

# **DIFFERENTIATED INTEGRATION IN SCHENGEN: OPT-IN OR OPT-OUT? THE CASES OF GERMANY AND THE UNITED KINGDOM**

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## **Abstract**

The thesis addresses the question of member states' choices to transfer or not competences to the European level and the respective implications of this for the nature of the European integration project. The paper approaches this question by focusing on the development of the Schengen Agreement within the framework of the European Area of Freedom, Security and Justice and examining the two diverging cases of Germany and the United Kingdom. This empirical analysis is used to test the basic theoretical assumptions of neofunctionalism and liberal intergovernmentalism as the two major theories of European integration. The empirical discussion demonstrates that despite the existence of functional logic of interdependencies in the integration process, states have been the major decision-making actors shaping the integration according to national interests and objectives. The findings thus provide evidence for the overall intergovernmental character of the European integration project.

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## Introduction

One of the possible scenarios, officially put forward in the White Paper on the Future of the European Union published by the European Commission in 2017, envisioned the development of the Union based on the idea that “those who want more do more.”<sup>1</sup> This scenario is the latest expression of the existing heterogeneity among member states and their diverging preferences on integration and the future development of the European Union. Non-uniform participation across member states and policy areas has been a persistent feature of the European integration exemplifying a core dynamic between sovereignty and integration and between intergovernmentalism and supranationalism.

This raises the question as to why some countries cede national control over certain policy area while others choose not to do so and what the implications of this are for the debate on the nature of the European integration. Different theories encompassing a wide range of theoretical approaches have tried to explain what drives integration in the European Union. One of the oldest approaches to integration is exemplified by the major ideas of federalism and its normative approach towards integration as a way to overcome the problems of the nation-state.<sup>2</sup> The empirical and scientific developments after the 1960s rendered federalist approaches obsolete and two major theories emerged and established themselves in the studies of European integration—neo-functionalism<sup>3</sup> and liberal intergovernmentalism.<sup>4</sup> While neofunctionalism assumes that functional pressures will eventually lead to the development of an ever closer Union, liberal intergovernmentalism retains the central role of

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<sup>1</sup> European Commission, “*White Paper on the Future of Europe: Reflections and Scenarios for the EU27 by 2025*”, 2017: 15-29.

<sup>2</sup> Michael Burgess, “Federalism,” in *European Integration Theory – 2nd Edition*, ed. Antje Wiener and Thomas Diez (Oxford: Oxford University Press, 2009), 25-43.

<sup>3</sup> Ernest Haas, *The Uniting of Europe: Political, Social and Economic Forces, 1950-1957*, (London: Stevens & Sons, 1958); Leon N. Lindberg, *The Political Dynamics of European Integration*, (Stanford, Calif.: Stanford University Press, 1963).

<sup>4</sup> Andrew Moravcsik, *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*, (Ithaca, NY: Cornell University Press, 1998).

states and their ability to shape and control the integration process according to national objectives. Recently, these classic theories have been challenged by more constructivist approaches following the overall rise in constructivist theories in the realm of International Relations and the emerging emphasis on the role of ideas, norms and identities in the European integration.<sup>5</sup> Despite the abounding constructivist literature in recent years, the approaches of neofunctionalism and liberal intergovernmentalism remain the basic perspectives on integration which address the main debate on the nature of the European integration between evolving supranationalism or persisting intergovernmentalism. However, considering the extensive literature on European integration, relatively few attempts have been made to empirically analyze and compare the divergence of state's preferences in relation to specific policy areas of the European integration given the growing interdependencies between member states and the increasingly transnational character of policy issues. This is an important inquiry which provides insights into the sovereignty/integration dilemma and contributes to the debate on the nature of the European integration.

To address the above-mentioned question, this paper focuses on the development of the Schengen Agreement for the abolition of border controls between member states and situates it within the framework of the European Union's policies in the Area of Freedom, Security and Justice. The development encompasses the intergovernmental Schengen Agreement of 1985, the Schengen Implementation Convention of 1990, and the incorporation of the Schengen Acquis into the European Union Law with the Amsterdam Treaty signed in 1997. The Schengen Agreement relates to core sovereign powers of the nation state such as borders control and security provision. Thus, it presents a policy area with significant implications for individual member states and the European project. Moreover, the paper

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<sup>5</sup> Thomas Risse, "Social Constructivism and European Integration," in *European Integration Theory – 2nd Edition*, ed. Antje Wiener and Thomas Diez (Oxford: Oxford University Press, 2009), 144-159.

compares the two cases of Germany and the United Kingdom with respect to the Schengen Agreement. While Germany has enthusiastically supported the Schengen Agreement, the United Kingdom's position to stay outside of this framework of cooperation has remained stable. The paper compares the two cases to trace the underlying factors and motivations in the decision for participation on the part of Germany and non-participation on the part of the UK. The cases of the two countries constitute historically significant and policy-relevant cases since both countries have played and continue to play important roles in the European integration.<sup>6</sup> They are also two examples of countries with long history of immigration after the Second World War.<sup>7</sup> Thus, they present two valuable cases to analyze the empirical process of decision-making and the constellation of historical, political and institutional factors that have led to certain policy prioritizations over others (in this case participation or non-participation in the Schengen Agreement).

Finally, the thesis tests these findings against the established theoretical knowledge of European integration. The cases of Germany and the UK provide empirical insights against which the explanatory value of two of the major European integration theories—neofunctionalism and liberal intergovernmentalism—are tested. Here the research follows a congruence analysis as the most appropriate approach.<sup>8</sup> This type of analysis allows the researcher to empirically test the explanatory value and relative strength of predictions deduced from the respective theories.<sup>9</sup> Therefore, it is an appropriate approach for drawing conclusions stemming from the congruence/incongruence between the theoretical predictions and the empirically observed outcomes. The paper enters the academic debate on the nature of the European integration arguing that functional pressures inform the logic of integrating

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<sup>6</sup> Stephan Van Evera, *Guide to Methods for Students of Political Science* (Ithaca: Cornell University Press, 1997), 50-88.

<sup>7</sup> Thomas Faist and Andreas Ette, *The Europeanization of National Policies and Politics of Migration: Between Autonomy and the European Union* (New York : Palgrave, 2007), 13.

<sup>8</sup> Evera, *Guide to Methods for Students of Political Science*, 58-63

<sup>9</sup> Ibid.

different policy areas based on the established interdependencies between the policy areas. However, the transfer of competences to the European level is by no means an automatic process controlled by supranational actors but one that retains the central role of national governments which consciously pursue, oppose and shape the integration based on their respective national interests.

The paper proceeds as follows. Chapter 1 discusses the main theoretical insights of neofunctionalism and liberal intergovernmentalism and mentions the main criticism addressed at the two theories of European integration. Chapter 2 outlines the development of the Schengen Agreement within the framework of the Area of Freedom, Security and Justice and demonstrates that despite the inner functional logic operating in this policy area, the decision-making is nevertheless driven by member states and their national objectives. Building on this, Chapter 3 and Chapter 4 examine how domestic factors and national objectives influence the position of the states on the European level by looking at the cases of Germany and the United Kingdom and their diverging experiences and positions on the integration of border, immigration and asylum policies. Chapter 5 summarizes the main findings of the research and the respective implications.



# 1. Theoretical Framework

Neofunctionalism and liberal intergovernmentalism exemplify two major theories of European integration which try to explain the logic of transferring competences to the European level. While both theories assume that actors are rational in their decision-making, neofunctionalism puts an emphasis on supranational actors and interdependencies, whereas liberal intergovernmentalism retains the central role of states, their national interests and bargaining positions.

## 1.1. Neofunctionalism

The origins of neofunctionalism are associated with Ernst B. Haas and his classical work *The Uniting of Europe*.<sup>10</sup> The political developments in the 1960s supported the main assumptions of the theory—the establishment of the Coal and Steel Community had led to further integration and the creation of the European Economic Community and the European Atomic Energy Community.<sup>11</sup> Neofunctionalism is considered to be a grand theory attempting to arrive at general conclusions about European integration as a process.<sup>12</sup> Haas has defined it as a process “whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations, and political activities toward a new and larger centre, whose institutions *possess or demand jurisdiction* [emphasis added] over the pre-existing states.”<sup>13</sup> Despite the many revisions of the theory, two things have remained at the core of neofunctionalist thinking—the role of actors other than the states and the notion of “spillover.”

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<sup>10</sup> Ernest Haas, *The Uniting of Europe*.

<sup>11</sup> Arne Niemann and Philippe C. Schmitter, “Neofunctionalism” in *European Integration Theory – 2nd Edition*, ed. Antje Wiener and Thomas Diez (Oxford: Oxford University Press, 2009), 45-56.

<sup>12</sup> Ibid.

<sup>13</sup> As cited in Walter Mattli, *The Logic of Regional Integration: Europe and Beyond*, (New York: Cambridge University Press, 1999), 24.

According to neofunctionalism, states are not the only relevant actors because supranational and transnational actors also influence the integration process.<sup>14</sup> They support the transfer of competences or loyalties to the supranational level based on rational calculations of their interests.<sup>15</sup> In addition to this, the established supranational institutions acquire new powers and gradually begin to function independently.<sup>16</sup> The institutions on the supranational level cease to be entirely controlled by member states and develop their own agendas and competences as well as the ability to influence member states in their policy decisions on integration. Thus, supranational institutions, such as the Commission, play an important role in extending their competences and initiating pro-integration policy agendas.

Central for the integration process itself is the logic of “spillover.” The choices of actors to transfer competences have a functional spillover effect—integrating in one policy area necessitates the further integration of more and more competences due to the already created interdependencies and the general interdependent nature of the different economic and political sectors.<sup>17</sup> Thus, decisions to integrate in one issue area have unintended effects and bring about the need to continue integration in other issue areas. Moreover, the functional spillover leads to a gradual political spillover.<sup>18</sup> International institutions influence the negotiation process because they come to possess superior knowledge compared to national governments.<sup>19</sup> They also provide an institutionalized arena for socialization and learning which decreases the costs of interstate bargaining and increases the chances for compromising and overcoming deadlock in the decision-making.<sup>20</sup> The ability of the supranational institutions to better manage certain issue areas leads to the gradual shift of actors’ loyalties to

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<sup>14</sup> Sabine Saurugger, *Theoretical Approaches to European Integration* (Basingstoke: Palgrave Macmillan, 2014), 34-56

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Saurugger, *Theoretical Approaches to European Integration*, 34-56.

<sup>18</sup> Mattli, *The Logic of Regional Integration: Europe and Beyond*, 21-28.

<sup>19</sup> Arne Niemann and Philippe C. Schmitter, “Neofunctionalism,” 45-50.

<sup>20</sup> Ibid.

the supranational level and their willingness to integrate further. In sum, according to neofunctionalism, the integration process is driven by the interconnectedness of participating states, pressures from supranational and transnational actors, and the logic of spillover.

## 1.2.Critics of Neofunctionalism

The theory was heavily criticized during the so-called “empty chair crisis” in which the French President Charles De Gaulle opposed further integration perceived as conflicting with French interests.<sup>21</sup> Such empirical developments seriously challenged the linear and irreversible perception of the integration process developed by neofunctionalism. Moreover, they demonstrated the failure of neofunctionalism to account for the persistence of nationalism and the impact of national interests and objectives on the European integration process.<sup>22</sup> This failure exemplifies the theory’s major weakness—it takes supranationalism as a given solution to states’ problems without examining the domestic dynamics which inform the policy choices to delegate competences.<sup>23</sup> Thus, this omission prevents neofunctionalism from taking account of the different preferences of national governments and their importance for the integration outcomes.

The theoretical emphasis on structural processes and grand explanations as opposed to looking at more concrete instances of actors’ conscious decisions has also been criticized by Andrew Moravcsik.<sup>24</sup> Notably, Moravcsik argues that no grand theory, such as neofunctionalism, is able to entirely capture the complexity of the European integration.<sup>25</sup> In other words, neofunctionalists argue that integration is driven by the pursue of economic interests but offer no account of the dynamics that accompany the formation of these interests as well as the external factors which influence the process of interests-formation. Thus,

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<sup>21</sup> Ibid.

<sup>22</sup> Mattli, *The Logic of Regional Integration: Europe and Beyond*, 21-28

<sup>23</sup> Ibid.

<sup>24</sup> Andrew Moravcsik, *The Choice for Europe*, 1-17.

<sup>25</sup> Ibid.

Moravcsik's criticism of neofunctionalism provides the basis for the development of yet another key theoretical approach to integration.

### **1.3.Liberal Intergovernmentalism**

Liberal intergovernmentalism moves beyond the logic of neofunctionalism and takes a closer look at the role of state's preferences and bargaining power as crucial factors influencing integration. The theory focuses on the major decisions and milestones of the European integration project. Liberal intergovernmentalism follows the intergovernmentalist logic arguing that integration is based on the cooperation between independent states driven by the need to respond more efficiently to the emerging international constraints and structural changes in the global environment.<sup>26</sup> The most influential scholar of the liberal intergovernmentalism school of thought is Andrew Moravcsik. His liberal intergovernmentalism theory is based on three key notions—formation of national preferences, intergovernmental negotiations, and the creation of institutions to secure the negotiation outcomes.<sup>27</sup> According to the theory, the integration process is a result of intergovernmental bargains which reflect the national interests and the relative power of states.<sup>28</sup> As opposed to neofunctionalism, liberal intergovernmentalism emphasizes the central role of states as rational actors in the integration who are generally unwilling to cede sovereignty and try to model the integration outcomes according to their national preferences.<sup>29</sup>

Preferences for integration of policies emerge from the domestic context and are the result of domestic economic, political and geopolitical considerations with the role of

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<sup>26</sup> Saurugger, *Theoretical Approaches to European Integration*, 54-76.

<sup>27</sup> Ibid, 69.

<sup>28</sup> Andrew Moravcsik, "Negotiating the Single European Act: National Interests and Conventional Statecraft in the European Community," *International Organization* 45, no. 1 (Winter, 1991):19-56.

<sup>29</sup> Ibid.

economic considerations being the most important one.<sup>30</sup> Thus, the national preferences are formed in the context of the domestic political environment and reflect the aggregated interest on the domestic level represented by the official position of the state.<sup>31</sup> Consequently, states can have varying preferences across time and policy issues in relation to the domestic opportunities and constraints. In addition to this, the outcome of international negotiations on integration depend on the relative bargaining power of state actors.<sup>32</sup> The states who would gain the most from integration are ready to make concessions and more reluctant member states can impose conditions on others because of their threat to block negotiations. Moreover, during the bargaining process states are subjects to both domestic and international pressures and this allows national governments to sometimes use international commitments to push controversial governmental agendas on the domestic level.<sup>33</sup> Ultimately, the outcomes of the bargaining are locked in institutions to secure compliance and commitment in the future.<sup>34</sup> Therefore, supranational institutions simply guard commitments and are controlled by states who are the major-decision makers.

In sum, according to liberal intergovernmentalism, states can have diverging preferences due to their domestic conditions and perceived national interests. Thus, states agree to transfer competences to the supranational level when it aligns with their national interests and strive to lock the negotiated commitments in supranational institutions through a process characterized by relative power and bargaining.

#### **1.4.Critics of Liberal Intergovernmentalism**

Scholars have pointed out the major shortcoming of the intergovernmentalist approach which lies in its extensive focus on intergovernmental bargains, thereby producing an

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<sup>30</sup> Saurugger, *Theoretical Approaches to European Integration*, 54-76.

<sup>31</sup> Ibid.

<sup>32</sup> Saurugger, *Theoretical Approaches to European Integration*, 54 -76.

<sup>33</sup> Ibid, 69-76.

<sup>34</sup> Ibid.

incomplete picture of the integration process.<sup>35</sup> The emphasis on major milestones in the decision-making omits the importance of preceding and following processes in the integration which lay the foundations or come as unintended consequences of the respective interstate bargains.<sup>36</sup> The theory has also been criticized for its extensive focus on states as the major actors which produces a narrow perspective on the European integration process.<sup>37</sup> This has led to the theory's underestimation of the role and the decision-making power of institutions such as the Commission and the European Court of Justice (ECJ).<sup>38</sup>

However, as will be discussed in the next chapter, the autonomy of supranational actors and their capacity to set the policy agenda and ultimately influence the decision-making process in sensitive policy areas related to borders, internal security, immigration and asylum has been limited. The next chapter demonstrates that integration of these policies displays functional logic because of the existing interconnectedness of the respective policy areas. Nevertheless, the integration process has been primarily guided by an intergovernmental decision-making and has exposed the importance of member states' national interests and preferences for integration reflected in their positions on the European level.

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<sup>35</sup> Paul Pierson, The Path to European Integration: A Historical Institutionalist Analysis, *Comparative Political Studies*, 29, no.2 (April 1996):123-163.

<sup>36</sup> Mattli, *The Logic of Regional Integration: Europe and Beyond*, 28-31.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

## 2. The Schengen Agreement

The Schengen Agreement and the framework of the Area of Freedom, Security and Justice provide examples of sensitive policy areas which relate to core sovereign powers of the state, such as internal security, frontier controls, immigration and asylum. Thus, it is important to explore the dynamic of the European integration in these policies and the respective implications of this for the integration project.

### 2.1. An Intergovernmental Agreement with a Functional Logic

The pre-history of the Schengen initiative in the 1980s can be traced back to an administrative dispute over the free flow of goods between the Federal Republic of Germany and France and a 1984 strike of French truck drivers against the long queues at the border.<sup>39</sup> These events were followed by bilateral negotiations between Germany and France for the gradual abolition of frontier controls between the two countries to ease the economic exchanges across borders. The negotiations were subsequently joined by the Benelux countries (Belgium, Netherlands and Luxembourg) which already had a passport union since the 1960s and expressed willingness to take part in the new initiative.<sup>40</sup>

The development of the Schengen Agreement follows the functional logic of the already established economic and political cooperation among the European countries. The Schengen Agreement of 1985 was not an isolated intergovernmental initiative but marked an important step towards the realization of the four freedoms of the common European market established in the Treaty of Rome—the free movement of goods, services, people and

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<sup>39</sup> Monica den Boer and William Wallace, “Justice and Home Affairs: Integration through Incrementalism?” in *Policy-Making in the European Union*, ed. Helen Wallace and William Wallace, (Oxford: Oxford University Press, 2000), 493-518.

<sup>40</sup> *Ibid.*, 498.

capital.<sup>41</sup> Thus, the idea of the initiative was already part of the Treaty of Rome with its provision on elimination of trade barriers between the European countries. The Schengen Agreement was envisioned by the signatories as a step towards realizing the full benefits of the common market as well as a step towards bringing the Community closer to the people through ensuring the free movement of persons across countries.<sup>42</sup> Moreover, the emergence of the Schengen Agreement is also connected to the development of the Single European Act which was signed in 1986 and addressed the progressive establishment of an internal market as “an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured [...]”<sup>43</sup> Therefore, the Schengen Agreement emerged based on and in parallel to other European initiatives focusing on the free movement of people in the context of internal market. Thus, it can be considered as a by-product of the functional spillover dynamics of the economic integration, and more specifically the development of the Single Market.

However, the Schengen initiative to gradually remove border controls proved to be politically controversial. Especially supportive of the creation of an area without internal frontiers were Germany and France which emphasized the importance of realizing the full benefits of the Single Market.<sup>44</sup> The reluctance of some member states, notably the United Kingdom, to cede control of their borders posed serious political obstacles on the European level and necessitated the signing of the Schengen Agreement outside of the Community legal

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<sup>41</sup> “Treaty on the Functioning of the European Union,” EUR-Lex Official Journal of the European Union, accessed April 30, 2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:xy0023&from=EN>.

<sup>42</sup> Antje Wiener, “Forging Flexibility – The Puzzle of British ‘No’ to Schengen,” *European Journal of Migration and Law* 1, no.4 (1999):444.

<sup>43</sup> “The Single European Act,” EUR-Lex Official Journal of the European Union, accessed April 30, 2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:xy0027&from=EN>

<sup>44</sup> Monica Bosche, “Trapped inside the European Fortress? Germany and European Union Asylum and Refugee Policy” in *Germany’s EU Policy on Asylum and Defence: De-Europeanization by Default?* ed. Gunther Hellmann (Basingstoke, England; New York: Palgrave Macmillan, 2006), 29-83.



framework.<sup>45</sup> Consequently, in 1985, Belgium, France, Germany, Luxembourg and the Netherlands signed the Schengen Agreement as an intergovernmental agreement for the gradual abolition of internal border controls and harmonization of external security and law enforcement policies.<sup>46</sup> However, despite being launched outside of the EC legal framework, the Schengen Agreement was deliberately made compatible with the European Community Law.<sup>47</sup> It was designed as an intergovernmental experiment to provide an example and set the pace for further integration on the European level. The above-mentioned political difficulties related to the Agreement demonstrate the sensitive nature of the addressed policies and the unwillingness of some member states to cede national control of their borders and ensure the free movement of people on their territory, despite the functional logic of the internal market.

## **2.2. The Schengen Implementation Convention (SIC) and the Security**

### **Dimension**

The Schengen Implementation Convention (SIC), detailing the implementation of the initial agreement, was signed in 1990 and included measures covering visa, immigration, asylum policies and police cooperation as compensatory measures to the removal of internal borders.<sup>48</sup> The idea of compensatory measures was already part of the text of the initial Schengen Agreement of 1985. The signatories of the Agreement realized that the internal abolition of border controls would expose member states to cross-border security threats and therefore additional measures need to be established to strengthen the external security of the Schengen Area. Thus, the text of the Agreement states that the parties need to work “to approximate their visa policies as soon as possible to avoid adverse consequences in the field

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<sup>45</sup> Den Boer and Wallace, “Justice and Home Affairs: Integration through Incrementalism?”

<sup>46</sup> Ibid.

<sup>47</sup> Bosche, “Trapped inside the European Fortress? Germany and European Union Asylum and Refugee Policy.”

<sup>48</sup> Den Boer and Wallace, “Justice and Home Affairs: Integration through Incrementalism?”

of immigration and security that may result from easing checks at the common borders.”<sup>49</sup> Moreover, the Agreement also recognized the need to “reinforce cooperation between customs and police authorities, notably in combating crime, particularly illicit trafficking in narcotic drugs and arms, the unauthorized entry and residence of persons, customs and tax fraud and smuggling.”<sup>50</sup> Thus, it was recognized as early as 1985 that the removal of border controls and the free movement of people will necessitate cooperation in other spheres and will impose common security concerns related to unauthorized immigration and cross-border crime on all participating member states.

Compensatory measures related to the removal of border controls were established in more detail in the Schengen Implementation Convention.<sup>51</sup> The Convention established the mutual responsibility for the external borders of the member states, common visa policy for third-country nationals, police and security cooperation, mutual assistance in criminal matters. In addition to this, it established the Schengen Information System (SIS) for the exchange of information and outlined the responsibility between member states for the examination of asylum applications.

Therefore, the creation of an area without internal borders made the movement of people across the territories of participating member states a matter of joint control. It spilled over to member states’ immigration and asylum policies because the immigration policy of one state impacts other states and becomes a question of concern for all Schengen members. The free movement of people practically relates to the free movement of third country nationals as well as policies on granting asylum. Thus, the development of the Schengen initiative created an arena for the discussion of immigration and asylum policies to be jointly

<sup>49</sup> “The Schengen Acquis,” EUR-Lex Official Journal of the European Union, accessed 30 April, 2018, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A42000A0922%2801%29> .

<sup>50</sup> Ibid.

<sup>51</sup> “Convention Implementing the Schengen Agreement of 14 June 1985,” EUR-Lex Official Journal of the European Union, accessed 30 April 2018, [http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:42000A0922\(02\)](http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:42000A0922(02)) .

addressed at the European level.<sup>52</sup> These discussions played an important role in the negotiations of the Maastricht Treaty and the establishment of the three pillars of the European Union. They also paved the way for the development of the Dublin Convention on Asylum which established the responsibility of examining asylum applications between member states.<sup>53</sup>

### **2.3. The Maastricht Treaty and the Three Pillars**

Despite the spillover effect of the policies, the cooperation on the European level on policies related to internal security, immigration and asylum emerged on an intergovernmental basis and the role of the European Commission as an entrepreneur and an agenda-setter in this policy area was rather limited. The Commission strongly supported the communitarisation of these policies as evident in the two communications of the Commission to the Council and the Parliament on the matters of immigration and the right of asylum published before the signing of the Maastricht Treaty.<sup>54</sup> However, it was the member states who were the main driving actors in addressing competences on internal security, immigration and asylum policies on the European level.

An intergovernmental network on the European level had already been established in the 1980s to address issues of security and immigration and the necessity of cooperation between member states. Along with the TREVI working group on security and counterterrorism, an Ad Hoc Group on immigration was established during the British

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<sup>52</sup> Bosche, "Trapped inside the European Fortress? Germany and European Union Asylum and Refugee Policy."

<sup>53</sup> Sandra Lavenex, "Justice and Home Affairs: Institutional Change and Policy Continuity" in *Policy-Making in the European Union*, ed. by Helen Wallace, Mark A. Pollack and Alasdair R. Young (New York, NY: Oxford University Press, 2014), 368-387.

<sup>54</sup> "Communication from the Commission to the Council and the European Parliament on the Right of Asylum" SEC (91) 1857 final, 11 October 1991, Archive of European Integration, University of Pittsburgh, <http://aei.pitt.edu/id/eprint/1275> ; "Communication from the Commission to the Council and the European Parliament on Immigration," SEC (91) 1855 final, 23 October 1991, Archive of European Integration, University of Pittsburgh, <http://aei.pitt.edu/id/eprint/1260> .

Presidency of the Council in 1986 based on intergovernmental cooperation.<sup>55</sup> In addition to this, parallel to the Schengen working groups, Ad Hoc groups on Organized Crime and Judicial Cooperation as well as the Rhodes Group on Free Movement of Persons dealing with compensatory measures were also established.<sup>56</sup> These examples of cooperation on security and immigration demonstrate the understanding among member states of the transnational nature of the current security issues in the circumstances of a common economic area and changing geopolitical environment. The end of the Cold War and the fall of the Berlin wall contributed to linking immigration and security in 1990s when the fear of organized crime, unauthorized immigration, drugs and human trafficking from the East became pronounced among policy circles as a transnational threat requiring coordinated response.<sup>57</sup> These intergovernmental policy networks responded to joint concerns of member states and contributed to addressing immigration and asylum policies on the European level in the Maastricht Treaty in 1992.

The Maastricht Treaty addressed the issues related to control of the external borders, asylum and immigration policy, police, customs and judicial cooperation on the European level through the creation of the Third Pillar of Justice and Home Affairs (JHA) as matters of common interest based on intergovernmental cooperation.<sup>58</sup> The creation of a third intergovernmental pillar was a compromise between the different positions of the member states—the German government was advocating the full transfer of JHA under the legal authority of the European Union, unlike the British government which had taken a strong stance against communitarisation of this area.<sup>59</sup> The sensitive nature of border controls, security, immigration, and asylum policies explains the political difficulties of shifting

<sup>55</sup> Bosche, “Trapped inside the European Fortress? Germany and European Union Asylum and Refugee Policy.”

<sup>56</sup> Den Boer and Wallace, “Justice and Home Affairs: Integration through Incrementalism?” 495.

<sup>57</sup> Virginie Guiraudon, “The Constitution of a European Immigration Policy Domain: a Political Sociology Approach,” *Journal of European Public Policy* 10, no.2 (2011): 263-282.

<sup>58</sup> “Maastricht and Amsterdam Treaties”, European Parliament Fact Sheets, 2018, accessed 30 April, 2018, [http://www.europarl.europa.eu/ftu/pdf/en/FTU\\_1.1.3.pdf](http://www.europarl.europa.eu/ftu/pdf/en/FTU_1.1.3.pdf).

<sup>59</sup> Den Boer and Wallace, “Justice and Home Affairs: Integration through Incrementalism?”

competences to the supranational level, despite the general willingness to cooperate on these policies on an intergovernmental basis. Thus, the intergovernmental arrangement reflected the diverging preferences and the unwillingness of some member states to adapt their national practices and be bounded by Community Law. The tension between national sovereignty and European integration was equally present during the negotiations of the Amsterdam treaty.

## **2.4. The Amsterdam Treaty and the Incorporation of Schengen into the European Law**

The subsequent Treaty of Amsterdam, signed in 1997, incorporated the Schengen Acquis into the framework of the European Law. The Amsterdam Treaty transferred to the first pillar cooperation on visa, asylum, immigration policy and police and judicial cooperation in civil matters but police and judicial cooperation in criminal matters remained in the domain of the national decision-making.<sup>60</sup> Thus, with the Amsterdam Treaty, the Area of Freedom, Security and Justice was developed establishing the free movement of persons with the respective measures for external border controls. However, the transfer of these areas to the Community pillar was accompanied by a transition period of five years and limitations on the Commission's right to initiate proposals and on the European Parliament's participation in the decision-making, which largely retained the intergovernmental nature of the decision-making.<sup>61</sup>

The incorporation of Schengen as well as the transfer of parts of the third intergovernmental pillar to the first community one was supported by Germany and the German Chancellor Helmut Kohl who was advocating for more integration in these areas and transfer of competences to the supranational level.<sup>62</sup> However, British reluctance to cede

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<sup>60</sup>“Maastricht and Amsterdam Treaties,” European Parliament Fact Sheets, 2018.

<sup>61</sup> Desmond Dinan, *Ever Closer Union : An Introduction to European Integration* (London : Macmillan, 2010), 529-567.

<sup>62</sup> Bosche, “Trapped inside the European Fortress? Germany and European Union Asylum and Refugee Policy.”

sovereignty, abolish control of its borders and visa policies, and support the free movement of people remained stable. As a result, the UK government secured an opt-out clause from the Schengen Acquis and the participation in the border-free Schengen Area with the possibility to selectively participate in certain aspects of the Acquis related to police and security as well as selective participation in the policies of immigration and asylum.<sup>63</sup>

Therefore, the Amsterdam Treaty officially established the flexible mode of European integration. It contained provisions allowing some member states to pursue “closer cooperation” in further integration efforts within the common institutional structure of the European Union.<sup>64</sup> This was necessary in order to accommodate the heterogeneous national preferences of member states. Thus, the different positions of the countries on communitarisation of policies and their diverging preferences on integration expose the weaknesses of the neofunctionalist logic and the failure of the theory to account for the resistance to integrative pressures. The development of the Schengen Agreement and the related compensatory measures followed the logic of functional interdependencies; however, the process was largely driven by states and their preferences for integration. These different positions point to the importance of national interests and interstate bargaining as laid down by liberal intergovernmentalism. The understanding of the integration process thus necessitates looking into the preferences of states developed on the domestic level and the way these preferences diverge and shape the European integration accordingly.

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<sup>63</sup> “Schengen Agreement: A Short History,” UK Parliament, accessed April 30, 2018, <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/LLN-2016-0013>.

<sup>64</sup> “Maastricht and Amsterdam Treaties,” European Parliament Fact Sheets, 2018.

### 3. The Case of Germany

This chapter demonstrates how domestic factors and national considerations propelled the German government to advocate for the development of the Schengen Agreement and harmonization of border, immigration and asylum policies. It argues that the German government consciously and strategically pursued Europeanization of these policies and tried to influence the European agenda on these matters based on national objectives articulated within the specific post-war historical, institutional and political development of the country in the context of exogenous and endogenous pressures.

#### 3.1. Germany's Support for Political Integration

Germany has been one of the biggest proponents of the European integration and communitarisation of policies related to borders, security, immigration and asylum. The German Chancellor Helmut Kohl and the French President Francois Mitterrand initiated the signing of the intergovernmental Schengen Agreement for the gradual abolition of border controls.<sup>65</sup> The German government also strongly advocated for European cooperation in Justice and Home Affairs (JHA) with the Maastricht Treaty and the full incorporation of JHA and the Schengen Agreement into the European Union legal framework with the Amsterdam Treaty.<sup>66</sup>

In a report to the European Parliament in 1983, Chancellor Kohl underlined the need to work towards the four freedoms of the free market and the further development of the integration:

That is precisely the moment not to lose sight of the basic political conviction set out in the Treaties of Rome. Their content is well-known. The aims are: a large and free internal market, an open, liberal external trade policy, a common

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<sup>65</sup> Monica den Boer and William Wallace, "Justice and Home Affairs: Integration through Incrementalism?" 493-518.

<sup>66</sup> Ibid.

agricultural market, a common development policy and, above all, the institutional development of the Community.<sup>67</sup>

Thus, Chancellor Kohl expressed the German preference for more integration and extension of the competences of the European Commission and the European Parliament.<sup>68</sup> Political integration was understood as important part of ensuring economic prosperity and stability in Europe. This entailed a vision of the European project not only as an economic trading block but a political community through which German national interests could be effectively pursued.

The preference for further political integration is the result of the country's historical and political post-war experience and its conception of national sovereignty within the context of the European integration project. The weakened position of divided Germany after the war prevented it from having an autonomous foreign policy since the West Germany's exercise of sovereignty was closely monitored by the Allies.<sup>69</sup> Membership in the European Community was a demonstration on the part of Germany of its commitment to Western partnership and its intention to pursue foreign policy within the framework of multilateral institutions.<sup>70</sup> Moreover, the ability of the West German Republic to exercise influence on the European integration process was strongly related to its bilateral partnership with France so as not to raise any suspicions from the other European partners.<sup>71</sup> The strong support for the European integration and the Franco-German cooperation helped Germany position itself as a nation

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<sup>67</sup> Report by Helmut Kohl to the European Parliament (30 June 1983), in Official Journal of the European Communities (OJEC), Debates of the European Parliament, 30.06.1983, n° 1-301. [s.l.], "Report by Helmut Kohl to the European Parliament (30 June 1983)," p. 16-21, available at [https://www.cvce.eu/en/obj/report\\_by\\_helmut\\_kohl\\_to\\_the\\_european\\_parliament\\_30\\_june\\_1983-en-38c14470-6d46-419e-afb8-890202491837.html](https://www.cvce.eu/en/obj/report_by_helmut_kohl_to_the_european_parliament_30_june_1983-en-38c14470-6d46-419e-afb8-890202491837.html), accessed April 30, 2018.

<sup>68</sup> Ibid.

<sup>69</sup> Christian Schweiger, *Britain, Germany and the Future of the European Union* (Houndmills, Basingstoke, Hampshire : Palgrave Macmillan, 2007), 43-80.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.



entirely committed to the political goals of the European Community.<sup>72</sup> This idea of Germany as a Europeanised nation helped the West German Republic regain its post-war status.

Thus, it was precisely through the European integration that Germany was able to secure its international position in the post-war period and pursue its national foreign policy priorities, including the unification of the country. As Chancellor Kohl pointed out, “Only if we are united under the aegis of Europe will we have any chance at all of seeing our nation united in future and in history.”<sup>73</sup> Chancellor Kohl’s strategy to link the unification of Germany to the country’s commitment for further European integration was a way to appease anxiety among other European countries confronted with the possibility of a strong united Germany and to sustain the status of Germany as a reliable European partner.<sup>74</sup> In his declaration to the Bundestag on reunification in 1990, Chancellor Helmut Kohl stated that perception in Germany continues to be that “Germany is our fatherlands, the united Europe our future.”<sup>75</sup> In addition to the expressed strong commitment to the European project, Chancellor Kohl’s speech explicitly articulated the German government’s position on the dynamic between sovereignty and integration:

At home and abroad we want to be good neighbours. There will be no separate German paths or isolated nationalistic efforts in the future either. Faithful to the preamble to our Constitution, we want to serve the peace of the world as an equal partner in a united Europe. This mandate embodies our conception of sovereignty. We are willing to share it with others in line with our Constitution, which authorizes us to transfer sovereign powers to intergovernmental institutions and - by *consenting to a limitation of our sovereign rights* [emphasis added] - to enter systems of collective security.<sup>76</sup>

<sup>72</sup> Schweiger, *Britain, Germany and the Future of the European Union*, 43-80.

<sup>73</sup> Report by Helmut Kohl to the European Parliament (30 June 1983).

<sup>74</sup> Schweiger, *Britain, Germany and the Future of the European Union*.

<sup>75</sup> Government Declaration by Helmut Kohl on the International Dimension of the Reunification (Berlin, October 4, 1990), in *The Unification of Germany in 1990*, Bonn: Press and Information Office of the Federal Government, 1991, 184 S, available at

[https://www.cvce.eu/obj/government\\_declaration\\_by\\_helmut\\_kohl\\_on\\_the\\_international\\_dimension\\_of\\_the\\_reunification\\_berlin\\_4\\_october\\_1990-en-f4falf85-e1b4-4c2b-9837-6ff964887745.html](https://www.cvce.eu/obj/government_declaration_by_helmut_kohl_on_the_international_dimension_of_the_reunification_berlin_4_october_1990-en-f4falf85-e1b4-4c2b-9837-6ff964887745.html), accessed May 11, 2018.

<sup>76</sup> Ibid.

The outlined dynamic between German national sovereignty and the European project gives an important background for the discussion of European integration initiatives and the role of Germany in these initiatives. It provides the necessary context for the German participation in the signing and development of the Schengen Agreement. Despite being launched outside of the legal framework of the European Community, the initiative for the abolition of internal frontiers was conceived by the German Chancellor Helmut Kohl as a step towards the realization of the full benefits of the Single Market and the creation of a political Union closer to the citizens.<sup>77</sup> It was part of the new dynamism of the integration process during the 1980s following the Commission's White Paper for the completion of the single market with the removal of physical and other controls between member states<sup>78</sup> and the Single European Act of 1986.<sup>79</sup> All these initiatives contributed to the efforts towards establishing more integrated political Union and a European area of free movement of people, goods and services which was actively supported and pursued by the German government.

Moreover, Germany had a strong economic interests related to free trade and the European internal market, as demonstrated by the increase in German exports in the 1970s-1980s.<sup>80</sup> The European Community constituted the main export market for Germany—German exports to the EC amounted to 15 percent of gross domestic product by 1985 which presented an increase close to 200 percent compared to 1972.<sup>81</sup> The German political commitment to the idea of the European project as well as the clear economic benefits of the internal market influenced its strong support for a European area without internal frontiers.

<sup>77</sup> Statement by Helmut Kohl to the Bundestag (Bonn, 27 June 1985), in Bulletin des Presse- und Informationsamtes der Bundesregierung, Hrsg. Presse- und Informationsamt der Bundesregierung, 28.06.1985, Nr. 75, Bonn: Deutscher Bundesverlag, "Rede von Helmut Kohl im Bundestag (27 Juni 1985)," p. 658-662, available at [https://www.cvce.eu/en/obj/statement\\_by\\_helmut\\_kohl\\_to\\_the\\_bundestag\\_bonn\\_27\\_june\\_1985-en-48945e81-df08-4faa-867c-c96bcd6727c.html](https://www.cvce.eu/en/obj/statement_by_helmut_kohl_to_the_bundestag_bonn_27_june_1985-en-48945e81-df08-4faa-867c-c96bcd6727c.html), accessed May 11, 2018.

<sup>78</sup> "Completing the Internal Market," EUR-Lex Official Journal of the European Union, accessed April 30, 2018, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:1985:0310:FIN>.

<sup>79</sup> "The Single European Act," EUR-Lex Official Journal of the European Union, accessed April 30, 2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:xy0027&from=EN>.

<sup>80</sup> Lily Gardner Feldman, "Germany and the EC: Realism and Responsibility," in *The European Community: to Maastricht and Beyond*, ed. Pierre-Henri Laurent (Thousand Oaks, Calif.: Sage Periodicals Press), 28-43.

<sup>81</sup> Ibid.

The perception that European integration does not constitute a fundamental threat to German sovereignty underpinned its general inclination to transfer competences to the European level and rely on supranational solutions. Thus, the signing of the Schengen Agreement was a politically logical step in line with the overall German foreign policy strategy and economic and political interests in the context of the evolving European integration project.

### **3.2.Schengen and the Connection Between Free Movement and Security**

The official position of Germany, expressed during the Maastricht Treaty negotiations, was that policies on security, immigration and asylum need to be jointly addressed on the European level.<sup>82</sup> The harmonization of security, immigration and asylum policies was actively and consciously pursued by the German government from the beginning of the Schengen Agreement. The tendency towards supranationalization in these policy areas developed as the result of domestic political and institutional considerations and in response to the perceived challenges of the international security environment.

As one of the driving forces behind Schengen, Germany actively advocated for compensatory measures to address issues of international crime and unauthorized immigration from the start of the Agreement. In 1985 the Committee of Internal Affairs of the German Bundestag issued a report stating the indispensability of compensatory measures that need to be established to guarantee internal security in case of abolition of internal borders—police and judicial cooperation, cooperation to prevent unauthorised immigration, cross-border

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<sup>82</sup>Address Given by Helmut Kohl on the Outcome of the Maastricht European Council (Bonn, 13 December 1991), in *Verhandlungen des Deutschen Bundestages*, 12. Wahlperiode, 68. Sitzung vom 13. Dezember, 1991, *Stenographische Berichte*, Hrsg. Deutscher Bundestag und Bundesrat, 1991, Nr. 159, Bonn, “Erklärung der Bundesregierung zu den Ergebnissen des Europäischen Rates in Maastricht,” p. 5797-5803, trans. CVCE.EU by UNILU, available at [https://www.cvce.eu/en/obj/address\\_given\\_by\\_helmut\\_kohl\\_on\\_the\\_outcome\\_of\\_the\\_maastricht\\_european\\_council\\_bonn\\_13\\_december\\_1991-en-12090399-dc71-42ee-8a3d-daf2420c0a9a.html](https://www.cvce.eu/en/obj/address_given_by_helmut_kohl_on_the_outcome_of_the_maastricht_european_council_bonn_13_december_1991-en-12090399-dc71-42ee-8a3d-daf2420c0a9a.html), accessed May 11, 2018.

trafficking, and strengthened control of the external borders.<sup>83</sup> Thus, the connection between free movement of people in the Schengen Area and the implications of this for the German national security was acknowledged during the negotiations of the Agreement in 1985 and gained even stronger importance in the Schengen Implementation Convention (SIC) in 1990. Germany committed itself to the widest possible scope of cross-border pursuit in the Schengen Implementation Convention—without time or geographical restrictions and with the right of arrest on all extraditable offences.<sup>84</sup>

The strong emphasis on the security dimension in the Schengen Implementation Convention and the connection between free internal movement and strengthened external control emerged as a response to the developments in the international environment. The unification in 1989 and the end of the Cold War entailed new cross-border security concerns related to Germany's Eastern border—fears of terrorism, drug trafficking, unauthorized immigration and transnational cross-border crime emerging from Eastern Europe entered the political debate alongside considerations about Schengen and the removal of internal borders.<sup>85</sup> Thus, the state of the international environment contributed to further linking the debate on the domestic level to the security dimension of borders. However, as evident from the text of the Agreement and the above-mentioned report of the Committee of Internal Affairs, the interconnectedness between lack of internal frontiers, free movement and security and the necessity to work on additional compensatory policies was acknowledged from the beginning of the Schengen Agreement in 1985 and was supported by Germany as a way to ensure strengthened external security of the common Schengen Area.

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<sup>83</sup> Decision and Report of the Committee of Internal Affairs (4<sup>th</sup> Committee), December 11, 1985, Dokumentations- und Informationssystem für Parlamentarische Vorgänge, Deutscher Bundestag, accessed 11 May, 2018, <http://dipbt.bundestag.de/doc/btd/10/045/1004555.pdf>.

<sup>84</sup> Roland Bieber and Joerg Monar, *Justice and Home Affairs in the European Union : The Development of the Third Pillar* (Brussels : European Interuniversity Press, 1995), 29-48.

<sup>85</sup> Sarah Helm, "Doubts Raised over Move to Abolish Borders in Europe," *The Independent*, December 12 1989, accessed May 11, 2018, LexisNexis Academic.

An important aspect related to borders and the German position on border controls and security is that many individuals without authorization to stay in the country are perceived to enter in a legal manner.<sup>86</sup> Germany, as most continental European countries, relies heavily on internal checks, such as residence or employment control systems, to detect individuals that have not obtained the necessary authorization or status for residence.<sup>87</sup> These systems are controlled by state governments, the Ministry of Interior and the Ministry of Labour and operate based on internal checks on residence, work permits, taxes and social security payed by employees to identify individuals who do not have the legal authorization to stay or work in the country.<sup>88</sup> Thus, the institutional tradition based on internal measures diminishes the importance of traditional border checks when it comes to detecting unauthorized foreign residents in Germany. However, it puts an emphasis on adequate and efficient internal controls over immigration and asylum processing systems and renders cross-border cooperation on these issues more important.

Moreover, as will be discussed in the next sections, the domestic institutional challenges related to immigration and asylum made Germany prone to seek European level solutions. Germany's liberal domestic immigration and asylum policies were becoming increasingly ineffective for addressing the immigration patterns and specifically the surge in asylum seekers in the 1980s and 1990s. Therefore, the Schengen Agreement for abolition of border controls and the related compensatory measures provided an opportunity for Germany to address its domestic policy needs and interests in the context of evolving European economic and political integration and adequately respond to policy challenges by shifting the political discussion to the European level.

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<sup>86</sup> Philip L. Martin, "Germany: Managing Migration in Twenty-First Century," in *Controlling Immigration: A Global Perspective*, ed. Wayne A. Cornelius, Takeyuki Tsuda, Philip L. Martin, and James F. Hollifield, (Stanford, Calif.: Stanford University Press, 2004), 221-258.

<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

### 3.3. Post-war Immigration to Germany

The German post-war experience with immigration is mostly connected to the recruitment of guest workers (Gastarbeiter). In line with the general prosperity in the Western European countries in the 1960s, the economic expansion in the Federal Republic of Germany led to an increased production and created the need for additional labour in factories producing for export or domestic markets.<sup>89</sup> The general belief was that the recruitment of guest workers will fill the employment needs in Germany and reduce unemployment in the home countries while allowing for exchange of work experience and training.<sup>90</sup> Thus, in the beginning, the guest workers scheme was viewed as a labour policy benefitting all participating sides, and the number of foreign workers recruited in Germany was progressively increasing. Consequently, the guest workers employed in Germany reached peak numbers in the 1970s – from 1 million in 1968 to 2.6 million people in 1973 or amounting to 12 percent of the wage and salary workers in Germany in 1973.<sup>91</sup>

However, this was a labour market policy not grounded in comprehensive legal and political immigration framework.<sup>92</sup> The agreements for recruitment of foreign workers signed with countries such as Italy, Greece, Spain, Turkey, Tunisia, Morocco and Yugoslavia operated within the institutional realm of labour agencies, employers and trade unions.<sup>93</sup> The guest workers scheme was confined to the general understanding of temporary guest workers residence corresponding to the current labour needs in the country. The policy was designed with the idea that after working for some time, the guest workers would return home and work for the development of their own countries. Nevertheless, despite the generally high rate of

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<sup>89</sup> Martin, “Germany: Managing Migration in Twenty-First Century,” 221-259.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> Christian Joppke, “Not a Country of Immigration: Germany,” in *Immigration and the Nation-State: The United States, Germany, and Great Britain* (Oxford University Press, 1999), accessed 30 April, 2018, <http://www.oxfordscholarship.com/view/10.1093/0198295405.001.0001/acprof-9780198295402-chapter-3>.

<sup>93</sup> Ibid.

guest workers returning to their home countries, around 30 percent of the foreign migrant workers stayed in Germany as permanent residents of the country.<sup>94</sup> Moreover, the German Basic Law contained humanitarian provisions establishing fundamental human rights, such as family rights and the right for family reunification.<sup>95</sup> Consequently, in the 1980s, the migration patterns were reversed from guest workers to family reunifications. The reunification policies increased the number of foreigners in the 1980s, despite the decrease in the employed foreign workers and the general abolition of the guest workers program. Thus, in 1980, for example, the number of employed foreigners fell to 1.9 million, while the number of total foreign residents increased to 4.5 million people—a trend that continued throughout the 1980s and 1990s.<sup>96</sup>

At the same time, citizenship in the country has historically been defined in terms of descent and the perception of nationhood based on ethnicity has to a large extent informed the post-war government's rhetoric that Germany is not a country of immigration.<sup>97</sup> However, the empirical developments demonstrated that Germany is in fact a country of immigration. The increase in foreign residents in the country and the related need to integrate them into the German society made clear that coherent immigration policy is necessary to control the immigration patterns.<sup>98</sup> However, there were domestic legal and institutional obstacles to enact policies in line with the government's political conception of no immigration. The legal framework and the liberal provisions in the Basic Law have granted extensive residence and family-unification rights to the guest workers and severely limited the executive power of the government to introduce restrictive immigration policies.<sup>99</sup> The German Federal Constitutional Court provided constitutional rights to foreign residents in Germany and the

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<sup>94</sup> Martin, "Germany: Managing Migration in Twenty-First Century."

<sup>95</sup> Christian Joppke, "Not a Country of Immigration: Germany."

<sup>96</sup> Martin, "Germany: Managing Migration in Twenty-First Century."

<sup>97</sup> Christian Joppke, "Not a Country of Immigration: Germany."

<sup>98</sup> Martin, "Germany: Managing Migration in Twenty-First Century."

<sup>99</sup> Christian Joppke, "Not a Country of Immigration: Germany."

government's program for voluntary return of guest workers in the 1980s proved to be ineffective in reducing the numbers of foreign residents in Germany in accordance with the political objectives.<sup>100</sup>

Thus, the German domestic political situation was characterized with substantial judicial constraints on the executive power when it comes to immigration policies. In addition to these legal constraints limiting the government's ability to enact more restrictive immigration policies, there was a general understanding among politicians of moral responsibility towards the immigrants and their families, which made a compromise on the issue politically hard to achieve.<sup>101</sup> Thus, the German post-war experience with immigration was based on liberal immigration framework and substantial domestic obstacles to respond to the empirical and social realities. This experience was fundamentally different from the one of the United Kingdom where restrictive immigration policies were introduced relatively early and it was feared that a participation in a European common framework on immigration would jeopardize the effective national policies. Whereas in the German case, as will be discussed in the next section, the harmonization of immigration and asylum policies on the European level was a way to address pending domestic issues and overcome domestic political opposition to change in policies.

### **3.4. The Asylum Compromise in Germany**

The domestic challenge on immigration became more acute when the reactions of the society in the 1980s towards foreign residents started to change as the issue was gaining more saliency—the share of Germans favouring return of foreigners rose from 39 percent in 1978 to 66 percent in 1981.<sup>102</sup> These attitudes were further exacerbated by the rapid increase in

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<sup>100</sup> Patrick Weil, "France, Germany and Immigration Policy: A Paradoxical Convergence," in *The Franco-German Relationship in the European Union*, ed. by Douglas Webber (London : Routledge, 1999), 159-166.

<sup>101</sup> Martin, "Germany: Managing Migration in Twenty-First Century."

<sup>102</sup> Christian Joppke, "Not a Country of Immigration: Germany."



asylum seekers applying for refugee status in Germany in the end of the 1980s and the beginning of 1990s. The termination of the guest workers program, the end of the Cold War, and the civil war in Yugoslavia provided the context for a surge in asylum applications.<sup>103</sup> Thus, the applications for asylum increased from 57 379 in 1987 to 438 191 in 1992.<sup>104</sup> Moreover, these patterns were accompanied by a wave of returns of ethnic Germans from Eastern Europe claiming German citizenship and residence rights after the end of the Cold War.<sup>105</sup> The steady rise in asylum applications caught the German government unprepared to deal with the social and economic burdens associated with the increase in asylum seekers applying for refugee status in the country. At the same time, right-wing parties were gaining support in local and state elections and attacks on foreign immigrants created the feeling that the government is ineffectively addressing the domestic situation on immigration and asylum.<sup>106</sup> Consequently, the issue with growing numbers of refugees and asylum seekers entered the political debate in Germany imposing a serious challenge on the domestic policies and a substantial pressure on the government to enact more restrictive policies.<sup>107</sup>

However, the German Basic Law's liberal asylum provisions had made the restriction of asylum legally and institutionally hard to achieve. Based on the country's historical experience, the provision in the Basic Law, enacted in 1949, stipulated that all persons prosecuted for political reasons have the right of asylum.<sup>108</sup> This liberal provision on asylum allowed access to the German territory to every individual claiming political prosecution. Moreover, the nature of the German political system based on coalition governments

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<sup>103</sup> Martin, "Germany: Managing Migration in Twenty-First Century."

<sup>104</sup> United Nations High Commissioner for Refugees (UNHCR), *Asylum Applications in Industrialized Countries: 1980-1999* (Geneva November 2001), 26, 53. <http://www.unhcr.org/3c3eb40f4.pdf>.

<sup>105</sup> Christian Joppke, "Not a Country of Immigration: Germany."

<sup>106</sup> Marc Fisher, "For West Europeans, Crucial Choices at the Ballot Box: Radical-Right Parties Score Major Gains in German State Voting," *The Washington Post*, April 6, 1992, accessed May 11, 2018, LexisNexis Academic.

<sup>107</sup> "Bonn, Feeling Pressure of Voters, is Trying to Curb Refugee Influx," *The New York Times*, August 24, 1986, accessed May 11, 2018, LexisNexis Academic.

<sup>108</sup> Martin, "Germany: Managing Migration in Twenty-First Century."

necessitates political compromises on controversial issues such as asylum policy.<sup>109</sup> The Chancellor Helmut Kohl and his Christian Democratic Union (CDU) were advocating in the early 1990s for an amendment of the Law in order make the asylum provisions more restrictive and control the number of asylum applications to Germany.<sup>110</sup> This was opposed by other political forces, mainly the liberal Free Democratic Party (FDP) and the opposition represented by the Social Democrats, based on historical reasons and humanitarian grounds.<sup>111</sup> This domestic controversy on asylum pushed the proponents for the legal change to seek the solution on the European level through the harmonization of immigration and asylum policies—as a representative from the government pointed out in 1991, “If European law is not harmonised in this field, then for us the whole thing remains extremely difficult.”<sup>112</sup>

The Schengen Agreement and the Schengen Implementation Convention’s emphasis on joint security over the Schengen Area addressed the common responsibility of member states on immigration and asylum policies affecting the common Schengen territory. The harmonization of policies was also incorporated in the Maastricht treaty as matters of joint concern of member states. These developments provided the German government with the needed justification to overcome the opposition and change its liberal asylum policy tying it to the need for harmonized and more restrictive security-oriented decisions and policies on the European level. This is evident from the speech of the Federal Interior Minister Rudolf Seiters from 1992 in which he underlined that participation in Schengen is a matter of joint responsibility and requires the amendment of the Basic Law provision on asylum in order to

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<sup>109</sup> Arne Niemann and Dorothee Lauter, “Playing Two-level Games in Berlin and Brussels: Maintaining Control of Asylum Policies,” in the *Europeanization of Control: Venues and Outcomes of EU Justice and Home Affairs Cooperation*, ed. by Petra Bendel et al. (Münster, Westf : LIT, 2011), 137-177.

<sup>110</sup> Anna Tomforde, “Germany Shuns Any Constitution Change: Setback for Kohl as Change in Liberal Asylum Laws is Rejected,” *The Guardian*, September 28, 1991, accessed May 11, 2018, LexisNexis Academic.

<sup>111</sup> Ibid.

<sup>112</sup> As cited in John Eisenhammer, “EC Summit: Germany Adamant on Immigration Policy; Bonn Seeks to Harmonize Laws on Asylum,” *The Independent*, November 16, 1991, accessed May 11, 2018, LexisNexis Academic.

ensure the effective participation of Germany within the framework of cooperation.<sup>113</sup> The liberal provisions of the Basic Law were making the possibility of transferring asylum seekers to other countries in line with the common asylum policy legally controversial. Thus, the Europeanization of immigration and asylum policies provided the German government with the opportunity to adjust its domestic policies and respond more effectively to the domestic social reality.

Ultimately, the debate over the domestic asylum policy was settled through the amendment of the Basic Law's article on asylum in 1993 with the provisions on "safe third country" and "safe country of origin" establishing that foreigners entering from a country considered to be safe or coming from a country not deemed politically unstable are no longer entitled to the right of asylum in Germany.<sup>114</sup> This change in the German Basic Law substantially restricted the right of asylum and resulted in the gradual decrease in asylum applications from the peak level of 438 191 in 1992 to 127 210 in 1994.<sup>115</sup> Thus, through linking the debate on immigration and asylum policies to the European level, the government was able to secure an important change in national politics and overcome the block of the domestic opposition. National political and institutional considerations served as a major impetus of the government in its official support for harmonization of immigration and asylum policies.

The free movement and the communitarisation of immigration and asylum policies remained a priority for the German federal government in negotiations preceding both

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<sup>113</sup>Address Given by Rudolf Seiters on the Schengen Agreements (Bonn, 12 February 1992), in Bulletin des Presse- und Informationsamtes der Bundesregierung, Hrsg. Presse- und Informationsamt der Bundesregierung, 14.02.1992, Nr. 19, Bonn: Deutscher Bundesverlag, "Schengener Abkommen als Meilenstein auf dem Weg zur Einheit Europas," auteur: Seiters, Rudolf, p. 201-202, available at [https://www.cvce.eu/en/obj/address\\_given\\_by\\_rudolf\\_seiters\\_on\\_the\\_schengen\\_agreements\\_bonn\\_12\\_february\\_1992-en-e55ffe3e-ecf4-4c55-9e91-3d2ea72c688d.html](https://www.cvce.eu/en/obj/address_given_by_rudolf_seiters_on_the_schengen_agreements_bonn_12_february_1992-en-e55ffe3e-ecf4-4c55-9e91-3d2ea72c688d.html), accessed May 11, 2018.

<sup>114</sup> Monica Bosche, "Trapped inside the European Fortress? Germany and European Union Asylum and Refugee Policy."

<sup>115</sup> United Nations High Commissioner for Refugees (UNHCR), *Asylum Applications in Industrialized Countries: 1980-1999*, 26, 53.

Maastricht and Amsterdam treaties. In 1996, the German Chancellor Helmut Kohl and the French President Jacques Chirac sent a joint letter to the Irish Prime Minister ahead of the Dublin European Council meeting outlining their priorities for the upcoming Intergovernmental Conference. The two leaders restated their countries' support for lifting internal borders, ensuring free movement of people, enhancing internal security, and working towards common policies on borders, visa, immigration and asylum:

Our fundamental aim continues to be the full implementation of the citizens' freedom of movement by lifting controls on our internal frontiers. This presupposes that we secure effective control of the external borders and, in addition, that we take all other measures necessary in order to guarantee the security of people within the Union. Thus a Community policy on external borders, visas, immigration, asylum and customs cooperation should be elaborated and implemented, with implementation, for subsidiarity reasons, being largely left to Member States.<sup>116</sup>

Thus, Germany's support for the integration of Schengen into the framework of the European Union and addressing the above-mentioned policies on the European level has overall remained a consistent political strategy. However, during the Amsterdam negotiations, Germany surprisingly shifted position on the supranationalization of asylum and immigration, despite the general support of the German government to Europeanize these policies.<sup>117</sup> This was the result of a shift in domestic interests and power balance. The relatively new decision-making powers of the German Länder (the German states) in the field of immigration and asylum created a political pressure on the federal government and pushed the German Chancellor Helmut Kohl to oppose the extension of Qualified Majority Voting (QMV) in

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<sup>116</sup> Letter from Jacques Chirac and Helmut Kohl to John Bruton (Paris, Bonn, 9 December 1996) in Bulletin des Presse- und Informationsamtes der Bundesregierung, 102 Nr. 11.12.1996, Bonn: Deutscher Bundesverlag, "Gemeinsame Botschaft von Bundeskanzler Dr. Helmut Kohl und dem Präsidenten der Französischen Republik, Jacques Chirac, an den amtierenden Vorsitzenden des Europäischen Rates und Ministerpräsidenten von Irland, John Bruton," available at [https://www.cvce.eu/en/obj/brief\\_von\\_jacques\\_chirac\\_und\\_helmut\\_kohl\\_an\\_john\\_bruton\\_paris\\_bonn\\_9\\_dezember\\_1996-de-5e01b4a8-97ab-40a0-924b-21352671edfb.html](https://www.cvce.eu/en/obj/brief_von_jacques_chirac_und_helmut_kohl_an_john_bruton_paris_bonn_9_dezember_1996-de-5e01b4a8-97ab-40a0-924b-21352671edfb.html), accessed May 11, 2018.

<sup>117</sup> Bosche, "Trapped inside the European Fortress? Germany and European Union Asylum and Refugee Policy."

immigration and asylum policies.<sup>118</sup> The Länder opposed further transfer of competences to the European level because the change in the asylum provisions had already dropped the number of asylum applications.<sup>119</sup> They feared that further transfer of competences would dilute the already established restrictive policies, thus imposing new financial and administrative burdens.

The change in the German position demonstrates how changes in domestic politics can shift the position of a member state on the European level. It, therefore, aligns with the logic of liberal intergovernmentalism that states can have different preferences which vary across time and policy issues in relation to the domestic opportunities and constraints. Moreover, it exemplifies the liberal intergovernmentalism's emphasis on the importance of the domestic level in the formation of national preferences that are subsequently expressed in the government's bargaining position and impact the integration process.

### **3.5. Summary of Findings**

The empirical findings of the chapter demonstrate that the Schengen Agreement was pursued by the German government in line with the German foreign policy towards the European integration and in response to German national objectives related to security, immigration and asylum policies. The German historical, political and economic post-war experience created a set of national objectives favourable to further political integration in Europe. Moreover, the German post-war experience with immigration and asylum aligned the government's domestic interests with the Europeanization of these policies. The next chapter will demonstrate how diverging historical, political and institutional experiences in the case of the United Kingdom had produced diverging preferences for integration in the Schengen-related policy areas. These diverging preferences necessitated the signing of the Agreement

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<sup>118</sup> Ibid.

<sup>119</sup> Ibid.

outside of the Community Law in 1985 and led to the British opt-out from the border provisions of the Schengen Acquis in 1997, ultimately shaping the integration process in a more flexible and non-uniform manner.

## 4. The Case of the United Kingdom

The case of the United Kingdom presents a diverging pattern of integration with respect to the Schengen Agreement and the policies on borders, immigration and asylum. In addition to the UK's general resistance to delegate powers to supranational bodies, abolition of frontier controls and integration of policies on internal security, immigration and asylum were perceived by successive UK governments as incurring high domestic costs considering the country's political and institutional developments in these policy areas.

### 4.1. British Opposition to Supranationalism

The reluctance of the United Kingdom to cede control of its borders has been a persistent government strategy. The UK government favoured the three-pillared approach in the Maastricht Treaty which confined the area of Justice and Home Affairs to intergovernmental cooperation without subjecting it to the authority of the European Commission, the European Parliament and the European Court of Justice.<sup>120</sup> The Labour government, which came to power in 1997, adopted a more cooperative attitude and permitted the incorporation of the Schengen Acquis into the framework of the European Law under special conditions for the United Kingdom.<sup>121</sup> Consequently, the Amsterdam Treaty gave the UK a possibility to retain control of its borders and granted it a flexible opt-in option in matters of police and judicial cooperation, visa, asylum, and immigration policies.<sup>122</sup> Thus, the British opt-out from the Schengen Area exemplifies more of a differentiated integration rather than a full non-participation.

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<sup>120</sup> Stephen Wall, "At the Heart of Europe: The Road to Maastricht Treaty" in *A Stranger in Europe: Britain and the EU from Thatcher to Blair* (Oxford: Oxford University Press, 2008), accessed 30 April, 2018, <http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199284559.001.0001/acprof-9780199284559-chapter-6>.

<sup>121</sup> Rebecca Adler-Nissen, "Behind the Scenes of Differentiated Integration: Circumventing National Opt-outs in Justice and Home Affairs," *Journal of European Public Policy* 16, no.2 (2008) :62-80, <https://doi.org/10.1080/13501760802453239>.

<sup>122</sup> Ibid.

The flexible participation also demonstrates that British opposition has never been an opposition to the cooperation in these areas but an opposition to the supranationalization of the Schengen-related policies. For example, the Conservative government of Margaret Thatcher initiated an intergovernmental cooperation on immigration and asylum in 1986 during the British Council Presidency with the establishment of an Ad Hoc group on immigration and asylum.<sup>123</sup> In addition to this, the UK has participated in bilateral initiatives for cooperation, such as the 1991 Sandgatte Protocol between the United Kingdom and France on police cooperation and frontier controls.<sup>124</sup> In his statement on the 1991 European Council in Maastricht, the Prime Minister John Major underlined the UK's preferences for intergovernmental cooperation:

As the House knows, there was strong pressure over many months for all aspects of co-operation to come within European Community competence. That was not acceptable to this country. Instead, an alternative route to European co-operation has been opened up. I believe that this will be seen as an increasingly significant development as the Community opens its doors to new members, and more flexible structures are required.<sup>125</sup>

Therefore, the UK's policy preferences have been different from these of Germany and display a general reluctance on the part of the United Kingdom to transfer competences to the European institutions and be bound by Community Law. The reasons for these diverging preferences of the two countries stem from their diverging historical experiences with the European integration project but more specifically their national priorities and objectives and the way they align with the integration process.

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<sup>123</sup> Bosche, "Trapped inside the European Fortress? Germany and European Union Asylum and Refugee Policy."

<sup>124</sup> Andreas Ette and Jürgen Gerdes, "Against Exceptionalism: British Interests for Selectively Europeanizing its Immigration Policy," in *The Europeanization of National Policies and Politics of Immigration: Between Autonomy and the European Union*, ed. by Thomas Faist, and Andreas Ette (New York: Palgrave, 2007), 93-111.

<sup>125</sup> "Mr. Major Commons Statement on the 1991 European Council Meeting at Maastricht," available at <http://www.johnmajor.co.uk/page860.html>, accessed April 30, 2018.



The United Kingdom's victorious status after the war as well as its imperial legacy have made it reluctant to agree to share national sovereignty and accept possible constraints on its foreign policy by focusing on regional cooperation.<sup>126</sup> In addition to this, the UK's political tradition of a unitary state with strong parliamentary power puts an emphasis on the British state institutions and their representation of national sovereignty.<sup>127</sup> These factors contributed to the United Kingdom's general opposition to supranationalism and created the need for a delicate balance between participation in the European Community and the traditionally strong ties with the Commonwealth and the United States of America.<sup>128</sup> Thus, the perception of national sovereignty within the context of the European project has been different from the one in Germany—a deeper European political integration was perceived as a threat to sovereignty and a potential challenge to national control over policies. Intergovernmental cooperation that retains the central role of the states has been the United Kingdom's preferred mode of integration. This position was officially expressed in the very beginning of the British membership in the Prime Minister James Callaghan's letter to the General Secretary of the Labour party in 1977 in which he stated his support for the autonomy of national governments with respect to their political objectives and his position against increasing the competences of the supranational institutions.<sup>129</sup>

Moreover, the British government pursued membership in the EC based on economic interests and participation in the common market. The decision to join the European Community was largely influenced by the diminishing international role of the UK and the growing economic importance of the EC.<sup>130</sup> The successful economic experience and the fast-growing economies of the EC in the 1960s created the fear of possible political and economic

<sup>126</sup> Andrew Geddes, *The European Union and British Politics* (New York: Palgrave Macmillan, 2004), 57-72.

<sup>127</sup> Christian Schweiger, *Britain, Germany and the Future of the European Union* (Houndmills, Basingstoke, Hampshire : Palgrave Macmillan, 2007), 14-38.

<sup>128</sup> Geddes, *The European Union and British Politics*, 57-72.

<sup>129</sup> Cited in Stephen George, "Britain: Anatomy of a Eurosceptic state," *Journal of European Integration* 22, no.1 (2000):16, <https://doi.org/10.1080/07036330008429077>.

<sup>130</sup> Geddes, *The European Union and British Politics*, 57-72.

exclusion and incentivized the UK to join the Community. The British Foreign Office estimated that economic exclusion from the European block would entail significant costs for the country since in the 1950s and 1960s British exports to the EC were progressively increasing as opposed to the British exports to the Commonwealth.<sup>131</sup> As a result, participation in the EC was presented to the British electorate in mere pragmatic terms without any concentrated political effort to create an attachment to the European project among the British citizens.<sup>132</sup> This functional relationship with the European Community was different from the ambitions associated with the development of an ever closer political Union present in Germany.

The UK's reluctant participation in the supranational structures of the Community is best expressed by the Prime Minister Margaret Thatcher's famous speech in Bruges in 1988.<sup>133</sup> In her speech Thatcher underlined the UK's position on the future of the European Community and the preference for practical intergovernmental cooperation and integration based on flexibility:

My first guiding principle is this: willing and active co-operation between independent sovereign states is the best way to build a successful European Community. To try to suppress nationhood and concentrate power at the centre of a European conglomerate would be highly damaging and would jeopardise the objectives we seek to achieve.<sup>134</sup>

More specifically, Thatcher's speech expressed the government's firm stance in relation to internal frontiers and free movement:

Of course we must make it easier for goods to pass through frontiers. Of course we must make it easier for our people to travel throughout the Community. But it

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<sup>131</sup> David Gowland, Arthur Turner and Alex Wright, *Britain and European Integration Since 1945: On the Sidelines*, (Milton Park, Abingdon, Oxon; New York: Routledge, 2010), 66.

<sup>132</sup> Stephen George, *An Awkward Partner : Britain in the European Community* (Oxford: Oxford University Press, 1994), 5-41.

<sup>133</sup> "Full text of Margaret Thatcher's speech to the College of Europe: The Bruges Speech," *The Telegraph*, accessed April 2, 2018, <https://www.telegraph.co.uk/comment/personal-view/3562258/Full-text-of-Margaret-Thatchers-speech-to-the-College-of-Europe-The-Bruges-Speech.html> .

<sup>134</sup> Ibid.

is a *matter of plain common-sense* [emphasis added] that we cannot totally abolish frontier controls if we are also to protect our citizens from crime and stop the movement of drugs, of terrorists, and of illegal immigrants.<sup>135</sup>

Thus, even though liberalization of the market was part of Thatcher's European priorities, dismantling of internal border controls and sacrificing sovereignty in sensitive areas such as internal security and immigration were perceived as not necessarily correlated to the economic rationale and the advantages of the common market. Thatcher's firm stance on the initiative to dismantle frontier controls displays the perception of the policy as one infringing on central notions of sovereignty, such as security and control of the country's physical borders. Thus, the British tendency to restrict the development of a political Union that would impose conditions on member state's national policies provides the necessary background to understand the country's general position on Schengen. However, there are underlying domestic factors and specific national objectives that further explain the United Kingdom's opposition to communitarisation of border, security, immigration and asylum policies.

#### **4.2. The Importance of National Control over Borders**

Margaret Thatcher's declaration in Bruges that "it is a matter of plain common sense that we cannot totally abolish frontier controls if we are also to protect our citizens from crime and stop the movement of drugs, of terrorists and of illegal immigrants"<sup>136</sup> underlines the security importance of nationally controlled borders for the United Kingdom. The security implications of border controls given the UK's geographical position formed a salient argument in the decision not to participate in the Schengen Agreement. The major rationale was connected to crime prevention and the role of borders for controlling who enters British territory. This is present in Lord Scarman's outline of the European Community Committee's report on the Easing of Frontier Formalities during the debate in the House of Lords:

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<sup>135</sup> "Full text of Margaret Thatcher's speech to the College of Europe: The Bruges Speech."

<sup>136</sup> Ibid.

We rely on systematic checks at our airports and sea ports to control illegal immigration. Other member states with long land frontiers *cannot exercise as efficiently as we can* [emphasis added] a frontier control system, for they have long land frontiers and persons can get across in other places than at sea ports and airports [...] If we are to implement this resolution it means that we shall have to find internal methods for doing that which we now do at our frontiers by means of immigration control. Those internal measures, it seemed to the committee and I would suggest to the House, would run counter to many of our cherished liberties in this country and would imply an unnecessary abolition of the effective immigration control policy established in the United Kingdom.<sup>137</sup>

Therefore, the general political position was that national borders are the main points of entry to the territory of the country and perform a fundamental security purpose that need to be controlled by the national government and not be subjected to supranational policy-making. The easiness of travel could be achieved through the special immigration control channels; however, the complete dismantling of identity checks was considered unfeasible since the main identity checks happen on the points of entry.<sup>138</sup> More importantly, as the above quote indicates, the perception was that United Kingdom is able to better exercise control of its borders than other European member states and participation in the border policies will induce the risk of levelling down security. The nature of the debate was thus different from the one in Germany whose geographical position created a sense of vulnerability that could be partially reduced by strengthening the control of the external Schengen border and creating European level structures for addressing cross-border crime.

In addition to the security dimension, domestic social considerations are also relevant. As the discussion of the report in the House of Lords indicates, the lifting of border controls and participation in a common frontier-free area would require the imposition of stricter internal checks, such as identity card checks, which was perceived to be against the British

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<sup>137</sup> “Easing of Frontier Formalities: ECC Report,” HL Deb 03 November 1983 vol 444 cc660-77, House of Lords Hansard Archives, accessed May 11, 2018, <https://api.parliament.uk/historic-hansard/lords/1983/nov/03/easing-of-frontier-formalities-ecc-report> .

<sup>138</sup> Ibid.

political tradition of civil liberties.<sup>139</sup> The required possession of identity cards and the respective rights of the police to examine them was seen as politically controversial for the British society in terms of personal freedom within the territory of the country. The inapplicability of an internal system of identity card checks appears in another report from the European Communities Committee published in 1999.<sup>140</sup> Part of the report points to the high administrative and social costs associated with the introduction of such checks and their impact on community and race relations in the British society. Thus, the general political consensus was that strict immigration controls at the borders fit the political and social traditions of the British society.

These political and social traditions relate to the post-war evolution of the United Kingdom as a society based on multiculturalism. As will be discussed in the next section, the colonial experience of the UK and the post-war immigration waves created significant minority populations in the United Kingdom, represented mostly by Indian, Pakistani, African and Bangladeshi populations and concentrated in the urban centres.<sup>141</sup> This changed the social and ethnic composition of the British society and contributed to the development of a multicultural society marked by ethnic heterogeneity. Moreover, the general understanding was that good race relations within the country depend on the strict control of immigration because of the perceived burden that uncontrolled immigration will impose on the state and its resources—as the Home Secretary Douglas Hurd pointed out in 1987, “I am quite clear that harmony in our cities depends on maintaining a firm but fair immigration control.”<sup>142</sup> Thus,

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<sup>139</sup> Ibid.

<sup>140</sup> Select Committee on the European Communities Seventh Report, Schengen and the United Kingdom’s Border Controls, Session 1998-1999, House of Lords, UK Parliament, accessed April 30, <https://publications.parliament.uk/pa/ld199899/ldselect/ldcom/37/3704.htm>.

<sup>141</sup> Zig Layton-Henry, “Britain: From Immigration Control to Migration Management,” in *Controlling Immigration: A Global Perspective*, ed. Wayne A. Cornelius, Takeyuki Tsuda, Philip L. Martin, and James F. Hollifield (Stanford, Calif.: Stanford University Press, 2004), 297-334.

<sup>142</sup> John Gray, “Immigration Plans of U.K. Government Described as Racist,” *The Globe and Mail* (Canada), November 10, 1987, accessed April 30, 2018, LexisNexis Academic.

the abolition of national border controls was seen as a threat to the already established British political and social traditions, entailing high domestic adjustment costs.

Therefore, the government's conviction has been that their own border controls system is different and superior to the ones of other European countries in preventing crime, terrorism and unauthorized immigration and that it is not in the interest of the UK to take part in the supranationalization of border policies.<sup>143</sup> However, the government's position on the opt-out from the Schengen Acquis demonstrates its willingness for a flexible approach that fits better domestic interests and priorities—retaining control of borders, immigration and asylum policies based on “geographical, historical and sometimes even economic considerations,” and taking part in police cooperation.<sup>144</sup> Thus, the UK has expressed interest to participate mostly in the security and policing aspects of the Schengen Agreement as long as they complement the national ones, and has demanded inclusion in borders security measures such as the EU's external borders agency Frontex, biometric passports and access to the Visa Information System.<sup>145</sup> This reflects the general pattern throughout the above-mentioned reports that some level of cooperation between governments in tackling cross-border crime and illegal trafficking is necessary but the abolition of border controls and supranationalization of immigration and asylum policies infringes on core sovereignty functions since these policies are based on specific domestic circumstances.

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<sup>143</sup> Select Committee on the European Communities Seventh Report, Schengen and the United Kingdom's Border Controls, Session 1998-1999.

<sup>144</sup> Select Committee on the European Communities, 31<sup>st</sup> Report, Session 1997-1998, House of Lords, UK Parliament, accessed April 30, 2018, <https://publications.parliament.uk/pa/ld199798/ldselect/ldcom/139/8072806.htm#p4a2>.

<sup>145</sup> “The UK, the Common European Asylum System and EU Immigration Law,” The Migration Observatory at the University of Oxford, accessed May 14, 2018, <http://www.migrationobservatory.ox.ac.uk/resources/primers/the-uk-the-common-european-asylum-system-and-eu-immigration-law/>.

### 4.3. Post-war Immigration to the United Kingdom

The discussion on borders and free movement of people implies examination of the United Kingdom's experience with immigration in the context of its special ties with the countries from the Commonwealth. The United Kingdom's experience with immigration is different from that of Germany in terms of origins of immigrants and time of development of policies. Immigration from the New Commonwealth has had a huge influence on the UK's immigration policy which started being increasingly restrictive from the 1960—at the time when Germany started to welcome foreign workers and experience its own immigration wave.

The loose immigration regime up to the 1960s had led to an increase in immigration from the New Commonwealth, such as the Caribbean, India, Pakistan and others—from net immigration levels of 11,000 in 1954 to around 136,000 in 1961 before decreasing in 1962 after the introduction of the first restrictive immigration bill.<sup>146</sup> The perception of uncontrolled inflow of people from the previous colonies gained saliency among the public, government and the media and became an important part of the Conservatives' political platform in the 1960s and 1970s.<sup>147</sup> It is important to note that the UK's central and independent executive power in addition to the lack of extensive constitutional protection for immigrants differs substantially from Germany's constitutionally protected human rights-based immigration system.<sup>148</sup> As discussed in the previous chapter, the Basic Law in Germany served as a serious constraint on the government's ability to change and adapt immigration and asylum policies. The lack of such constraints in the UK and the strong decision-making power of the UK's Parliament have allowed the British government to introduce restrictive immigration policy

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<sup>146</sup> Zig Layton-Henry, "Britain: From Immigration Control to Migration Management," 302.

<sup>147</sup> "All-party U.K. Committee Urges New Curbs on Non-white Entries," *The Globe and Mail* (Canada), March 22, 1978, accessed May 14, 2018, LexisNexis Academic.

<sup>148</sup> Andreas Ette and Jürgen Gerdes, "Against Exceptionalism: British Interests for Selectively Europeanizing its Immigration Policy," 93-111.

measures without much domestic controversy or institutional constraints and to control the immigration patterns according to the political objectives of the government.

Thus, in 1962 the Commonwealth Immigrants Act was established, which restricted the entry of persons from the Commonwealth through the introduction of an entry voucher system for people that were not born in the United Kingdom or were in no possession of a British passport.<sup>149</sup> This allowed the government to control the flow of immigration from the previous colonies and to restrict the number of people coming in depending on the national social and labour circumstances. In addition to this, several years later a second Immigrants Act was introduced that restricted the immigration of people possessing British passports but having no connections to the United Kingdom.<sup>150</sup> The debate in the House of Commons regarding the introduction of the second Immigrants Act was exclusively focused on the importance of strict immigration control for maintaining harmonious race relations in the country and on the possible threat of uncontrolled immigration from the New Commonwealth if effective preventive measures are not to be implemented in a timely manner.<sup>151</sup> The debate underlines the salient social dimension of immigration and the perception of immigration strongly related to domestic concerns about race relations within the country.

Consequently, the period between 1961 and 1968 marked the introduction of successive measures to restrict immigration from the previous colonies displaying the general agreement among both Conservative and Labour Parties for the need to maintain strict immigration controls. Immigration was further restricted in 1971 with the introduction of a government's comprehensive immigration bill that was based on work permits without the

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<sup>149</sup> Zig Layton-Henry, "Britain: From Immigration Control to Migration Management," 297-334.

<sup>150</sup> Ibid.

<sup>151</sup> "Commonwealth Immigrants Bill," HC Deb 27 February 1968 vol 759 cc1241-368, House of Commons Hansard Archives, accessed May 11, 2018, <https://api.parliament.uk/historic-hansard/commons/1968/feb/27/commonwealth-immigrants-bill> .



possibility of residence in the country or family unification.<sup>152</sup> It applied to all citizens of the Commonwealth countries that had no connections to the United Kingdom, thereby positioning them on equal footing with foreign nationals and thus removing preferential treatment for Commonwealth citizens.

Moreover, the attempt of the UK to limit further immigration from the Commonwealth and reduce the responsibility towards the newly independent former colonies entailed the need for reformulation of the generally broad concept of British citizenship that would allow the government to continue to restrict immigration without being accused of discriminatory policies.<sup>153</sup> Before 1981 the British citizenship was based on the concept of the British Empire and articulated in terms of individual subjects' loyalty to the British Crown.<sup>154</sup> Thus, it granted people from the British colonies the right to settle in the country and implied the right for permanent settlement. To put a limit on this, the Conservative government of Margaret Thatcher developed the British Nationality Act in 1981, which outlined new categories of citizenship, thereby restricting the concept of British citizenship and allowing the United Kingdom to break away from its responsibility towards the former colonies.<sup>155</sup> The measures attracted substantial international criticism claiming that the government's policy is specifically targeting non-white immigrants and therefore represents a discriminatory practice.<sup>156</sup> This controversy around the firm British immigration policies exemplifies the specificity of the immigration debate in the United Kingdom largely linked to issues of race and based on the country's distinct colonial experience.

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<sup>152</sup> Zig Layton-Henry, "Britain: From Immigration Control to Migration Management," 297-334.

<sup>153</sup> Ibid.

<sup>154</sup> Matthew J. Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees*, (Cambridge, UK; New York: Cambridge University Press, 2004), 110-112.

<sup>155</sup> Zig Layton-Henry, "Britain: From Immigration Control to Migration Management," 297-334.

<sup>156</sup> Derek Brown, "'Inhuman' Immigration Rules Attacked: European Parliament Told of Inequalities in British Policy," *The Guardian* (London), September 27, 1984, accessed May 14, 2018, LexisNexis Academic.

The specificity of the immigration debate in the UK and the government's firm strategy on restricting immigration are also exemplified in the more recent events from 2017 and 2018 related to the so-called Windrush scandal that exposed the controversial treatment of Commonwealth citizens from the Caribbean who have lived most of their lives in the United Kingdom but have not been able to obtain British passports and were thus denied proper access to jobs, housing, healthcare and in certain instances threatened with deportation.<sup>157</sup> The controversy, which led to the resignation of the British Home Secretary, exposed the government's highly restrictive immigration policies based on deterrence measures and removal targets without proper considerations of the respective social costs of such policies.<sup>158</sup>

Thus, the United Kingdom's post-war immigration experience substantially differs from the experience of Germany outlined in the previous chapter and demonstrates how divergent experiences on the domestic level contribute to different formulations of national interests and thus diverging preferences for integration on the European level.

#### **4.4. Asylum Policies in the United Kingdom**

The UK's experience with asylum policies also diverges from the German one, despite the similarity of pressures from the international environment. As in the case of Germany, in the late 1980s and early 1990s, the number of asylum applications to the United Kingdom started to increase—asylum applications rose from 4, 256 in 1987 to 44,840 in 1992.<sup>159</sup> Most of the asylum applicants in the period 1985-1995 were coming from countries such as Sri

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<sup>157</sup>Jessica Elgot, "Theresa May's 'Hostile Environment' at Heart of Windrush Scandal," *The Guardian*, April 17, 2018, accessed May 23, 2018, <https://www.theguardian.com/uk-news/2018/apr/17/theresa-mays-hostile-environment-policy-at-heart-of-windrush-scandal>.

<sup>158</sup> Heather Stewart, Amelia Gentleman, and Nick Hopkins, "Amber Rudd Resigns Hours after Guardian Publishes Deportation Targets Letter", *The Guardian*, April 30, 2018, accessed May 23, 2018, <https://www.theguardian.com/politics/2018/apr/29/amber-rudd-resigns-as-home-secretary-after-windrush-scandal>.

<sup>159</sup> United Nations High Commissioner for Refugees (UNHCR), *Asylum Applications in Industrialized Countries: 1980-1999*, 26, 53.

Lanka, Iran, Turkey, Somalia, Pakistan as well as Yugoslavia starting from the early 1990s.<sup>160</sup> This new trend shifted attention to asylum policies and the need to regulate asylum applications. In line with its restrictive immigration policies, the Conservative government under Margaret Thatcher proceeded to undertake measures for the restriction of asylum—it imposed visas for countries of origins of asylum applicants such as Sri Lanka, India, Pakistan, Bangladesh and introduced the Carrier’s Liability Act in 1987 imposing fines for carriers accepting travellers without the necessary documents and visas.<sup>161</sup> The introduced measures were in line with the emphasis on strict control at the points of entry to the country.

In addition to this, John Major’s government introduced the Asylum and Immigration Appeals Act in 1993 which marked the beginning of a comprehensive firm legal stance on asylum policy in the United Kingdom.<sup>162</sup> The Act substantially restricted the time for asylum appeals process and was received as an unexpectedly tough measure with the potential to prevent granting asylum to genuine applicants.<sup>163</sup> Moreover, the Act introduced fingerprinting for asylum seekers.<sup>164</sup> The provision allowing authorities to take fingerprints of the asylum applicants clearly demonstrates the emphasis on security and strict control over the asylum process which is put above humanitarian considerations. The Asylum and Immigration Appeals Act from 1993 was followed by another Asylum and Immigration Act in 1996 which further restricted asylum provisions through, for example, limiting social security benefits for asylum seekers.<sup>165</sup> The idea was that the reduction in social security benefits will render the country unappealing to potential asylum seekers.

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<sup>160</sup> Ibid, 42, 74.

<sup>161</sup> Zig Layton-Henry, “Britain: From Immigration Control to Migration Management,” 297-334.

<sup>162</sup> Dallal Stevens, “The Asylum and Immigration Act 1996: Erosion of the Right to Seek Asylum,” *The Modern Law Review*, 61 (1998): 207-222, <https://doi.org/10.1111/1468-2230.00138>.

<sup>163</sup> Nick Cohen, “Refugees Face Loss of Sanctuary: The Asylum Bill is Far Tougher Than Expected, Nick Cohen Reports,” *The Independent* (London), November 2, 1991, accessed May 14, 2018, LexisNexis Academic.

<sup>164</sup> Asylum and Immigration Act, 1993, ch.23 (United Kingdom), <http://www.legislation.gov.uk/ukpga/1993/23/contents>.

<sup>165</sup> Dallal Stevens, “The Asylum and Immigration Act 1996.”

In the subsequent years, the restrictive asylum policy was continued by the Labour government. The Home Department's White Paper on Immigration and Asylum presented to the Parliament in 1998 with the title "Fairer, Faster and Firmer—A Modern Approach to Immigration and Asylum" put a strong emphasis on the need to control immigration and the asylum process in the United Kingdom and to prevent possible abuses of the system. The White Paper expressed the firm position on immigration stating that "Every country must exercise firm control over immigration and Britain is no exception. This Government will not allow our controls to be abused with impunity and will ensure that the controls are modernised and that the staff who operate them are equipped to carry out their tasks."<sup>166</sup> Thus, the UK's asylum policies had become very restrictive—if 15 percent of the asylum applications were refused in the period 1988-1990, the percentage rose to 71 percent in 1991-1993 and to 77 percent in the period 1994-1999.<sup>167</sup>

The 1998 Home Department's White Paper on Immigration and Asylum expressed the government's commitment to European cooperation in the field of security and immigration; however, it emphasized that border and immigration policies remain under the control of the UK government because of their established effectiveness in tackling crime and controlling immigration in light of United Kingdom's "tradition and geography."<sup>168</sup> It also specifically underlined that "we need to recognize these differences"<sup>169</sup> The strict immigration control at the borders and its connection to the social relations in the country is again reappearing in the Home Department's White Paper, part of which states that:

The Government believes that a policy of *fair, fast and firm immigration control* will help to promote *race equality* [emphasis added]. One of this Government's

<sup>166</sup> United Kingdom Home Office, *Fairer, Faster, Firmer-A Modern Approach to Immigration and Asylum*, July 27, 1998, accessed May 14, 2018, <https://www.gov.uk/government/publications/fairer-faster-and-firmer-a-modern-approach-to-immigration-and-asylum>.

<sup>167</sup> Anthony M. Messina, *The Logics and Politics of Post-WWII Migration to Western Europe* (New York: Cambridge University Press, 2007), 120.

<sup>168</sup> United Kingdom Home Office, *Fairer, Faster, Firmer-A Modern Approach to Immigration and Asylum*.

<sup>169</sup> Ibid.

central themes is tackling the problems of racism and creating a society in which all our citizens, regardless of background or colour, enjoy equal rights, responsibilities and opportunities.<sup>170</sup>

Thus, due to its colonial legacy, specific institutional framework, and in response to domestic societal considerations, the United Kingdom's government has managed to devise a comprehensive and restrictive national immigration policy early on without much political opposition. The restrictive policies on immigration and asylum were perceived as effective in controlling immigration and asylum patterns and appropriate for the United Kingdom's domestic conditions. Therefore, common European policies on border-free zone, immigration and asylum were opposed on the basis that it would diminish the effectiveness of the developed strict immigration and asylum controls in the United Kingdom and challenge the already established British system of control. The Amsterdam opt-out was considered a successful deal for the UK considering its priorities on the issues at stake—ensuring that “policy on border controls and immigration will be made in Britain, not in Brussels.”<sup>171</sup>

#### **4.5. Summary of Findings**

The United Kingdom's position on the Schengen Agreement should be considered in the context of its historical participation in the European integration based on preference for intergovernmental cooperation as opposed to supranational solutions. Moreover, the security importance of borders and the perceived value of the national provision of security have rendered supranationalization of this area disadvantageous for the United Kingdom. The UK experienced patterns of immigration from the previous colonies relatively early in the post-war period, which combined with the institutional environment of the British political life, allowed the government to introduce highly restrictive immigration and asylum policies

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<sup>170</sup> Ibid.

<sup>171</sup> Robin Cook, HC Debates, 12 Nov 1997: Column 910, House of Commons Hansard Archives, accessed May 11, 2018, [https://publications.parliament.uk/pa/cm199798/cmhansrd/vo971112/debtext/71112-22.htm#71112-22\\_spnew1](https://publications.parliament.uk/pa/cm199798/cmhansrd/vo971112/debtext/71112-22.htm#71112-22_spnew1) .

before other Western European states such as Germany. Therefore, the national objectives in these policy areas created preference for integration based on selective participation that enhances domestic policies rather than changing them. The government has translated these domestic considerations to the European level through its bargaining position, thereby influencing the integration process through limiting communitarisation in these policies and ultimately securing a flexible arrangement for participation.

## 5. Discussion of Findings

The findings of the research demonstrate that integration of policy areas in the European Union exemplifies functional logic because of the strong interconnectedness of the economic and political structures. The Schengen Agreement to gradually abolish frontier controls and ensure free movement of people, goods and services entailed the need for compensatory measures to be implemented if the objective of the agreement is to be achieved. The Agreement necessitated further cooperation in sensitive policy areas such as immigration, asylum policies, visa and police cooperation that started encompassing a broader range of policies covering different competences previously exclusively governed by the member states themselves. Thus, the neofunctionalist logic of spillover does have a partial application to the internal logic of the European integration and the way the integration process develops based on interdependencies between policies in the conditions of an already established economic integration.

However, this is by no means an automatic and linear process governed by functional pressures and supranational actors. On the contrary, it is one primarily driven by member states which try to shape and influence the integration according to their domestic preferences and national objectives. Thus, the research challenges the implicit assumption of an ever closer union embedded in neofunctionalist theoretical logic. The diverging cases of Germany and United Kingdom with respect to Schengen and the related policies demonstrate that preferences for integration stem from specific domestic conditions and national objectives and the way they align with the integration process in response to challenges from both the internal and the external environment. The obstacles to uniform integration posed by states' diverging preferences and objectives have been demonstrated through the discussion on the development of the Schengen Agreement within the context of the Area of Freedom, Security and Justice. In addition to the intergovernmental beginning of the Schengen Agreement, the

Maastricht Treaty confined the policies on borders, security, immigration and asylum to the third pillar based on intergovernmental cooperation. Despite the official incorporation of Schengen with the Amsterdam Treaty and the transfer of policies such as visa, immigration and asylum to the first Community pillar, the general intergovernmental nature of decision-making in these areas was to a large extent retained and the powers of the supranational bodies limited through intergovernmental qualifications included in the Treaty.<sup>172</sup>

The empirical discussion of the two cases points to the validity of the liberal intergovernmentalism's core theoretical insights, mainly that states' preferences for integration are informed by the aggregated interests on the domestic level articulated through the respective bargaining positions. Moreover, as discussed in the German context with the change in the asylum law, the European level provides member states' governments with the opportunity to use international commitments to justify controversial governmental agendas on the domestic level. In addition to this, as articulated by the theory of liberal intergovernmentalism, member states perceive unequal gains and losses in the integration. This necessitates concessions that can be realized in the form of flexible arrangements if the process is to move forwards (as in the case of the UK's conditional participation in the Schengen Agreement and the policies on borders, internal security, immigration and asylum).

Ultimately, the findings of the research give answers to the questions not only on the different positions of states which result in diverging integration preferences and inform the need to maintain flexibility in the integration process but also to the questions on the very nature of the European Union and the debate between supranationalism and intergovernmentalism. This research demonstrates that decision-making in the European Union lies very much in the hands of member states and despite the growing competences

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<sup>172</sup> Dinan, *Ever Closer Union : An Introduction to European Integration*, 529-567.



addressed at the European level, the integration process remains something fundamentally intergovernmental.

More recent developments also support these conclusions. The Lisbon Treaty, which was signed in 2007 and entered into force in 2009, despite abolishing the pillar structure and strengthening the powers of the European Parliament, also enhanced the institutional importance of the European Council and retained the intergovernmental decision-making in sensitive policy areas.<sup>173</sup> Moreover, the inflow of asylum seekers and refugees in Europe in 2015 and 2016 posed serious challenges to the initial logic of the Schengen and Dublin Accords and exposed the central role of member states' national objectives and their precedence over commitment to European integration and burden-sharing in times of perceived crisis of the European institutions. The re-introduction of border controls and fences and the inability to agree on redistribution of responsibility for asylum seekers rendered the future of Schengen uncertain, the effectiveness of the Dublin Regulation questionable, and demonstrated that member states are prone to pursue their own national interests and security objectives resorting to solutions outside and sometimes even in conflict with the Community's legal and political framework.<sup>174</sup> But it is also exactly these national interests and objectives that prevent the establishment of effective cooperative and redistributive systems on the European level and the necessary tools to enforce them in the first place.

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<sup>173</sup> Sergio Fabbrini, *Which European Union? Europe After the Euro Crisis* (Cambridge; New York : Cambridge University Press, 2015), 33-63.

<sup>174</sup> For a more detailed account of Hungary and the other Visegrad countries' opposition to shared responsibility for asylum seekers see Boldizsár Nagy, "Shifting Responsibility or Shifting the Focus? The Responses of the EU and Visegrad Countries to the Post-2015 Arrival of Migrants and Refugees," *Global Turkey in Europe Series* Working paper No. 17, May 23, 2017, Istituto Affari Internazionali, Roma, [http://www.iai.it/sites/default/files/gte\\_wp\\_17.pdf](http://www.iai.it/sites/default/files/gte_wp_17.pdf) and Boldizsár Nagy, "Hungarian Asylum Law and Policy in 2015–2016: Securitization instead of Loyal Cooperation," *German Law Journal* 17, no. 6 (2016): 1033-1081, <http://heinonline.org/HOL/P?h=hein.journals/germlajo17&i=1045> .

The policy relevance of these insights is significant considering the ongoing debate of the nature of the European Union. With the growing complexity of the European Union in terms of both policies and member states, the discussion on the dynamic between sovereignty and integration has also intensified. This discussion has become part of a persistent political discourse based on the growing supranationalism in the European Union and the extension of the powers of bureaucrats in Brussels to impose policies on member states' governments. This is especially true for policy areas such as migration, asylum and internal security that touch upon core competences of the state. This discourse formed the heart of the Brexit campaign which was extensively focused on the threat to the United Kingdom's sovereignty and independent decision-making stemming from Brussels. The central idea of "taking back control" and regaining national sovereignty informed the whole Brexit campaign and was especially salient on those most visible issues such as border controls and the free movement of people.<sup>175</sup> This lack of control narrative was repeatedly articulated by leaders campaigning for the UK's leave, such as Boris Johnson, who claimed that the European Union is undertaking a process of "legal colonisation, as the EU infiltrates just about every area of public policy."<sup>176</sup> This political discourse on the supranational nature of the European Union threatening to substitute the nation state is echoed in countries such as Hungary and Poland where accusations of the European Union infringing on national sovereignty have also been strongly present.<sup>177</sup>

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<sup>175</sup> Kalypso Nicolaïdis, "The Political Mantra: Brexit, Control and the Transformation of the European Order," in *The Law and Politics of Brexit*, ed. by Federico Fabrini (York, NY; Oxford: Oxford University Press, 2017), 25-48.

<sup>176</sup> "Boris Johnson Exclusive: There is Only One Way to Get the Change We Want – Vote to Leave the EU," *The Telegraph*, March 16, 2016, accessed May 17, 2018, <https://www.telegraph.co.uk/opinion/2016/03/16/boris-johnson-exclusive-there-is-only-one-way-to-get-the-change/>.

<sup>177</sup> Krisztina Than and Gergely Szakacs, "Hungary's Orban to Seek EU of Strong Nations after Landslide Re-election," *Reuters*, April 10, 2018, accessed May 17, 2018, <https://www.reuters.com/article/us-hungary-election-orban/hungarys-orban-to-seek-eu-of-strong-nations-after-landslide-re-election-idUSKBN1HH12A>; Daniel Boffey and Christian Davies "Poland Cries Foul as EU Triggers 'Nuclear Option' Over Judicial Independence," *The Guardian*, December 20, 2017, accessed May 17, 2018, <https://www.theguardian.com/world/2017/dec/20/eu-process-poland-voting-rights>.

However, the findings of this research demonstrate that the above-mentioned political discourse on supranationalism is in fact unjustified and the claims of the European Union as a supranational entity that had gone out of the control of member states are incongruent to the legal and political realities and the still very much intergovernmental nature of the Union. The European Union integration in sensitive policy areas, such as internal security, immigration and asylum, has been shaped by member states' conscious choices and influenced by member states' respective national objectives, and remains largely intergovernmental. The divergence of member states experiences, interests and abilities is exactly the reason the Union has developed as a complex flexible arrangement across policy areas and member states and has failed short of effectiveness in its policies on certain occasions. This also implies that the scenario "those who want more do more"<sup>178</sup> that acknowledges member states' heterogeneity in terms of preferences and objectives has not only been a persistent feature of the development of the European Union but is likely to continue shaping the European integration in the future.

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<sup>178</sup> European Commission, "White Paper on the Future of Europe: Reflections and Scenarios for the EU27 by 2025", 2017: 15-29.

## Conclusion

By looking at the development of the Schengen Agreement within the framework of the European Area of Freedom, Security and Justice and comparing the two cases of Germany and the United Kingdom with respect to the related policies, the paper provides answers to the dynamic of the integration process and the decisions of member states to delegate or not competences to the European level. While the intricacy and complexity of the European integration project and its structures is way beyond the scope of this paper, the research nevertheless demonstrates that despite the functional logic of the integration, the decision-making in sensitive policy areas such as borders, internal security, immigration and asylum has been largely intergovernmental exemplifying the central role of states. The empirical discussion of the two cases of Germany and the United Kingdom points to the fact that national objectives and interests informed by and articulated within specific domestic conditions play crucial role in the integration process as expressed through the positions of the respective states on the European level. These findings have implications for the ongoing debate on the nature of the European integration which has been and continue to be contested and elusive. The findings demonstrate that while the European Union's competences have grown impressively since the establishment of the European Economic Community, it has nevertheless not evolved into a supranational polity and the integration project has been and remains largely governed by intergovernmental logic.

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