches of Putnam, Bulmer, and Moravcsik on liberal intergovernmentalism and two level games shed light on the relevant study. They are important researchers on those issues. On the other hand, new institutionalism analysis was largely based on Rosamond's book, and Pierson, North, Armstrong's approaches. Wallace's book on 'Policy-Making in the European Union' is also very practical theoretical analysis of EU affairs. The broader and more detailed analysis of theories will be given in the theoretical part of our research.

1.3.2 Empirical Literature

Empirical literature used for the research entails different sources. It is worth to mention that although there is a great amount of empirical studies on EU's general immigration policy, the material on immigrant integration in EU level is very scarce. Only some specialised articles and policy papers entails information about it. Geddes, Ucarer and Puchala, Barbara Melis, Baubok has interesting studies on immigration policies of EU. They all are qualified specialists on this issue. For specifically integration policy, official reports and communications of EU institutions were very helpful. The working papers of Niessen, Penninx on this issue was very supportive as well. Accordingly, online database of EU was used extensively. And some electronic articles from internet on immigrant integration issues were of importance to have whole picture about the issue.

CHAPTER II

2. THEORETICAL FRAMEWORK

The multiple theories will be used which will inform and guide the rest of the study by having the ability to clearly explain and make understand the issue researched. We presume that EU and the process of European integration are too complex to be outlined by single theoretical prospectus. Especially, immigration policy in EU level has very interesting, sometimes controversial features regarding the theoretical basis: It entails both supranational and intergovernmental accounts in itself.

2.1 Two-Level Games Theory and Liberal Intergovernmentalism

Two-level games theory with conjunction liberal intergovernmentalism is considered basic theoretical basis for explaining European integration processes in immigration issues by many theoreticians.

Putnam originally constructed the 'two-level games' theory to make logical connection between international negotiations and domestic decision-making processes and integrate them in a parsimonious, yet fruitful way. Putnam argues that we should think of policymakers as players of two games: a 'Level I', international game with one another, and a 'Level II', ratification game with domestic constituencies. The actors at Level II may represent bureaucratic agencies, interest groups and public opinion.²⁴ At the domestic level, there are interaction of politicians and interested groups; the latter pressure on the former for producing favorable policies and former builds coalitions among the latter to enhance its power. On the other hand, at the international level, the governments seek to achieve bargains that would please domestic pressures and constituents in order to secure its position domestically. This is impressively well practical explanation of international cooperation yet very generally.

²⁴Putnam, R., Diplomacy and Domestic Politics: the logic of two-level games, *International Organization*, 42, 3, 1988. pp 434-436

Putnam notes that it is unproductive to ask whether it is domestic politics that shape international negotiations or whether it is opposite, because the answer is 'both sometimes'. If we interpret it, that means 'two-level games' theory admits the role of domestic politics and international institutions equally in cooperation process. All these hypotheses draw attention to the importance of the effects of domestic politics on international cooperation. Later authors developed this assumption to explain concretely European integration.

Bulmer's analysis of the relation between domestic politics and European integration focused more on domestic policymaking *structures* and *attitudes* held within the member states to the EC and the effects on European integration. Bulmer's analysis is *bottom up*. It means that the basic unit of EC system is the national polity not member state executives. He furthers his argument that the understanding of the bargaining that takes place between governments at the European level requires concentrating on the domestic roots of the state preferences which are negotiated in those bargains.²⁵

Moravcsik applied 'two-level games' to European integration by developing 'liberal intergovernmentalism'. He argues that EU policy-making is largely intergovernmental; it is dictated by national preferences and allows governments to escape from domestic pressures that limit their room for manoeuvre at national level. His approach rests on the assumption that 'state behavior reflects the *rational* actions of governments constrained at home by domestic societal pressures and abroad by their strategic environment.'²⁶ National preferences, on its part, represent dynamic political processes in domestic politics. He attaches equal importance to both levels. In other words, he acknowledges the important role of supranational institutions. They are seen as a facilitator for gaining positive bargains, as they provide low transaction costs, rich information settings. However, he looks to institutions from the perspective of states. Most liberal intergovernmentalists argue that EU level cooperation strengthens states in comparison with their home polities, as they use institutional environment of EU for legitimization of their actions and maintain preferences.

²⁵ Bulmer, S.J. (1983) 'Domestic Politics and European Community Policy-making, *Journal of Common Market Studies*, 21(4), pp 349-51

²⁶ Moravcsik, A. (1993) 'State preferences and power in the EC: a liberal intergovernmental approach'. *Journal of Common Market Studies*, 31(4), pp 480-482

Liberal intergovernmentalist accounts fit well for explaining the development of EU immigration policy and its motivations, because, as many theorists agree, domestic political factors and national governments do play an important role in this development.

Terri Givens argue that EU immigration policy is *bottom up* in sense that immigration policy institutions came up from domestic politics of immigration, because national level factors have determined the nature of various harmonization proposals, by determining the position of member states in negotiation process at EU level. He develops his suggestion by proposing a concrete model that focuses on political salience, political partisanship and institutions that protect immigrant rights.²⁷ In his interesting and attempting analysis, he concludes that when the political salience of a given immigration issue is high in domestic polity; any harmonization that results in EU level is more likely to be restrictive toward immigrant rights.

Thus, states pursue domestic preferences in EU supranational level and Moravcsik views it as 'the continuation of domestic politics in EU level by other means'. The features of domestic politics have regular, predictable and widespread effect on supranational politics. In other words, increasing interstate cooperation on immigration issues is partly a function of political pressures on national governments by electorates and some political parties favoring restrictive policies.

LI pursue that states prefer EU level of cooperation, because it enables them to avoid domestic level institutional constraints such as judicial or bureaucratic which challenge their attainment of restrictive immigration policies. In the words of Guiraudon, state policy makers *escaped* to Europe by consciously shifting to EU level cooperation, that is to say 'Europeanization of immigration issues' helped state officials to get rid of national constrictions.²⁸ Since from the beginning the role of Commission, EP and ECJ was very limited, the cooperation in immigration issues at EU level has actually strengthened the state executives by reasserting

²⁷ Givens, T., Luedtke, A., The politics of European Union Immigration Policy: Institutions, Salience, and Harmonization, *The Policy Studies Journal*, vol. 32, No 1, 2004. pp 145-150

²⁸ Guiraudon, V., Seeking New Venues: Europeanization of Migration-related Policies, Debate on Immigration Policy, *Swiss Political Science Review*, 7(3): pp 99-104

their power of deciding who enters its territory. As Givens clearly puts it, state actors strategically use EU level organizations to pursue national policy goals, trading sovereignty for policy success.²⁹ Immigration policy belongs to one of the sensitive issues regarding sovereignty, and the cooperation in this, is a considerably new phenomenon. Therefore, it is quite unsurprising why the pattern of EU cooperation is still largely intergovernmental bargain. However, as the cooperation advances, EU institutions are being progressively incorporated in the process especially after Amsterdam Treaty.

Although liberal intergovernmentalist and two-level games perspectives can somewhat correctly locate the EU immigration policy and how interstate preference regarding the issue is shaped, it has been criticized by various authors on several grounds. One argument is that these theories in spite of having good account of ‘escape to Europe’ pay little attention to the reality that EU competencies also can affect domestic structures. They can ‘Europeanize’ the laws, institutions, policies and collective identities in member states.

Above mentioned theories try to open the ‘black box’ of domestic politics to enhance understanding of social pressures on governments in international negotiations, whereas taking institutions as ‘black box’. Geddes notes that EU and its supranational institutions is dealt as an ‘external’ issue and complex vice-versa influence of EU institutions on member states and in relations between members and EU is neglected. Therefore, these viewpoints are institutionally ‘thin’.³⁰ There is little autonomy in LI for supranational institutions or for European integration to promote iterative forms of cooperation and partnership that could begin to change the preferences and identities of actors involved in European ‘political field’. It tells little about institutional dynamics that can arise as a consequence of intergovernmental deals.

However, it is good to remember also the fact that liberal intergovernmentalism is dealing mainly, in the word of Peterson, with the level of ‘history-making’ policy decisions. At this point, it is very practical to use Peterson’s distinction of policy levels with relevant theoretical

²⁹ Givens, T., Luedtke, A., The politics of European Union Immigration Policy: Institutions, Salience, and Harmonization, *The Policy Studies Journal*, vol. 32, No 1, 2004. pp 150

³⁰ Geddes, A., The shift to Europe: Explanations for and Implications of the Development of EU Migration Policy, Debate on Immigration Policy, *Swiss Political Science Review*, 7(3): pp 107-109

framework for them. Peterson separates the integration policy process into different level of analysis. The ‘super systemic’ level is a decision-making area that can make grand changes in the EU’s way of working, dealing mainly with arena of European *integration*.³¹ Above explained liberal intergovernmentalist perspectives properly suites such kind of high political level.

‘Systemic’ level is mainly dealing with *policy-making*, specifically *policy setting* and *policy shaping*.³² This is where routine integration takes place and daily EU policy is proceed. On this ‘systemic’ level institutions really *matter* to explain the processes. Peterson preferred theory of new institutionalism for explaining this level of policies. Once integration has taken place in one area, EU then becomes a complex polity on its own right, where institutions gain significant role in shaping the preferences, initiating policies and bargainings.

2.2 New Institutionalism

New institutionalism presents important insights and analytic tools for clearing up the role of institutions in EU policy making process. They argue that institutions are the source of much political behavior and they are not impartial ‘black boxes’ which simply transform preferences into policies. New institutionalist analysis of EU tells that Union’s common institutions are often more than mere arbiters in the decision-making process, and have become key players in their own right; in other words, institutions *matter*.³³

Bulmer defines institutions as ‘meaning formal institutions, informal institutions and conventions, the norms and symbols embedded in them, and policy instruments and procedures’.³⁴ It includes less formalized arena of politics, culture of political institutions.

Rosamond notes that, institutions are not simple and passive vessels within which politics occurs, they can offer framework within which actors can carry out a relatively higher amount

³¹ Peterson, J. & Bomberg, E. (1999) *Decision-making in European Union*, London: Macmillan Press LTD, pp 10-12

³² Ibid. pp 8-9

³³ Ibid. p 17

³⁴ Armstrong and Bulmer, 1998, p 52, in Rosamond, B. (2000) *Theories of European Integration*, London: Macmillan Press LTD. P 115

of constructive sum deals. They act as principal variables between actor preferences and policy outputs.

Some new institutionalists, such as North, view institutions as a constraint for political actions: 'the institutions define (or at least constrain) the strategies that political actors adopt in pursuit of their interests'.³⁵ States benefit from functions of institutions.

However, it is common tendency that after a while national governments lose control over the institutions created originally strengthen them, and EU develops according to its own integrative logic. As Pierson put it, 'actors may be in a strong position initial position, seek to maximize their interests and nevertheless carry out institutional and policy reforms that fundamentally transform their position in a ways that are unanticipated or undesired'.³⁶ Thus, actors - states may not be aware of the full implications and unintended consequences of participating in institutional venues when they begin their cooperation in the framework of institutions.

Bulmer argues that institutions do not merely reflect the interests of the units comprising them, and are not only mediator among them. The institutions themselves shape those preferences and that power by structuring the access of political forces to the political process, creating a kind of bias. Moreover, institutions can develop endogenous institutional momentum for policy change that goes beyond mere institutional negotiation.³⁷

Institutions, as setting of beliefs, knowledge, values and norms, established way of doing things, are regarded in large extent by March and Olsen as very important shapers of the behavior of participating actors.³⁸ From this standpoint, it is useful to examine actual and potential effects of the institutionalization of an EU migration policy. North suggests that cooperation becomes 'institutionalized' when 'individuals repeatedly interact, when they have

³⁵ Rosamond, B. (2000) *Theories of European Integration*, London: Macmillan Press LTD. p 116

³⁶ Pierson, P. (1996) 'The path to European integration: an historical Institutional approach', *Comparative Political Studies*, 29(2), p 126

³⁷ Bulmer, S. J., New Institutionalism, the Single Market and EU Governance, *ARENA Working Papers*, WP 97/25, http://www.arena.uio.no/publications/wp97_25.htm accessed: 25.11.2004

³⁸ March and Olsen: 1984, in Rosamond, B. (2000) *Theories of European Integration*, London: Macmillan Press LTD. p 120

a great deal of information about each other, and when small numbers characterize the group.³⁹ Therefore, institutionalist perspectives have provided valuable insights into immigrant politics.

All above mentioned aspects are very important to our research, because in this paper immigration policies of the EU will be analyzed in both levels (systemic and super-systemic) of policy-making. While common migration policy is driven forward by transgovernmental cooperation, there are remarkable attempts to achieve supranational governance in this field. Therefore, potential and actual role of EU institutions in shaping immigration policies will be also examined.

2.3 Policy-Making Modes

As the study will mainly deal with policy-making process and with its context in EU level, the analysis of Wallace⁴⁰ regarding the policy process can be helpful for the research. Wallace defines five different form of EU policy process: distinctive Community method, the EU regulatory model, multi level governance, policy coordination and benchmarking, and intensive transgovernmentalism. Two of these types (policy coordination and benchmarking, and intensive transgovernmentalism) are considered to be relevant to the specific issue of the thesis.

2.3.1 Intensive Transgovernmentalism

Intensive transgovernmentalism particularly well explains the policy-making process within the immigration issues. Wallace uses ‘transgovernmentalism’ instead of well known phrase ‘intergovernmentalism’ to emphasize the intensity and commitment in EU level cooperation. This mode of policy implies the cooperation mainly between relevant national policy makers and does not involve intensive participation of EU institutions. This is typical policy framework especially in areas which touch core aspects of state sovereignty. In this case some selected supranational structures can be used, nevertheless member states still keep the

³⁹ North, D. C. (1990) *Institutions, Institutional Change and Economic Performance*, Cambridge and New York: Cambridge University Press. P 12

⁴⁰ Wallace, H., Wallace, W. (2000) *Policy-Making in the European Union*, Oxford: Oxford University Press, pp 28-35

privilege of determining types of common instruments and their domestic implementation.

The main characteristics of this policy mode are⁴¹:

- European Council mainly sets the general direction of policy;
- Council of ministers controls the consolidating of cooperation;
- Commission has limited role;
- EP and ECJ is almost excluded from the involvement;
- Special mechanisms for cooperation management;
- The policy process is not open to national parliaments and public.

It could give the impression as somewhat loose and weak mode of policy-making. However, it should be mentioned that it has the capacity to bring out substantive and effective joint policy when needed. Moreover, one should remember that this policy mode develops in areas where EU level integration is new emerging or which has been long under the national control. Therefore, it might be misleading to compare the integration in such areas with the integration in less sensitive policy areas such as environment or commerce. This kind of cooperation employs 'soft' institutions which have little autonomy and binding power, nevertheless have quite good potentials of generating 'hard' policies.

2.3.2 Policy Coordination and Benchmarking:

Another relevant EU policy-making mode is *policy coordination and benchmarking*. This stems from the experience of OECD, international organization of developed countries; it developed practice of comparing and evaluating the public policies of each states. Therefore, sometimes it is called 'OECD technique'. Commission usually uses this technique to build up light cooperation in a new area in order to bring this issue eventually to the supranational level, as it did in case of environmental policy issue by achieving the incorporation of this issue to the SEA.

This policy coordination therefore, counts mainly on technical specialist opinions and assumptions to develop a common approach, to encourage innovation.

The main features can be defined as⁴²:

⁴¹ Wallace, H., Wallace, W. (2000) *Policy-Making in the European Union*, Oxford: Oxford University Press, p 34

⁴² Ibid. p 33

- The Commission is a developer of network of experts and support them;
- 'Independent' experts are engaged as promoters of ideas and techniques;
- The high-level groups in the council are organized for brainstorming rather than negotiating, thus Council also has creative character;
- Dialogue with specialist committees of EP in specific issues.

It is observed that, this coordination practice is not any more a merely technique for transition, but became policy mode itself. The opportunities of using 'benchmarking' together with coordination in EU level produced very advanced chances for comparing national, local and sectoral practices. And this is being done not for the sake of generating a single policy framework, but for sharing experiences and support the spread of best practice. With its practicality and emphasis on actual work, this policy mode is seen as a persuasive alternative to the before existing formal ones.

One main feature of this mode is that it is based on intergovernmental ground. However, if we look the purpose of using this policy, we can see the supranational character also. Benchmarking in EU level aims towards improvement and changes in performance in certain issues and for supporting certain policy. It should develop key indicators for comparing and evaluating, and help to understand why and how the best practice has been achieved. Benchmarking itself can be viewed, on one hand, the promoter of Europeanization by leading to convergence of national policies; on the other hand, the 'nationalization' of policy areas, by introducing only the best national practice. This policy mode can explain or be ground for the new emerging EU immigrant integration policy, as it seems very relevant for that issue.

To conclude the theory part, multiple theories and perspectives were used in the research in order to better give the understanding of the issue. Every theory has been used to give framework to different phases of the study. That is to say, liberal intergovernmentalism and new institutionalism is mainly for comprehending the complex development of EU integration in immigration issues, role of institutions in this issue and its future implications. Policy mode approaches is used to highlight the policy-making process in this field.

CHAPTER III

3. IMMIGRATION POLICY OF EUROPEAN UNION

Although European countries do not identify themselves as immigration countries and pursue 'zero' immigration policies, with the continuing immigration flows, all of them by and large were transformed *de facto* into immigration countries and faced similar problems regarding this. Simultaneously, Europe was experiencing integration process aiming to create an 'ever closer union' between the peoples of Europe, assisted by common institution and joint policy-making. However, this integration project didn't include immigration issues until recent times. Therefore, the emergent of common EU immigration policy is still incomplete, covering only specific parts of member states' domestic policies, and witnesses a coexistence of intergovernmental with supranational forms of cooperation.

In order to answer the questions 'why the need for common policy in the area of immigration appeared?' and 'why has European integration drawn migration policy into the EU's sphere of competencies?' it is important to briefly trace the historical development of the integration in this area.

3.1. From Intergovernmentalism Towards Communitarizing Immigration

3.1.1. Informal Intergovernmentalism:

First efforts to manage immigration issues at EU level go back to mid-1970s within the framework of Trevi group⁴³ established in 1975 which afterwards resulted in the creation of the Ad Hoc Immigration Group of senior Officials (AHIG)⁴⁴ in 1986 to deal with immigration mainly as security issues. However, this kind of ad hoc institutional infrastructure wasn't adequate to respond properly to the challenges posed by immigration.⁴⁵

Mid-1980s is characterized with the intensification of coordinating immigration matters among European states. This was drawn mainly by two factors:

⁴³ Mainly addressed cross border issues of terrorism between member states, oriented thus more on security.

⁴⁴ The main goals of AHIG were to emphasize the importance of each state's external border controls to security of community as a whole and to facilitate the coordination of national policies. The AHIG's method was to make policy recommendations to national related ministers.

⁴⁵ Messina, A. M. (2002) *West European Immigration and Immigrant Policy in the New Century*, Westpot and others: Praeger, p 99

First ground was the consequences of immigration for domestic policy makers and pressures derived from that. Here, it is good to delineate the patterns of immigration to Western Europe after the WWII, in order to appreciate the distinct challenges raised by various dimensions of migration and to better understand how they affect the policy-making of EU states. Three main waves of migration are of importance for the study.

- First wave captures *labour immigration* to Europe which occurred in 1950s and 60s massively. The grounds of this initial wave were the postwar economic boom that created acute labour shortages in European labour markets. To address these structural economic problems, private employers and governments across Europe actively recruited cheap foreign workers. They had made important economic contributions to the economic reconstruction and prosperity in Europe. These migrant workers were labelled as ‘guests’, which assumed return to their countries of origin when labour conditions changed.⁴⁶ Contrary to these expectations, most of the migrants decided permanently settle in Europe. Moreover, in the early 70s, Western Europe experienced economic recession resulted from the oil crisis of 1973-74. All these pushed governments to increasingly stop the immigration by terminating recruitment agreements. This shift was significant for European policy and heralded the restrictive policies of future.
- Restrictions in European states toward labour migration fuelled second wave of immigration – *family reunifications*; settled migrants began to bring their families. Liberal democratic character of domestic environment easily allowed it. This wave was more robust and greater in scope. Thus, a pattern that began as a temporary, economically motivated policy of labour recruitment became permanent settlement. EU states could not individually stop this unwanted and unexpected reality.
- The third and most recent wave of immigration to Europe, increasing in the late 1980s, is *asylum and illegal migration*. The origins of this ‘new’ wave can be divided into two instants: reduction of the scope for legal immigration by restrictive policies; and the end of the Cold War which resulted in number of conflicts and revolutions in Eastern Europe in the late 1980 and early 1990s. During the span of only seven years (1988-94)

⁴⁶ Geddes, A. (2000), *Immigration and European Integration: Towards Fortress Europe?* Manchester & New York: Manchester University Press, pp 19-20

more than three million persons sought asylum in Western Europe. For humanitarian reasons and because of domestic constraints, such as judicial and bureaucratic, and as a consequence of international treaty obligations, the immigrant receiving countries had initially far less room for manoeuvre to restrict the flow of asylum seekers and refugees.⁴⁷ Unlike previous waves, they didn't contribute to welfare state; instead those immigrants needed care of receiving state and depended largely on public benefits. The image of new immigration has been affected by this development. Consequently, asylum seekers flow generated more negative reaction in the welfare societies, and was perceived as a 'threat' to welfare state.

As one wave of migration petered out, either through natural loss of momentum or state restrictions, another soon gathered strength, thus migration was transformed but never ceased in Europe. The third wave of migration deserves closer attention because it has become so central to the politicisation of migration since 1990s. The entire postwar immigration was certainly large in scale. It generated 21 million immigrant populations living in Western Europe. In late 1990s, immigration to EU fluctuated around a total for the EU of 850,000 net international migrants per annum by the end of the decade. (See figure 1)

Second ground affecting the cooperation in immigration issues was related with the development in integration process achieved by Single European Act of 1985. SEA expected to reach the completion of common market, including the free movement of people within the community territory by 1992. Because internal free movement and abolition of internal borders posed the challenge of external frontier control at the borders of single market and internal security policies, supranationalisation of intra-EC free movement of people by Treaty provisions necessarily made immigration and asylum issues common interests for EU states. 'Low politics' of free movement impelled cooperation and integration in 'high politics' of immigration and asylum. However, as we will see from the subsequent tendencies, while free movement was 'constitutionalised'⁴⁸ at EU level, the same wasn't applied to immigration and

⁴⁷ Messina, A. M. (2002) *West European Immigration and Immigrant Policy in the New Century*, Westpot and others: Praeger, p 109-110

⁴⁸ body of case law and associated institutional competences have developed at EU level that bolster free movement and limit the competence of member state in this area

asylum; they have remained mainly subject to intergovernmental cooperation and been largely unchecked by judicial overview or democratic accountability at both national and supranational level.⁴⁹

Consequently, those factors gave impetus for cooperation on the sensitive issue such as controlling the national territory and population which is considered the very core of state sovereignty. *Schengen agreement*, which was signed by five pro-integration countries (Belgium, France, Germany, Luxemburg, and the Netherlands) in 1985⁵⁰, was first coordinated institutional effort to achieve multilateral cooperation, even though it couldn't initially include all member states and was negotiated outside the EU framework. Schengen involved some important measures that later became central for shaping EU common immigration policy. Geddes notes that, Schengen signatories were pushing fundamental EC objectives, albeit beyond the 'constraints' imposed by the EC's legal and political order, also excluding those reluctant members to cooperate on the immigration and asylum issues.⁵¹

At the core of the agreement⁵² are commitments by signatory states to dismantle their internal border control regarding their nationals, establish common external borders, adopt a common visa policy for TCNs, strengthen internal controls, designate a state responsible for the review of an asylum claim, and exchanging information by creating a common Schengen Information System (SIS).⁵³ Schengen was a parallel development that reflected intensive patterns of cooperation on free movement and internal security.

Second document that came out of European intergovernmental negotiations was the *Dublin Convention* of 1990 dealing with mainly asylum matters.⁵⁴ Unlike Schengen agreement, this convention established explicitly EU-wide arrangements agreed by all member states in the

⁴⁹ Geddes, A. (2000), *Immigration and European Integration: Towards Fortress Europe?* Manchester & New York: Manchester University Press, pp 3-5

⁵⁰ But came into force only after 10 years and now includes 13 members, excluding UK and Ireland

⁵¹ Ibid. pp. 82-84

⁵² Lavenex S., Ucarer E. M. (2002) *Migration and externalities of European integration*, Lanham, New York others: Lexington Books, p 22

⁵³ By articulating the notion of a 'responsible country' for handling asylum claim, Schengen countries agreed that one only one Schengen country should be responsible for seeing an asylum request to completion. This was to prevent asylum seekers to lodge multiple applications in those countries. An innovative information exchange system was created for that purpose.

⁵⁴ Principal aim of the Dublin Convention was to harmonise most asylum procedures across EU thus to reduce incidents on 'asylum shopping' giving only first state of entrance to decide on case.

meeting of Ad Hoc Immigration Group. However, as it required ratification, it was in 1997 that this convention fully came into force. This convention basically duplicated the Schengen provisions concerning asylum issues.⁵⁵

These developments were *ad hoc* and intergovernmental, relying on unanimity, in character. This informal cooperation defined immigration and asylum within security frame and because it was largely run by those with a security-centred understanding of migration and determination to restrict those forms of migration defined as unwanted.⁵⁶ An implication of this for immigration and asylum cooperation was that ‘lowest common denominator policies’ emphasising intergovernmentalism and restrictive policies emerged.

3.1.2. Formal Intergovernmentalism: Maastricht Treaty

Signed in 1992, Maastricht Treaty created ‘third’ pillar of EU under the name of Justice and Home affairs (JHA) and placed immigration and asylum issues under this EU-based institutional setting. Due to strong opposition from some member states to give up competencies to supranational institutions, Maastricht Treaty formalised, but did not supranationalise cooperation on immigration and asylum policy by drawing cooperation that had been outside of the Treaty into intergovernmental ‘pillar’ of the newly created EU.

Title VI of Maastricht treaty dealt with JHA cooperation. Article K1 listed the issues that were regarded as matters of only ‘common interest’, not ‘common policies’⁵⁷:

1. asylum policy
2. rules governing the crossing of persons of external borders of the member states and exercise of controls therein
3. immigration policy and policy regarding nationals of third countries
 - a) their conditions of entry to and movement within the territory of member states;
 - b) their conditions of residence on territory of member states, including family reunion and access to employment;
 - c) Combating their unauthorised immigration, residence and work on the territory of member states.⁵⁸

⁵⁵ Messina, A. M. (2002) *West European Immigration and Immigrant Policy in the New Century*, Westpot and others: Praeger, p 100

⁵⁶ Geddes, A. (2003), *The politics of Migration and immigration in Europe*, London: Sage Publications, p 134

⁵⁷ Geddes, A. (2000), *Immigration and European Integration: Towards Fortress Europe?* Manchester & New York: Manchester University Press, pp 95-96

As it is seen from those common interest provisions, countervailing immigration integration measures were limited and did not possess a sure footing in the treaty, while there was clear preference convergence on the tight control aspect of immigration.

Maastricht generated an institutional setting in which decisions were to be taken by unanimity, which significantly hampered subsequent processes. The Commission, EP and ECJ were marginal to decision-making, while Council emerged as a dominant actor. The Commission's powers were also limited, because it had to share its right of initiative with the member states.⁵⁹ EP only had the right to be informed after the fact of third pillar developments. Thus these treaty arrangements brought intergovernmentalism to EU framework. However, we would prefer the term of Wallace 'intensive transgovernmentalism' rather 'intergovernmentalism', because of complex and intertwined role of EU institutions here.⁶⁰

The legal basis for the immigration issues was weak; it did not involve the binding regulations and directives. Instead, three 'soft' policy instruments specific for third pillar were available for members: - joint positions, which has not any binding power; - joint actions, which depended on unanimity to gain binding effect; - conventions, which requires ratification at national level and that creates cumbersome procedures prior to their entry into force.⁶¹ Council preferred to use non-binding recommendations, resolutions and conclusions in post-Maastricht period, which was over 70 in number. For example, the resolutions on 'safe third country', 'safe country of origin' brought into the collective domain, an idea that was already in practice in many member states and allowed them to continue restrictive policies .

While Maastricht treaty changes represented an improvement over the previous *ad hoc* arrangements, this new institutional arrangement was plagued with the variety of governance problems, which hindered its effectiveness in the years that followed the implementation of

⁵⁸ Article K1 also included other issues such as combating drug trafficking, terrorism, police cooperation and others. Immigration and asylum were thus placed alongside internal security issues. Immigration was constructed as an external challenge and an internal threat to societal stability and cohesion.

⁵⁹ Lavenex S., Ucarer E. M. (2002) *Migration and externalities of European integration*, Lanham, New York others: Lexington Books, pp 23-25

⁶⁰ It created a Coordinating Committee comprised of senior representatives from each state and representative from Commission to advise the council on immigration and asylum matters.

⁶¹ Geddes, A. (2000), *Immigration and European Integration: Towards Fortress Europe?* Manchester & New York: Manchester University Press, p 97

Maastricht Treaty.⁶² Nonetheless, regular consultations became the rule rather than exceptions as the Union institutions tried to negotiate their space within the emerging structure. And the Treaty did draw immigration and asylum closer to the EU.

3.1.3. Communitarizing Immigration: Amsterdam Treaty

Signed in 1997 and came into force in 1999, Amsterdam Treaty, committed to develop ‘an area of freedom, justice and security’, was the first step for developing common EU migration policy. It moved immigration and asylum matters from ‘third’ and incorporated it into ‘first’ Community pillar via a new title IV, that is to say EU gained competence on immigration matters⁶³. The institutional changes regarding immigration issues were of importance: there was now potentially greater role for supranational institutions of Commission, EP and ECJ. After the five years of transition period (2004), Commission would gain its sole right to initiative on immigration issues, but until that it had to share this right with Council. Following this period, the parliament may share the legislative power according to co-decision procedure in certain areas.⁶⁴ The Court of Justice will have the jurisdiction to rule on interpretation of title IV on a request from the Council, commission and member states.

Although Amsterdam treaty communitarized immigration issues, it kept the unanimity decision-making in the Council, thus maintaining the intergovernmentalism for at least five year period. After that time again by unanimity, not automatically, Council can decide to move to QMV system. Immigration and asylum were ‘communitarized’ in the sense that they moved to community pillar, but were not ‘supranationalised’ in the sense of being made subject to day-to-day process of integration. All those compromises could only be achieved by granting

⁶² Regarding this intergovernmental cooperation, there were 2 kind of criticism emerging: first one came from the refugee and migrant’s rights advocates in the ace of the increasingly selective and restrictionist practice that was coming out of Brussels. Second one was about institutional structure of Maastricht – at that point highly secretive and non democratic – that was producing these new policies.

⁶³ Article 63 of the EC Treaty provides that, in the five years following the entry into force of the Treaty of Amsterdam (1 May 2004), the Council will adopt:

- measures on immigration policy within the following areas: conditions of entry and residence, and standards on procedures for the issue by Member States of long term visas and residence permits, including those for the purpose of family reunion, illegal immigration and illegal residence, including repatriation of illegal residents;
- measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States. Measures adopted by the Council pursuant to points 3 and 4 shall not prevent any Member State from maintaining or introducing in the areas concerned national provisions which are compatible with this Treaty and with international agreements.

⁶⁴ Messina, A. M. (2002) *West European Immigration and Immigrant Policy in the New Century*, Westpot and others: Praeger, p 102

Denmark, UK, and Ireland opt-outs or the right to be bound by the policy output unless they choose so, by adding flexibility clause to the treaty. Member states imported the comfort blanket of intergovernmentalism and constrained the scope for supranational institutionalisation.

There was a change in the decision making procedure as well. ‘Soft law’ instruments were abandoned and immigration and asylum were made subject to standard EU policy instruments, such as *binding regulations, decisions and directives*. However, the balance of the Amsterdam treaty was towards consolidation of restrictive emphasis, with limited EU competence for issues affecting the rights of migrants.⁶⁵ It created only potential for expanded anti-discrimination provisions to cover racial or ethnic discrimination. Another key element of Amsterdam treaty was that it fully incorporated Schengen *acquis* into the EU’s single institutional framework.⁶⁶

Nonetheless, critics argue that such institutional ‘progress’ toward a common migration regime still favours a ‘least common denominator approach’, fostered further by the unanimity rule which still privileges the member states’ position. Furthermore, review and control functions of the EP and ECJ are still limited, signalling that issues of transparency and democratic deficit remain as area of concern. While Amsterdam treaty decisions came at expense of creating a multispeed Europe, it can be still hailed as success for the deepening of European cooperation.⁶⁷

Having said all of those criticism, it should be mentioned that Amsterdam treaty opened new doors for institutionalisation of immigration policies; post-Amsterdam period is increasingly associated with the activeness of EU institutions, especially Commission is trying to take crucial role in shaping the preferences of member states, in constructing EU level policies. The roles of institutions will be analysed in later parts of study. Ucarer consolidated improvements of all these treaty cooperation in the following table N1.

⁶⁵ Geddes, A. (2000), *Immigration and European Integration: Towards Fortress Europe?* Manchester & New York: Manchester University Press, pp 125-26

⁶⁶ The main problem here was that decisions made by Schengen’s secretive and unaccountable Executive Committee would immediately after the ratification of Amsterdam become community law.

⁶⁷ Lavenex S., Ucarer E. M. (2002) *Migration and externalities of European integration*, Lanham, New York others: Lexington Books, pp 26-27

After such historical review of developments in the area of immigration issues within EU, now we are better placed to explore some key questions and problems regarding the issue.

Table 1. Evolution of Immigration Policy Competences of EU Institutions

	Pre-Maastricht	Post-Maastricht Third Pillar	Post-Amsterdam First Pillar (Communitarized areas of former Third Pillar)	
			1999-2004	Post-2004
Asylum, Immigration, External Borders	Domestic policy-making giving way to intergovernmental cooperation <i>outside</i> the Community framework	Third Pillar, Title VI, Article K of TEU	Article 73 of Amsterdam Treaty	
European Parliament	No role	Limited role	Consultation for the first five years after Amsterdam Treaty takes effect, co-decision afterwards	
European Court of Justice	No jurisdiction	No jurisdiction	Referral for an obligatory first ruling for national last-instance courts	
Decision-making	Intergovernmental negotiations Nonbinding decisions in the form of resolutions Binding decisions in the form of treaties	<i>Unanimity</i> rule on all issues	Council acts <i>unanimously</i> on proposals from Commission and member states <u>for the first five years</u>	Council will act unanimously on a move towards <i>qualified majority voting</i> (with no need for national ratification of this decision)
Commission's Right of Initiative	None Occasional observer status at intergovernmental meetings	<i>Shared</i> right of initiative for the Commission and Member States	Commission has shared right of initiative (member states have encouraged the Commission to assume an exclusive right for asylum issues)	Commission has <i>exclusive</i> right of initiative in Title IIIa

Source: Ucarer, E. M. *From the Sidelines to Center Stage: Sidekick No More? The European Commission in Justice and Home Affairs* [http://eiop.or.at/eiop/texte/2001-005t.htm#\(I\)](http://eiop.or.at/eiop/texte/2001-005t.htm#(I))

3.2. Context of the EU Immigration Policy

Articulations between restriction and expansion, between inclusion and exclusion of migrants and between intergovernmentalism and supranationalism have characterized European immigration policies for over 30 years. Since the early cooperation on immigration until today, the underlining principles of European migration policy have been the liberalisation of migration inside the Union through freedom of movement, and safeguarding of control over migration from outside the Union.

Regarding the form of immigration cooperation, it can be seen that EU immigration policy still favours intergovernmental incline, although much has been done to communitarize this matters. The reason of such development can be explained in this way: EU level cooperation on immigration issues from the beginning was shaped by preferences of member states, and motivation for cooperation was to *escape* form domestic judicial and bureaucratic constraints⁶⁸ that impeded to attain restrictive immigration policies. That is because the scope for political and judicial control is far weaker at EU level than at national level. That is why member states were always reluctant to supranationalise the immigration policies, because they don't want to be constrained by EU level institutional framework again for this time.

Often EU immigration policy was characterised as building 'Fortress Europe'. The walls of supposed European fortress deemed to be a combination of tightly *restrictive* immigration policies and the social and political *exclusion* of settled migrants and their descendants. However, Geddes argues that EU migration policy can be rather 'net', which designed to 'catch' certain immigrants and 'allow' others go, than 'fortress'.⁶⁹ For example, highly skilled worker from developed countries can move relatively easy, they are encouraged and facilitated by European countries to overcome skills shortages and counter the effects of an ageing population. On the other hand, unskilled workers or asylum seekers have become increasingly 'unwanted' and the subject of restrictive policies, and encounter formidable obstacles.⁷⁰ These categorizations highlight the capacity of states to categorize migrants, on this basis to then

⁶⁸ Courts have offered protection to immigrant newcomers and created some level of spaces for them, so the liberalness of liberal states constrains the restrictive urges of politicians.

⁶⁹ Geddes, A. (2000), *Immigration and European Integration: Towards Fortress Europe?* Manchester & New York: Manchester University Press, p 6

⁷⁰ *Ibid.*

attempt to regulate international migration, as well as to develop international cooperation that can facilitate the attainment of these tasks.

One important feature of EU immigration policy is that it was always considered as security-oriented matter; 'new' immigrants were often perceived as 'threat' to the society and something 'unwanted'. The 'securitisation' of migration emphasises the links between market relations embodied within the free movement framework and control of population and was influenced by the 'security-oriented' background of cooperating parts. Securitisation is also a result of politicisation of asylum-seeking by highly tensioned popular view. Moreover, immigration policies of EU are largely unchecked by judicial overview or democratic accountability at both national and supranational level due to minimised role of supranational institutions.

EU immigration agenda is not dealing with every aspect of immigration policy equally. The cooperation on immigration is uneven process. It is seen from above-mentioned positive trends that, EU was successful to develop common policies especially concerning a common and strict visa policy, the adoption of high standards of control at the external borders, the fight against illegal immigration, the limitation of access to asylum procedures, and return of rejected asylum seekers and illegal immigrants. In other words, all this is about the control and restriction of immigration. Other very important aspects of immigration policy, such as immigrant integration, labour migration, rights of TCNs in EU is weakly discussed issues at EU level. Migration policies regarding TCNs largely remain within the policy making jurisdiction of individual governments and states.

In order to explain those tendencies in cooperation, the complex and multifaceted nature of so-called immigration dilemma in EU should be kept in mind. Messina explains that, the problem of this nature is that immigration-related policy agendas of member states only partially overlap.⁷¹ In those policy areas where there is wider agreement among member states, such as asylum, border control significant progress has been achieved to generate common policies. On

⁷¹ Messina, A. M. (2002) *West European Immigration and Immigrant Policy in the New Century*, Westpot and others: Praeger, pp 118-119

those dimensions, where there is not much convergence of state objectives, such as labour migration tiny EU level policy has been reached, because in terms of unanimous decision-making one reluctant part can be obstacle in progressive agreements.

By applying Lowi's (1972) fourfold classification of policy-making patterns, immigration and asylum can be seen as a 'constituent' policy sector, within which the rules of the game remain matters for negotiation but are already fairly well structured by national responses to the control and security dimensions of policy.⁷²

3.3. Role of Institutions and Policy/Decision-Making Framework

Now in order to study the scope of supranational institutionalisation of the immigration area, we need to assess the competence of supranational institutions and their ability to shape policy outcomes. Within this assessment, policy and decision-making framework for immigration issues will also be analysed. For those reasons, it is reasonable to examine the role of every institution and their power in policy-making separately.

3.3.1. European Council/Council of Ministers

Given the great sensitivity of immigration issues, European Council/Council of Ministers has been given great weight on this issue, because it directly represents member states. Although through the successive treaty reforms the capabilities of Council have been relatively diminished, it still holds decision-making on its hands. *The Justice and Home Affairs* (JHA) Council formation is responsible for Immigration policy issues, which brings together related ministers about once every two months to discuss the development and implementation of cooperation and common policies in this sector. It permits dialogue, mutual assistance, joint effort and cooperation between immigration executives of the fifteen members.

According to Amsterdam Treaty, unanimity is the main decision-making pattern in Council at least for transition period of five years.⁷³ Only in the matters of visa policy, QMV is applied. In regard to the decision-making procedure, unlike other Community policy areas, Council is not

⁷² Geddes, A. (2000), *Immigration and European Integration: Towards Fortress Europe?* Manchester & New York: Manchester University Press, p 41

⁷³ This was criticised by many, because unanimity means that interest of one single state can be very decisive in policy outcomes.... Even after the end of this five years period all members must agree to move towards QMV.

sharing its decision-making rights with European Parliament. However, it is laid down that the Council, acting unanimously after consulting the European Parliament, may take a decision with a view to making all or part of the areas of immigration to the codecision procedure. As regards the procedures and requirements for the issue of visas by the Member States and rules on uniform visas, the Treaty provides for the co-decision procedure to apply after the transitional period without the Council having to take a decision.⁷⁴ In the area of policy-making Council also has the right of policy initiative until 2004.

To be conceivable, the policy and decision-making process and flow of policy in Council, the hierarchal structure of Council should be outlined⁷⁵ (see figure 2): Below the *JHA Council* of relevant national ministers, comes *Permanent Representatives Committee* (COREPER) which prepares the procedures of the Council. The Permanent Representatives, who are the ambassadors of the Member States to the Union, act in this area as they do in regard to other Community policies. *Strategic Committee on Immigration, Frontiers and Asylum*, composed of senior officials of Members, is one of the three main Ad Hoc Committees within the Council. After this committee come several *working parties*, which has important role in shaping the agendas and in policy-making structures.

The Presidency of Council plays the role of providing impetus for proceedings. Management of policy and setting the agendas to a large degree depends on presidency in such sense that every six month priorities might shift with particular national concern. Presidency is being assisted in this task by *the General Secretariat of the Council. European Council*, as a general intergovernmental body, also plays an important role in setting off priorities, strategic commitments and political guiding principles of the Union in certain matters. With the initiative of Commission, a special European Council devoted exclusively to JHA matters has been organised in October 1999 in Tampere which has a significant role in further development of immigration policy. Brief summary of the result of the Council meeting has been outlined below:

⁷⁴ http://ue.eu.int/cms3_fo/showPage.asp?id=249&lang=en&mode=g Justice and Home Affairs Council, accessed: 10.12.2004

⁷⁵ Wallace & Wallace (2000) *Policy-making in the European Union*, Oxford: Oxford University Press, pp 515-517

- while the Treaty of Amsterdam established a community competence in immigration matters, it did not indicate about the Common EU immigration policy. This was done in Tampere Council of 1999. The Tampere European Council clearly defined the policy framework in which Member States wish to create a common immigration policy. It set the political guidelines and some concrete objectives for the development of a common EU policy within the key areas identified, namely⁷⁶:

- Work to harmonise national legislations regarding conditions for entry and residence of TCNs - management of migration flows;
- Ensure fair treatment to TCNs residing legally on the territory of its Member States through more vigorous integration policy aimed at granting them rights and obligations comparable to those of EU citizens;
- A comprehensive approach in respect to partnership with countries of origin which addresses political, human rights and development issues in countries and regions of origin and transit;
- A common European asylum system based on the full and inclusive application of the Geneva Convention.

This common policy program had a huge effect on constructing and maintaining the Common immigration policy of EU in successive period. To reach all those goals and to fulfil its responsibilities in five years deadline put by Amsterdam Treaty, Council with the initiative of Commission reached some important agreements in the following period of time up to now. Penninx introduces interesting statistics of those directives. According to him, since 1999, some 50 legislative proposals were made; only 23 of them became binding regulations: they relate to borders and visa (11), illegal immigration and expulsion (9), asylum (5) and only one to legal immigration.⁷⁷ Council adopted its first directive concerning 'legal immigration' in 2003 on the right to family reunification.⁷⁸ However, Council could not agree on very

⁷⁶ http://www.europa.eu.int/comm/justice_home/fsj/immigration/fsj_immigration_intro_en.htm, *Towards Common EU immigration Policy*, Council Conclusion; accessed 12.12.2004

⁷⁷ Penninx, R *Integration Policies for Europe's immigrants: performance, conditions and challenge*, Expert paper, pp 27-28

⁷⁸ Other directives such as concerning the status of third-country nationals who are long-term residents (November, 2003), laying down minimum standards for the reception of asylum seekers (January 2003), implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (June 2000), establishing a general framework for equal treatment in employment and occupation (November 2000) were adopted by Council.

important directive proposal of Commission on admission of immigrants for employment purposes. All these statistics still imply the domination of control oriented regulation at EU level.

3.3.2. European Commission

Unlike other issue areas where the Commission enjoyed a mandate from the start and was hence an unquestionable agent of the member states, immigration issues belonging to JHA pillar initially represented a policy sphere that was neither in nor entirely out of the Union. So far, Commission's role developed during last four years from awkward, weak actor to relatively autonomous actor with significantly improved agenda-setting powers.

Amsterdam Treaty allows Commission to take sole right of initiative after the transitional period in immigration issues, till that time it has to share this role with member states. Nonetheless, during these five years, Commission has been very active and was always trying to grasp leadership in policy-making process regarding immigration issues. Post-2004 Commission will be in a significantly improved position concerning policy-initiation. European Council gave a mandate for the Commission to develop a common immigration and asylum policy in Tampere Summit. Commission's role in the area of immigration and asylum was further enhanced by the creation of DG dealing with JHA⁷⁹ in 1999, allowing it to better organise and structure its activities. This DG is the youngest DG in Commission, split into four sub-directorates.

As Ucarer argues, Commission is a 'sidekick no more' for immigration policy, because constitutional delegation of responsibility by Amsterdam Treaty and organisational changes within Commission has certainly empowered its role in policy-making and agenda-setting.⁸⁰ It surely improved its position regarding immigration policy-making through the past five years. The President of the European Commission joins the Heads of States and of Governments in the European Council. The Commission takes part in the meetings of the Council, COREPER,

⁷⁹ now renamed DG Freedom, Security and Justice

⁸⁰ Ucarer, (2001) E. M. *From the Sidelines to Center Stage: Sidekick No More? The European Commission in Justice and Home Affairs*, European Integration online Papers, Vol. 5 /N 5, <http://eiop.or.at/eiop/texte/2001-005.htm>, accessed 05.12.2004

the Strategic Committee and the working parties. By these informal engagements, Commission assumes to take supranational 'entrepreneurialism'⁸¹ and to strengthen its position as information-holder in information-scarce environment. Information asymmetries thus are utilised as an opportunity for supranational activity. By cooperating with EP and cultivating alliances with NGOs representing migrant interests, Commission keenly claims for supranational leadership on immigration matters and for key coordinating role.

During the post-Amsterdam period most proposals to Council were made by Commission, and member states were in favour of its initiatives. Moreover, it always takes pro-migrant position, and pursues expansive and inclusive immigration policy. The Commission's communication on migration policy and on asylum of 2000, and communication dealing with the coordination of migration policies of 2001 mark supranational response to this salience and begin to provide a better and more comprehensive idea of what common policies in these areas might look like.⁸² Moreover, a 'scoreboard' was created to trace the concrete timetables and progress in this area for developing legislations according to Tampere programme, which means for Commission putting concrete tasks to propose certain legislations until selected deadlines. Those developments indicate the emergence of new, more holistic and more structured approach toward common immigration policy.

However, in spite of impressive strengthening of Commission over time, it is observable that member states still hold sanctioning means and they are in the driving seat. That is the policy preferences of member states that actually matters rather the position of institutions. There are substantial constraints on formal and informal agenda-setting power of Commission.

3.3.3. European Parliament

While the roles of the European Parliament have been relatively strengthened by the Treaty of Amsterdam, it is less powerful than in the framework of Community policies. In most immigration and asylum matters Council only consults with Parliament while taking decision.

⁸¹ Moravcsik defines supranational entrepreneurialism as exploitation by international officials of asymmetrical control over scarce information or ideas to influence the outcome of multilateral negotiations through initiation, mediation and mobilisation.

⁸² Geddes, A. (2003) *Still Beyond Fortress Europe? Patterns and Pathway in EU Migration Policy*, Quinn Papers on Europeanization, N 4, p. 5-8

Parliament has created closer cooperation with Commission for having more influence on the policy making process. As it is relatively marginalised institution in immigration matters, it has been very critical to unanimous decision-making, and supports Commission actions ‘to counterbalance the restrictive prerogatives of member states’.⁸³

Concerning policy and decision-making process, Amsterdam and Nice treaties gave Parliament co-decision power in certain issues either after transitional period, or after adoption of common principles and the basic rules governing those issues.⁸⁴ But still it is very limited and there is uncertainty about the time of transition. It has periodically produced its opinions and critical views regarding Community policies about immigration. It has Committee on Civil Liberties, JHA dealing with immigration matters. EP has always called for supranationalisation of immigration policy-making by applying QMV and co-decision.

3.3.4. European Court of Justice

Immigration policies at EU level do not have much judicial constraint as in any other Community policies. Given to the fact that national courts have helped open ‘social and political spaces’ for migrants and their descendants, ECJ also could be thought to have a prospects to play the same role at EU level. However, ECJ encounters with ‘legitimacy constraints’ while acting in those areas. ECJ’s right of jurisdiction over Title IV issues has been constrained in three ways: first, preliminary rulings can only be sought against decisions which there are no judicial remedy under national law. Second, ECJ is excluded from measures relating to the maintenance of law, order and safeguarding of national security. The Court has no jurisdiction to review the validity and proportionality of operations conducted by the police or other law enforcement agencies of a Member States. Third, ECJ can rule on interpretation of title IV on a request of only from Council, Commission and Member states.⁸⁵

As a result, democratic and judicial oversight at EU level falls under the question by highly limited role of ECJ. Member states thus did its best to limit the scope of unintended

⁸³ Ibid.

⁸⁴ The matters include: movement of TCNs in possession of visa; illegal immigration and the repatriation of illegally resident persons, administrative cooperation in areas under title IV. Policy on asylum and persons under temporary protection will be move to codecision procedure after adoption of Community legal framework on related issue.

⁸⁵ Geddes, A. (2003) *Still Beyond Fortress Europe? Patterns and Pathway in EU Migration Policy*, Quinn Papers on Europeanization, N 4, p. 8

consequences of communitarization of immigration issues through Treaty provisions that restrict ECJ's ability to involve itself in immigration and asylum.⁸⁶ In general, the scope for supranational leadership and unintended effects can be difficult to establish in new areas of integration such as immigration where future policy shapes is only just becoming clear.

3.4. OMC as a Method of Cooperation for Immigration Policy

Open Method of Coordination (OMC) has been used in several Community policy areas, such as Employment and Social Policy to help member states progressively design their own policy and 'to do so in a coordinated way'. Key characters of OMC were defined by European Council as following at Lisbon Meeting:

- "fixing guidelines for the Union combined with specific timetables for achieving the goals in the short, medium and long terms;
- translating European guidelines into national and regional policies by setting specific targets and taking into account of national and regional differences;
- coordination of national policies, exchange of best practices, and follow-up and evaluation of the impact of community policy;
- periodic monitoring, evaluation and review organised as mutual learning process."⁸⁷

As can be noted from this definition, there are no mechanism of compliance; OMC is based on soft law, which means there is no legal base for guaranteeing compliance to the objectives, but only for control.

In its Communication of 2001, Commission proposed to use OMC for Community Immigration Policy⁸⁸. Despite communitarization of most immigration matters, Member States still have sole competence on a number of issues, such as economic migration and integration policy. It is because immigration is very sensitive issue which directly affects civil society. Therefore, Commission considers that these issues should be discussed openly, at both national and EU level in order to get effective policy consensus. For the purposes of OMC, Commission called for a reinforcement of the exchange of information and experiences on migration between member states.

⁸⁶ Ibid.

⁸⁷ Lisbon European Council (2000) paragraph 37

⁸⁸ Commission of EC, (2001), *Communication from the Commission to the Council and the European Parliament on an open method of coordination for the community immigration policy*, Brussels

Communication offers the adapted form of OMC for particularly immigration filed. Open Method of Coordination is designed to support and complement Community legislation on immigration and provide a framework for reviewing with the Member States the implementation of these legal instruments.⁸⁹ Commission is deemed to be a key figure and sole coordinator in implementation of OMC. It will have the responsibilities of - preparing European guidelines to be approved by Council; monitoring implementation of legislation in the field and ensuring co-ordination of national policies; making proposals for new legislatives necessary for implementation of common policy; promoting the exchange of experience and the best practice among member states; monitoring and evaluation of implementation of guidelines.⁹⁰ These comprehensive functions and activities shows that Commission wants to develop completely new progressive common immigration policy.

In the Communication, Commission proposes ‘Multiannual guidelines for Union’ as key element of OMC accompanied by specific timetables for achieving the goals which they set in the short, medium and long term.⁹¹ In order to translate these guidelines into national policies and to implement them at domestic level ‘National Action Plans’ will be used as an instrument. They are to be prepared by each member state and will take national differences and specific needs into account and include national/local actions.

Multidimensional character of immigration policy requires the involvement of other EU institutions and units as well.⁹² Commission also considers that civil society, particularly politicians, local authorities and other relevant organisations, such as NGOs and associations of migrants as stakeholders and of the media should also actively participate in open and informal

⁸⁹ EC, *Communication from the Commission to the Council and the European Parliament on an open method of coordination for the community immigration policy*, 2001, pp 6-7

⁹⁰ To this end, the Commission will consult widely - by making appropriate arrangements including the setting up of committees and working groups - with senior officials, experts in immigration matters from the Member States, representatives of the social partners and of local and regional authorities, experts on particular topics under review and with other representatives of civil society.

⁹¹ The Commission proposes that guidelines be established initially in the following areas: management of migration flows; admission of economic migrants; partnership with third countries and the integration of third country nationals.

⁹² European Parliament in its resolution adopted in 2003, on its turn, favours the implementation of an OMC. However, it stresses that this method cannot take the place of the legislative initiatives and should not be abused to delay the legislative process.

discussions and debates of issue, at both national and European levels.⁹³ This will provide the flexibility, pluralism and willingness in cooperation. Soft law mechanism, such as OMC takes into account the national differences and this makes members more likely to cooperate. In this sense, soft law mechanism can present safer ground for compliance and good basis for trans-national policy networks.

The main shortcoming of OMC is that it solely depends on good will of member states, on their commitment to cooperation. Unfortunately, above-mentioned ideas remain only as proposal. Member states turned to be reluctant to implement this progressive method on immigration domain. However, if they cooperate, they can gain a lot from the open method of coordination process.

3.5. Changing Realities

While European states continue their restrictive immigration policies both at EU and national level, recent economic and demographic developments introduce new realities for them. Economic changes include the rising shortage of high skilled and relatively low skilled labour in certain member states; there are even some domestic attempts to re-open legal channels to such immigration. On the other hand, demographic changes such as the ageing and low growth of European population became more subject to political debates. With the fertility rate of 1.47 in 2001 (it will fall further in future) and life expectancy growing, it was projected that by 2030 there would be 110 million people over the age 65 in EU25, up from 71 million in 2000. Consequently, working age population will fall from 303 to 280 million in 2030, which means old age dependency ratio increase from 23% to 40%⁹⁴. (See figure 3, 4) These changes have two problematic implications, which will become more fully visible as time passes: there is increasing recognition that it will lead to gradual reduction of labour supply in EU; it will increase the demand for care service labour for older people and will thus challenge welfare state. It is more pronounced that immigration can be complementary strategy for solving those challenges, although it can't compensate all effects of demographic ageing in the labour market. Furthermore, immigration can help to ease the projected decline in labour supplies, to

⁹³ EC, *Communication from the Commission to the Council and the European Parliament on an open method of coordination for the community immigration policy*, 2001, p 14

⁹⁴ Niessen, J. (2004) *Five Years of EU migration and asylum policy-making under Amsterdam and Tampere mandates*, Migration Policy Group, pp 15-18

achieve the Lisbon targets of employment of 70% by 2010.⁹⁵ Those two changes are very important for the future socio-economic performance of EU. Immigration is seen one alternative solution for both of those challenges and has come to be considered seriously as an element of Europe's economic future. Although, current economic downturn in EU points out to high unemployment rate rather than shrinking of labour supply, above-mentioned problems are to be faced in coming future. 'Immigration option' for both projected overall drop in labour supply and certain skill shortages are emphasised in socio-economic agenda of EU through Employment strategy and Reports as well.⁹⁶ Future of this proposed option depends partly on the foresight of policy-makers. Member states must make use of this additional labour supply resulting from immigration and existing immigrant population. There is huge labour supply of resided immigrants, although sometimes their labour qualifications are not what are needed, they should be better utilised in first place. (See figure 5)

By taking all those factors into account, Commission wants to open up new phase in EU immigration policies that would have more open approach to immigration. In its Communications, it underlines to foster 'pro-active' immigration policy, a policy that instead of focusing on vain attempts to prevent and stop immigration, would try to open up legal channels and help to address the needs of EU labour market. It considers that 'zero immigration' policy is no longer appropriate, and that unless a more open approach is taken to legal immigration, the EU may be faced with increasing pressures, running the risk of increased illegal immigration: tight restrictive policies have structural flaws of encouraging illegal immigration. Therefore, commission expressed the urgency to adopt a more flexible approach common to all member states on the issue of 'legal migration'.⁹⁷ However, despite the Commission's efforts to prepare the whole package of proposals that would provide legal framework to open up legal channels for immigration, as well as to extent certain rights pertaining EU citizenship, clear political commitment and direction has not yet been reached in Council due to high political sensitivity of the issues among population and member states; Council has not reached agreement on the directive on admission of TCNs for the employment

⁹⁵ Commission of EC, (2003) Communication on immigration, integration and employment, Brussels, pp 12-16

⁹⁶ Joint Employment Report http://europa.eu.int/comm/employment_social/employment_strategy/index_en.htm

⁹⁷ The commission does not propose quota system on EU scale, which would be 'impracticable', the proposed system would produce periodic reports of member states on their immigration policies and its impact in the past and make projections on the numbers of economic migrants needed in the future.

purposes. The re-insertion of immigration into the socio-economic agenda of EU is very remarkable as it emphasises the importance of immigration to European societies and calls for forward looking policies on immigration. It can change the ‘unwanted’ image of immigrants also, because immigration is seen as a solution rather than problem in this approach.

From the above-mentioned examination, it can be concluded that EU common policy on migration is on the way of formation. The extent of EU level institutionalisation of immigration policy depends upon the development of legal context through the EU’s treaty basis and subsequent legal developments. On the other hand, OMC can be a good basis for formulation of common framework on immigration. There is visible process that EU level supranational policies on immigration more and more affect the policy management of member states and shape their preferences. The policy-making is largely based on intensive transgovernmentalism. Moreover, changing realities also can influence in future perspective. Having examined common EU migration policy, now we narrow down the study by focusing on immigrant integration aspect of immigration policy of EU in the next chapter.

CHAPTER IV

4. IMMIGRANT INTEGRATION POLICY AT EU LEVEL

4.1. Emerging EU Policy on Immigrant Integration

It is becoming widely accepted that, the success of a common immigration policy at EU level highly depends on the successful integration of immigrants into society. Immigration and integration policies need to complement each other in order to achieve long-term objectives. As Penninx puts it, the lack of a consistent and transparent immigration policy is an impediment to effective integration policies. The lack of consistent integration policies and the (real or perceived) obstacles to the integration of increasingly diverse streams of newcomers lead in turn to mainly negative perceptions of migration and immigrants - and hence reinforce defensive immigration policies.⁹⁸

Notwithstanding restrictive policies of European states and EU as a whole, immigration to Europe continues and seems to be continued in future. The post-war immigration created a large amount of immigrant population in Europe with distinct culture, language and traditions. Now, there are almost 20 million foreigners living in EEA which amounts to 5.3 per cent of total population according to OECD.⁹⁹ This has caused many challenges for society that became more and more multiethnic. Ucarer notes that Western societies are increasingly having the apprehension that immigrants will weaken national identities, and pose threat to welfare state by claiming to share those welfare benefits that were initially intended for nationals.¹⁰⁰ Consequently, across Europe, xenophobia and discrimination became, at least partly, reaction by native citizens to the permanent immigrants. Throughout the EU 45 % of population considered that numbers of foreigners were too many, 40 % - many and only 10 % considered them not many.¹⁰¹

⁹⁸ Penninx, R. *Immigration without integration: a recipe for disaster*, Policy Brief 17, p 1

⁹⁹ http://www.oecd.org/topicstatsportal/0,2647,en_2825_494553_1_1_1_1_1_1,00.html#494574 accessed: 10.01.05

¹⁰⁰ Ucarer, E. M., Puchala, D. (1997) *Immigration into the Western societies: Problems and policies*, London & Washington: Pinter, p. 8

¹⁰¹ Messina, A. M. (2002) *West European Immigration and Immigrant Policy in the New Century*, Westpot and others: Praeger, p 115

Despite its economic benefits, postwar immigration has caused variety of social problems; most of these problems congregate around the broad challenge of integrating, with the words of Messina, ‘the predominantly non-white, non-western, and often non-Christian immigrant populations into the primarily white, nominally Christian societies of Western Europe’.¹⁰² As the proportion of non-nationals in the population of member states develops and with the prospect of further increases, coordinated and sustained efforts to ensure the social integration of migrants are more than ever necessary.

Traditionally, Europe is seen by its people and also by governors as a realm of democratic and liberal values, especially of such values which is against any kind of discrimination, exclusion and intolerance opposed to racist and totalitarian regimes all over the world. By definition, the protection of such rights must be universal; all individuals must be covered equally. However, it is not case with TCNs settled in Europe. Consequently, two attitudes prevail towards existing immigrant population¹⁰³:

- Inclusionist policies, which is justified by traditional democratic and liberal values based on tolerance, individual rights, equality and equal opportunity; this attitude favours integration of TCNs in host societies;
- Exclusionist policies, which appeal to traditional nationalistic sentiments and assert that the rights of equal treatment are limited to the persons who are citizens; this approach prefers to treat TCNs as a class and ‘object’ of the policy rather the potential part of it.

The latter has been more visible both at national and at EU level.

Across the EU ‘new’ immigrants (asylum seekers, refugees, and families) have been excluded from welfare benefits because they are perceived as undeserving of welfare benefits. For example, there is a growing supposition that asylum seekers are ‘bogus’ or ‘abusive’ in the sense that they are economic migrants seeking to avoid strict controls on economic migration and are burden to welfare state. Eurobarometer polls affirm these perceptions: according to

¹⁰² Messina, A. M. (2002) *West European Immigration and Immigrant Policy in the New Century*, Westpot and others: Praeger, p. 208

¹⁰³ Springer, B. *Testing Tolerance* in Ucarer, E. M., Puchala, D. (1997) *Immigration into the Western societies: Problems and policies*, London & Washington: Pinter

1997 poll, a majority -75% of those interviewed considered that immigrants pay less than they claim, and 59% said that they abuse the system of social benefits.¹⁰⁴

Social exclusion of asylum seekers in the form of dispersal, denial of the right of work, and the replacement of cash benefits with vouchers is seen as a deterrent instrument to keep them in minimum conditions in order to make their stay reversible. Geddes argues that, in this case it is not so much the personality or character of this people that matters, but rather the ways in which they are viewed by the organisations and institutions of receiving country.¹⁰⁵ Public resentment of migrants and fear of difference leads to discrimination, community tensions, and occasional violence, and has contributed to the rise in support of the far-right political parties, who successfully exploit people's fears and resentments.¹⁰⁶

Integration of those people to the host societies is of importance and should be central issue in any policy related to immigration. It is logical to assume that, Community migration policy would depend on the extent to which migrants become integrated into their new country. Failure to develop an inclusive and tolerant society, which enables different ethnic minorities to live in harmony with the local population of which they form a part, leads to discrimination, social exclusion and the rise of racism and xenophobia.

Two major factors have led to pressure for a more effective EU strategy to promote the economic, social, cultural and political integration of migrants: recognition of the failure to integrate past migrants effectively, and concern about the rise in support for the far right. One of the factors leading to an increased focus on integration at EU level is the belated recognition that immigration will be a permanent part of Europe's future.

Many authors argue that, EU member states have largely failed to properly integrate immigrants; their integration policies have not been sufficiently effective so far.¹⁰⁷ If the

¹⁰⁴ Eurobarometer Opinion Poll N 47.1, *Racism and xenophobia in Europe*, 1997

¹⁰⁵ Geddes, A. (2003), *The politics of Migration and immigration in Europe*, London: Sage Publications, p. 5

¹⁰⁶ Right-wing parties, such as The Freedom Party in Austria, the National Front in Belgium, the National Front in Britain, the Progress Party in Denmark, the National Front in France, the Centre Party in Netherlands, the Progress Party in Norway, the National Socialist Front in Sweden, the People's Party in Switzerland, and xenophobic groups in Germany, marketed themselves using xenophobic rhetoric and owed their political success to the resentment among natives to the presence of new ethnic minorities.

¹⁰⁷ Penninx, Geddes: 2003, Lavenex, Ucarer: 2002

democratic states do not succeed in the proper integration policy, they run the risk of having ethnic and social segmentation coinciding in a lasting and systemic fashion. And here emerges the need for common action in this area. Although member states have pursued diverse integration policies, there is an increasing tendency towards convergence arising from similarity of problems and from the growing influence of supranational authorities.

As EU is acquiring more and more competences in the immigration field, its supranational institutions capitalise this by advancing and developing more comprehensive and holistic EU immigration policy. Immigrant integration issue has been drawn to EU scene only in 3 or 4 years. Before, it deemed to be responsibility of member states to integrate immigrants. Furthermore, EU policy agenda were busy with elaboration of restrictive measures to keep TCNs out of the union, rather than to improve status of TCNs already settled within its boundaries. This was changed with Amsterdam Treaty¹⁰⁸ and following Tampere Council¹⁰⁹ meeting; both had very important role in further development of integration policy initiatives.

Tampere Council gave real impetus by defining the immigrant integration as one of the four key elements of EU Common immigration policy. It states that ‘the European Union must ensure fair treatment of TCNs who reside legally on the territory of its member states. A more vigorous integration policy should aim at granting them rights and obligations comparable to those of EU citizens. It also should enhance non-discrimination in economic, social and cultural life and develop measures against racism and xenophobia.’¹¹⁰ Commission was mandated to take the lead on this process.

While, the development of integration policies is largely the responsibility of member states with local authorities having a very important role to play, EU policies in this field could become facilitator for those local policies. Penninx notes that there are different possible functions for EU in the field of integration: first, framework-setting, where the EU should

¹⁰⁸ Particularly, Amsterdam treaty introduced a new article 13 that extended the anti-discrimination provisions to include gender, race, ethnicity, religion and etc. creating further opportunity for progress in this field

¹⁰⁹ Tampere Council included the openly stated recognition that EU has become immigration area, and that legally residing immigrants should have as much as possible rights as EU-migrants and that the integration of these immigrants should be strived for.

¹¹⁰ Melis, B. (2001) *Negotiating Europe's Immigration Frontiers*, The Hague and others: Kluwer Law International, p. 31

influence the way a society looks at migration and integration; second, norm-setting, where such norms should codify immigrant status, develop anti-discrimination policies and examine the extent to which immigrants have access to public institutions, and to economic, social, political and cultural spheres of the host society.¹¹¹ For example, Commission's communications on the issue is seen as frame-setting initiatives, and legislative measures related to integration can be norm-setting instruments. EU has at its disposal several unique levers to make an effective contribution to the development of integration policy, complementing the primary responsibility of its member states.

As immigrant integration is relatively new issue in EU agenda, there are limited political activities and developments. The Commission has been very active so far to propose legislatives, present common frameworks by Communications. It presented its Communication on Immigration, Integration and Employment in 2003, which is the most developed document on this issue. Therefore, mostly this document will be taken as a main referent through the examination of immigrant integration policy of EU. Another important document is again from the Commission, the Annual Report on integration of 2004. It is important to mention that integration process involves many EU policy areas which affect the status of immigrants other than immigration policy, such as employment social cohesion, education policies; therefore, it can be considered a cross-policy matter.

4.2. Defining the Concept: Integration

Before examining the EU policy on immigrant integration, it is crucial to give the definition of the concept of 'integration' itself initially. The answer to the question 'what is integration?' is not so simple if we take into account the multiple areas that it appeals to and diverse definitions given by different countries which describes their own perceptions and priorities on the issue. According to the Commission's relevant Communication, integration is defined 'as a two-way process based on mutual rights and corresponding obligations of legally resident TCNs and the host society which provides for full participation of the immigrants. This implies on the one hand that it is the responsibility of the host society to ensure that the formal rights of immigrants are in place in such a way that the individual has the possibility of participating in

¹¹¹ Penninx, R. *Immigration without integration: a recipe for disaster*, Policy Brief 17, 2004

economic, social, cultural and civil life and on the other, that immigrants respect the fundamental norms and values of the host society and participate actively in the integration process, without having to relinquish their own identity.’¹¹²

Commission has also determined main elements of integration process throughout the EU. Those core components are¹¹³:

- respect for fundamental values in a democratic society;
- the right for an immigrant to maintain his or her own cultural identity;
- rights comparable to those of EU citizens, corresponding obligations;
- active participation in all aspects of life on an equal footing (economic, social, cultural, political, civil).

Penninx defines integration as the process of becoming an accepted part of society. The more a society is integrated, the more closely and more intensely its constituent parts relate to one another. There are two parties involved in integration processes: the immigrants, with their particular characteristics, efforts and adaptation; and the receiving society with its reactions to the newcomers. They are, however, unequal partners. The receiving society - its institutional structure and the way it reacts to newcomers - is much more decisive for the outcome of the process.¹¹⁴

The process of integration of immigrants into a society is not as one-dimensional as it may first seem at first glance. It is a many-faceted phenomenon in which we should at least make a distinction between the institutional and normative dimension.¹¹⁵ Two important aspects emerge from this: *legal-political* and *cultural*.

Accordingly, legal-political aspect entails the legal status of immigrants and is affected by the *jus soli* and *jus sanguinis* systems of citizenship in member states. *Jus soli* system is based on principle of territoriality; under this system all people resident in a territory have the same

¹¹² Commission of EC, (2003) *Communication on immigration, integration and employment*, Brussels, p 18

¹¹³ Ibid. p.45

¹¹⁴ Penninx, R. *Immigration without integration: a recipe for disaster*, Policy Brief 17, 2004

¹¹⁵ Entzinger and Biezveld define those aspects so: institutional dimension refers to an increase in immigrant participation in the major institutions of society – integration, normative dimension refers to changes in the immigrant’s cultural orientation and identification – acculturation.

rights, irrespective of their ancestry. The *jus sanguinis* system, by contrast, is governed by the principle of descent; citizenship and political status are acquired by birth passing from one generation to the next along ‘the lines of blood’.¹¹⁶ Those systems have great implications for immigrant integration.

Cultural aspect involves also two distinct tendencies: multiculturalist and assimilationist. According to the idea of *multiculturalism*, ‘integration’ means that immigrants should adjust to the norms and regulations in the receiving society while being allowed to preserve what is often labelled ‘their own culture’. Mutual understanding and tolerance between communities is a condition for harmonious multicultural society. If needed, public authorities should take measures to promote this. It has pluralistic basis and has become the ‘policy of honour’ for modern welfare state among which Scandinavian countries have central position.¹¹⁷ In *assimilationist* approach, on the other hand, immigrants are expected to assimilate to the host society; it requires significant degree of cultural adaptation from immigrants to their new environment. Immigrant communities are not recognised, individuality is emphasised. Assimilation involves the loss of at least some of the distinctive cultural attributes of minorities.¹¹⁸

Those aforementioned aspects of integration are employed in different integration policies of European states. The aim of any integration policy is how best to incorporate immigrants into the societies of Europe in a manner and to a degree that satisfies both the aspirations of new ethnic and racial minorities as well as expectations of the majority populations and governments of host society. Now as we have clarified in some degree the concept of integration, we can turn to the exploring EU level policy strategies, its instruments, actors and factors influencing this policy domain.

¹¹⁶ Entzinger H. & Biezveld, R (2003) *Benchmarking in Immigrant Integration*, report to European Commission, European Research Centre on Migration and Ethnic relations. p. 12

¹¹⁷ Lavenex S., Ucarer E. M. (2002) *Migration and externalities of European integration*, Lanham, New York others: Lexington Books, pp. 186-8

¹¹⁸ Ucarer, E. M., Puchala, D. (1997) *Immigration into the Western societies: Problems and policies*, London & Washington: Pinter, p. 196

4.3. EU Legal Framework for Integrating Immigrants

The establishment of a common legal framework setting out the rights and obligations of TCNs underpins the EU approach to the integration of immigrants. In only last four years, EU have developed fairly good amount of binding legislative basis for immigrants integration policies. They set mostly the minimum standards in different areas for TCNs which should be observed by member states while treating TCNs. Commission took the principle set out in Tampere council which requested ‘more vigorous integration policy’ which ‘should aim at granting legally resident TCNs’ rights and obligations comparable to those of EU citizens’ as a starting point when it proposed legislative to establish common framework for status of TCNs.

The *Directive on the right to family reunification*¹¹⁹ was adopted in Council in September, 2003. The right to family reunification is, by itself, an essential element in the integration of immigrants. The establishment of stable family communities ensures that migrants are able to contribute fully to their new societies. The directive recognises the right to family reunification for TCNs holding a residence permit of two years or more who have reasonable prospects of obtaining permanent residence.

Following that, Council approved the Directive concerning the *status of third-country nationals, who are long-term residents*¹²⁰ in November, 2003. This directive is based on the tradition in the member states that the length of stay has an influence on the level of rights of the person concerned. According to Directive, long term residence (which is permanent) will be obtained after 5 years of legal and continuous stay. The 5 year period corresponds with the period for EU citizens to get permanent residence rights, thus giving TCNs a comparable legal status to EU citizens. This status allows TCNs to move within the EU under certain conditions (they should have a job offer), but they are not entitled to move freely and seek a job.¹²¹ Council added a provision that Member state may require TCNs to comply with integration measures. Moreover, refugees and persons enjoying temporary protection are not included to

¹¹⁹ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification

¹²⁰ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents

¹²¹ The free movement rights for the TCNs are thus very limited: Niessen, J. (2004) *Five Years of EU migration and asylum policy-making under Amsterdam and Tampere mandates*, Migration Policy Group, pp 5-6

those who benefit these rights, although Commission has proposed it initially. By analysing the wording of directive, it is seen that these directives do not really offer comparable treatment between TCNs and EU citizens, and it leaves too much room for member states' discretion.

EU also has developed the legal framework for *combating discrimination*, which can seriously impede the integration process, and in particular, common minimum standards to promote equal treatment and to combat discrimination on grounds of racial or ethnic origin. EU adopted a package of anti-discrimination measures. First two elements of this, Directive *implementing the principle of equal treatment between persons irrespective of racial or ethnic origin* and Directive *establishing a general framework for equal treatment in employment and occupation*, was adopted in June and November of 2000.¹²² Anti-discrimination directives of 2000 have put in place policy frame that appears to draw heavily from UK and Dutch understanding of anti-discrimination. Another element – ant-discrimination Action Program was also agreed in 2000: this program will run for six years from 2001 and will have a budget of 100 million Euros, including the activities combating discrimination on the ground of race and ethnicity. The scope of Community legislation banning racial discrimination is wide and covers employment, education, social security, health care, access to goods and services and to housing. Those directives were to be transposed into National law with the deadline of 2003; Commission monitors this process.

The EU has made progress towards granting TCNs the same protection as EU workers in the field of *social security* when moving within the EU. *Council Regulation*¹²³ was approved in May 2003, extending the provisions of Regulation No 1408/71 and Regulation No 574/72 to TCNs who are not already covered by those provisions solely on the ground of their nationality. This was first binding measure concerning legal migration ever agreed in Council.

¹²² The lobbying of pro-migrant groups with the sponsorship of Commission had played important role in adopting those anti-discrimination measures.

¹²³ Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality

All those legally binding measures show the progress in the field of migrant inclusion agenda and point to norm-setting function of EU. Most of them do not address directly to the European integration policy, except from antidiscrimination directives which are directly related to this issue. That is because EU has not yet got the full competence on integration. But all those legal measures really do affect the life of immigrants. Moreover, this can not prevent EU from influencing the member states policies, at least, based on OMC, by facilitating the exchange of information, practices and policy models; from assisting them to get to know each other's policies; from offering open discussion forums to define problems, reach to possible solutions.

4.4. EU Policy Instruments for Immigrant Integration

In its Communication, Commission proposes to use variety of instruments and resources for constructing EU immigrant integration policies and achieving goals at EU level.

4.4.1. Open Method of Coordination

OMC is very useful tool for starting to build EU framework for integrating immigrants. OMC has been used in the fields of employment and social inclusion, and was proposed for immigration policies as well. Those policies have direct relevance to the integration of immigrants in EU. As policy of integrating immigrants is multi-dimensional process¹²⁴, OMC could link all of its elements and increase transparency and openness. Being neither political nor legal instrument, OMC can further a learning process about the challenges of integrating immigrants into society. It was designed to help member states progressively design their own policy and to do so in a coordinated way at EU level. It is thought to supplement and support the community legislation.

OMC establishes concrete guidelines policy objectives set at EU level, which are translated into national and local policies by setting national targets. Commission mainly coordinates this process by creating benchmarks and indicators to measure progress, exchange of experience to learn from good practice. The main shortcoming of OMC is that, as Bernd Schulte points out, it solely depends on voluntary cooperation and good will of member states and therefore

¹²⁴ Access to the labour market, social security, civic citizenship and political participation, education, religion and culture, family reunification

sanctions could not be enforced if criteria were not respected.¹²⁵ However, it can be good starting point.

Despite these advantages of OMC, Council shows reluctance to approve it as a policy instrument for the immigration policy area. Member states have not yet translated into reality the proposed OMC on immigration.

4.4.2. European Migration Network

For the building up new framework for common policy on integration, the availability of information is very crucial for success and proper evaluation. This is also essential to raise public awareness of the contribution which migrants bring to economic, social and cultural life in the EU. In 2002, the Commission established a European Migration Network as a pilot project to establish a system for exchanging information on asylum, migration and countries of origin. The EMN will be basis for monitoring and analysing the multidimensional phenomenon of migration and asylum by covering a variety of its dimensions – political, legal, demographic, socio-economic - and identifying its root causes.

4.4.3. National Contact Points on Integration

In order to reinforce the exchange of information on existing integration policies of national and local level, National Contact Points (NCP) in all member states were created in 2003 following the Thessaloniki Council.¹²⁶ It is the first step in developing the coherent framework for integration with a view to strengthen coordination of relevant policies at national and EU level. These approaches stem from the notion that integration process takes place at local not EU level, and much can be learned from those practices. This group of National Contact Points is meeting regularly under the coordination of European Commission DG JHA. First result of the NCP's work to structure the exchange of information has been issued in this autumn as a first edition of 'Handbook on Integration' which is based on the studies conducted between the contact points. The handbook concentrates on two specific elements of integration programs of

¹²⁵ European Policy Centre, What European Union strategy for integrating migrants?: EPC-KBF Migration Dialogues, June 30, 2004.

¹²⁶ Commission of EC, (2004) *First Annual report on Migration and Integration*, Brussels, p 7

member states: introduction programs for newly arrived immigrants and recognised refugees; and civic participation.¹²⁷ This handbook is designed for policy-makers and practitioners and thought to provide some general principles and policy recommendations for integration policy.

4.4.4. Annual Report on Immigration and Integration

Commission prepares annual reports on development of integration policies in order to monitor progress over time and to ensure the regularity both EU policy and national policy. First annual report were issued in 2004 and constitutes a new instrument to review the development of the common immigration policy. It is mainly based on information from different EU policies affecting immigrants, namely the NCPs on Integration as well as on the NAPs for Employment¹²⁸ and the NAPs for Social Inclusion¹²⁹. The aim of the reporting is to ensure that the needs of immigrants properly *streamlined* in all related policy areas such as employment and social inclusion, and to inform Council on progress made in those policies and programmes.

4.4.5. Financing Integration: EU Financial Instruments

In order to reach political commitments in the area of integration of immigrants, EU availed itself a number of specific budget lines and programs of mainly Commission which directly or indirectly support the integration of immigrants.

One of the relevant sources is European Social Fund. It supports integration through the 'EQUAL' target programme. In addition, Community funds are being used under the Multiannual Programme for Enterprises and Entrepreneurship 2001-2005 of the European Investment Fund for micro-lending activities which benefit immigrant entrepreneurs. In the field of education and culture, several action programmes targeting the integration of immigrants have been carried out under the SOCRATES, the LEONARDO DA VINCI, YOUTH, CULTURE-2000 programmes.¹³⁰

¹²⁷ Niessen, J. & Schibel, Y. (2004) *Handbook on integration for policy-makers and practitioners*, Migration Policy Group for European Commission, p. 8-10

¹²⁸ Joint Employment Report http://europa.eu.int/comm/employment_social/employment_strategy/index_en.htm

¹²⁹ Joint Inclusion Report http://europa.eu.int/comm/employment_social/news/2001/jun/napsincl2001_en.html

¹³⁰ Commission of EC, (2003) Communication on immigration, integration and employment, Brussels, p 8

European Refugee Fund is specifically intended to be main financial instrument targeting immigrants. It was established in 2000, with the objective of '*supporting action by the member states intended to promote the social and economic integration of refugees, in so far as it contributes to economic and social cohesion*'. Integration activities accounted for 28% of total budget of ERF during 2000-2002 (20 million Euros). Aid went in particular language training, activities promoting employability and providing advices on housing, social benefits, education. This phase of ERF comes to end in December, 2004. New ERF II was proposed by Commission (2005-2010) which gives more detailed importance to integration activities, including social assistance, participation in civil and cultural life and so on. Its target group includes recognised refugees, asylum seekers and persons with subsidiarity protection.¹³¹

A new budget line on integration of TCNs (INTI) came into the existence in 2003. Its budget for first year was 4 million Euros and 6 million Euros for 2004. The INTI programme funds pilot projects for integrating TCNs with an emphasis on promoting open dialogue with civil society, developing consistent integration models, exchanging and evaluating good practices in the integration field and setting up networks at EU level.¹³² In order to enhance the dialogue with migrant organisations and as a mean to overcome prejudices and intolerance within the EU, the Commission will give priority to the creation of networks and co-operation under the INTI preparatory actions for 2005.

The EU level funding of integration can be very useful and needed if those activities enable local actors to develop and implement adequate strategic projects, if successful pilot projects are reported systematically and this results shared as good practice.

¹³¹ Niessen, J. (2004) *Five Years of EU migration and asylum policy-making under Amsterdam and Tampere mandates*, Migration Policy Group, pp 24-25

¹³² http://europa.eu.int/comm/justice_home/funding/inti/wai/funding_inti_en.htm, Commission's official website on JHA, accessed 23.12.2004

4.4.6. Civic Citizenship as an Instrument to Facilitate Integration

In its Communication on community migration policy of 2000¹³³, the Commission introduced a new concept of *civic citizenship*. It was deemed to be an instrument that would give certain core rights and obligations to immigrants which they would acquire gradually over a period of years. This would create an opportunity for them to be treated in the same way as nationals of their host state, even if they are not naturalised. The realisation of concept of civic citizenship as a parallel to national citizenship can be useful to promote integration by emphasising more strongly the supranational level and European belonging.

This concept is prototype of ‘denizenship’ proposed by Hammar. Tomas Hammar makes distinction between foreigners – temporary workers and political refugees, denizens – permanent residents who lack full political citizenship, yet have access to civic and social rights, and citizens.¹³⁴ The stark fact is that despite the rhetoric of ‘inclusion’ there are over 15 million TCNs who are largely excluded from formal EU provisions, from democratic participation. The effect of Europeanizing denizenship would be to create a new form of supranational membership that would not be reliant on prior possession of the nationality of member state. By proposed legislatives on the status of TCNs, Commission is on the way to realise this instrument.

Commission underlines the importance of confirming the rights and obligations of legally resident TCNs in the framework of the new Constitutional Treaty by the incorporation of the Charter of Fundamental Rights with a legally binding status¹³⁵. Since most of its provisions are applicable to all persons irrespective of their nationality.

4.5. Policy Coordination with Other Relevant EU Policy Areas

The multi-dimensional character of integration process requires the involvement of other policy areas into this process. For example, integration of immigrants into the labour market has been identified the main priority and main challenge by most member states. Therefore,

¹³³ COM(2000)757 Communication on a Community Migration Policy, Brussels

¹³⁴ In Lavenex S., Ucarer E. M. (2002) *Migration and externalities of European integration*, Lanham and others: Lexington Books, pp 182-3

¹³⁵ Modalities of incorporation were discussed in Working group II of the Convention, chaired by Mr. Vitorino. See final report of Working Group II, WG II – 16 of 22.10.2002

Commission takes comprehensive approaches by incorporating to the integration process other DGs and policy strategies. Immigration was thus reinstated into the socio-economic agenda of EU.

4.5.1. The European Employment Strategy (EES)

In the framework of European Employment Strategy, the labour market integration of migrants is priority in the Commission's guidelines and of many NAPs on Employment. For example, 2003 guidelines calls for better integrating immigrants into labour market and propose to achieve a target of significantly reduction in the unemployment gap between non-EU and EU nationals by 2010.¹³⁶ In 2002, unemployment rate was more than twice as high among non-EU nationals as among EU nationals. (See figure 6) Other issues noted by Commission is promoting full participation and employment for 2nd generation migrants; closer monitoring of the needs of the EU labour market and of the role of immigration in filling current and future labour shortages; barriers to integration on the labour market; local employment strategy for immigrants. Within the framework of the integration of disadvantaged groups into the labour market, migrant workers and ethnic minorities were main groups to be taken into consideration by EES. A European Job Mobility Portal¹³⁷ has been launched to provide information on available jobs as well as on living and working conditions in the EU.

4.5.2. Social Inclusion Process

Besides the Employment Strategy, Social Inclusion Process is also highly relevant policy instrument for socio-economic situation of migrants. This process was initiated in 2000 by setting common objectives to combat social exclusion and poverty in EU.¹³⁸ And first NAPs against poverty and social exclusion submitted in 2001 clearly identified ethnic minorities and immigrants as being at high risk of social exclusion and discrimination. With low qualifications, immigrants are generally put in a very vulnerable position at the bottom of host

¹³⁶ Niessen, J. (2004) *Five Years of EU migration and asylum policy-making under Amsterdam and Tampere mandates*, Migration Policy Group, pp 23-24

¹³⁷ See <http://europa.eu.int/eures>

¹³⁸ To facilitate participation in employment and access by all to resources, rights, goods and services; to prevent the risks of exclusion; to help the most vulnerable and to mobilise all relevant bodies in the fight against social exclusion.

societies. Commission criticised these NAPs on the ground that, despite the widespread recognition of such risks, the first NAPs lacked data on these groups.¹³⁹

The need to reduce poverty and social exclusion among migrants and minorities were identified one of the priorities in later NAPs of 2003 and in Joint Inclusion Report. Few NAPs gave clear evidence that situations facing immigrants has improved since submission of first action plans. Therefore, Commission encourages addressing the issue of integration of immigrants in a more comprehensive, integrated and strategic manner. The Joint Employment and Joint Inclusion Reports of Commission and relevant Committees (Employment Committee and Social Protection Committee) should serve to monitor progress at EU level.

4.6. Main Actors in Integration Policies

Since we have explored the main factors of integration policies and barriers in integration of immigrants, now it is good to look at the actors which play important role in those processes. Comprehensive EU level integration policy management and implementation requires the involvement of all relevant actors from local to regional, national and EU authorities.

4.6.1. National Governments

Governments are certainly main actors, as they are designing the overall integration policies and strategies, financing these strategies and so on. They are also main actor responsible for implementing EU level integration policies at national level. Commission notes that, strong political leadership is required to promote pluralistic societies. Since governments are sole decision-makers in Council, they can achieve very positive common solutions if they are willing to cooperate. However they still seem to be reluctant if common rules are perceived as undermining their sovereignty.

4.6.2. Local Authorities and Actors

As integration policies are implemented at local level, the local authorities have realistic important role in integrating immigrants. At this level practical integration programmes tailored for specific needs of immigrants are implemented. Local authorities should be given

¹³⁹ Commission of EC, (2003) *Communication on immigration, integration and employment*, Brussels, p 7

more resources and instrument to act locally adequate way. Community and public service providers are also good to involve in those processes. The Social Partners have an important role to play in the integration process as facilitators of everyday integration in the workplace and by highlighting the importance of responding to cultural differences, they can increase workforce efficiency and enhance social responsibility. Local authorities are successfully collaborating with Commission in certain projects that seek the social integration of immigrants, to combat racism and assist refugees, such as Cities against Racism (CAR)¹⁴⁰ and Local Integration/Partnership Action¹⁴¹ (LIA) projects.

4.6.3. Non-Governmental Organisations and Interest Groups

These actors deserve more detailed analysis, as they are only actors representing migrant's interests. Both at national and EU level NGOs play a central role in advocating on behalf of migrants and persons enjoying international protection.¹⁴² Geddes argues that, pro-migrant NGOs at EU level tend to be relatively weak because public opinion across the EU tends to be anti-immigration/immigrant while non-national migrants have limited access to local and national political systems, never mind to the EU political system.¹⁴³ Moreover, they do not possess powerful resources; most NGOs is supported by Commission. Yet EU's 'democratic deficit' acted as insulator from direct political pressures for Commission to create opportunities to act progressively towards migrant inclusion. They became active at EU level especially in the late 1990s, and major success of their lobbying at EU level was the adoption of anti-discrimination directives in 2000.

Most prominent EU level pro-migrant lobby groups are: Start Line Group, European Union Migration Forum (EUMF), European Council on Refugees and Exiles¹⁴⁴. Start Line Group, created in 1992 by academics and NGO legal experts, now has 400 associated NGOs and

¹⁴⁰ CAR ran in 1995-97 period, and brought together local authorities and NGOs from 30 EU towns and aimed to promote the development and implementation of good practice and combine this with EU level exchange of experience between grassroots level actors.

¹⁴¹ LIA involved 23 cities developing local action plans against racism

¹⁴² Conference on "*Immigration: The Role of Civil Society in Promoting Integration*", Brussels, 9-10 September 2002

¹⁴³ Geddes, A. (2003), *The politics of Migration and immigration in Europe*, London: Sage Publications, pp 143-4

¹⁴⁴ Geddes, A. Lobbying Migrant inclusion in the European Union: new opportunities for transnational advocacy?, *Journal of European public policy*, 7:4 October 2000, 632-49

logistical help of the Brussels-based Migration Policy Group. EUMF is another best known EU level pro-migrant organisation which is created in 1991 as an umbrella group for migrant organisations. They mainly lobby for the fair treatment of TCNs, social inclusion, anti-discrimination laws, and free-movement of TCNs. As Commission and ECJ had no competence on immigrant policy issues before Amsterdam (and in a larger sense also now) and absence of treaty basis on this issues, these groups focused on policy linkages with existing EU prerogatives such as freedom of movement, association treaties, social exclusion, and anti-discrimination, enhanced rights for TCNs.

Pro-migrant advocacy groups at supranational level seek to exercise informal agenda-setting influence on EU level by establishing alliances with community institutions. They advocate 'more' not 'less' Europe¹⁴⁵ in immigration issues, because more Europe means more competence for community supranational institutions, more democratic opportunities for migrant inclusion and more constraint on restrictive policies of intergovernmental Council. Thus, the solutions for fortress Europe, from the perspective of pro-migrant NGOs, is not return to state sovereignty, but rather more powers for the Commission, ECJ and Parliament, that is to say deeper European integration is a progressive counterbalance to the lowest common denominator decision-making.¹⁴⁶

By operating at EU level, and identifying European sources of political, social and legal power as the addressee of their claims, these groups underline the importance of right-based dimension associated with European integration. EU level pro-migrant groups are mostly Brussels-based and receive financial support from EU. They tend to be 'umbrella' organisations representing interests of sub-national and national organisations.¹⁴⁷ Thus, pro-migrant lobbying at EU level has centred on building of alliances between lobby groups and sympathetic EU institutions which provide EU resources for them. The Commission has also an interest in sponsoring interest groups as a way of adding legitimacy to EU decision-making while also developing pro-European integration coalitions. This kind of activities can turn to new and more effective political mobilization of migrants at EU level in future.

¹⁴⁵ Geddes, A. (2003) *Still Beyond Fortress Europe? Patterns and Pathway in EU Migration Policy*, Quinn Papers on Europeanization, N 4, p. 6-9

¹⁴⁶ Ibid.

¹⁴⁷ Geddes, A. Lobbying Migrant inclusion in the European Union: new opportunities for transnational advocacy?, *Journal of European public policy*, 7:4 October 2000, 632-49

4.6.4. EU Institutions

EU institutions evidently have the most decisive role in shaping EU level policies on immigrant integration. However, they are not represented equally. Since EU supranational institutions have not yet competence on those issues and is not well placed to intervene in these day-to-day issues, their activities are limited. Yet, Commission has shown great enthusiasm to take leadership by proposing variety of innovative initiatives and its budget and pursues pro-migrant and inclusive approach. It also controls the policy implementation. Its two DGs - DG JHA and DG for Employment and Social Affairs - intensively cooperate on the integration issues by presenting joint reports and proposals. Moreover, Commission has incorporated pro-migrant lobby groups into consultation processes on integration issues. Commission has been active in funding pro-migrant NGOs, their projects to better integrate migrants to society and to fight discrimination. It also organised and funded some projects and programs that seek social integration for non-national immigrants in member states, to combat racism and xenophobia¹⁴⁸.

Although European Parliament remains marginal to immigration issues, EP has taken variety of actions to promote social benefits in the EU including dealing with the plight of immigrants. It continuously supported anti-discrimination campaign throughout Europe. EP has been very instrumental in promoting the notion of European citizenship¹⁴⁹, which for immigrants might possibly be a pathway around some of the member states' exclusive laws. Nevertheless, because of the absence of a substantive basis for EP activity, its main role has been as a persuader of national governments and potential ally for supranational institutions and lobby groups in the quest for deeper EU integration on immigration issues.¹⁵⁰

All of the above actors bear part of the common responsibility for a successful integration of TCNs into European societies. Taking all of these into account, Commission calls for more pro-active integration policy. A comprehensive approach involving stakeholders at the local, regional, national and EU level is therefore essential. EU could contribute by developing a

¹⁴⁸ Within framework of European Year against racism-1997, different projects amounted to 4.7 million ECU were organised to raise awareness of racism and xenophobia in member states. Another projects are CAR, LIA.

¹⁴⁹ However, EU citizenship is criticised on the ground that right to EU citizenship requires prior possession of member state nationality, and therefore excludes TCNs from its scope.

¹⁵⁰ Geddes, A. (2000), *Immigration and European Integration: Towards Fortress Europe?* Manchester & New York: Manchester University Press

pedagogical strategy, promoting the exchange of information and good practice, especially at local level and the development of guidelines or common standards for integration measures.¹⁵¹

4.7. Policy Context

It is important to get to know what kind of policy EU intends to pursue towards integrating immigrants in terms of context of policy. As we have seen so far, EU is trying to create a general framework for cooperation and thus to *help* member states to effectively maintain *their own* integration policy rather than to replace it. It is one of the modest ways of cooperation, which takes into account that immigrant integration takes place at local/national level and that integration policy issues is not yet within EU competence. Therefore, by offering itself as a venue to exchange information, to reach to a common definition, to find out best practices and to openly discuss integration issues, EU actually intends to facilitate integration process in member states as much as possible. Moreover, EU goals in relation to immigration, economic growth and social cohesion all require a focus on integration. The Union has competence to address a range of issues vital to integration, including post-entry rules on immigrants; EU law on discrimination; targeted programs for migrants like ‘EQUAL’; and through (currently marginal) attention to integration in mainstream strategies on employment and health.

EU recognizes the ‘incremental approach’¹⁵² to integration, which involves development of a balance of rights and obligations over time. At the same time it also stresses that integration measures and some rights for newly arrived immigrants should be available as soon as possible. Moreover, Commission argues that refugees, including resettled refugees and persons enjoying subsidiary or temporary protection¹⁵³, should also be eligible for integration measures. It must be recognised, however, that integration is a long-term process and special attention needs to be paid to second generation migrants, including those born in the EU, to ensure that problems do not lead to social exclusion and criminality.

Commission urges EU to take holistic approach to integration of immigrants, that is to say not only the economic and social aspects of integration but also issues related to cultural and

¹⁵¹ Commission of EC, (2000) *Communication on a Community Migration Policy*, Brussels, p. 20

¹⁵² Commission of EC, (2003) *Communication on immigration, integration and employment*, Brussels, p 18

¹⁵³ Council Directive 2001/55/EC of 20 July 2001, OJ L 212, 7.8.2001

religious diversity, citizenship, participation and political rights should be carefully considered; involvement of immigrants in all aspects of society is the objective of such policy. Some issues which were considered to have importance for such comprehensive integration strategies were shown in the Communication as below¹⁵⁴:

- *Integration into the labour market*, access to employment has been identified as the greatest barrier to integration and thus the most important political priority within national integration policies by member states according to annual report. At 52.7% the employment rate of non-EU nationals in EU-15 is significantly lower than the 64.4% rate for EU nationals (see figure 6). Diversity management¹⁵⁵ can be an important instrument to promote the integration of migrants in the labour market.

- *Education and language skills*, most immigrants have some qualities that are needed in EU labour market. The problem usually arises for immigrants with respect to the recognition of their academic attainments and professional qualifications. Moreover, lack of language skills of host society is another huge barrier for integration. These two factors impedes immigrant to improve its educational attainment also. Therefore, member states increasingly are concerning about the language factor and trying to solve this problem by providing specific language courses for newly arrived immigrants. EU notes that education system¹⁵⁶ can be a good instrument for the encouragement of pluralism and diversity with respect to both the immigrant population and the host society and thus for combating discrimination. In order to make better use of migrants' full potential, it is important to make assessment of their previously acquired experience and qualifications already obtained outside the EU. This requires recognition and proper assessment of immigrants' formal and informal qualifications (including diplomas).¹⁵⁷

- *Housing and urban issues*, access to housing is a basic necessity in integration, and the lack of affordable quality housing in ethnically mixed areas is a problem many migrants encounter.

¹⁵⁴ Commission of EC, (2003) *Communication on immigration, integration and employment*, Brussels, pp 18-23

¹⁵⁵ Diversity management is management of diversity in the workforce, in lifestyle and in the role of enterprises in society

¹⁵⁶ Education system is evaluated not only as a place to gain knowledge, but also as a place for acquiring formal and informal information on norms and values in society and as a cultural bridge.

¹⁵⁷ Using the reserve of immigrants already living in the EU is one strategy proposed by Commission to fill labour shortages in certain sectors.

On one hand, when immigrant residence concentrates in one area, it creates the risk of isolation from host society. On the other hand, in the ethnically mixed areas racism and xenophobia emerges as an obstacle to migrants' sense of belonging and participation. Therefore, those factors should be taken in integration policies into account.

- *Health and social services*, this is also key issue for integration.

- *The social and cultural environment*, meeting others is an important step in settling down and becoming a part of the host society and interaction between different cultures and religions will increase tolerance and respect. Measures are needed to encourage this participation in local community life, and they should be encouraged to take part in public debate. Therefore, accurate information about immigrants and their positive contribution, both economically and culturally, to our societies needs to be publicised as failure to meet this challenge may fuel resentment, social exclusion and the rise of racism and xenophobia. Here politicians and the mass media have a major responsibility in their role as educators of public opinion.

- *Nationality, civic citizenship and respect for diversity*, obtaining nationality is a facilitator to integrating immigrants as it increases the sense of belonging to the host society. Therefore, EU urges member states to make easy for legally resided immigrants for sufficient time to get the citizenship of that country, especially for 2nd and 3rd generations it should be automatically available. However, it should be noted that naturalisation itself is not enough for integrating immigrants. Participation in the political decision-making process is considered last hurdle in integration process. Most countries have granted immigrants some political rights at local level. This is very crucial step in offering foreigners similar rights and obligations as EU-nationals. This also takes away the 'object' image of immigrants and instead gives it the opportunity to be the potential 'actor' in political process.

- *Civic education or orientation for new immigrants*, this aspect wasn't stressed in Communication, but further examinations show that a need for civic education - the understanding of basic norms and values of host society, such as information about fundamental rights and obligations, including equality of men and women - is crucial. Many member states organise 'introduction programmes' for this purpose, which includes language

courses as well. This ensures that immigrants understand and respect those values of host society.

- *fight against discrimination and racism*, this aspect has been turned into even more complex in the recent political climate, with the sometimes negative stereotyping of immigrants in the media and the rise in support for far-right political parties in some member states. Anti-discrimination policies are not always connected to integration policies in many member states. Effective translation of two anti-discrimination directives can have very positive effect on combating discrimination. However, it is observed that principle of equal treatment among the migrants in member states is far from being achieved. There is still discrimination towards immigrants especially in employment. .

Comprehensive integration policy should involve both mainstreaming and specific programmes addressed to integration. *Mainstreaming* immigration means actively and openly taking into account immigrant issues in all relevant policies and measures at EU and national level.¹⁵⁸ As mentioned above, Commission report on integration has the task to ensure that interests of immigrants are streamlined in all other relevant EU policies. However, the report shows that, in some policy fields the mainstreaming of immigration issues remains slow.

As Thessaloniki Council stressed the need for developing a common European framework, EU institutions have since been working on the *Common Basic Principles* for immigrant integration policy in EU. Recently, European Council adopted conclusion which defines these common basic principles. It establishes following principles for immigrant integration policy of EU¹⁵⁹:

- Integration is a dynamic, two-way process involving both legally residing TCNs and host society;
- Integration implies respect for the basic values of EU and fundamental human rights;
- Employment is a key part of integration process and is essential to participation of immigrants, to the contributions immigrants make to the host society and to make this contributions visible;

¹⁵⁸ Commission of EC, (2004) *First Annual report on Migration and Integration*, Brussels, p 10

¹⁵⁹ Council of EU, *Press Release: Conclusion of Council Meeting*, November, 2004, Brussels
http://ue.eu.int/cms3_fo/showPage.asp?id=339&lang=en : press releases, accessed 24.12.2004

- Basic knowledge of the host society's language, history and institutions is indispensable for integration; enabling this knowledge to the immigrants is essential for successful integration;
- Efforts in education are critical to preparing immigrants and particularly their descendants, to be more active and more successful participants in society;
- Access for immigrants to institutions, as well as public and private goods and services, on a basis equal to native citizens, and in non-discriminatory way is a critical foundation for better integration;
- Frequent interaction between Member State citizens and immigrants is fundamental mechanism for integration. Shared forums, inter-cultural dialogue, education about immigrants, and immigrant cultures, and stimulating living conditions in urban the environments enhance the interaction between those two parties;
- The practice of diverse cultures and religions is guaranteed under the Charter of Fundamental Rights and must be safeguarded, unless practices conflict with other inviolable European rights or with national law;
- The participation of immigrants in democratic process and in formulation of integration policies and measures, especially at local level, supports their integration;
- Mainstreaming integration policies in all relevant policy portfolios and levels of government and public services is an important consideration in public policy formation and implementation;
- Developing clear goals, indicators and evaluation mechanisms are necessary to adjust policy, evaluate progress on integration and to make exchange of integration more effective.

Although those basic principles are not binding, it can be a good framework for greater coordination of national integration policies and EU initiatives. National policies of integration can benefit from it in a large sense. All those measures set out in both Commission Communication and Council Conclusion, if implemented properly, would make a significant contribution to the economic, social, cultural, and political integration of migrants across the European Union.

4.8. Policy Coordination and Benchmarking as a Policy Mode for Immigrant Integration Policy

Policy coordination and benchmarking has been developed as a policy mode itself and has been used in different policy areas successfully. In theory chapter of study, this was examined as a distinct policy mode. It is a soft type of policy, yet very practical and flexible. It is generally used by Commission in policy areas where EU has newly gained competence or is on the way to get it, in order to draw this policy eventually into the supranational venue. From this point of view, immigrant integration is another potential policy sphere that can apply benchmarking policy mode. Actually, Commission, in its communication and reports, has defined to EU the function of ‘policy coordinator’ in the area of immigrant integration. It is pronounced that, EU can coordinate national policies by developing common basic principles and framework for immigrant integration, by sharing experiences and learning from best practices. Benchmarking together with coordination is very suitable policy mode for such situations.

Now we will explore the possibility of using benchmarking for immigrant integration at EU level. Commission has sponsored several useful studies regarding this issue. Those studies indicate that, immigrant integration is very new area that member states began to cooperate on; therefore, there are several difficulties on the way of using benchmarking. Integration itself is very multi-faceted process that involves social, economic, political, cultural, and many other aspects; this makes the situation more complex. In order to use benchmarking, comparable indicators should be developed applicable to all member states. However, there arise three groups of problems regarding to measure the effectiveness of integration policies in member states¹⁶⁰:

- Differences of definitions and registrations;
- Ambiguity of certain indicators;
- Differences in policy approaches.

Member states differ even in the defining of some basic concepts such as who is a ‘migrant’. Potential indicators also are not defined in the same way throughout EU. The different

¹⁶⁰ Entzinger H. & Biezveld, (2003) R. Benchmarking in Immigrant Integration, report to European Commission, European Research Centre on Migration and Ethnic relations, Rotterdam, pp. 38-43

integration policies in member states (assimilationist or pluralist) can result in using same indicators for different purpose and meaning. This also means that those countries can have different policy objectives and policy instruments. Some member states have not even developed indicators for measuring certain aspects of integration process. All those create indeed difficulties for comparison and for applying benchmarking to immigrant integration.

Nevertheless, there are also growing number of similarities among EU member states in their efforts to promote integration which very significant. Niessen has found that, in all countries measures adopted by now aim at securing legal residence rights, at facilitating equal access to employment, housing, education and political decision-making. Equal access to the institutions of welfare state is viewed by most member states as primary condition for the integration of immigrants.¹⁶¹

Those similarities can be fruitful base for exchange of information, policy initiatives and best practices. Those studies conclude that benchmarking, despite all above mentioned difficulties, is possible in immigrant integration but in a 'modest' way. Benchmarking requires indicators that are sufficiently comparable, and these can only be developed if there is a basic consensus on definitions. At a more modest scale and in specific cases it does seem possible to draw fruitful and methodologically justifiable comparisons between situations that are relatively similar.¹⁶² Under such conditions benchmarking may help identify 'best practices', which may then be discussed and exchanged between the responsible authorities, not only at the level of member states, but certainly at local level also.

In the study of ERCOMER¹⁶³, the potential indicators which can be used in measuring the successfulness of immigrant integration in member states were elaborated. Due to multidimensional nature of integration process, those indicators were classified according four dimensions of integration which is socio-economic integration, legal-political integration,

¹⁶¹ Niessen, J. (2001) *Diversity and cohesion: New Challenges for the integration of immigrants and minorities*, Strasbourg: Council of Europe, p 31

¹⁶² Entzinger H. & Biezveld, (2003) R. *Benchmarking in Immigrant Integration*, report to European Commission, European Research Centre on Migration and Ethnic relations, Rotterdam, pp 44-45

¹⁶³ European Research Centre on Migration and Ethnic Relations: Entzinger H. & Biezveld, (2003) R. *Benchmarking in Immigrant Integration*, report to European Commission, Rotterdam

cultural integration, and attitudes of recipient society. These indicators per filed are as following¹⁶⁴:

Socio-economic integration:

1. employment
2. income level
3. social security
4. level of education
5. housing and segregation

Cultural integration:

1. Attitude towards basic rules and norms of the host society
2. frequency of contacts with host country and country of origin
3. choice of spouses
4. language skills
5. delinquency

Legal and political integration:

2. numbers of migrants naturalised annually or who obtain a secure residence status
3. numbers of migrants with dual citizenship
4. participation in politics
5. participation in civil society

Attitudes of recipient society:

1. reported cases of discrimination
2. perceptions of migrants by the host society
3. incidence and effects of diversity policies
4. role of media

As we can see, this is more systematic and measurable approach to immigrant integration. These indicators cover almost all aspects of immigrant integration process and can be very practical in this respect. After benchmarking achieves some level of sophistication (able to

¹⁶⁴ Entzinger H. & Biezveld, (2003) R. *Benchmarking in Immigrant Integration*, report to European Commission, European Research Centre on Migration and Ethnic relations, Rotterdam, pp 32-36

define best practices, have sufficient base for comparison) it may be sensible to define policy targets that can be measured on a really comparative basis.

Benchmarking can be a very useful and effective instrument in the promotion of immigrant integration. However, in this highly diverse and very complex policy field many obstacles need to be overcome before benchmarking can be implemented at a reasonably large scale. A very useful step towards this would be to develop a similar monitoring system through which relevant data concerning integration may be collected from member states in a comparable manner. This could be a very useful step on the road towards more sophisticated forms of benchmarking, which eventually would benefit immigrant integration throughout the EU.

To sum up, the Commission calls for more coherent and long-term European framework for integration to ensure that immigration contributes more effectively to the new demographic and economic environment. It claims that successful integration of immigrants is both a matter of social cohesion and prerequisite for economic efficiency. Calling for holistic approach, communication touches upon the social and economic aspects of integration, as well as issues related to cultural and religious diversity, citizenship, social participation and political rights. Education, access to housing, health and social services are all mentioned.

CHAPTER V

5. ANALYSIS

5.1. Theoretical Findings

Theoretical background for the study was introduced in the second chapter. Now, when we have also examined empirical aspects of the topic, we are better placed to analyse that study using theoretical analytical concepts. Not all theories presented turned to be equally useful for the analysis; however, they all contribute to get the holistic picture of the issue. Every theory has contributed to comprehend certain phase or aspect of the given issue throughout the study. As a matter of fact, we found out that our empirical findings are compatible with those theories in a large extend.

Why did European states choose to bring up immigration to EU level cooperation? We have seen that emergence of cooperation in the field of immigration was initially function of two major developments: first, the increasing perception among population that immigration flows were a ‘new’ threat – political pressures and failure to meet these pressures with domestic instruments due to domestic constraints resulted in search for new policy arenas that could facilitate the reassertion of immigration control; second, the subsequent linkage of this domestic problem with strengthened single market project – abolishment of internal borders required coordinated control of external borders.

The examination of chronological developments of EU cooperation on immigration issues points out that liberal intergovernmentalism/two level games theories and new institutionalism is a framework for different stages of cooperation. Former theories are good basis for analysing the developments until Amsterdam Treaty came into force. By looking through the lenses of those theories, we can well see that European cooperation on immigration has been largely formulated according the state preferences of member states and marks a rational attempt to attain restrictive policy objectives. Member states have sought to avoid domestic legal and political constraints by developing new European level cooperation with only limited scope for scrutiny and accountability. The analysis of study proves that shift to Europe thus strengthen rather than weaken state executives.

Two level game theory gives equal importance to domestic factors in intergovernmental cooperation. It turns out to be functional in the case of immigration: empirical study shows that increasing interstate cooperation on immigration related issues is least partly a function of the political pressures which are brought to bear on national governments by their predominantly illiberal electorates as well as anti-immigration interest groups and political parties. And when governments are not able to respond to these pressures due to the constraints coming from liberalness of system, they 'escape' to Europe. This exactly what liberal intergovernmentalism gives the explanation for EU cooperation, states benefit from and use the institutional environment of the EU for purposes of domestic legitimation and pursuit of preferences.

Due to the sensitiveness of immigration to the state sovereignty, member states are ceding their respective decision-making prerogatives slowly, compromising only as much sovereignty as is necessary to achieve the objectives that they cannot otherwise accomplish by acting unilaterally. All developments from informal intergovernmentalism of Schengen to intergovernmentalism of Maastricht Treaties provide vivid evidence of intergovernmentalism in immigration cooperation. So, liberal intergovernmentalism and two level game theories suit well to explain the cooperation formation and policy preferences of governments, their behaviour in negotiations regarding immigration issues; through examination of policy developments, we see that domestic factors do really matter in immigration cooperation and in construction of state preferences. However, these perspectives proved to be weak when examining the possible role of institutions in policy making process.

New institutionalism perspectives gave good insights for analysing institutional dynamics that arise as a consequence of integration, the influence of supranational institutions, and their role on formation of state preferences. By taking into account institutionalist viewpoint, an understanding can be developed of the ways in which the EU's institutional context reshapes understanding of the control dimensions of policy, and gives structure to debates about EU level migrant inclusion. Institutions, especially Commission has been gaining more and more active role on shaping immigration policy. Especially after Amsterdam treaty Commission used its opportunities to the full in order to construct common EU immigration policy framework. Although member states are still holding driving seat, supranational institutions are

also no more ‘side kick’. Commission always takes liberal approach to immigration, works hard to change restrictive and exclusionist policies of member states. For this end it has created alliances with pro-migrant NGOs and other supranational institutions; it gained good opportunities for agenda setting. The most interesting recent development is the commission’s attempt to strengthen its position as information holder in an information poor environment. Emphasizing that, it is also important to mention that most of the perspectives introduced by institutionalism is good for analysing future opportunities in the field of immigration, because for now, institutions have little place on the whole picture. Therefore, some assumptions such as the ability of institution to shape the policy preferences have not turned to be real in immigration case. Moreover, by keeping democratic and judicial oversight of EP and ECJ very limited, member states could minimise the unintended consequences of integration on immigration issues which can reduce the capacity of members to control outcomes.

From the empirical study, it can be summarised that certain instances point to the continuity of transgovernmental structure within newly communitarized immigration field¹⁶⁵: *Firstly*, there is no encompassing grounding norm in treaty which would call for common European immigration policy and could have been used to establish a community competence for this. *Secondly*, important limitation has been imposed on the supranational institutions that depart from the classical ‘community method’ of integration. *Thirdly*, the uniform interpretation of the developing EU immigration policies is hampered by the plenty of flexible arrangements in this area.¹⁶⁶ *Finally*, the development of a community competence is challenged by the continuity of migration related activities outside the community pillar.¹⁶⁷

It is observed throughout the study that EU level cooperation on immigration means the engagement, however not equal, of both member states and supranational institutions to the policy-making process. Therefore, intensive transgovernmentalism policy mode proved to be operative on immigration issues so far. In these terms, there is complex combination of

¹⁶⁵ Modified from Lavenex, S., The State, Sovereignty, and the Europeanization of Migration Policy, *Swiss Political Science Review* 7(3): 99-120

¹⁶⁶ Opt-outs from cooperation in UK, Ireland and Denmark and involvement of two non-EU states: Iceland and Norway in this cooperation.

¹⁶⁷ The fight against illegal immigration, racism and xenophobia under the pillar three, inclusion of migration-related issues in foreign policy under pillar two, and some purely transgovernmental cooperation outside the EU framework in multilateral and bilateral consultations.

supranational and national immigration policies located in different institutional areas, and dealing with some aspect of immigration policy while leaving others to the discretion of member states. States are key actors in these policies, but not the only actors. Despite such intricateness, the cooperation at EU level moves and develops by the time.

The analysis of EU immigrant integration policy shows that policy coordination and benchmarking can be possible as a policy mode. This policy approach has been in use in policy areas that have started as light transnational cooperation and now are integrated part of EU policy. Since it is very new policy area that EU wants to get involved, there is very little development at EU level. Benchmarking is on the way of utilisation in this area. However, for now it is only pronounced in communications and policy analyses, not in practice. Because there must be done much in order to apply this policy mode: as we saw, immigrant integration policies are very diverse in different member states and therefore there is a problem of comparability of indicators in this field. Since the main principle of benchmarking is the comparative evaluation of experiences and elimination out best practices, it can't be done without having proper and comparable indicators of related policy.

5.2. Common EU Policy on Immigration?

In many respects immigration policy has lagged behind the changing realities of immigration. Anticipating the social, cultural and economic implications of immigration has proved to be equally difficult. Therefore, most EU policies on immigration were reactive in character and narrowly oriented on specific issues of control by emphasizing security concern. This securitisation is reflective of relatively well established national policy preferences. Restrictive efforts have been directed at those forms of migration deemed to constitute the greatest 'threat', namely 'bogus' asylum seekers and illegal migrants. EU cooperation was achieved more successfully in those areas dealing the control and asylum, while member states remained responsible for a number of significant issues, particularly with respect to the admission of economic migrants and for immigrant integration policy.

One main finding of study is that supranationalised common EU policy on migration is not formulated yet. EU's impact on immigration debates was quite marginal until the late 1990s.

Only after Amsterdam changes, there began to emerge real community-based policy framework in immigration, but is far from comprehensive and well rounded policy. That the actual common European immigration and asylum policies do not exist yet has two reasons¹⁶⁸: *First*, member states were reluctant to share more sovereignty, give up more competencies to EU level and were not ready to give up the unanimity rule applying to decision-making on immigration matters which consequently prompted ‘lowest common denominator’ decision-making with emphasis on security and restriction. Policy-making at EU level engages member states in a double debate, namely on the issue at hand and on how to best cooperate. Member states have agreed on the outline of common approach, but are constrained by a reliance on unanimity, which reflects the sensitivity of issue involved.¹⁶⁹ Difficulty is that member states have not given themselves the tools to do the job. The disjunction between what the member states say they want to do and what they are then prepared to agree on are evident. There is often the lack of understanding how issues occur differently in member states and efforts must be made to arrive at common definitions and concepts.

The *second* reason that Europe still lacks the vision and determination for a coherent immigration policy has to do with the perception of this phenomenon itself, which has been and is still negative. Many forms of migration (asylum, families, illegal) were perceived as threat and ‘unwanted’. However, the categorization of immigrants as ‘unwanted’ had nothing to do with personal qualities of individuals; rather it was institutional context at both EU and national level that produce these notions. As a result of such perception, EU policies were mostly reactive, dealing with crises over unwelcome arrivals, rather than proactive, making efforts to attract and integrate immigrants, and protect asylum seekers. Most of the agenda were occupied by restriction issues such as illegal migration, asylum and control.

But at least, during last years member states get an opportunity to understand each other better and to build confidence. Post-Amsterdam period of immigration policy has been marked with some positive developments though. Especially Tampere Council, dedicated entirely to

¹⁶⁸ Niessen, J. (2004) *Five Years of EU migration and asylum policy-making under Amsterdam and Tampere mandates*, Migration Policy Group, pp 42-43

¹⁶⁹ Geddes, A. (2003), *The politics of Migration and immigration in Europe*, London: Sage Publications, pp.197-199

immigration, played important role in defining the common EU framework generally. The fact that the Commission, from this year, starts walking on familiar ground with the implementation of the exclusive right of initiative is significant and allows the Commission to have a greater impact on setting the agenda. And it is seen from the speeches of JHA commissioner and communications of commission. Its holistic and integrated approach is very remarkable and could be very good basis for community policy. Communications provided background for community action and defined issues and explored new ways of dealing with them thus stimulating debates among wide variety of stakeholders.

One of the main findings from analysis of study is that commission's progressive and comprehensive proposals are usually blocked by member states in Council; some very important ones, such as directive on admission of TCNs for the purpose of employment were not agreed so far. Commission faced both formal and informal constraints on its agenda setting role plus the limitation that arise from continued reliance on unanimity. Moreover, as Niessen argues, adopted directives were in such lower level of harmonization that they were almost meaningless except as a 'first step' towards common legislation, such as family reunion.¹⁷⁰ In a negotiating environment based upon unanimity between member states, the more reluctant members can have decisive effect on the range of policy outcomes and can block possible progress, even if commission worked being aware of position of member states throughout the drafting process. Thus, the negotiations in JHA field developed in close interplay between commission and council. Member states were reluctant to significantly change their national laws, and agreed on relatively minimum standards.

It is worth to mention that in recent times Commission intensively tries to bring up the legal immigration, admission of labour migration into the socio-economic agenda of EU, to present a comprehensive set of proposals covering all point of Amsterdam agenda. The admission of economic migrants outside of EU made comeback on agenda for labour market and demographic reasons.¹⁷¹ Despite the emergence of the debate of the immigration needs, the

¹⁷⁰ Niessen, J. (2004) *Five Years of EU migration and asylum policy-making under Amsterdam and Tampere mandates*, Migration Policy Group, p 44

¹⁷¹ The need for high specialised labour in labour market and the ageing of EU population becomes more and more evident.

place of immigration on socio-economic agenda was not secured, because of high unemployment and popular reaction throughout Europe. While immigration does appear on Union's socio-economic mechanisms such as EES and Social Inclusion Process, it is minor elements of these mechanisms. Nevertheless, this attempt of commission is significant, because bringing immigration to socio economic agenda can grandly change the format of discussion about immigration as it is easier to give up competence in this agenda, rather than in JHA where immigration is viewed as sensitive issue to state sovereignty and is largely securitized. Niessen also considers that migration must be given the place in European socio-economic policy agenda.¹⁷² This would clarify that migration is complementary labour market strategy, rather than purely control and security issue. This would enable immigration policies to be proactive and to meet the economic and demographic projections.

EP also was involved actively in immigration debates through its reports on every legal policy initiatives. However, analyses show that ECJ and EP do not have 'regular community' competences in immigration issues and therefore, there exists democratic deficit and lack of judicial oversight. This currently gives member states to have a room to manoeuvre at EU level. However, Geddes argues that this democratic deficit could be used in progressive way; new political opportunities for pro-migrants can arise where decision-makers are relatively shielded from direct political pressures, and later by enhancement of ECJ it can serve to open up the political and social spaces for migrants at EU level.¹⁷³

Although Commission and EP had developed its relations and dialogues with NGOs and civil society regarding immigration problems, it seems to be not sufficient yet. We noticed that there is more emphasis on support for intergovernmental cooperation and projects at Commission level. Through the study we observed that the development of European policies on immigration goes beyond the procedural questions and has to do with how Europe feels with immigrants. Therefore the open dialogues with civil society are essential in changing the existing perceptions. For a long time European countries felt that immigration was unwanted

¹⁷² Niessen, J. (2004) *Five Years of EU migration and asylum policy-making under Amsterdam and Tampere mandates*, Migration Policy Group, pp 52-55

¹⁷³ Geddes, A. (2003) *Still Beyond Fortress Europe? Patterns and Pathway in EU Migration Policy*, Quinn Papers on Europeanization, N 4, pp. 5-8

and immigrants enter Europe only to take from it without giving anything in return and therefore admitted restrictive policies. There needs to be an open debate¹⁷⁴ about immigration in Europe, and an effort needs to be made to better educate public opinion about immigration's impacts. Contrary, immigrants contributed and continue to contribute to the expansion of European economies. Commission proposed OMC on immigration for this end, which could complement community legislation by providing a common framework for review and could be very useful as a soft instrument, but member states have not still brought into reality this innovative proposal.

While analyzing the immigration policy at EU level, it should also be mentioned about the implementation problems. These implementation issues are highly relevant because they relate directly to the effectiveness of policy:

First, problems of the management of policy implementation arise when the EU does not have direct powers over implementing agencies. However, when implementing immigration policy, EU depends upon national agencies, over which it has little control. 'Capabilities-expectations' gap emerges consequently¹⁷⁵.

Second, external circumstances such as extent of border controls and the cost of policing them mean that additional funding and support from national level is likely to be required to complement and reinforce attainment of EU policy objectives. The absence of perfect communication and coordination means that policy objectives can be mangled in the mill of implementation.

Third, policy learning which occurs when newer immigration countries adopt the immigration and asylum policy framework of older immigration countries. Actually, EU impact has been more evident on those new immigration countries in the Southern and Eastern Europe.

Fourth, cause and effect problems can arise if tighter regulation of migration contributes to the problems it seeks to solve by encouraging illegal entrance. Restrictive immigration policies do not reduce migration pressures. They can actually increase the cost of migration and rewards for traffickers.

¹⁷⁴ This open debate will serve two purposes: one is that it will engage the public in a process of policy-making, second is that the public will be informed and will understand that presence of immigrants is not necessarily detrimental to European societies.

¹⁷⁵ To paraphrase the sub-title of famous study of policy implementation in a federal system: great expectations in Brussels may be confounded in Brindisi.

However, the formulation and implementation of EU policy depends on a balance between member state interests and the pursuit of common EU objectives by supranational institutions. If EU lacks the capacity to implement agreed policies, there will be a scope for fragmentation of responsibility and will affect the effectiveness of policy outcomes.

We can summarise that restrictive policies underpinned by the ‘threat’ of immigrants will continue to coexist with continuation of certain forms of immigration, because liberal states can restrict but cannot control migration. Moreover, recent economic and demographic developments show that there is increasing recognition that EU needs certain immigration of high skilled and service sector labours. This paradox of fear and need left open questions to this point.

Although there has been achieved much since first informal intergovernmentalist efforts, from the analysis it seems that, EU still lacks the comprehensive common immigration policy which would have regular ‘community method’ of decision-making and which would be coherent and embrace all aspects of immigration. But it is not deadlocked also; it is developing on its own. Policy-making is now more or less communitarized but not yet decision-making. Commission’s role in recent developments is really impressive, but still not much as a leader. In the recent past, cooperation outside and within the treaty framework has allowed member states to slip domestic political and judicial constraints. There is still reluctance among some states to see the transfer of competencies to EU level. But within the changing conditions and increasing involvement of supranational institutions the future can witness interesting steps forward.

5.3. What Prospects and Opportunities for Common EU Immigrant Integration Policy?

As it is mentioned in earlier parts of study, EU immigration policy, for now, includes itself only some aspects of immigration phenomenon. Immigrant integration policy was examined in the sense that it is very new issue aroused in EU agenda, only after 2002. In the relevant chapter we looked through the existing communications, available instruments and possible

policy mode for immigrant integration policy at EU level. Now, analysis of those findings will be made in the light of general EU immigration framework.

The main decisive point is that Amsterdam treaty did not grant any legislative competence to the Union on the immigrant integration matter. It has important consequences for EU level policy and decision-making processes. Although Tampere council included immigrant integration in its conclusion as one of the four main elements of EU common immigration policy, this conclusion was very weak as many member states had insisted that most draft conclusions on integration be deleted. Most of them consider that it is the responsibility of member states to pursue integration policies, while also confessing that they have not succeeded in that challenge so far.

We analyzed the need for integration policy in previous paragraphs, and it became evident that pro-active immigration policies require effective immigrant integration policy at EU level. Moreover, the exclusionist policies of welfare states are not relevant, because social exclusion¹⁷⁶ of ‘unwanted’ immigrants through the formation of a new underclass threatens the equity ethos of the welfare state; so, with the words of Brochmann, ‘punishing groups by withdrawing benefits may punish society in the long run’.¹⁷⁷ In a view of an expected need for and growth of immigrants in Europe in the future, comprehensive integration policies are needed to keep social cohesion in society. However, there is also another side of the coin: excessive attention paid to immigrants can challenge the majority’s sense of justice. On the other hand, most member states fear that measures leading to an improvement of the situation of migrants can have a boomerang effect in that they stimulate further immigration, and increase thus the problems they were meant to solve. All those tensions should be solved in pragmatic and inclusionist way. Here arises ‘windows of opportunity’ for European solutions to problems. EU can use the unique levers at its disposal to make an effective contribution to the development of integration policy, complementing the primary responsibility of member states.

¹⁷⁶ Dispersal, removal of the right to work, and the replacement of cash benefits with vouchers have helped to place asylum seekers outside of the community of legitimate receivers of welfare benefits.

¹⁷⁷ Brochmann, G. *Is immigration threat to traditional welfare states of Western Europe?* Policy Brief N 4, p. 2

We found that there are several important instruments available for organising EU level integration policies. In the absence of EU competence, there is no legal instrument directly on immigrant integration; however other certain proposals, such as family reunion and long-term residents, contain elements of integration policy. Two anti-discrimination directives are powerful instruments to promote equality, which is the cornerstone of integration policies. Other instruments potentially important are EES, social inclusion policy, Open Method of Coordination, intergovernmental Contact Points regarding integration. European countries influenced each other's policies through an ongoing exchange of experience and policy models, in other words through soft policy mechanisms. EU's role can be identified as a coordinator and facilitator of national integration policies. In this sense, policy coordination and benchmarking is seen as a very good potential policy mode for this policy area.

Having mentioned all of these, it is regretful to note that most of those instruments are still unused, or weakly used for the purpose of immigrant integration policies at EU level. Several impediments to securing agreement on EU-wide integration strategy exist: The *first* is fear of public resistance to migrants, and to EU involvement in their conditions of stay. *Second*, absence of community competence on integration policy limits the functioning of supranational institutions. *Third*, the key levers for integration (such as employment policy, family re-union) come within the remit of different DGs at the European Commission, different committees in the European Parliament, and different Ministries at national level - with the usual barriers thus created to developing a coordinated strategy. *Fourth*, views differ across Europe on the goal of integration and appropriate strategies to achieve it. From the latter derives the problem of having comparable indicators of policy which is very important for operating of benchmarking policy mode.

The leading role of the Commission in all these activities is crucial. With its communications, reports, innovative initiatives Commission can be considered the driving force of emerging EU immigrant integration policy. Analyses show that it was actually Commission that drew this issue to the EU level debates by linking it to employment issues. It sponsors extensive researches on immigrant integration problems of member states in order to further pursue its strategy. In its pronouncing, the Commission emphasizes to intensify its efforts in a number of areas to provide a more coherent European framework for integration and to ensure that

immigration contributes as effectively as possible to the new demographic and economic challenges of EU. This requires new structures and innovative ideas, the mobilisation and co-ordination of a range of relevant policies and a variety of actors at different levels.¹⁷⁸ Commission is funding different projects that are of importance for integrating immigrants. Thus, Commission is trying to shape the policy preferences of members if we look from institutionalist point of view. However, it still depends on member states to decide whether accept these innovative proposals of Commission and Council seems reluctant in this issue, so again intergovernmentalism is on play. The European commission is limited to the voluntary agreement of member states in respect to integration. The main result Council achieved is the adoption of conclusion on basic principles of integration, but is only non-binding conclusion.

To answer the question posed in the heading - what prospects for EU level immigrant integration policy? - several findings should be analyzed together. The fact that EU member states have largely failed in their immigrant integration policies and they are aware of the threats deriving from that failure, such as segmentation of society, anti-immigrant resentment among natives, gives opportunity to find solution at EU level. Moreover, the instruments and leverages available at EU level for attainment of effective national policies add more value and perspective to this opportunity. For now, even if there is no EU competence on integration, EU can be the venue where member states exchange their experiences, learn from each other's best practices, and define general principles and frameworks. Soft policy mechanisms such as OMC, policy coordination and benchmarking can be very good for starting. So, the answer is mostly positive on the condition that members are willing to cooperate, because of non-binding character of most of those measures.

Many suggestions were laid out for the future enhancement of this policy area. Spencer's analyses are interesting in this respect. These proposals are indeed supporting our concluding analyses and our own propositions. They can be summarized as following¹⁷⁹:

¹⁷⁸ Commission of EC, (2003) *Communication on immigration, integration and employment*, Brussels, p 26

¹⁷⁹ Spencer, S. *Challenges of integration for the European Union*, Policy Brief N 19, pp 2-3

- to create a mechanism for dialogue and coordination between member states and across the Commission to facilitate ideas for the EU integration strategy to develop and to converge;
- to review existing and proposed EU immigration and asylum measures to ensure that they provide migrants with a secure legal status, and with the maximum possible access to the rights that promote integration;
- to take active responsibility for leading informed public debate about the reasons migrants are in Europe, by putting into the public domain information about the contribution they make and barriers they experience; acknowledging public fears, and redressing misinformation; in other words thinking ‘immigration as an asset, rather than a liability’;
- to employ horizontal approach rather than ‘top down’ by engaging member states, the social partners, NGOs and migrant organizations, learning from them, sharing ideas on good practice; and enabling migrants to participate in policy and decision making process;
- to conduct a review to identify which Community policies, programs, budgets and policy levers are most relevant to integration including strategies on employment, social inclusion and health;
- Monitoring and enforcement by the Commission could help to ensure implementation of the Discrimination Directives by Member States, giving immigrants and refugees the rights to work so that they became productive part of society.

We should mention that integration process requires quite a long time to give results. Therefore, every strategy concerning this must be on a long-term basis by influencing the behaviour of both the immigrants and the receiving society. However, it is not a top-down process as well; as Penninx noted, integration processes took place at the local not at the EU level, therefore local communities and other partners must be given funds and a framework to conceptualise integration policies that are functional in their specific environment.¹⁸⁰ Another very important issue is the possibility for access to EU rights for TCNs arising as a result of

¹⁸⁰ European Policy Centre, *What European Union strategy for integrating migrants?:* EPC-KBF Migration Dialogues, June 30, 2004. <http://www.theepc.be/> : European Policy Centre, accessed: 10.01.05

their legal residence in a member state rather relying on the prior acquisition of the nationality of member state, in other word, through giving full content to EU citizenship. There is even very pro-active proposal of issuing EU passport for TCNs, but it is far to achieve. As commissioner Vitorino stated, 'EU strategy for integrating immigrants is neither easy nor something that can be done overnight'. There are already some main ingredients for EU level policy: existing legal framework on immigration, financial instruments to promote immigrant integration, the framework for exchanging information on best practices and common basic principles for EU. Strong political leadership at both EU and national level is required to formulate and implement this strategy and to overcome the aforementioned obstacles.

5.4. Future Developments for EU Immigration Policies

Despite all weaknesses and barriers on the way to achieve common EU immigration policy, future developments of European Union integration give some signs for optimism. New Constitutional Treaty has been signed at EU level and now is in the phase of ratification by member states. This new treaty includes many grand changes on immigration issues regarding both decision-making and policy competence.

In terms of procedures, Commission sole right of initiative will be confirmed and migration and asylum will come under the co-decision procedure, which means EP will gain power of joint decision-making. Qualified Majority Voting will be applied to all aspect of immigration and asylum policies¹⁸¹, that is to say ordinary community procedures will be fully operative. European Council has already agreed in 2004 to use QVM and co-decision in the fields of asylum, illegal immigration and border control.¹⁸² But legal immigration will remain an exception to this rule, owing to some states' preference not to delegate sovereignty in this particular field.

¹⁸¹ Niessen, J. (2004) *Five Years of EU migration and asylum policy-making under Amsterdam and Tampere mandates*, Migration Policy Group, p 54

¹⁸² http://www.eu2005.lu/en/presidence/domaines_politiques/justice/index.html, Luxemburg presidency official website, accessed: 10.01.05

The Constitution will also extend the EU's competences in the area of immigration and asylum.¹⁸³ The union will have explicit competence to conclude readmission agreements. A new provision will allow Union to adopt legal measures on integration, provided that they do not harmonize national legislation, so this competence is limited. Issues relating the conditions of employment will remain under the unanimous decision-making, although there is transitional provision leading to change to QMV. Incorporation of Charter of Fundamental Rights to the Constitution is very positive progress to improve the status and rights of TCNs. Overall, Constitution will advance the communitarization of immigration policies both in terms of procedures and in terms of fields covered.

¹⁸³ In asylum issues, the term of European Asylum system were incorporated to treaty, the adoption of minimum rules will be abandoned in favour of establishment of uniform status and common procedures.

CONCLUSION

The aim of the study was to examine the EU immigration policies in terms of policy and decision-making process, to understand the motivations behind the move to EU level cooperation and to explore if these policies provide comprehensive common EU framework on immigration. Immigrant integration policy was studied as a case to make the study more specific.

The links between immigration and state sovereignty (migration policy touches core aspect of state sovereignty, namely the state's sovereign discretion over the entry and stay of non-nationals in its territory) suggest that the Europeanization of immigration policies can introduce a new stage in the integration process towards a 'political' union.

While EU migration policy, at its current stage includes only some aspects of immigration, over the last decade, the decision-making has progressively shifted to the Union institutions and the process has moved beyond strict intergovernmentalism characteristic of the earlier cooperation efforts. This implies both transfer of competences originally reserved for national authorities to supranational institutions and wider scope for common policies. Complex mixture of intergovernmentalism in form of unanimity and supranationalism characterizes the EU immigration policy. The coexistence of conflicting discourses, and diverse modes of decision-making in a period of numerous and rapid treaty revisions does not allow for coherent or comprehensive policy. In the new communitarized areas of immigration and asylum, limitations on the role of Commission and ECJ inhibit scope for supranational constitutionalisation and institutionalisation.

Legal immigration and immigrant integration issues are largely under the competence of member states. However, renewed growth in Europe and new labour shortages has allowed the emergence of new policy frames (global economic competition and demographic decline) which can be the door for positive immigration policies. Immigration was again back to socio-economic agenda of EU. These changes are important for the further developments of events. Because, it can change the perceptions 'how Europe feels about migration' by softening existing security and control oriented policies and stressing on more practical realities of EU.

We have to bear in mind that, it is time-taking process to build common EU policy; it took almost thirty years for Europe to achieve common trade policy in the form of single market, and harmonised immigration policy could not thus realistically be expected to happen in the forthcoming years.

Within these changing realities, immigrant integration policy becomes more central. There must be a good strategy of integrating settled and new arrived immigrants to society before opening itself to new immigration in order to solve existing problems and not to face with new challenges. Immigrant integration is now Europeanized but not communitarized issue. More or less, immigrant integration has been brought to the EU agenda and many instruments made available to formulate and implement EU strategy. The prospects for EU level immigrant integration policy will depend on the availability of legal basis and EU competence on the issue which determines EU capacity to act, willingness of member states to cooperate on this area and configuration of institutional context in the future. 'More Europe' can bring up more pro-migrant policies and more involvement of supranational institutions which means pro-migrant groups can also have more influence on decision-making. In this context, new constitutional treaty is very promising in terms of being foundation for future developments of migration and integration policies.

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ANNEX:

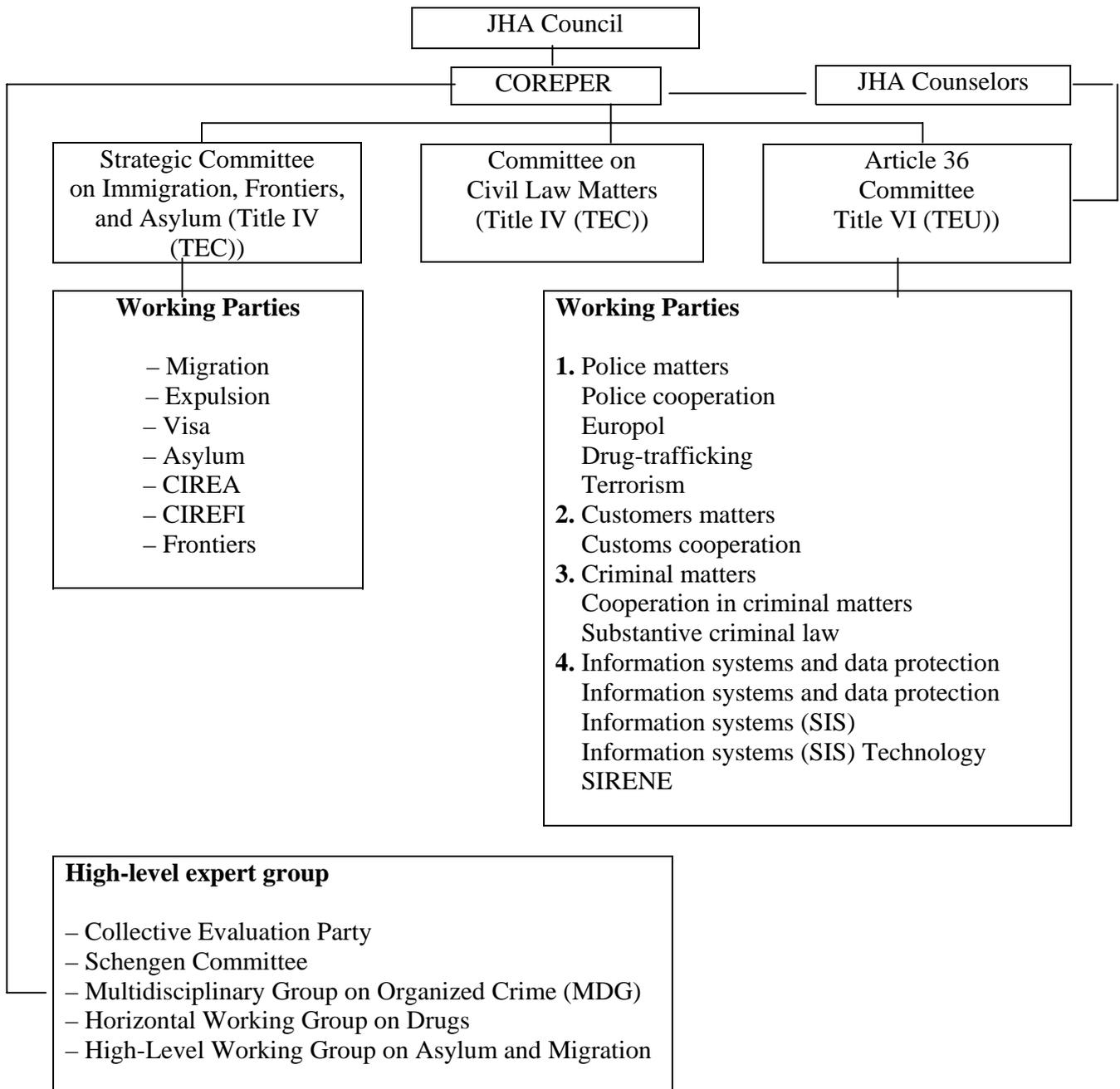
Figure1. Percentage of population made up of immigrants in 2000. EU member states and

	Population (in thousands)	Immigrants (in thousands)	Immigrants % of total population
EU-member States			
Austria	8,080	756	9,4
Belgium	10,249	879	8,6
Denmark	5,320	304	5,7
Finland	5,171	134	2,6
France	59,328	6,277	10,6
Germany	82,017	7,349	9
Greece	10,610	534	5
Ireland	3,803	310	8,1
Italy	57,530	1,634	2,8
Luxemburg	437	162	37,2
The Netherlands	15,864	1,576	9,9
Portugal	10,016	233	2,3
Spain	39,910	1,259	3,2
Sweden	8,842	993	11,2
United Kingdom	59,415	4,029	6,8
Accession Countries			
Bulgaria	7,949	101	1,3
Cyprus	784	49	6,3
Czech Republic	10,272	236	2,3
Estonia	1,393	365	26,2
Hungary	9,986	296	3
Latvia	2,421	613	25,3
Lithuania	3,696	339	9,2
Malta	390	9	2,2
Poland	38,605	2,088	5,4
Romania	22,438	94	0,4
Slovakia	5,399	32	0,6
Slovenia	1,988	5	2,6
Turkey	66,668	1,503	2,3

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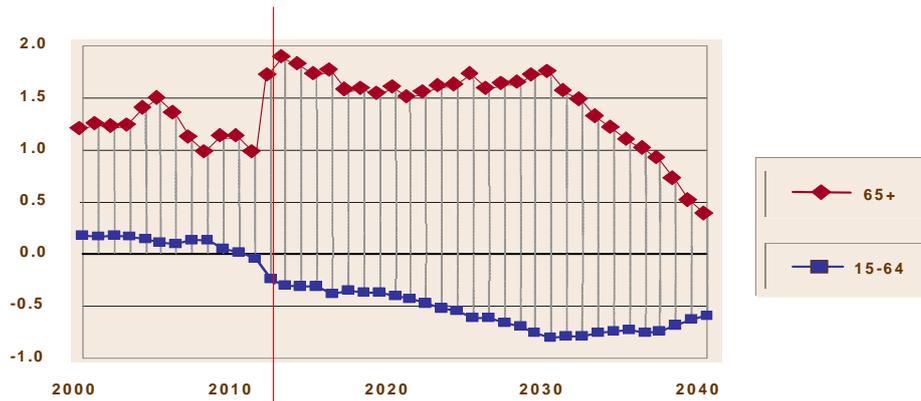
Source: United Nations Population Division, Department of Economic and Social Affairs. International Migration 2002. This table is a shortened version of the Department's wall chart covering whole world. See: <http://www.un.org/esa/pop.html>

Figure 2. Decision-making on Justice and Home Affairs after Amsterdam



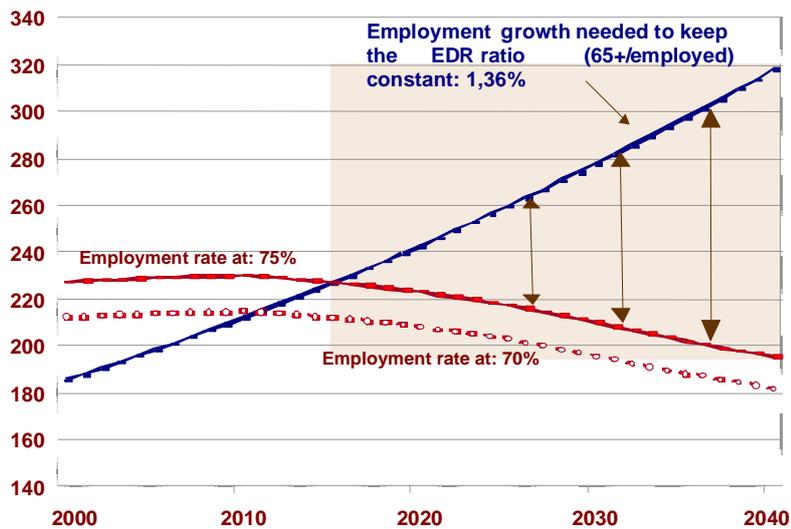
Source: Wallace, H., Wallace, W. (2000) *Policy-Making in the European Union*, Oxford: Oxford University Press, p 515

Figure 3 Annual rate of growth of population aged 65+ and 15-64, EU 25, period 2000-2040



Source: Eurostat

Figure 4 Demographic decline and the Employment growth potential of EU25 in the period 2000-2040



Source: Eurostat

Figure 5. Stocks of foreign and foreign-born labour force in selected EU countries

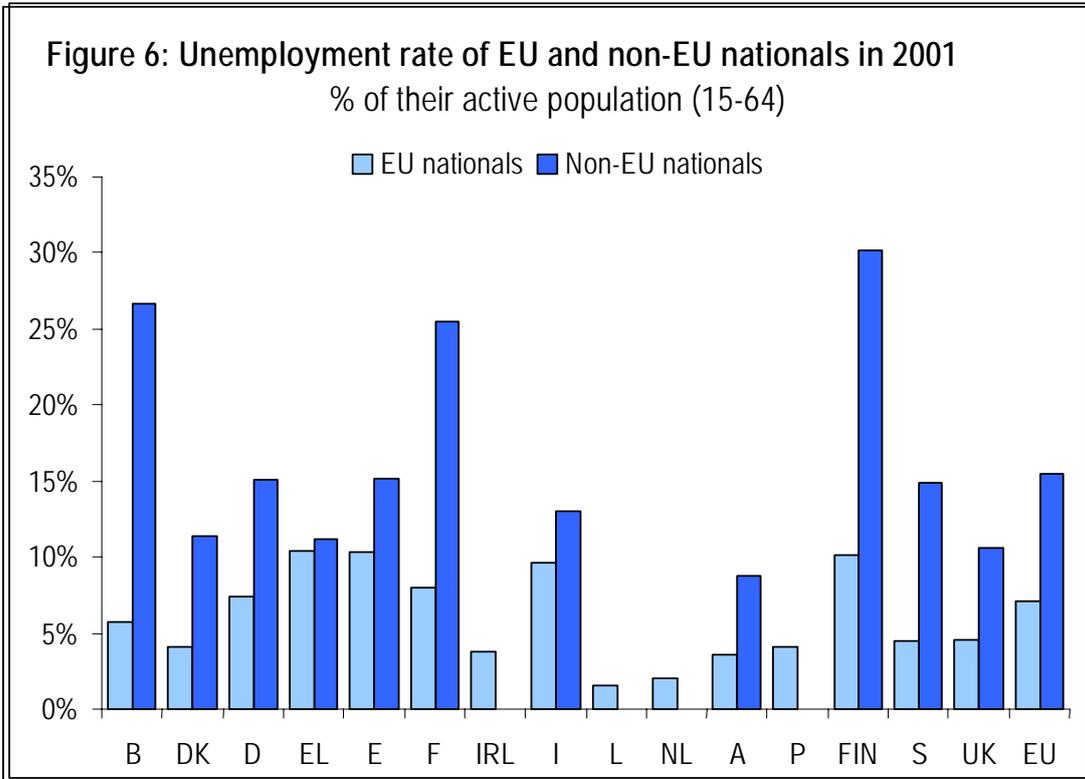
Thousands and percentages

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Stocks of foreign labour force										
Austria	277,2	295,9	304,6	316,5	325,2	328,0	326,3	327,1	333,6	345,6
% of total labour force	8,7	9,1	9,3	9,7	9,9	10,0	9,9	9,9	10,0	10,5
Belgium	303,0	325,6	342,1	354,9	362,1	368,0	377,4	390,7	386,2	..
% of total labour force	7,4	7,8	8,1	8,4	8,5	8,6	8,8	8,8	8,9	..
Czech Republic	..	..	51,6	72,1	111,9	143,2	130,8	111,2	93,5	103,6
% of total labour force	..	..	1,0	1,4	2,2	2,8	2,5	2,1	1,8	2,0
Denmark	71,2	74,0	77,7	80,3	83,8	88,0	93,9	98,3	96,3	96,8
% of total labour force	2,4	2,6	2,7	2,9	3,0	3,1	3,3	3,4	3,4	3,4
Finland	..	..	..	24,4	26,9	29,7	33,0	36,0	37,2	..
% of total labour force	..	..	..	1,0	1,1	1,2	1,3	1,4	1,5	..
France	506,0	1 517,8	1 541,5	1 593,9	1 573,3	1 604,7	1 569,8	1 586,7	1 593,8	1 577,6
% of total labour force	6,0	6,0	6,1	6,3	6,2	6,3	6,1	6,1	5,8	6,0
Germany	..	..	..	..	..	..	3 575	..	3 545	3 546
% of total labour force	..	..	..	..	..	..	8,9	..	8,8	8,8
Hungary	33,4	15,7	17,6	20,1	21,0	18,8	20,4	22,4	28,5	35,0
% of total labour force	..	0,4	0,4	0,5	0,5	0,5	0,5	0,6	0,7	0,9
Ireland	39,3	40,4	37,3	34,5	42,1	52,4	51,7	53,3	57,7	63,9
% of total labour force	2,9	3,0	2,7	2,5	2,9	3,5	3,4	3,3	3,4	3,7
Italy	285,3	296,8	304,8	307,1	332,2	580,6	539,6	614,6	747,6	850,7
% of total employment	1,3	1,4	1,5	1,5	1,7	2,6	2,4	2,7	3,6	3,6
Luxembourg	92,6	98,2	101,0	106,3	111,8	117,8	124,8	134,6	145,7	152,7
% of total employment	47,5	49,2	49,7	51,0	52,4	53,8	55,1	57,7	57,3	57,3
Netherlands	214	229	219	216	221	218	208	235	..	..
% of total employment	3,3	3,5	3,3	3,3	3,2	3,1	2,9	3,4	..	..
Portugal	54,9	59,2	63,1	77,6	84,3	86,8	87,9	88,6	91,6	99,8
% of total labour force	1,1	1,3	1,4	1,6	1,8	1,8	1,8	1,8	1,8	2,0
Spain	171,0	139,4	117,4	121,8	139,0	166,5	178,7	197,1	199,8	..
% of total labour force	1,1	0,9	0,8	0,8	0,9	1,0	1,1	1,2	1,2	..
Sweden	241	233	221	213	220	218	220	219	222	222
% of total labour force	5,3	5,3	5,1	5,0	5,1	5,1	5,2	5,1	5,1	5,0
United Kingdom	828	902	862	864	862	865	949	1 039	1 005	1 229
% of total employment	3,0	3,6	3,4	3,4	3,4	3,3	3,6	3,9	3,7	4,4

Note: For details on sources, refer to the notes at the end of the Annex.

Data include the unemployed, except in Italy, Luxembourg, the Netherlands, Norway and the United Kingdom. Cross-border workers and seasonal workers are excluded unless otherwise stated.

Source: OECD official website: www.oecd.org



Source: LFS, Eurostat; <http://epp.eurostat.cec.eu.int/>