The Europeanisation of German asylum policy and the "Germanisation" of European asylum policy: the case of the "safe third country" concept

DOROTHEE LAUTER and ARNE NIEMANN

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Correspondence

Dorothee Lauter (MA)
Research Fellow
University of Hagen
Institut für Politikwissenschaft
Lehrgebiet: Politikwissenschaft III
D-58084 Hagen, Germany
dorothee.post@fernuni-hagen.de

Dr. Arne Niemann
Lecturer
University of Amsterdam
Department of Political Science
Amsterdam School of Social Science Research
OZ Achterburgwal 237,
NL-1012 DL Amsterdam, The Netherlands
E-mail: a.niemann@uva.nl
http://home.medewerker.uva.nl/a.niemann/

The Europeanisation of German asylum policy and the "Germanisation" of European asylum policy: the case of the "safe third country" concept

Dorothee Lauter and *Arne Niemann*

1. INTRODUCTION

EU asylum policy can be regarded as one of the most dynamic areas of European integration. At the constitutional level, it has shifted from an intergovernmental regime, in which only a handful Member States participated outside the Treaty framework, towards an almost fully communitarised EU policy area in less than 15 years. At the EU legislative level – even though processes were often cumbersome and usually reflected the "minimum standards" stipulated in the Treaty – output in quantitative terms has been remarkable.[1] In view of the significant dynamics of EU migration policy at both levels and the potential constraints for governments to pursue certain policies domestically as the result of European integration, what merits further explanation is that member governments often seem to have retained control over the process – both at home and in Brussels – and managed to push through their preferred policy line. In this paper we seek to substantiate this on the case of Germany with regard to the development of the "safe third country concept"[2] within EU/European and domestic asylum policy. How can the development of the concept at the European (and domestic) level be accounted for? And, how can it be explained that the German government

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[1] Since 1999 the Council has adopted on average each month ten new texts on JHA issues, many of which are on asylum policy (Monar 2004: 4).

[2] According to the safe third country rule, "an asylum seeker is denied access to substantive refugee determination procedures, on the ground that he could or should have requested and if qualified, would actually have been granted refugee protection in another country" (Kjaergaard 1994: 652).

– in both uploading and downloading[3] Europeanisation processes – stayed in charge and managed to realise its preferences? We discuss these questions particularly by analysing uploading processes leading to the EU Asylum Procedure Directive.

Our paper is linked to the (wider) debate on whether Europeanisation restricts or enhances Member governments' scope for manoeuvre (e.g. Lavenex 1999, Thielemann 2002). However, our paper goes beyond the still predominating focus on top-down processes, by including bottom-up processes in our analysis, as well as feedback processes from both levels. Within the Europeanisation literature (on uploading/bottom-up processes) our study particularly looks at the under-researched (meso-)level of policy-making, rather than the (micro-)level of policy implementation or the (macro-)level of European integration in terms of history-making decisions (e.g. Moravcsik 1998). Our contribution especially seeks to specify the instruments/mechanisms of uploading which Member governments pursue.

We argue that two, somewhat interrelated, factors can explain this process: (1) the discourse; and (2) the institutional set-up/context. The German public discourse on the notion of asylum provides the rationale for exporting the German version of the safe third country concept. Member States had introduced the notion of safe third countries in their domestic asylum legislations. However, Germany has been the only Member State establishing a list of countries through the German Parliament and annexed to the German Constitution (Basic Law), which is not rebuttable by an individual claimant. And under German asylum law any claimant accessing Germany illegally can be send back to a safe third country immediate by border authorities.

Traditional functionalist/rationalist explanations cannot shed sufficient light on the matter because (a) the safe third country rule itself accounts for only a small part of the decreasing asylum applications, (b) after enlargement the practical utility of the concept for Germany was largely vanished since all neighbouring countries are now either Member States of the

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[3] In terms of downloading Europeanisation this has been comprehensively argued in the literature. See

European Union or have joined the Schengen Agreement[4], and (c) because legally speaking no constitutional change was necessary in order to implement the Commission proposals. Instead the "sacredness" of the concept established through the public discourse provides a convincing rationale. When the concept of a safe third country was introduced into the German constitution in 1993 the concept was portrayed as an essential means to restore public order and trust into the ability of the state as well as politicians to address immediate public concerns, after a series of violent and xenophobic outbreaks in different German cities. In that discourse any deviation from the concept was portrayed as a loss of national security.

The wider discourse at the European level also adds to our understanding: here migration policy became increasingly securitised. This discourse, which developed into the dominant one, de-legitimised the rather liberal and rights-oriented first Commission proposal and NGO/UNHCR claims and thus narrowed down the policy options available to the European institutions, most notable the commission and council. At the same time this dominant discourse legitimised the restrictive asylum policy agenda of (most) Member States, including Germany.

The German proposal, which most importantly aimed at exporting its particularly restrictive version of the safe third country concept, was met by not insubstantial reservations and resistance from other Member States, EU institutions, NGOs and the UNHCR. At the same time the unanimity requirement alone cannot sufficiently explain why Germany succeeded to realise its objectives in the negotiations because of cooperative Community norms, which put limits to how much a country can block or veto in EU negotiations.

That Germany nevertheless succeeded in achieving its objectives can be attributed to the institutional context and how Germany managed to assert itself within this context, i.e. its skilful uploading by (1) playing credible two-level games under unanimity; (2) linking expertise and constructive engagement in the negotiations with winning the understanding of

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particularly (Lavenex 2001a); also Post and Niemann (2005).

the Commission; (3) good timing of its own proposal; and (4) cultivating support in the informal G5 setting. While the discourse can explain the broad rationales and shifting policy options, what we have termed the "institutional set-up/context" can explain the more specific developments.

We proceed as follows: section two defines key concepts and explicates the framework for analysing our empirical data. Section three, provides the background for, and broader context of, our subsequent analysis. The fourth section contains our empirical analysis. It considers how and why Germany managed to export its safe third country concept to the European level, i.e. we look at the "Germanisation" of EU asylum policy. Finally, we draw some conclusions.

2. CONCEPT AND FRAMEWORK

The concept of Europeanisation

Research on Europeanisation has gradually increased since the mid-1990s and has developed into an academic growth industry over the last decade. As a field of inquiry, Europeanisation merits continued systematic academic attention. The Europeanisation research agenda arguably focuses on a set of very important research questions, related to *where*, *how*, *why*, and *to what extent* domestic change occurs as a consequence of EU integration and governance. Moreover, compared to the several decades that European integration studies have focused on explaining and describing the emergence and development of a supranational system of European cooperation, research on Europeanisation is still in its infancy.

The term Europeanisation has been used in a number of different ways to describe a variety of phenomena and processes of change (cf. Olsen 2002). As a starting point,

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[4] There are other legal burden sharing mechanism in place for Member States or under the Schengen Agreement.

Europeanisation is understood here as the process of change in the domestic arena resulting from the European level of governance. However, Europeanisation is not viewed as a unidirectional but as a two-way-process, which develops both top-down and bottom-up. Top-down perspectives largely emphasise vertical developments from the European to the domestic level (Ladrech 1994, Schmidt 2002). Bottom-up accounts stress the national influence concerning European-level developments (which in turn feeds back into the domestic realm). This perspective highlights that Member States are more than passive receivers of European-level pressures. They seek to shape policies and institutions at the European level in ways that suit their national interests to reduce adjustment costs at a later stage (Börzel 2002). Member governments are thus eager to "export" their national policies to the EU level or alternatively import policy solutions that suit their domestic interests (Blomberg and Peterson 2000). Policies, ideas and practices are thus generated at all levels (EU and national) and may produce policy change at both levels. Thus, EU policies, institutions and processes cannot be taken as given, but are, at least to some extent, the result of domestic political preferences and processes which are acted out on the European level (cf. Börzel 2002; Dyson 1999). By referring to Europeanisation as a two-way process our conceptualisation underlines the interdependence between the European and domestic levels for an explanation of such processes. In contrast to a unidirectional top-down usage of the concept, studying Europeanisation as a two-way process entails certain disadvantages in terms of (waning) conceptual parsimony and methodological straightforwardness. However, we argue that these problems are outweighed by a substantially greater ability to capture important empirical phenomena.

It should be pointed out that for us Europeanisation does not equate to "EUisation". Rather the EU is only part – albeit an important one – of the wider fabric of cross-border regimes in Europe in which other (transnational) institutions and frameworks, both formal and informal, also play a role. Hence the EU is not the monopoly source and channel of Europeanisation (cf.

Wallace 2000). This may include institutional arrangements at the European level, which are related to European (integration and) cooperation in a broader sense, such as the Schengen Agreement or the G5.[5]

While working with a fairly wide notion of Europeanisation, it is important to further delimit the concept in order to avoid the danger of overstretching it. Europeanization should not be confused with "harmonisation" and also differs from "convergence". Europeanisation may lead to harmonisation and convergence, but this is not necessarily the case. Empirical findings indicate that Europeanisation may have a differential impact on national policy-making and that it leaves considerable margin for domestic diversities (Cf. Héritier *et al.* 2001). Moreover, as pointed out by Radaelli (2000: 5), there is a difference between a process (Europeanisation) and its consequences (e.g. potential harmonisation and convergence).

In order to analyse and understand the success or failure of governments to upload their policies it is important to concentrate on the meso-level of EU policy-making rather than the great history-making events. Bomberg and Peterson identified three types of decisions – "history-making", "policy-setting" and "policy-shaping" (Bomberg and Peterson 1999). Policy-setting" refers to the actual making of decisions within the legislative process at the inter-community level. This process is highly institutionalized. Formally (treaties) and informally (behavioural rules) and community institutions have become an integral part of the policy-making process (Jachtenfuchs and Kohler-Koch 2004: 103). These institutional rules determine the interaction among the EU actors and hence have an impact on the behaviour of the actors and on the policy outcome. However, this policy-making process is also embedded in a certain discursive structure in which policy choices and options are formulated before the actual decision-making. These discourses however, are not just out there but also to a certain extent reflect the institutional rules.

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[5] An informal intergovernmental forum where Italy, France, Germany, Spain and the UK discuss Justice and Home Affairs issue in order to drive the European integration process.

Our analytical framework is made up of two factors: (1) the discourse and (2) the institutional composition/context. The framework is not meant to constitute a full-fledged theory. It rather comprises building blocks that may be used for more formal theorising. The explanatory factors of the framework have been derived inductively from prior research (Post and Niemann 2005). The two factors are intertwined in several ways and cannot always be neatly separated from each other.

The discourse

Discourses have been described as institutions (here broadly defined) in their own right that shape actors' "boundaries of the possible" (Jachtenfuchs 1997: 47) and "guide political action by denoting appropriate or plausible behaviour in light of an agreed environment" (Rosamond 2000: 120). Discourse analysis points to the existence of hegemonic conceptions, elements which have acquired the status of knowledge for which reason they are located largely outside the realm of the contestable. Language here constitutes the central element through which the dominant (policy) frames[6] are generated.

It has been noted that "discourses do not exist 'out there' in the world; rather, they are structures that are actualized in their regular use by people of discursively ordered relationships" (Milliken 1999: 231). The terms assigned to specific issues concentrate the attention on certain elements and lead to the neglect of others. Through the selection of certain words over others frameworks of meanings are established. Put differently, "discursive interventions contribute towards establishing a particular structure of meaning-in-use which works as a cognitive roadmap […]." Such structures create pressure for adaptation on all actors involved (Wiener 2004: 201). The discourse hence interprets events happening in the

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[6] "A frame is a perspective from which an amorphous, ill-defined problematic situation can be made sense and acted upon." Policy frames are shared understandings concerning a given issue, which reflect actors' perceptions and definitions of the issue (Rein and Schön 1991, 264).

real world and thus provides a structure within which actors formulate their preferences and develop their negotiation positions. However, as discourses are embedded in a "struggle inside institutions for what is counted as legitimate" (Bigo 2002), it is also important to take the institutional context and the resulting actor constellation in to account.[7]

Institutional composition/context

The institutional context enables or facilitates the appearance of certain actors and (thus also) discourses, while excluding or hampering others. This may happen, as the institutional composition tends to reinforce the position of a particular advocacy coalition, thereby fostering the implementation of its promoted policy (Lavenex 2001b: 855-856). In other words, the institutional structure shapes actors' access to the decision-making arena, which in turn favours the development of certain policy lines or 'cognitive roadmaps' over others. On the EU/European level, the degree of involvement of supranational institutions and the type of decision rules (e.g. qualified majority voting or unanimity) may have an important impact on policy outcomes, as the agenda-setting powers of different actors as well as veto points are thus established. At the domestic (here German) level, the division of powers of certain groups of actors, such as the Chancellery, the Federal Foreign Office and the Ministry of the Interior, and among the various political parties, constitutes an important element of the institutional composition.

Another feature of the institutional context is the potential for *two-level games*. These may be played when domestic and international politics are entangled.[8] The insight of the "two-level" metaphor is that governments, acting in the domestic and international arenas simultaneously, have to conciliate domestic demands with international pressures. In doing

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[7] In this analysis, the study of discursive interventions has taken place through an investigation of official documents, (especially parliamentary) debates, speeches and major media.
[8] On two-level games see Putnam (1988). For use of this concept in EU studies see Moravcsik (1993).

so, governments can act as gate-keepers between the two levels. (National) policy-makers can refer to domestic constraints in order to strengthen their negotiating position at the international level. Furthermore, two-level games can be played the other way round: national policy-makers can draw on the international/European level in order to bring about policy changes in the domestic arena, which they would not have been able to produce without indirect 'support' or legitimacy from constraints at the international level. Constraints or necessities at either level may be purposely carried into the discourse arena (where it may also be exaggerated or, to some extent, strategically constructed) in order to increase one's own bargaining power on the respective other level. By advancing the need for action through two-level "strategic gaming" actors may induce the resonance with a particular policy discourse.

The two factors are (closely) linked with each other. Not only does the institutional set-up facilitate the appearance of certain actors and thus discourses. The (dominant) discourse also affects the institutional context. For example, it reduces policy options by legitimising some actors, while de-legitimising others. The discourse may also increase domestic constraints regarding EU negotiations because only certain courses of action remain viable under the dominant discourse. Increased domestic constraints in turn (positively) affect the possibility to play credible two-level games because important domestic "constituencies" are (more) likely to veto EU level outcomes.

3. BACKGROUND AND BROADER CONTEXT

In 1993 Germany reformed its asylum legislation. This marked a watershed in that it brought about a substantially more restrictive domestic asylum regime. Even though Article 16 a (1)

of the Basic Law still guarantees that "persons persecuted on political grounds shall have the right to asylum", it has been extended by a long list of specifications and restrictions (Bosswick 2000: 50). In its asylum law Germany makes use of a so-called safe third country concept. The German application of that concept, when introduced, differed from the standards set at European level, i.e. in the London Resolutions of 1992. Contrary to these resolutions, the German Basic Law does not provide for an individual assessment of the safety of a country, but allows for the general presumption of countries being safe. The German Bundestag drew up a list of countries that are considered safe. Moreover, a refugee entering from a designated third country can automatically be sent back by the border authorities, even if he or she merely travelled through the country.

From the mid-1980s several factors have influenced asylum policy both at the domestic and European level. In this context the free movement of persons objective should be mentioned, which was reinforced by the Schengen Agreement on the gradual abolition of common frontiers in 1985 and the Single European Act of 1986 which aimed at the realisation of an internal market by 1992. The introduction of the free movement of persons called for certain flanking measures, not least in the area of asylum policy, in order to tackle its (unwanted) implications, such as asylum-shopping, (geographically) unbalanced refugee flows, etc. The broader context also encompasses a number of exogenous events and developments, including increasing numbers of migrants entering the EC from the late 1980s, growing unemployment figures in many West European countries, and xenophobic violence in several EU countries including Germany (reference). This background does not only provide the broad parameters within which the German *"Asylkompromiss"* (asylum compromise) of 1993 developed, but also the context for the evolution of migration policy on the European level. The need for flanking measures – in the areas of visa, asylum and immigration policy – compensating for the implementation of the free movement of persons was explicitly stated in the Treaty of Amsterdam, which was signed in 1997.

Negotiations on the EU Asylum Procedure Directive go back to that Treaty of Amsterdam, which stipulated as one of the objectives of Title IV minimum standards on asylum procedures (Article 63, 1). The Tampare Conclusions adopted by the European Council in 1999, reinforced that goal and went further by aiming at "common standards for a fair and efficient asylum procedure" (point 14). The first Commission proposal for the asylum procedure directive of 2000 and the negotiations that lasted until 2005 (again) have to be seen in broader context.

At the beginning of the new century, the public and political focus was on the issues of illegal immigration and the trafficking in human beings. Following a series of refugee tragedies there were public demands for a more effective policy against illegal immigration. Moreover, southern European countries demanded a system for ensuring a fairer burden sharing as the number of illegal migrants entering from the Mediterranean Sea increased (Neue Züricher Zeitung Online, 22.10.2003). Consequently, pressure grew to find agreement on a common European migration policy, including measures to develop a genuine system of burden-sharing and to deter illegal immigrants from abusing refugee systems (European Council 2002).

The terrorist attacks of 9/11 lifted internal security matters to the top of the agenda of every Member State. As the attacks were carried out by foreign nationals, the measures taken in their wake focused on the tightening of border controls and migration rules. Thus, the link between security and migration was strengthened.

Right-wing parties were also gaining public support. Most notable were the success of the French right-wing populist, Le Pen in the Presidential Elections of 2002, and of the Dutch populist, Pim Fortuyn. Both gained votes by using racist and islamophobic rhetoric and pointing to their governments' inability to curb illegal immigration and the abuse of asylum. They thus pressured their governments to take more restrictive measures both at the national and EU levels (Grice and Castle 2002).

In addition, Member States still felt the "negative" implications of the gradual implementation of the free movement principle. The burden-sharing system that had been established by the Dublin Convention was working insufficiently, partly because of substantial differences between refugee laws and procedural standards in the Member States. The primary aim of the minimum standards concerning EU asylum procedures was hence to "limit secondary movements" due to the diversity of applicable rules in order to "avoid negative effects for the Member States' interests" (European Commission 2000b: para. 2.1.).

4. THE "GERMANISATION" OF EU ASYLUM POLICY: THE NEGOTIATIONS OF THE ASYLUM PROCEDURE DIRECTIVE

The discourse

The European discourse: de-legitimising human rights claims and legitimising a restrictive migration policy agenda

The Tampere Conclusions adopted by the European Council in 1999, envisioned the establishment of an "open and secure European Union, fully committed to the obligations of the Geneva Refugee Convention, and other relevant human rights instruments, and able to respond to humanitarian needs on the basis of solidarity" (European Council 1999: para 4). Consequently, the Commission widely consulted with the United Nation High Commissioner for Refugees (UNHCR) and several refugee and human rights NGOs before drafting the proposals emanating from the Amsterdam Treaty and Tampere European Council (ECRE 2004). The Commission took some of the NGOs demands (in particularly regarding procedural standards) into account. The first Commission proposal for the Procedure Directive in 2000 was ambitious both in terms of standards (including several standards that

would exceed national practices) and degree of harmonization. The safe third country rule was based on an individual assessment, not allowing for the automatic return of an applicant at the border. But it allowed for Member States such as Germany to uphold national lists of safe third countries (European Commission 2000a). However, the UNHCR and NGOs humanitarian ideas did not find the support of the Member States and were seen as "unrealistic" in light of an evolving political discourse centred around security issues that was increasingly preoccupied with control of immigration (see House of Lords 2001), especially after the terrorist attacks of 9/11 2001.

Following the 9/11 attacks, migration as a cross-border phenomenon became embedded in a broader security discourse. Within this discourse the referent object shifted from state sovereignty to referents such as democracy, freedom and the rule of law (Buzan et al. 1998: 153). The European Council defined the attacks "as an assault on our open democratic, tolerant and multicultural societies" (European Council 2001b). Through this shift the foreigner, who in the case of terrorism became the "carrier of death", was now framed as an existential threat to the stability of social order, legitimating "politics of exception"[9] (cf. Faist 2002: 10).

The post-9/11 discourse drew a clear link between terrorism and migration, merging terrorism and migration into one continuum. It was argued, for instance by Tony Blair that the anti-terrorist legislation will "increase our ability to exclude and remove those whom we suspect of terrorism and who are seeking to abuse our asylum procedures." (cited in Huysmans and Buonfino 2006, 11). And the Laeken European Council of December 2001 declared that "better management of the Union's external border controls will help in the fight against terrorism, illegal immigration and the trafficking of human beings" (European Council 2001a). As many refugees entered the Union illegally, they also became depicted as potential security threats.

The increasing number of refugee tragedies prompted accusations of illegal immigrants to abuse asylum and social security systems by right-wing parties (Roche 2000). At the European level the aim of a common immigration and asylum policy was reformulated: to strike a "balance" between on the one hand the commitment to international Conventions, principally the Geneva Convention, and on the other hand the need for "resolute action to combat illegal immigration and trafficking in human beings" (European Council 2003).

This security oriented public discourse de-legitimised any human rights based demands by NGOs and the UNHCR. Even though asylum policies were now to be harmonised at the EU level the public discourse in the Member States still portrayed it as a national issue. They still viewed themselves to be in a regulatory competition with other Member States to deflect asylum seekers in order to preserve national security (Barbou des Places 2003). This competitive environment would then not allow for any rising of standards. Hence any demands for higher asylum standards were presented to be "unrealistic" and potentially harmful for national interests (reference). Thus, by de-legitimising NGO/UNHCR (human rights) claims, while at the same time legitimising Member States' (and especially interior ministries') restrictive migration policy agenda, the European discourse triggered the abandonment of the ambitious Commission proposal concerning EU asylum procedures (cf. Post and Niemann 2005).

The security oriented wider European discourse – which increasingly merged migration and terrorism, criminalised migrants, and shifted to referents of democracy and social order – resonated well with the discourse in Germany.

The German discourse: the rational for exporting the "German" safe third country concept

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[9] "Politics of exception" refers to situations where an issue is portrayed as an existential threat, lifting it above

Although the first Commission proposal for the Procedure Directive allowed for Member States to uphold national lists of safe third countries, Germany did not content itself with this. Instead, Germany insisted on exporting "its" version of the safe third country concept into the directive, and eventually succeeded to have almost the same wording in the directive as in its legislation (on asylum).

We argue that the (German) discourse adds to our understanding because conventional rationalist/functionalist explanations leave us in the dark. These explanations would suggest that Germany bargained rather hard for exporting "its" version of the safe third country concept onto the European level in the negotiations on the EU Procedure Directive mainly because it had something substantive/material to gain from this. Such rationale can, however, be invalidated in three ways. First, it has been argued that the safe-third country concept itself only constituted a rather small element in explaining the decrease of asylum applications from 1992/1993 not least because its implementation depends on the third countries readiness to take the non-national applicant back (Interview-3-Brussels, 2007).

Secondly, and (even) more importantly, experts agree that with the recent enlargements the significance of the safe third country concept for Germany "was practically gone because with the accession of 12 new countries there are virtually no safe third countries left". Hence, today the concept actually brings "virtually no practical benefits" (Interview-3, Brussels, 2007, see Frankfurter Allgemeine Zeitung, 3 July 2003).

A third point which cannot be adequately accounted for by conventional rationalist/functionalist explanations is that Germany was not satisfied with the first (two) main proposals on the table with regard to the safe third country concept, even though Germany would not have had to alter its Basic Law substantially because both proposals allowed for a list-based approach (European Commission 2001: Article 21) and the amended proposal also allowed for border procedures in the case that an applicant arrived from a safe

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normal politics (cf. Weaver 1996).

third country (European Commission 2002: Article 35) Hence, Germany did not act to re-install a "goodness of fit", as German legislation on the concept already fit into/with the first two main proposals on the EU Procedure Directive. Therefore this is more a case of "uploading" German policy than minimising (non-existing) potential adjustment costs. Why did Germany go beyond the functionally necessary?

As conventional rationalist/functionalist rationales are unconvincing on these three points, we have to look for alternative explanations. Part of this explanatory gap can be filled by looking at the discourse. We argue that German policy-makers and negotiators pursued an exporting/uploading of the German version of the safe third country concept – beyond what was rational from a cost-benefit calculation and beyond what was functionally necessary – largely because of the (extremely) securitised discourse in Germany. "Germany's" safe third country concept was equated with the assurance of national security. Any deviation from it (at the domestic and/or EU level) was seen as a loss of national security.

The securitisation of the discourse in Germany goes back to the mid/late 1980s when in particular the southern *Länder* – Bavaria and Baden Württemberg – fostered a politicisation of the issue as they felt they had to carry a disproportional percentage of the burden (Schwarze 2001: 58). Within this discourse it was suggested that Germany was "threatened" by growing numbers of "bogus asylum seekers". Thus the *Bundesrat* argued that "it was unacceptable that during every crises in the third world or the set-up of human trafficking organizations (….) the Federal Republic of Germany is threatened to be flooded by asylum seekers, who are eager to escape their bad economic situation (…)" (BR-Drs. 100/85, Beschluss, p. 9 quoted in Münch 1992: 105, translation by authors). Following the Schengen Agreement in 1986, Germany was also said to be turning into the "*Asylreserveland*" of Europe (Tomei 1996: 4). This sort of discourse was further normalised by linking Germany's internal asylum reform process to the European integration process. The reform of the German asylum regime was

framed as a precondition for participation in a common European asylum system and thus as a condition for its internal security (Deutscher Bundestag 1993a).

While the German changes in asylum law in 1993 have been examined and explained by several authors in light of European developments (cf. Lavenex 2001a), the importance of the reform lies however rather in the domestic arena. Germany saw the worst wave of xenophobic violence since the end of he third Reich. At the same time the German population felt increasingly overburdened by the number of refugees in Germany at the beginning of the 1990s and mistrusted the politicians' ability to solve the problem. Following continued attacks against foreigners, leaving forty people dead in Rostock-Lichtenhagen and three persons in Möllen, politicians were eager to demonstrate their ability to address the problems. Thus the changes to the asylum regime, in particular the safe third country rule, were framed as instruments to establish domestic peace as the population would not accept further delays (Frankfurter Allgemeine Zeitung 27 May 1993). Hence, the safe third country rule was seen as a means to re-establish popular confidence into politics and to uphold national security and democracy while at the same time, making Germany fit for the European asylum system (Frankfurter Allgemeine Zeitung 27 May 1993). Despite the fact that the *Asylkompromiß* (asylum compromise) entailed other instruments than the safe third country concept, in the discourse and many people's awareness the concept and the compromise became identical. Any derogation from it would actually mean a derogation from the Asylkomromiß (interview-3, Brussels; Deutscher Bundestag).

(HERE THE QUOTES)

In the late 1990s, the Social Democrats (SPD)-Green coalition government as well as social and economic interest groups were pushing for a comprehensive immigration policy including labour migration. Most importantly, the government set up an expert commission involving different stakeholders – the so-called "Süssmuth Commission". Its report encouraged immigration into the labour market while preventing immigration into the social systems

(Müller 2001). Despite this pro-immigration dialogue, the Social Democrats and the Christian Democrats (CDU) continued to stress the security dimension of immigration. Thus, Interior Minister, Otto Schily, demanded that an immigration policy was not to allow persons who were not in need of protection but were eager to exploit generous social protection systems, to stay in Germany (Süddeutsche Zeitung 9/5/2003). Conservatives were calling for more restrictive measures to halt abuse of the asylum system, including the demand to abolish the constitutional right to asylum as set forth in article 16 Basic Law (Süddeutsche Zeitung 25/4/2001). Similar to the debate on the reform of the asylum law in 1992, it was once again claimed that Germany would not be able to uphold its liberal asylum policy in light of the harmonisation of standards in Europe. In the parliamentary debate on the Tampere Conclusions Jürgen Rüttgers of the CDU, for example put forward, "all our European partner countries are, as we know, thank God, liberal Western democracies and constitutional states. If however the predominant fraction of all asylum seekers arriving in Europe is still drawn to Germany, then there must be reasons. This is certainly related to our high benefits" (Deutscher Bundestag 1999, authors' translation).

With the attacks of 9/11 and rising unemployment, a close linkage between asylum and security – similar to the discourse at EU level and other European Member States, such as Britain – was drawn (Diez 2006: 14). In addition, the discourse raised concerns about the cultural threats posed to the German society by the development of "parallel societies" of Germans and Muslims, which would threaten the cultural homogeneity and would thus demolish European societies (Müller 2004: 1). Moreover, these Muslim communities would grant safe heaven to so-called "sleepers". The "sleeper", who was staying unrecognised in Germany, and who could turn at any time from being an inconspicuous student into a fanatic terrorist became a new "deterring enthrallment" (Geis 2004: 4)). Consequently, any political measures encouraging migration were rejected while stricter asylum measures were defined as instruments of "self-protection" (Müller 2004: 1). The discourse on immigration thus, turned

into one of internal security and "danger prevention", leading to an immigration law (2004) that primarily focused on instruments discouraging immigration and excluding immigrants.

The safe third country concept remained "sacred" in the political discourse. Any deviation from it (at the domestic and/or EU level) was seen as a loss of national security (Geis 2004). In sum, it may be argued that the well-established and long-standing securitised asylum discourse in Germany provides a convincing rationale for why Germany went beyond what was required for required for maintaining its safe third country national provision of the Basic Law but instead insisted on exporting more or less the precise wording of the German legislation to the EU Procedure Directive.

Negotiating the Asylum Procedure Directive:

Since the Member States remained the dominant actors under the Amsterdam regime the negotiation process and the outcome were largely depending on the interests of the Member States. Hence, before turning to the negotiations at the EU level, the process of preference formation in Germany – in particular the debate on the first German immigration law as well as the German election campaign of 2002 – have to be taken into consideration.

The German preference formation and institutional context: party cleavages, Bund-Länder relations and the Basic Law

Within the coalition government, Greens and Social Democrats had different views regarding labour migration as well as the harmonisation of EU standards. Most Social Democrats had long been sceptical with regard to a law allowing for legal immigration since it represented an electorate, which felt threatened by immigrants, particularly with regard to their economic

situation. A central demand of the Greens had always been the establishment of a modern immigration policy. As for asylum policy, there was a heated debate between Social Democrats and Greens on the need for a broader refugee definition including non-state and gender-related persecution. These different positions were fostered during the election campaign in 2002 as both governing parties had to serve the interests of different voter groups (Fried 2001). The CDU continued to oppose any compromise on an immigration bill in the Bundesrat (the upper house of the German parliament, representing the 16 *Länder*) – that had to consent to the Bill – by linking the domestic debate to the EU negotiations on common asylum standards. It argued that the government would use the negotiations at the EU level to circumvent domestic opposition against a liberal immigration law and to predetermine the substance at the EU level, resulting in unrestricted immigration and an abolition of the safe third country concept (Deutscher Bundestag 2003a). By playing such "two-level game" the CDU opposition increased the pressure on the government in the domestic arena to accommodate its demands on the immigration bill (interview-3, Brussels 2007). Consequently, the government was only able to seriously engage in negotiations at the EU level until after the passing of the domestic immigration bill in 2003. Hence, the domestic opposition party was able to play the European card in order to enhance its negotiation position in the domestic arena. This shows that national parliamentarians are increasingly aware of the European dimension and that they can use it strategically.

With a view to the EU harmonisation process, a "coalition" of CDU and SPD were in favour of a "transfer" of German standards to the EU level. The CDU feared that the harmonisation process would limit the German capacity to regulate refugee flows gained through the "Asylkompromiss", especially the safe third country concept. Both the SPD and the CDU viewed the compatibility of European standards with the German asylum law of 1993 to be essential to the German interests (Süddeutsche Zeitung 9/5/2003). Since the asylum law reforms of 1993 the numbers of asylum seekers had fallen by 76% by 1998

compared to 1993 figures (Frankfurter Allgemeine Zeitung, 14/1/1998: 2). As the CDU and the SPD were attributing this success to the implementation of a restrictive safe third country rule and the safe country of origin rule, they agreed that any derogation from this rule would lead again to an increase in asylum seekers and thus to societal instabilities (Geis 2004). The Greens argued against a simple transfer of the German minimum standards without, however, questioning the already established German asylum procedures (Käppner 2001). Only the "Party of Democratic Socialism" (PDS) underlined the importance to bring European standards in line with international human rights standards.

Considering that the *Länder* (federal states) share competences with the *Bund* (federal government) in the area of asylum and immigration policy, the *Bund* has to take the opinions and decisions of the *Länder* into account when negotiating at the EU level. As the *Länder* and communities had also benefited from the declining number of asylum applications, the *Bundesrat* resisted any EU agreement that would lead to higher protection standards in Germany. To this end they asked the government, to counter the Commission's proposal because it did not include a provision allowing for the general designation of a safe third country nor a possibility for border officials to refuse the entry of an asylum seeker coming from a safe transit country (Deutscher Bundesrat 2002).

At the same time the *Länder* also had a prominent role in the securitisation of migration. The *Bundesrat* for example tabled its own proposals regarding the fight against terrorism focusing on immigration and asylum measures. The prime minister of Baden-Würtemberg demanded in this regard that "internal security must become a main aspect of all law dealing with foreigners and asylum" (cited in Diez 2006, 16). This security-oriented move was also reflected in the subsequent negotiations between the government and *Bundesrat* in the conciliation committee. At this point in time, there was a CDU/CSU majority in the *Bundesrat*, providing the Conservative opposition with a strong negotiating position, and demanding the government to make far reaching concessions to the *Länder* as well as the

CDU/CSU, in particular with regard to the inclusion of security measures. In the negotiations the *Länder*, in particular Bavarian interior minister Beckstein made clear that any concession at the European level especially concerning the *Asylkompromiss* would cost the government in the negotiations at the national level (Interview-3, Brussels, 2007).

In sum, it can be argued, that there was a general consensus among Social Democrats and Conservatives as well as between *Bund* and *Länder* that the achievements of the *Asylkompromis*", in particular the safe third country concept, were not to be impaired by the European integration process.

The negotiations at EU level: intergovernmental bargaining under unanimity and two-level games (institutional context)

When the Commission tabled its first proposal for a directive on common asylum procedures, it was aware of the fact that the unanimity rule in the Council would not allow for a far reaching harmonisation of standards, and thus took a two-step approach: first, minimum standards which would hardly interfere with national rules were to be adopted; second, a process of genuine harmonisation was to be commenced. Already in the early stages of the negotiations it became clear that the ambitious Commission proposal could not be upheld in the Council (Interview-1, Brussels, 2007). Asylum policy touched the heart of state sovereignty, entailing great public sentiments and "strong national principles and views", making any compromise in the Council difficult (Financial Times 25/11/2003: 8).

It was also the first attempt at the European level to harmonise procedural law, demanding an approximation of administrative rules and procedures which are strongly embedded in national traditions and peculiarities. At the same time, the implementation of procedural matters will be more easily controllable for applicants as well as the EU body responsible for the oversight of the implementation of the directive. Hence Member States'

room for manoeuvre with regard to the implementation is limited (Vedsted-Hansen 2005: 374). Moreover, the unanimity rule in the Council enhanced the possibility for Member States to block aspects of the proposal that were incompatible with their own laws and perspectives and increased the possibility to play credible two-level games and hence to uphold specific domestic procedures (see below). All Member States were eager to preserve their asylum standards as well as established national instruments in order to avoid adaptational "costs" and uphold their competitive advantages compared to states with higher standards (UNHCR 2003). Moreover, throughout the negotiations several Member States, including Germany, the UK, France, the Netherlands, and Austria were reforming their national legislations resulting in more restrictive policies. As a result, the respective positions of the States were shifting, which made the negotiations particularly difficult (Ackers 2005). Member States were merely agreeing on the general aim of a harmonisation process: to ensure "efficiency" and "rapidity" of the examination procedures to prevent asylum shopping (Council 2002). Disagreement however, prevailed until 2004 with regard to instruments, including among others the notion of safe third country.

During the negotiations on the procedure directive, the German government's aim was twofold: first, to establish relatively high procedural standards – a demand by the Ministry of Justice – in particular concerning appeals; second, to have its specific rules as set forth in the *Asylkompromiss,* most importantly the concept of safe third country at the EU level. While the idea of sending applicants back to a third country that could be considered safe and to which the applicant had a link, had spread throughout Europe and the world during the 1990s, the German approach remained unique in two aspects: First it was the German Bundestag that had adopted a list of safe third countries which was incontestable for an individual applicant. Second, the German procedural law allowed refusing an applicant's entry at the border and sending him or her back to a designated safe third country without any consideration of the case.

In the negotiations Germany was not satisfied with Commission proposals that would have allowed Germany to keep a list of safe third countries. Instead, Germany insisted on a formulation that reflected its own law with regard to the designation of the safe third country and the possibility to retain its border procedures. Although in its amended proposal the European Commission introduced the idea of border procedures and upheld the possibility for Member States to establish lists of safe third countries the German government and especially the Länder made further demands that the provisions of the German asylum procedure law are becoming European standards (Die Zeit 45/2003). Hence, in its statement on the amended Commission proposal the *Bundesrat* put forward that the safe third country rule should be rejected as it diverged from the German legal position in that it required an individual assessment even if the German Bundestag has determined the country from which the person entered as "safe". Second the Bundesrat thought it was dissatisfactory from the point of view of the Länder that an applicant cognisably entering from a designated safe third country and intercepted by the police before actually making a claim for asylum cannot be send back immediately to the third country as practiced by Länder police in the case of "Großschleusungsfällen" (major cases of human trafficking) (Bundesrat, Empfehlungen der Ausschüsse, Bundesrat-Drs. 886/02).

Hence, in October 2003 the German delegation came forward with a proposal for an article 35a, (closely) resembling the German legislation (Article 16, 2 (a) and § 18 (2) Asylum Procedure Law. It allowed a Member State to deny access to its territory if an applicant entered from a safe third country and if it was obvious that he was safe from persecution in another third country or posed a threat to the general public (Council 2003: 26).

This proposal proved rather controversial in the Council and was met with (considerable) reservations by several other Member States (among others Finland, Portugal the Netherlands, Sweden), the European Parliament and the Commission because it did not give any guarantees (including legal certainty) to those seeking asylum at the border (Council 2003:

24). In their criticism these delegations were supported by the UNHCR (UNHCR (2003). The latter's High Commissioner intervened during the negotiations writing a letter to Silvio Berlusconi, holding the EU Presidency at the time, to express his concerns regarding the directive (UNHCR News Story, 24 November 2003). He warned that the proposed directive would undermine international refugee law and provide for insufficient harmonization. One of his major concerns was the newly introduced border procedures under article 35 a. Several NGOs demanded for a withdrawal of the directive in case of the inclusion of such a "super safe third country rule" (ECRE 2004). Hence, the success of the German proposal cannot be explained by a (potential) absence or lack of disagreement with the German proposal.

In addition, the unanimity rule cannot sufficiently explain the outcome. Although it increases the possibility for Member States to block provisions and, in the extreme case, to veto an agreement, the negotiating realities in the Council are somewhat different due to cooperative norms in the Council (cf. e.g Wallace 2005). There are limits to how much can be blocked, resisted or pushed through, without providing credible rationales, or skilful (non-coercive) negotiation. As one official noted with regard to the negotiations on the Procedure Directive, 'we had to stretch ourselves in the Council framework to get our [safe third country] concept through. We couldn't just say "this is negotiated under unanimity: please clear the way, here we come"' (interview-3, Brussels 2007). Given the opposition to the German proposal and the limits of the national veto in cooperative institutionalised Community decision-making, how did Germany succeed in achieving its objectives? We argue that the German delegation used several instruments for successfully uploading its preferences unto the EU level and eventually export its version of the safe third country concept. Helped by the unanimity rule, the German government made use of the following mechanisms and instruments: (1) two-level games; (2) linking expertise and constructive engagement in the negotiations with winning the understanding of the Commission; (3) good

timing of its own proposals/interventions; and (4) building/cultivating support through informal groupings.

First, with regard to upholding the safe third country concept the German government had considerable scope for playing two-level games. It could plausibly maintain during the negotiations that its capacity to compromise was very limited due to constraints at the domestic level – most importantly the ongoing negotiations on the immigration bill as well as the applicable constitutional law (cf. House of Lords 2004). With regard to the immigration bill, the German delegation communicated from the start of the negotiations onwards that it would only be able to present a unitary position and make concessions after a compromise on the immigration bill was reached between the *Bund* and *Länder* in the conciliation committee. Although the asylum procedure directive only marginally touched the immigration bill in substance, there was an implicit link between the two, as the CDU/CSU opposition was prepared to use any concessions made by the German government in relation to the *Asylkompromiss* (safe third country rule) at the EU level, to demand a trade off in the negotiations between *Bund* and *Länder* on the immigration bill (Interview-3, Brussels 2007). Here, the opposition indicated that any changes to the *Asylkompromiss* would seriously threaten any compromise on the question of including non-state and gender-specific persecution in national law, as foreseen by the EU Qualification Directive.[10] Second, the government referred to (alleged) constitutional constraints. Any agreement, which did not allow Germany to keep its version of the safe third country concept, would require a change of the *Grundgesetz*, so the argument went. And this was to be avoided given that a 2/3 majority was necessary for such as change. Legally speaking, the need for a constitutional

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[10] The Qualification Directive proposal included non-state and gender-specific persecution as asylum grounds. The government, particularly the Greens, was in favour of including a similar provision in the new immigration bill. This was however opposed by the Conservatives and the *Bundesrat*. In the national debate on the Immigration Law the government increased the legitimacy of its "case" by referring to the EU Qualification directive and the fact that all other Member States had not voiced any concerns regarding the inclusion of non-state and gender related persecution to push through a domestic clause on non-state and gender specific persecution. Without the Qualification directive – and the reverse two-level game played by the German

change is at least contested, if not unlikely. Hence, this aspect of the two-level game was mainly strategically framed. Third, the CDU-dominated *Bundesrat* would not have supported any European concept derogating from the German standards. Hence, overall the German government could credibly refer to domestic constraints making it politically imperative to have the German safe third country concept recognised at the European level (Interview-2-Brussels).

Second, throughout the 1990s Germany had advocated a European solution to the problem of burden sharing among the Member States. At the same time it successfully directly and indirectly transferred its regulatory concepts – notably the Safe Third Country Concept – to other European countries and the candidate countries in Central and Eastern Europe (Lavenex 2003). Germany had thus played a leading role in the Europeanization of asylum policies during the 1990s, and it was hence regarded as an essential player in the negotiations by the other Member States as well as the Commission. Following Germany's full engagement in the negotiations Germany took its leading role on and became a reliable and "realistic" partner for the Commission, especially with regard to the German delegations good technical (legal) know-how. As opposed to other delegations, which had problems with the Commission proposal(s), notable the UK, the German delegation helped to work constructively on (common) solutions (Interview-1, Brussels 2007). Not least due to such constructive engagement, as the negotiations evolved the Commission acknowledged the German particularities regarding its constitutional constraints and JHA Commissioner, Vitorino, promised the German Interior Minister Otto Schily that the German regulation would remain untouched by European law (Interview-1, Brussels 2007).

Third, the German proposal came in with its own proposal on a safe third country rule at the right time. During 2002/03 there was a heavy debate among Member States in particular on the possibility of a common list of safe countries and of border procedures allowing

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government back-home – it would have been unlikely that a similar provision would have been included in the

refugees to be sent back without any consideration of their claim and any right to review of their case. The Austrian delegation had been a driver on this issue. It proposed a common list approach in 2002 based on an EU regulation in order to fully harmonize the application of the concept and thus to ensure the proper functioning of the EU asylum policy (Austrian Delegation 2002). However, the Austrian proposal did not find sufficient support as a regulation would not have provided for sufficient flexibility demanded by Germany (Europe Intelligence Wire, 16/10/2002). In contrast, the German proposal/intervention was well timed because it was brought into the negotiations at the technical level when there was a stalemate in the negotiations process concerning the determination of safe third countries and the inclusion of border procedures. It provided new/fresh impetus and was thus a regarded as good solution/approach to overcome the deadlock (Interview-1, Brussels 2007).

Finally, discussion in informal groupings facilitated the process. The German proposal, concerning safe third countries and notion of the safe country of origin was first informally elaborated at the political level during a G5 meeting in October 2003, when Germany presented its version of the safe third country concept as an effective measure to prevent mass influx of refugees (Interview-1, Interview-2, Brussels 2007). Germany thus used this informal intergovernmental setting to promote its ideas and was able to convince the other members, in particular the French minister of the interior, Sarkoczy, of a list-based approach to both the safe country of origin and safe third country concept.[11] Airing its ideas during informal discussions in the G5 helped the German delegation building support in a smaller forum. As one official said with reference to the G5 forum and broad initial acceptance of German wishes and policy constraints concerning the safe third country concept, 'this sort of occasional but recurrent informal exchange and get-togethers can inject a powerful dynamics into the process' (intereview-3, Brussels 2007). This in turn, also given the importance of

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Immigration Bill (Interview-3, Brussels 2007).

these five countries in EU policy-making, fostered agreement along such lines in the Council framework. As Wallace (1985) has pointed out, agreement is facilitated when there are fewer positions or options on agreement.

In the end, the Council (2005) agreed on a safe third country concept along German lines. It can thus be argued that Germany successfully exported its safe third country concept. The super safe country rule as laid down in the directive meant another "externalisation" of migratory pressure to neighbouring countries (Kusicke 2004). At the same time, it questioned the *non-refoulement* principle and thus the international refugee regime. The European asylum regime hence moved further away from the liberal post-War refugee regime.

5. CONCLUSION

We have argued above that the institutional set-up in combination with the discourse can adequately explain how Germany managed to upload its "super safe third country concept" to the EU level.

The German discourse provides the rationale for exporting the German version of the concept. Traditional functionalist/rationalist explanations leave us in the dark here because arguably the concept itself accounts for only a small part of the decreasing asylum applications, since after enlargement the practical utility of the concept for Germany was largely gone and because legally speaking no constitutional change seemed necessary from the Commission proposals. Instead the "sacredness" of the concept established through the discourse provides a convincing rationale. In that discourse any deviation from the concept was portrayed as a loss of national security.

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[11] France regarded a common list as the best means to constrain German influence (Council 2003; Interview-2, Brussels, 2007). While Germany was not opposed to a common list, it made a reservation to ensure that it could

The more general European discourse also adds to our understanding: in the wider European discourse, which was also carried by the European Council, migration policy became increasingly securitised. This discourse, which developed into the dominant one, de-legitimised the rather liberal and rights-oriented first Commission proposal and NGO/UNHCR claims and thus narrowed down the policy options available. At the same time this dominant discourse legitimised the restrictive asylum policy agenda of (most) Member States.

As we have seen, the German proposal was met by not insubstantial reservations and resistance from other Member States, EU institutions, NGOs and the UNHCR. At the same time the unanimity requirement alone cannot sufficiently explain why Germany succeeded to realise its objectives in the negotiations, not least because of cooperative Community norms, which put limits to how much a country can just block, veto or push through in EU negotiations.

That Germany nevertheless succeeded in achieving its objectives can be attributed to the institutional context and how Germany managed to assert itself within this context, i.e. its skilful uploading by (1) playing credible two-level games under unanimity; (2) linking expertise and constructive engagement in the negotiations with winning the understanding of the Commission; (3) good timing of its own proposal; and (4) cultivating support in the informal G5 setting. While the discourse can explain the broad rationales and shifting policy options, what we have termed the "institutional set-up/context" can explain the more specific developments.

Despite the constant development of the EU asylum regime, this paper has indicated that member governments can retain considerable control over asylum policy (cf. Lavenex 1999, Thielemann 2002). Through the discourse and institutional set-up/context (and here particularly the instruments of uploading described above), the German government managed

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keep its national list until the Council would decide on a common list (Ackers 2005).

to frame and influence EU negotiations such that most of their practices were successfully exported to the European level. It remains to be seen to what extent the advent of qualified majority voting (and the exclusive right of initiative for the Commission) may affect Member State control over (EU) asylum policy in the future.

REFERENCES

Ackers, Dode, 2005: The Negotiations on the Asylum Procedure Directive, European Journal of Migration and Law, 7, 1-33.

Bade, Klaus, 1994: Ausländer – Aussiedler – Asyl: eine Bestandsaufnahme, München: Beck.

Bigo, Didier, 1996: Polices en réseaux: l'expérience européen, Paris: Presses de Science Po.

Bomberg, Elizabeth and John Peterson (1999): Decision-Making in the European Union, Houndmills: Palgrave Macmillan, New York.

Börzel, Tanja, 2002: Member State Responses to Europeanization, in: Journal of Common Market Studies, 40, 193-214.

Bosswick, Wolgang, 2000: Development of Asylum Policy in Germany, in: Journal of Refugee Studies 1 (Special Issue), 43-60.

Buller, J. 2006: Contesting Europeanisation: agents, institutions and narratives in British monetary policy, West European Politics 29, 3, 389–409.

Buzan, Barry, Ole Weaver and Jaap de Wilde, 1998: Security: A New Framework for Analysis, Boulder: Lynne Rienner.

Council of the European Union, 2005: Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, 12983/05, 2005/0031 (CNS), 17.11.2005.

Council of the European Union, 2003: Outcome of proceedings of the Asylum Working Party, 12734/1/03 Rev. 1.

Council of the European Union, 2002: Draft Statement on Safe Third Countries, 14666/02.

Council of the European Union, 1992a: Resolution on Manifestly unfounded Application for Asylum, 2 December 1992, SN 4822/1/92 WGI 1282 REV 1.

Council of the European Union, 1992 b: Conclusion concerning countries in which there is generally no serious risk of persecutions, 1 December 1992 SN 4821/92 WGI 1281.

Council of the European Union, 1992c: Resolution on a Harmonized Approach to Questions Concerning Host Third Countries, 19 November 1992, SN 4834/92 WGI 1283.

Davy, Ulrike, 2001: Art. 16a (Asylrecht), in: Erhardt Denninger et al. (eds.): Kommentar zum Grundgesetz der Bundesrepublik Deutschland, Neuwied: Luchterhand Verlag, 1-55.

Deutscher Bundesrat, 2002: Vorschlag für eine Richtlinie des Rates über Mindestnormen für Verfahren in den Mitgliedsstaaten zur Zuerkennung oder Aberkennung der Flüchtlingseigenschaft", Drs. 886/02 (Beschluss), 20.12.2002.

Deutscher Bundesrat, 2002: Empfehlung der Ausschüsse, Vorschlag ür eine Richtlinie des Rates über Mindestnormen für Verfahren in den Mitgliedsstaaten zur Zuerkennung oder Aberkennung der Flüchtlingseigenschaft, Drs. 886/02*, 9.12.2002.

Deutscher Bundestag, 2003a: Antrag, "Europäische Ausländer-, Asyl- und Zuwanderungspolitik transparent machen", Drucksachen 15/655, 17.3.2003.

Deutscher Bundestag, 2003 b: Innenausschuss Protokoll Nr. 15/18, 2.7.2003.

Deutscher Bundestag, 1999: Plenarprotokoll 14/63, 28 Oktober 1999.

Deutscher Bundestag, 1993a: Drucksachen 12/160. of 26 May, 1993 at 13505-130506.

Deutscher Bundestag, 1993b: Drucksachen 12/134, 21 January, 1993 at 11615.

Deutscher Bundestag, 1992: Debate on the Schengen Agreement, Drucksachen 12/2453, 23 April.

Diez, Thomas, 2006: Opening, Closing: Securitization, the War on Terror and the Debate about Migration in Germany, Paper for discussion at the MIDAS/SWP Workshop on Security and Migration, Berlin, 9 March 2006.

Dyson, K. 1999: EMU as Europeanization. Convergence, Diversity and Contingency, in: Journal of Common Market Studies, 38, 645-66.

ECRE, 2004: ECRE et. al. (2004), Call for withdrawal of the Asylum Procedures Directive, Letter to Mr. Antonio Vitorino – Member of the European Commission, 22 March 2004.

European Commission, 20002: Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, COM (2002) 326 final/2.

European Commission, 2000a: Proposal for a Council directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, COM/2000/578 final.

European Commission, 2000b: Communication: Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum, COM/2000/0755 final.

European Council, 2003: Presidency Conclusions, Thessaloniki, 19/20 June 2003, 11638/03.

European Council, 2002: Presidency Conclusions, Seville, 21/22 June 2002, 13463/02.

European Council, 2001a: Presidency Conclusions, Laeken 14/15 December 2001, SN 300/1/01 REV 1.

European Council, 2001b: Conclusions and Action Plan of the Extraordinary Council Meeting on 21 September 2001, SN 140/01, p.1.

European Council, 1999: Presidency Conclusions, Tampere 16 October 1999, 200/1/99.

Faist, Thomas, 2002: Extension du domaine de la lutte: International Migration and Security before and after September 11, 2001, in: International Migration Review 36, 1, 7-14.

Favell, A., 1998: The Europeanisation of Immigration Politics, European Integration online Papers, 2, 10.

Fried, Nico, 2001: Schily-Entwurf: Leises Murren, in: Süddeutsche Zeitung, 14.8.2001.

Geis, Mattias, 2004: Allein unter Siegern, in: Die Zeit, 24.6.04, No. 27, 7.

Greiner, Gerhard, 1993: Westeuropa schottet sich ab, in: Blätter der deutschen und internationalen Politik 3, 270-272.

Grice, Andrew and Stephen Castle, 2002: Europe: A tide of tough rhetoric, but no sign of a joined-up policy on immigration, in: The Independent, 25.4.02.

Haas, Ernst, 1958: The Uniting of Europe: Political, Social and Economic Forces, 1950-7, London: Stevens.

Héritier, A., D. Kerwer, C. Knill, D. Lehmkuhl and M. Teutsch, 2001: Differential Europe. New Opportunities and Constraints for National Policy-Making, Lanham: Rowman and Littlefield.

House of Lords, 2004: Select Committee on the European Union: Minutes of Evidence given by Mr Iain Walsh, Caroline Flint MP and Mr Andrew Jackson. Proposed Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status, Wednesday 21 April, 2004. Available at http://www.publications.parliament.uk/pa/ld200304/ ldselect/ldeucom/999/eue2104.pdf, 28.11.2005.

Huysmans, Jef, 2000: The European Union and the Securitization of Migration, in: Journal of Common Market Studies 38, 5, 751-777.

Huysmans, Jef and Buonfino, Alessandra, 2006: Politics of Exception & Unease: Immigration , asylum, insecurity in parliamentary debates on terrorism in the UK, Paper for the Annual Convention of the Internationa Studies Association, 22-25 March 2006, san Diego.

Jachtenfuchs, Markus, 1997: Conceptualizing European Governance, in K.E. Jørgensen (ed.): Reflective Approaches to European Governance, Basingstoke: Macmillan.

Jachtenfuchs, Markus and Kohler-Koch, Beate, 2003: Governance and Instiutional Development, in: A. Wiener and T. Diez (eds.), European Integration Theory, OUP, Oxford, p.97-115.

Joppke, Christian, 1998: Asylum and State Sovereignty: A Comparison of the United States, Germany and Great Britain, in: Christian Joppke (ed.): Challenge to the Nation-State. Immigration in Western Europe and the United States, Oxford: Oxford University Press, 109-152.

Käppner, Joachim, 2001: Gestern Schreckbild, heute Vorbild, in: Süddeutsche Zeitung, 3.7.2001.

Kimminich, Otto, 1989: Ein europäisches Asylrecht in der Tradition europäischer Rechtskultur, in: Barwig, Klaus et al. (eds.): Asylrecht im Binnenmarkt. Die europäische Dimension des Rechts auf Asyl, Baden-Baden: Nomos.

Kjaergaard, Eva, 1994: The Concept of 'Safe Third Country' in Contemporary European Refugee Law, in: International Journal of Refugee Law, 6, 4, 650-655.

Knill, Christoph, 2001: The Europeanisation of National Administrations, Cambridge: Cambridge University Press.

Kröning, Volker, 1989: Artikel 16 GG, Genfer Flüchtlingskonvention und Europäische Gemeinschaft, in: Barwig, Klaus et al. (eds.): Asylrecht im Binnenmarkt. Die europäische Dimension des Rechts auf Asyl, Baden-Baden: Nomos.

Kusicke, Susanne, 2004: Auffangstation oder sicherer Drittstaat?, in: Frankfurter Allgemeine Zeitung, No. 249, 25.10.2004, 5.

Ladrech, Robert, 1994: Europeanisation of Domestic Politics and Institutions: The Case of France, in: Journal of Common Market Studies 32, 1, 69-88.

Lavenex, Sandra 2001a: The Europeanisation of Refugee Policies: Between Human Rights and Internal Security, Burlington: Ashgate.

Lavenex, Sandra, 2001b: The Europeanization of Refugee Policies, in: Journal of Common Market Studies 39, 5, 851-874.

Lindberg, Leon N., 1963: The Political Dynamics of European Economic Integration, Stanford: Stanford University Press.

Milliken, Jennifer, 1999: The Study of Discourse in International Relations: A Critique of Research and Methods, in: European Journal of International Relations, 5, 2, 225-254.

Monar, Jörg, 2004: Specific factors, typology and development trends of modes of governance in the EU Justice and Home Affairs domain, NEWGOV, reference number 1/D17.

Monar, Jörg, 2002a: Decision-making in the Area of Freedom, Security and Justice, in: Arnull, Anthony and Daniel Wincott (eds.): Accountability and Legitimacy in the European Union, New York: Oxford University Press, 63-80.

Monar, Jörg, 2001: The Dynamics of Justice and Home Affairs: Laboratories, Driving Factors and Costs, in: Journal of Common Market Studies 39, 4, 747-764.

Moravcsik, Andrew, 1993: Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach, in: Journal of Common Market Studies 31, 473-524.

Müller, Peter, 2001:Es geht nicht um Taktik. Interview mit Peter Müller, in: Süddeutsche Zeitung, 4.12.01.

Müller, Reinhard, 2004: Humanitärer Selbstschutz, in: Frankfurter Allgemeine Zeitung 238, 12.10.04.

Münch, Ursula, 1993: Asylpolitik in der Bundesrepublik Deutschland - Entwicklung und Alternativen, Opladen: Leske + Budrich.

Olsen, Johan P. 2002: The Many Faces of Europeanisation, in: Journal of Common Market Studies 40, 921-52.

Putnam, Robert D., 1988: Diplomacy and Domestic Politics: The Logic of Two-Level Games, in: International Organization 42, 3, 427-460.

Radaelli, Claudio 2000: Whither Europeanisation? Concept Stretching and Substantive Change, in: European Integration online Papers, 4.

Rein, Martin and Donald Schön, 1991: Frame-reflective policy-discourse, in: Wagner, Peter et al. (eds.): Social sciences and modern states: national experiences and theoretical crossroads, Cambridge: Cambridge University Press, 262-289.

Risse, Thomas, James Caporaso and Maria Green Cowles, 2001: Europeanization and Domestic Change. Introduction, in: Maria Green Cowles, James Caporaso, and Thomas Risse (eds.): Transforming Europe. Europeanization and Domestic Change, Ithaca NY: Cornell University Press.

Roche, Marc, 2000: La mort de 58 clandestins à Douvres relance le débat sur l'asile en Europe, in: Le Monde, 20.6.00.

Rosamond, Ben, 2000: Theories of European Integration, New York: Palgrave.

Schimmelfennig, Frank, 2001: The Community Trap: Liberal Norms, Rhethorical Action, and the Eastern Enlargement of the European Union, International Organization 55, 1, 47-80.

Schmidt, V. 2002: Europeanization and the Mechanics of Economic Policy Adjustments, in: Journal of European Public Policy, 9, 894-912.

Schwarze, Susan, 2001: Das Arenen-Verhandlungsmodell – Deutsche Asylpolitik im europäischen Kontext von 1989 bis 1993. Dissertation, available at www.diss.fu-berlin.de/2001/2002, 8.8.2004.

Thielemann, Eiko, 2002: The 'Soft' Europeanisation of Migration Policy: European Integration and Domestic Policy Change, Paper Presented at the 2002 ECPR Session of Workshops, Turin, 22-27 March.

Ulmer, Mathias, 1996: Asylrecht und Menschenwürde. Zur Problematik der „sicheren Drittstaaten" nach Art. 16a Abs 2 und 5 GG und die Harmonisierung des Asylrechts in Europa, Frankfurt a.M.: Lang.

UNHCR 2003: News Stories – Lubbers warns of deteriorating standards in EU asylum directive, 24.11.2003. Available at http://www.unhcr.ch/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&page=home&id=3fc20ed57, 26.11.2005.

Vedsted-Hansen, Jens, 2005: Common EU Standards on Asylum optional Harmonisation and Exclusive Procedures, European Journal of Migration and Law 7, 369-376.

Vink, M. 2002: What is Europeanization? And other Questions on a New Research Agenda, Paper for the Second YEN Research Meeting on Europeanisation, University of Bocconi, Milan, 22-23 November.

Waever, Ole 2004: Discursive Approaches, in: Wiener, Antje and Thomas Diez, (eds) European Integration Theory, Oxford: Oxford University Press, 197-216.

Wallace, Helen 2000: Europeanisation and Globalisation: Complementary or Contradictory Trends?, in: New Political Economy, 5, 369-82.

Wiener, Antje, 2004: Contested Compliance: Interventions on the Normative Structure of World Politics, in: European Journal of International Relations, 10, 2, 189-234.