



The Europeanisation of Integration Policies – An Analysis of the Development of a new EU Policy Field

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Universität Bamberg, März 2007

Bamberger Beiträge zur Europaforschung und zur internationalen Politik Nr. 15/2007

Abstract: This article analyses the development of integration policies concerning third country nationals at the European level. Starting with the discovery of recent policy developments at the EU level, including new directives granting social rights to non EU citizens, the paper proceeds to examine the reasons that enabled this shift from the national to the European level of decision making. It concludes that integration policies have been created as a new EU policy field amidst the also fairly new policy field of immigration policies. In light of the theoretical concept of „organisational fields” the interests and motives of the main actors involved are analysed, resulting in the following conclusions: First, a European integration policy could only be established within the emerging field of immigration policies. Secondly, the European Parliament, the Council of Europe, several non-governmental organisations and most notably the European Commission played an important role in promoting integration policies at the European level. Thirdly, these actors tried to strengthen the status of integration policies by emphasising the linkage between successful integration policies and economic and social cohesion.

* The research was kindly supported by a fund from the Jean Monnet Chair for European Studies in Social Sciences at the University of Bamberg. For their helpful comments on earlier drafts the author would like to thank Dominik Bohl, Claudia Diehl, Wulf Drexler, Martin Heidenreich, Matthias Koenig, Katharina Moosbauer and Miriam Schader.

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1. Introduction

On the one hand, the reasons enabling the Europeanisation of migration policies have been widely discussed, highlighting security concerns and mutual advantages of the nation states regarding matters of immigration control (Angenendt 2002; Collinson 1993; Geddes 2000a, 2003b; Guiraudon 2000; Tomeí 2001; Turnbull/Sandholtz 2001), or analysing the role of non-governmental organisations (NGOs) (Favell 1998; Geddes 2000b). On the other hand, the subsequent process of an emergent common integration policy agenda, which refers to the granting of rights to third country nationals (TCNs)¹, has received far less attention – mostly referring to legal issues (Brinkmann 2004; Hailbronner, 1995: 194 ff., 2004; Klos 1997). The unexpected shift of decision making from the national to the supranational arena regarding the rights of TCNs – a policy field that was once one of the last bastions of national sovereignty – has not yet been analysed and is therefore the topic of this paper.

On 1 May 1999, the Treaty of Amsterdam came into effect and created for the first time a legal basis for supranational action regarding immigration and asylum issues by integrating them into the first pillar of the European Union (EU)². Immediately afterwards the EU heads of states concluded during their summit in Tampere, that TCNs shall be granted rights *comparable* to European citizens³. A decision that was followed by the adoption of four binding directives, which regulate for the first time rights of TCNs at the EU level (for an overview see *table 1*). This development signified an unexpected turn of events for two reasons. First, the diverse national integration policies and the nation states' sovereignty requests regarding the rights granted to TCNs made a communitisation of this policy field improbable (Brinkmann 2004). Second, TCNs were mainly exempt from European laws and rights during the last 60 years of EU history. Instead they were subject to national laws where their rights rather depended on their residence status than on their citizenship status. On the national level sometimes only the lack of political rights distinguished TCNs from citizens, a situation for which Hammar coined the term “denizens” (1990: 12-20). The conclusion that EU law until 1997 only benefited those inhabitants of the EU, who possessed a citizenship of

¹ Third country nationals (TCNs) are all inhabitants of the EU that do not possess the citizenship of any EU member state. The group included in the enlarged EU in 2005 15 million people, which signifies 3.43 percent of the EU population.

² The first pillar represents the community dimension. Official Journal (OJ) C 340, 10 November 1997

³ European Council Presidency Conclusion, 15-16 October 1999

an EU member state sparked the protest of various actors, whose roles and interests shall be analysed in more detail later on.

In stark contrast to this historic background the last ten years have witnessed decisive changes towards the Europeanisation of rights for TCNs. As a result of the new EU-directives the traditional distinction between EU citizens and TCNs in terms of their respective rights began to erode. However, a completely equal status has not been achieved yet because a series of optional clauses in the directives allows the nation states once again to use more restrictive measures against TCNs than against EU citizens⁴. The recent demands by some member states which require TCNs to comply with integration conditions before granting them more rights sparked a new debate on the definition of integration policy (Barwig/Davy 2004; Groenendijk 2004). And it will be interesting to see how these approaches will be dealt with at the European level in the upcoming second round of harmonisation regarding the status of TCNs.

This paper focuses on the developments that led to the “surprising” emergence of integration policies as a new policy field at the EU level. It does not focus on the effects of EU law on the nation states (Faist/Ette 2007; Olsen 2002; Radaelli 2003) instead the underlying reasons for the augmentation of collective decision making at the supranational level stand at the centre of this investigation. The research is based on an analysis of official documents spanning the last 50 years of European policy development regarding the rights of TCNs. This analysis is supplemented by expert interviews conducted with three European Commission officials and a representative of the German government in 2006.

After a theoretical overview (chapter 2), the events leading to the emergence of integration policies at the agenda of the EU will be analysed in two steps – prior (chapter 3) and after the Treaty of Amsterdam (chapter 4). In chapter 5 final conclusions will be drawn.

2. Theoretical framework of organisational fields

This analysis is embedded in the neo-institutionalist concept of organisational or social fields, which helps to clarify the emergence of new formal rules, normative and cognitive frames, and new resources that the actors can rely on (DiMaggio/Powell 1991; Scott 1994). The concept of organisational fields was at first mainly associated with the analysis of the

⁴ For example Austria, Germany, and the Netherlands demanded to expand the conditions for a long time resident status, including the following clause “*member States may require third-country nationals to comply with integration conditions, in accordance with national law*” (Council directive 109/2003/EC, Art.5 (2)). Similarly the right for family reunion differs concerning the eligibility of family members in comparison to Union citizens (Bendel 2005: 6; Herz/Blätte 2004: 283-284).

industrial or entrepreneurial sector. Later on Stone Sweet et al. (2001) and Fligstein (2001) transferred the field concept to the political arena.

In order to explain the emergence of the policy field of integration policies the interests and resources of the various actors involved are analysed. This includes an account of the shifting of competences from the Council of Europe to the European Council – a question that has been neglected by researchers so far – and an overview of the activities of the European Parliament (EP), the European Commission and various NGOs. These actors will be characterised as agenda setters, who have the “*ability to introduce cooperation in others*” (Fligstein 2001:105). This emphasis on the actors’ dimension follows the neo-functional tradition, which ascribes skilled social actors a significant role in influencing developments at the European level (Stone Sweet/Sandholtz 1998; Stone Sweet et al. 2001). Furthermore the research highlights the power of the nation states within the EU system and the necessity to match their interests in order to foster a new policy field on the European level (Moravcsik 1993). The research therefore combines the neo-institutional emphasis on normative and cognitive aspects with a focus on the aspect of power, drawing on neo-functional as well as on intergovernmentalist assumptions. Along these dimensions three arguments are put forward in order to explain this particular process of Europeanisation.

2.1. The question of legitimacy for a common EU integration policy agenda

In general the emergence of an organisational field is not researched well. According to DiMaggio (1991), this failure leads to an underestimation of the amount of conflict that may go hand in hand with the development process until enough legitimacy can be accumulated to justify the emergence of an independent policy field. It is widely known that Europe is characterised by a multitude of integration schemes which are not easily transferable from one nation state to the next (Heckmann/Schnapper 2003). The variety of approaches and the difficulties to transfer them, led to decades of stand-still regarding the harmonisation of integration policies. But the emergence of a common EU immigration and asylum policy changed this blockade. The first argument therefore assumes that the common EU migration policy was the prerequisite for a common EU integration policy.

2.2. The manipulation of frames of references

Next to formal rules actors are also influenced through normative and cognitive frames of reference. In this context Fligstein, Stone Sweet and Sandholtz emphasise the importance of

skilled social actors in enabling cooperation between divergent interests through the creation and manipulation of cultural frames, which allow the actors to engage in new relationships.

Special attention needs to be given to the European Commission which holds official agenda-setting power due to its right of initiatives in certain policy fields. The Commission is not exposed to political pressure and can therefore fight for the rights of rather politically unpopular groups such as TCNs, while expanding its influence at the same time (Geddes 2003a: 5; Uçarer 2001: 2). The second argument supposes that the European Commission, the European Parliament and the NGOs jointly created a common frame of reference, which aimed at the alteration of the status of integration issues within the political arena.

2.3. The struggle for resources and the role of the agenda-setters

A field is characterised by a number of actors who share a common goal, common expectations and common rules. The rules are guarded by sanctions (Crozier/Friedberg 1979: 170) and incorporated through organisations. They are developed by the actors in order to meet their interests and thus they are changeable. Fligstein distinguishes between two kinds of powerful actors: the “incumbents”, who mostly construct the rules in the first place, and the “challengers”, who may contest them later on (2001:108). Concerning the field of integration policies at the EU level the rules governing the decision procedures are of special importance since they regulate the resources available for the different actors. In this context the nation states can be seen as the “incumbents” since they hold the decision power over structural changes within the EU. They try to maintain the status quo of the rules, thus, keeping their established resources of power, while the “challengers” try to disturb this equilibrium (Fligstein 2001: 123).

One of the most active of the challengers is the European Commission, which envisions further cooperation processes as an “institutional opportunity” (Uçarer 2001: 19) to broaden its influence. But also the European Parliament, which had been marginalised for the longest time in the decision making process on migration issues and the NGOs, which pursue their transnational interests through lobbyism on the EU level have to be acknowledged as challengers to the intergovernmental style of politics. Meanwhile, the Council of Ministers – especially some member states – tried to prevent a transfer of competences to the EU level. But as Thelen (2003) noted, the fragmentation of the status quo especially in crisis situations is only a matter of time before the challengers slowly gain momentum. According to the neo-functional theory the third argument put forward assumes that the above named challengers play a decisive role with regards to the emergence of integration policy demands on the EU

agenda. Their engagement is believed to be the necessary precondition for processes of Europeanization in this policy field. At the same time it can be expected, according to the intergovernmentalist theory, that their engagement represents a necessary but not a sufficient precondition, since the nation states also need to agree to any changes regarding their powers.

3. The development of a European integration policy prior to 1997

The first empirical section analyses the early developments on the European level regarding the rights of TCNs. It highlights the pioneering initiatives taken by the Council of Europe, as well as the first steps taken by the European Commission, the European Parliament, and the NGOs, which tried to foster the shift from the national to the EU level of decision making. Regarding the nation states this section examines the diverse influences, which fostered the slow process of change that led to the decision in Tampere in 1999 to grant TCNs rights comparable to EU citizens.

3.1. The Council of Europe as a pioneer in the field of integration policies

To analyse the development of the Europeanisation of policies regarding the integration of TCNs one has to acknowledge the path-building work of the Council of Europe, which constantly promoted a common integration policy agenda as a necessary counterbalance to the security-concern-driven EU immigration policies. The summary of activities listed in *table 1* demonstrates that the diverse initiatives from the Council of Europe dominated the activities at the European level until the 1990s before the EU established a legal basis for supranational activities with the Treaty of Amsterdam.

Conventions are the strongest policy instrument available to the Council of Europe, albeit they are much weaker than the directives issued at the EU level. Among these conventions only one applies to TCNs, namely the 1992 convention on the participation of foreigners in public life at local level (ETS 144), which grants them the rights a) to assemble, b) to free speech and c) to vote in local elections⁵. In general the common trend of the EU law to grant rights only to citizens of the member states was also upheld by the Council of Europe.

⁵ The right to vote in local elections was only granted in Denmark, Finland, Iceland, the Netherlands, Norway and Sweden

Table 1: Activities concerning integration policy measures on the European level⁶

Year	Activity	Body
1950/1953	European Convention on Human Rights (European Treaty Series (ETS) 05)	Council of Europe
1977/1985	European Convention on the legal status of migrant workers (ETS 93)	Council of Europe
1980, 1983, 1987, 1991, 1993, 1996, 2002	Conferences of European Ministers responsible for Migration Affairs	Council of Europe
1987-1991	Project „Community and ethnic relations in Europe”	Council of Europe
1991-1996	Project „The integration of immigrants: towards equal opportunities”	Council of Europe
1992	Convention on the participation of foreigners in public life at the local level (ETS 144)	Council of Europe
Since 1996	Round Tables on integration and community relations policy with the countries of more recent immigration	Council of Europe
1996-1999	Project „Tensions and tolerance: building better integrated communities across Europe”	Council of Europe
1997/1999	The Treaty of Amsterdam , 16-17 June 1997; 1 May 1999	EU
1999	European Council meeting in Tampere , 15-16 October	EU
2000	Conference on „Diversity and cohesion: new challenges for the integration of immigrants and minorities“, Report	Council of Europe
2000	Framework of Integration Policies, Report	Council of Europe
2000	Council Directive 43/2000/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, 29 June	EU
2000	Council Directive 78/2000/EC establishing a general framework for equal treatment in employment and occupation, 27 November	EU
2000	Proclamation of the Charta of fundamental rights of the EU, 7 December, Nice	EU
2003	Council resolution 859/2003/EC enabling the EU-wide transfer of rights for TCNs, 14 May	EU
2003	Establishment of the national contact points for integration , European Council summit in Thessaloniki, 20 June	EU
2003	Council Directive 86/2003/EC on the right to family reunification, 22 September	EU
2003	Council Directive 109/2003/EC concerning the status of third-country nationals who are long-term residents, 25 November	EU
2004	First annual report on migration and integration, 14 July	
2004	Treaty establishing a Constitution for Europe , joint signature, 29 October	EU
2004	Den Hague Program (2005-2010), 5 November	EU
2004	Establishment of eleven common basic principles for immigrant integration policy in the EU, JHA Council, 19 November	EU
Planned for 2007	Creation of a European fond for the integration of TCNs Establishment of a European Integration forum	EU

⁶ Due to the large body of policy activities the table represents only a selection of relevant measures regarding the integration of TCNs, collected by the author

The Council of Europe developed many innovative ideas and policy proposals concerning the integration of TCNs. As early as 1980 the ministers responsible for migration affairs agreed that common answers and multilateral cooperation were necessary to respond to rising immigration numbers and urgent integration challenges⁷. Similar demands can be found in all its documents mentioned in *table 1*. The Council of Europe supported a multicultural model of society with a focus on individual rights, antidiscrimination and mutual respect. It also underlined the twofold perspective of the process, requiring initiatives from the host societies as well as from the TCNs (Koenig forthcoming).

But in general the Council of Europe faces a number of restrictions: Its recommendations are non-binding and the low ratification rates of the conventions show that the nation states do not agree on a stringent line of action. Its resources are limited and although its experience concerning migration and integration issues was indisputable it could not prevent its loss of influence when the EU started to invest in a common migration policy. Since the establishment of the Treaty of Amsterdam in 1997 the Council of Europe issued only two major reports⁸, no convention and only two recommendations⁹ were adopted, and the last conference of the ministers responsible for migration affairs was in 2002. The Council of Europe seems to treat the activities within the EU with reserve, an assumption that is based on the observation that the EU is only briefly mentioned once in each final statement of its 2000 and 2002 conferences dealing with migration issues.

In the future a better cooperation between the two institutions is advisable, which the European Commission increasingly tries to foster. *"There is a lot more willingness to cooperate, and there is a lot more willingness to coordinate our agendas now than there used to be"* (Interview with a European Commission official, 2006). The Council of Europe remains the pioneer in raising the issue regarding TCNs to the top of an international agenda. But since the more powerful EU got involved in the policy field a new status order emerged as predicted by Scott (1994: 216). The relationship between both institutions can be seen as an example of DiMaggio's (1991) assumption that the development process of a policy field will not proceed without conflicts.

⁷ Among their requests were the improvement of information concerning integration measures, the securing of the legal resident status for TCNs, the inclusion in local decision making procedures and the support for the areas of education, vocation, living conditions and social and professional advancement. Council of Europe (1980) Final Conclusion: First Conference of European Ministers Responsible for Migration Affairs

⁸ CDMG (2000) 35 and Framework on Integration Policies (2000), Council of Europe Publishing

⁹ Council of Europe, REC (2000) 15: Recommendation concerning the security of long term residents and REC (2002) 4: Recommendation on the legal status of persons admitted for family reunification.

3.2. The EU and its policy development towards third country nationals

To understand why the EU organs did not pursue the quest of a common integration policy agenda until the end of the 1990s one has to take into consideration the existing treaty basis. Already in the founding Treaty of Rome the member states clarified in an additional regulation¹⁰ that the right of free movement only applied to citizens of the member states¹¹. Generally TCNs were restricted to stay in one nation state once they acquired a residency permit.

The nation states were reluctant to give up their sovereignty regarding the treatment of TCNs including the rules governing their entrance and stay (Joppke 1998: 21). The unanimity rule hindered a change of this arrangement, since especially Great Britain and Denmark successfully blocked any common progress (Geddes 2000a: 95). The construction of the common market, and the rising immigration figures, as well as the security concerns arising through these developments presumably changed the nationalistic perception on migration issues. In intergovernmental ad-hoc committees the nation states started to cooperate regarding security issues that were related to immigration flows. According to Geddes these security concerns represented the “*lowest common denominator*” for a supranational cooperation (*ibid*: 107). For the member states the intergovernmental cooperation represented a possibility to bypass national restrictions and offered an opportunity to exclude adversaries such as the European Court of Justice or other social actors (Guiraudon 2000).

The Single European Act (1986) continued to exclude the TCNs similar to the Treaty of Rome. Progress was initiated only by the five member states that agreed upon the gradual abolition of checks at their common borders. On 14 June 1985 Belgium, France, Germany, the Netherlands and Luxembourg signed the Schengen agreement, which required for the first time compensation measures regarding migration and asylum policies. It offered as assumed in the first argument an institutional basis for a supranational immigration policy agenda within which integration policy demands could be developed by the European Commission, the Parliament, and other social actors (Herz/Blätte 2004: 277).

Another possible aspect for externally induced change leading to the creation of a common EU integration policy was the destabilisation of national integration schemes. On the one hand xenophobic tendencies were on the rise in Europe during the early 1990s (Collinson

¹⁰ OJ 956/64, 17 April 1964

¹¹ Exceptions were granted to dependants of EU citizens (OJ L 257, 19 Octobre 1968), or to people with a special status due to association treaties, which existed with Turkey, Algeria, Morocco and Tunisia. (Geddes 2000a 52-54).

1993: 62; Hansen 2003). On the other hand member states began to reconfigure their own immigration and integration policies (Gieler/Fricke 2004). The German debate concerning the implementation of immigration laws in 1990 and 2005 can exemplarily highlight the national insecurities related to the attempts to introduce policy changes (Bade 1994: 57ff.; German Immigration Council 2001, 2004).

The nation states' reaction to these structural changes can be described as isomorphism. This process of homogenisation was theorised first by DiMaggio and Powell 1983. They distinguished between three dimensions of isomorphism, namely between "coercive, mimetic and normative pressures" (DiMaggio/Powell 1991).

Mimetic adaptations mostly take place in environments of heightened insecurity. If the solutions to a problem seem unclear it can be of an advantage for the organisation to adapt itself to existing structures that are perceived to be more legitimate or successful (*ibid*: 69ff.). Although DiMaggio and Powell associated this mimetic strategy to processes within an established field, the concept can also be transferred to explain the creation of a new policy field. In this case, the described national insecurity concerning integration issues led the nation states to search for solutions at the EU level where other policy fields had already been successfully coordinated. Fligstein refers to this as the "bandwagon" effect, where some EU success stories are sufficient to initiate cooperation on various subjects (2001: 114-115). The transfer of the topic from the agenda of the less visible Council of Europe to the European Council can be interpreted in this sense. This adaptation strategy can also heighten the legitimacy of the heads of state themselves, which demonstrate their good will to act in a crisis situation – with the additional outcome of a heightened legitimacy for the policy field itself. The second concept of isomorphism relating to "normative pressures" refers to the "professionalization" of policy fields. The emerging expert networks play an increasingly important role, because of their ability to connect different organisations and aid in the diffusion of innovations. Sometimes these networks are created on behalf of the nation states in the hope for better solutions to urgent problems. One example is the Joint Initiative on Racism and Xenophobia, which was founded in 1994 by France and Germany and which strongly supported the antidiscrimination agenda (Due 1996). Coercive elements only play a subordinate role in this case, although the obligatory adoption of the *acquis communautaire* by the new member states can be seen as one example for the formal pressures that led to the distribution of a common EU integration policy.

The transfer of competences to the EU level as a reaction to the structural changes and to the above mentioned normative pressures did not take place until the Treaty of Amsterdam.

The Treaty on European Union¹² in 1992 further strengthened the intergovernmentalist tradition regarding migration policies which it included into in the third pillar “Justice and Home Affairs (JHA)”. But for the first time matters regarding TCNs were declared as a joint interest. In reaction to this, the Council of Ministers released in 1996 its first resolution concerning TCNs, which was not binding for the nation states yet. One demand was that TCNs who had had a legal resident status for the last ten years should automatically be granted another 10 years of legal stay¹³. Another important document adopted in 1992 was the social policy protocol which does not include a reference to citizenship status (Handoll 1995: 392). The creation of a “citizenship of the union” on the other hand underlined once again the exclusionist stance towards TCNs, who were excluded from this status.

This overview shows the marginal progress made in the EU framework towards the inclusion of rights for TCNs in the political agenda. The differing national integration policies and the reluctance of at least some member states to hand over powers on integration issues to the supranational level blocked further developments. A common approach to immigration and asylum issues seemed more urgent (Geddes 2000a; Tomeí 2001) but in the end these newly found structures and resources served as the foundation for the development of an improved status for TCNs as assumed in the first argument. The creation of a border-free Europe forced the member states to act, while the challengers, as shown below, seized this opportunity and issued their normative demands regarding the status of TCNs.

3.3. The restrained powers of the European Commission and the European Parliament

Concerning the dimension of power the analysis comes to the conclusion that the European Commission and the European Parliament were severely restrained to foster a common integration policy agenda because the European Treaties did not offer a legal basis for a supranational approach. *“I mean the reason why we didn’t do anything until quite late was simply because it wasn’t in the treaties”* (Interview with a European Commission official, 2006). The nation states as the “incumbents” hindered the organs of the EU to exert their influence. But the European Commission and the Parliament did not react in the same way to this predicament.

While the European Commission sought out the contact with the nation states and adopted their distanced attitude towards TCNs the Parliament was already marginalised and

¹² OJ C 191/1, 29 July 1992

¹³ OJ C 80/02, 18 March 1996, section III

had no more influence to loose. Its demands were therefore more far-reaching but mostly ineffective at times¹⁴. Joint declarations with the Council of Ministers had no effect either¹⁵ and were merely of symbolic nature (Geddes 2000a: 141).

In 1985 the European Commission demanded for the first time the integration of TCNs into the EU rights system, arguing that the right to free movement was a prerequisite for the opening of internal EU borders¹⁶. A functionalist argument that could have initiated a spill over process, but at the time was not followed up by the nation states. The European Commission continued to practice a two-fold approach participating in the ad-hoc committees close to the nation states while at the same time supporting further communitisation processes for migration and integration issues. The European Parliament criticised this tactical behaviour¹⁷.

In 1992 both organs had to face further restrictions because of the Treaty on European Union, for example did the Commission have to share its right of initiative with the member states¹⁸. But in 1994 the European Commission produced a communication that became, according to a European Commission official, the basis for the decisions in Tampere in 1999. *“Pretty much everything that came out in Tampere and everything we are doing since already foreshadowed in this report.”* (Interview in 2006) The European Commission demanded the integration of TCNs in order to balance the security driven immigration policy agenda¹⁹. But it was not until the Treaty of Amsterdam that the necessary legal basis to implement these demands was given. The policy process progressed rapidly after 1999 and it became an advantage that the actors involved did not change much as pointed out by a European Commission official: *“So when the treaty came along and gave the opportunity it was really only a question of taking up the old papers and reformulating them. And talking with people you had been talking with each other for several years to get agreement on them”* (Interview in 2006).

To sum up, the European Commission tried to gain the confidence of the nation states for supranational solutions trying to foster success stories in related fields, e.g. the Schengen agreement. The European Commission bid its time gathering a coalition and preparing the nation states indirectly for further EU integration, while keeping its own interest to enlarge

¹⁴ OJ C 100/7, 12 October 1971; OJ C 76/25, 3 Juli 1974; Document A2-160/85, 25 November 1985, Document A3-195/90, 23 July 1990

¹⁵ OJ C 158/1, 25 July 1986

¹⁶ COM (1985) 48 and 310, SEK (1991) 1855

¹⁷ OJ C 255/184, 20 September 1993, p. 3

¹⁸ OJ C 254/1, 31 August 1992, Article K.3

¹⁹ COM (1994) 23 and 333

the European Commission's responsibilities in mind. (Uçarer 2001) The European Parliament and especially the European Court of Justice were meanwhile marginalised in the pillar structure following the Treaty on European Union, offering the Court no possibility to foster a process of Europeanization. In spite of the institutional constraints both the European Commission and the Parliament exercised normative pressure on the nation states in favour of an extension of rights for TCNs, with the difference that the latter lanced these demands more overtly and the former more covertly. Both actors can be described as "challengers" that demanded more power in order to influence the policy agenda dominated by the nation states as the "incumbents", which resisted a partial supranationalisation of the field until the adoption of the Treaty of Amsterdam in 1999.

3.4. Small scale attempts of non-governmental organisations

NGOs are another group that tried to exert influence on the nation states in favour of TCNs and their status within the EU. Generally a symbiotic process can be found between the NGOs and the European Commission. The European Commission heightens its legitimacy through the support and the expert knowledge of the NGOs and in turn it financially supports some of the actors, includes them in the consultation processes, and helps to create them in the first place. Among those NGOs which managed to establish themselves in Brussels were: the Migration Policy Group, the Starting Line Group, as well the Organisation European Citizenship Action Service, the European Union Migrants' Forum, and the Churches' Committee for Migrants in Europe (Favell 1998: 11-15). Another important representative of the civil society is the European Economic and Social Committee (EESC). Especially its own-initiative opinions are of importance since they try to sensitise the European Commission for future policy areas. This happened in 1991 when the EESC issued two opinions claiming better solutions for the treatment of TCNs, while emphasising the link between economic and social cohesion in the member states and the importance to further integrate TCNs²⁰.

Prior to the Treaty of Amsterdam the NGOs successfully combined their demands within the "Starting Point" Program (Chopin/Niessen 1998). This program included the demand to extend the "union citizenship" rights to all legal resident TCNs who had lived for at least five years in any member state. Furthermore more rights for the European Court of Justice and an inclusion of TCNs in the anti-discrimination rights were claimed. The European Union Migrants' Forum even accused the member states of treating TCNs as

²⁰ Opinion of the EESC, nr. 1394, 1991, and own-initiative opinion nr. 560, 1991

second class citizens²¹. In general the demands were only partially effective. Nonetheless, the NGOs did help foster the integration policy agenda. Through their public demands they also exercised “normative pressures”, which encouraged the process of isomorphism that finally led to the supranationalisation of this policy field. The work of the NGOs has to be seen with regard to their own interests, which are: to heighten their legitimacy, their financial security and their influence in Brussels.

4. The beginnings of a common integration policy agenda since the Treaty of Amsterdam

The second empirical part focuses on the policy changes within the last ten years regarding the rights of TCNs and the materialization of a common integration policy agenda at the EU level. It focuses on the continuing struggle between the nation states and the “challengers”, and contains a brief analysis of the employed frames of references.

4.1. The process of delegating competences to the EU level

“Tampere did not come out of thin air. The Amsterdam Treaty actually made it possible to develop the policy acts” (Interview with a European Commission official, 2006).

The foundations for the establishment of integration policies on top the EU agenda and the basis for all subsequent policy measures were laid out with the adoption of the Treaty of Amsterdam in May 1999 (Niessen 2004). All issues regarding immigration and asylum were moved to the first pillar (section IV) of the treaty and with article 63 they were granted a legal basis. The member states did not yet agree on a complete supranationalisation of this policy area and kept their veto option thus banning qualified majority voting for at least another five years. The European Commission still had to share its rights of initiative until the 1 May 2004 and the European Parliament and the European Court of Justice were still restricted in their influence (Uçarer 2001). Concerning the TCNs, the Treaty only granted the abolishment of border controls (article 62) within the next five years was granted by the Treaty, which did by no means match to the demands for an inclusion of legally resident TCNs into the status of “citizenship of the Union” as claimed by several NGOs. However, the redefinition of article 13, which now enabled “*appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation*”, created the basis for the later anti-discrimination directives 43 and 78/2000/EC.

²¹ EP Public Hearing 17-18 October 1995: general proposal by the European Union Migrants’ Forum. http://www.europarl.europa.eu/hearings/19951018/igc/sommaire_en.htm

Immediately following the adoption of the treaty, the heads of states met in Tampere in October 1999 in order to discuss the newly created “area of freedom, security and law”. The most important topics were once again questions concerning asylum and illegal immigration. But this time the “fair treatment of TCNs” was included in the final declaration of Tampere as one of four issues for a new common EU asylum and migration policy. This represented a change in the agenda which can be connected to the constant lobbying of the European Commission. As described above, the European Commission stipulated already in its 1994 communication (p. 11) to strengthen integration measures regarding TCNs in order to achieve a balanced approach.

„The big concern was asylum and illegal migration at that time. But the trick of the people who were involved in preparing Tampere was to, in spite of that being the main political agenda, to get into the discussions and into the conclusions this balanced approach as we always called it” (Interview with a European Commission official, 2006).

In the end even the European Commission was surprised about the outcomes of the statements made at Tampere that led to a communitisation process with binding directives similar to other policy fields. *“It is quite interesting that what came out is a common immigration and asylum policy, a very strong community procedure, like the common agricultural policy and various others”* (Interview 2006). The relation between the preliminary documents – mainly the European Commission communications²² but also for example the Vienna action plan issued jointly by the Council and the European Commission on 3 December 1998²³ – and the outcomes of Tampere are clearly visible in the subject matters and the wording. This supports the assumption made in the second argument, that it was the work of the “skilled social actors” (Fligstein 2001) that helped to achieve a consensus of the member states regarding the rights of TCNs. But the coordination of the treatment of TCNs also must have represented the interests of the member states that would not have included the topic on their agenda otherwise. The common acknowledgement that the EU represents an immigration area led to an agreement on a common way of treating its migrant population in order to avoid the unwanted outcomes of failed integration. The harmonisation of entrance and resident rights was seen as a control tool and seemed beneficial (Interview with a German government official, 2006).

The developments following the adoption of the Treaty of Amsterdam and the statements made at the Tampere summit led to a change in the existing inclusion and exclusion mechanisms. Since the creation of the common market and the establishment of the

²² SEK (1991) 1855; COM (1994) 23

²³ OJ C 19, 23 January 1999

freedom of movement rights, the exclusion of EU citizens from national social protection and employment rights became more and more restricted (Heidenreich 2006: 20). Today the exclusion mechanisms available to member states are limited to the point that TCNs, too, benefit from EU-wide transferable rights

But the member states did not transfer their powers easily. The pace of supranationalisation was deliberately slowed down during the process of reaching an agreement on the directives, which were proposed by the European Commission. The directive on the right of family reunification was a typical example of the conflicts between the human rights ideals held up by the NGOs, the European Commission as well as the European Parliament in contrast to the national interests by some member states, which feared a too far-reaching agreement. This situation finally led to a decision of the lowest common denominator (Bendel 2005; Herz/Blätte 2004).

The rejection of the European Commission proposal regarding the conditions of entry and residence of TCNs for the purpose of paid employment and self-employed economic activities²⁴ signified another flex of powers *“The member states would never agree to anything, when they believe it can damage their own interests. That’s why we have the example of the access to the labour market guideline, where the Commission had to realise that it cannot put this guideline through”* (Interview with a German government official, 2006, translated by the author). The European Commission reacted with the establishment of a high-level advisory group²⁵ and the proposal of four separate directives that only refer to a smaller group of workers²⁶. *“We actually admitted that the horizontal approach that covers wholly all migrants coming for the purpose of work and self-employed capacity is for the moment not an issue, not something we can achieve. And so we are rather aiming for punctual approaches like highly skilled migrants”* (Interview with a European Commission official, 2006, see also Maaßen, 2006).

During their summit in Thessaloniki in 2003 the nation states decided instead to foster non-binding cooperation and enabling a knowledge-exchange regarding integration policies. This led to the creation of national contact points on integration, which already produced two handbooks on integration. The heads of state also agreed on the need for a coherent European Union framework against which they can judge and assess their own efforts. This initiative led to the adoption of eleven common basic principles for immigrant integration on 19

²⁴COM (2001) 386

²⁵ OJ L 21/20, 25 January 2006

²⁶ COM (2005) 669

November 2004 by the Council of Justice and Home Affairs²⁷. Another joint action is the yearly report on migration and integration that the European Commission issues with the help of the member states²⁸. The process resembles the open method of coordination (OMC) that is being employed in other policy fields (de la Porte 2002; Borrás/Jacobsson 2004: 193). The member states rejected the implementation of an OMC regarding immigration and asylum policies as proposed by the European Commission in 2001²⁹. But the established set of non-binding measures can be interpreted as an equally effective procedure as a European Commission official stated: “*So we do it anyway without it being called an OMC*” (Interview 2006).

During their summit in The Hague in 2004 the nation states decided that the unanimity rule shall stay in place regarding integration issues – a notable step since all other issues regarding immigration and asylum policies received the status of qualified majority voting. Together with the above mentioned decisions, this demonstrates that the nation states did not give up their control over the speed of the supranationalisation process at any point. But the various non-binding measures introduced and the adopted directives reveal the national interest in fostering a European integration policy agenda.

4.2. The continuing influence of the European Commission, the European Parliament and the non-governmental organisations.

Despite the described powers of the nation states in shaping the course of policy developments, the challengers continued to play a decisive role in guiding the developments towards a certain path. After the Tampere summit the NGOs continued to exert normative pressure and came forward with proposals on how to implement the acclaimed goals. Among their initiatives was the postulation of a “residents charta” demanding rights to be derived from status of residence and not from citizenship (Geddes 2000a: 21-26, 2000b: 641-643). This demand later manifested itself in the achievements regarding the long-time resident status agreed upon in directive 109/2003/EC. Another example is the continuing work of the EESC, which issued another own-initiative opinion titled “Immigration, integration and the role of civil society organisation” in 2002 including an outline of a “community framework programme”³⁰. The programme was taken up two years later in the eleven common basic principles for the integration of TCNs as mentioned above.

²⁷ Council of the European Union, Brussels 19 November 2004, 14615/04 (Press 321)

²⁸ COM (2004) 508, SEC (2006) 892

²⁹ COM (2000) 757

³⁰ CES 365/2002

The established expert network at the European level (Favell 1998) also successfully focused on the establishment of an anti-discrimination agenda. (Chopin/Niesen 2001) But the merits for this success have to be split between the social actors and the nation states, because the Kahn-Committee initiated by France and Germany for example was also a strong supporter for a tougher EU stance on anti-discrimination. (Geddes 2003a: 10; Due 1996) The ability of a skilled social actor to create a consensus among the other actors involved is hence not restricted to non-governmental actors but can be achieved by state officials as well.

Nevertheless it was the NGOs, the European Parliament and the European Commission that mainly played the role of an innovator and creator of new ideas. In order to widen its influence within the EU structures the European Commission persistently tried to integrate new policies concerning the status of TCNs into the supranational arena. Since the Treaty of Rome in 1957 it took 40 years to convince the member states to delegate competences regarding TCNs to the EU level. 40 years in which the European Commission and the European Parliament took more or less bold steps, which were mostly supported by the transnational NGOs with their expert knowledge and their normative support, a collaboration that shall be fostered in the future through the European Integration Forum planned by the European Commission³¹. Regarding the power dimension – which highlighted the influence of the European Commission, the EP, and the NGOs – a twofold conclusion can be drawn. As it has been shown these actors did help to introduce integration policy issue at the EU agenda. But their engagement signifies only a necessary and not a sufficient precondition because in the end the nation states decide on the pace of implementation and the agenda-setters have to orient their actions towards their interests.

In order to analyse how the challengers tried to influence the member states the cognitive frames, which were being employed to support the idea of a common EU integration policy, were scrutinized. Among the common arguments repeatedly employed by the “skilled social actors” are the necessity of labour market integration of TCNs, the perceived threat failed integration poses to national security and social cohesion, as well as demographic arguments regarding the necessity of further immigration and the need to integrate legal immigrants. Regarding the link between integration policies and the established field of employment policies the social actors emphasised the need to activate the entire EU workforce potential, including the TCNs, in order to become the most competitive

³¹ COM (2005) 389, p. 14. Another future project under discussion is the establishment of a European fund for the integration of TCNs. (*ibid.*)

and dynamic knowledge-based economy as indented by the Lisbon strategy³². Often these frames of reference are combined as seen for example in the following comment by the European Commission: *“The successful integration of immigrants is both a matter of social cohesion and a prerequisite for economic efficiency. In the context of a relaunched Lisbon agenda, it is crucial to ensure integration of both established and future immigrants”*³³ In general the employed arguments try to match the interests of the nation states. The frame of universal human rights is for example only occasionally referred to in order to support TCNs.

The attempt to institutionalise the connection between the fields of employment, social inclusion and migration with the introduction of another OMC for immigration policies has not been successful yet³⁴. Interviews with officials of the European Commission revealed that the connection between the policy fields – employment, social inclusion and migration – dates from the time when no treaty justified any community action regarding migrants. TCNs nonetheless received funding through the social and economic programs aimed at disadvantaged groups. It could be shown that the link between a successful integration and economic and social advantages became one of the standard frames employed in order to support the extension of rights to TCNs and a more coordinated integration policy. A closer analysis of national statements and documents needs to be conducted in order to analyse the outcome of this framing process and to reconstruct the arguments, which were employed by nation states to justify their decisions regarding the transfer of power to the supranational level.

5. Conclusions

The starting point of this analysis was the recognition of a new set of binding and non-binding policy acts issued at the European level that explicitly strengthened the position of TCNs in the EU. Considering the history of TCNs in the EU – which was dominated by an exclusion from EU rights and a sovereign national management of integration policies – the shift of competences from the national to the supranational level seems surprising. The aim of this analysis was hence to investigate the creation of this new EU policy field with a focus on the actors and interests that fostered its outcome. In relation to the normative, cognitive and the power dimensions the following conclusions can be drawn.

³² Lisbon European Council Presidency Conclusion, 23-24 March 2000

³³ COM (2005) 123, p. 103

³⁴ COM (2001) 387, an earlier similar mechanism was implemented but not used by the member states: COM (1985) 381

The first argument assumed that the legitimacy of integration policies as an independent policy field on the EU agenda was enabled through the creation of a common EU immigration agenda. Immigration policies played an increasingly important role after the Schengen agreement and the common market were initiated, which required compensation measures regarding the treatment of TCNs. The supranational infrastructure, such as ad-hoc committees and a core of national representatives, constituted the basic structure within which further demands regarding the integration of TCNs could be raised. The fact that the dimension of increased rights for TCNs became included within the security-driven discussions can be attributed to the normative pressure exercised by different actors. Originally the Council of Europe was the pioneer in linking security and integration issues, an approach that was adopted by the European Commission. Its repeated agenda-setting attempts regarding the necessity of an extension of the common immigration agenda with policies regarding the integration of migrants were not immediately successful. Due to the unanimity request and the lack of a treaty basis some nation states blocked a common approach. But in the shadows of a mutually beneficial common immigration policy, a new agenda regarding integration policies emerged. The first argument can therefore be confirmed.

Regarding the second dimension, the analysis showed that the challengers repeatedly tried to frame the perception of integration policies by linking it with issues of employment and social cohesion. Thus, they were issuing normative pressure through the reference to well-established agendas such as the Lisbon framework and the national security agenda and combining it with the underlying threat that the failure of one member state would have consequences for the others.³⁵ It could not be proven how far this strategy influenced the decision making processes of the individual member states. But the emergence of a common European integration policy agenda can be interpreted as an example of how the embedding of a new policy field within established structures – on the institutional, the organisational and the symbolic level – fosters its successful implementation.

The third dimension of power predicted a decisive influence of skilled social actors – such as the European Commission, the European Parliament and the NGOs – in achieving the insertion of integration policy demands within the immigration policy agenda. On the one hand, the so called “challengers” (Fligstein 2001: 123) pursued their own interests when demanding a strengthening of their supranational competences. The nation states as the “incumbents” on the other hand agreed to step by step reforms, while securing their own

³⁵ COM (2005) 389, p.16

interests. A closer analysis of the distinct national positions regarding the supranationalisation of this policy field would be worth further investigation. The reluctance of some member states to agree to a complete equalisation of the status of TCNs is reflected in the many optional clauses inserted into the directives regarding the status of TCNs and the right to family reunion. (Gronendijk 2004)

Overall the emergence of an integration policy agenda can be seen as an example for the potential to further integrate European policies despite national scepticism. The acceptance of the importance of policy measures regarding the integration of migrants and the establishment of various non-binding instruments can be attributed to the preparatory work of the above named actors. Especially the Council of Europe played a pioneering role that should not be underestimated within the EU-centric research agenda. Generally, the combination of the neo-institutional field approach with neo-functionalist and intergovernmentalist assumptions regarding the influence of the actors involved proved to be a resourceful concept in order to analyse the process of Europeanisation of a new policy field.

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